

## **OMBUDSMAN UNDER THREAT – A FACILITATED DISCUSSION**

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Ladies and Gentlemen,

Thank you very much for inviting me to speak at this webinar. The African Ombudsman Research Centre did a wonderful job in bringing us all together, despite the limitations we experience because of COVID-19. It is important that the Ombudsman community continues to be in touch and to exchange experiences and best practices; especially in difficult times like these. I am therefore happy that we have found ways and tools to meet “electronically”, so that we can keep learning from each other.

The topic of this webinar is “Ombudsman under threat” and I have to emphasise that this topic is a very important one indeed. Unfortunately, the issue of Ombudsman under threat has become more and more relevant in the past few years. So much, that helping Ombudsman under threat has become one of the core objectives of the International Ombudsman Institute (IOI). This is my second year as Secretary General of the IOI and I have already seen several cases where colleagues came under attack and asked for our support.

### **INTRODUCING THE IOI**

Let me start with some basic information about the IOI, before I talk about Ombudsman under threat from the IOI's point of view in more details.

The IOI was established in 1978 and it is the only global organisation for the cooperation of independent Ombudsman institutions worldwide. At the moment, we have 205 member institutions from more than 100 countries and our members are parliamentary Ombudsman at the national, the regional or the local level.

The IOI is committed to promoting the Ombudsman concept and we do this in a variety of ways:

- We encourage the creation of Ombudsman institutions where they do not exist;
- We promote exchange and shared learning among our members by organizing conferences, seminars or training initiatives;
- We fund research and regional projects on Ombudsman -related matters;
- We foster an ongoing dialogue with international organizations and regional partner associations such as the African Ombudsman and Mediators Association;
- And last but not least: We support colleagues who come under threat or who operate under difficult circumstances.

Ombudsman institutions are an essential and necessary element in every democracy.

- They are an important mechanism to ensure good governance and the rule of law;
- They make public administration more transparent and accountable;
- They protect people against violation of rights and the abuse of power;
- They uphold, protect and promote human rights;
- But most importantly: They always abide by the core principles of independence and impartiality when they fulfil their mandate!

## **OMBUDSMAN UNDER THREAT**

As I have said at the beginning, it happens more frequently, that Ombudsman contact the IOI to inform about the difficult circumstances they face or attacks against them and their offices. As the only global organization for the promotion of Ombudsman institutions all over the world, the IOI takes these reports very seriously and we have made it our clear priority to support members in need!

Threats to Ombudsman institutions come in a variety of forms but the reason why they happen is usually the same: They are a direct response to the Ombudsman's work, to our fight against the abuse of power and to our efforts to protect human rights.

## When do we talk about “threats”?

From the IOI’s point of view, any action, which can put the independent operation and exercise of the Ombudsman institution at risk can be seen as threat. The IOI witnessed different examples of how colleagues can come under pressure. Let me give you some examples of what we consider a matter of “Ombudsman under threat”:

- The office faces budget cuts or cuts in staff numbers.
- Parliaments refuse to discuss the Ombudsman’s report.
- Damaging remarks or verbal attacks are made against the Ombudsman publicly.
- The office faces organizational changes or changes of its mandate.
- The legal basis is changed in a way that reduces the independence of the office.
- Ombudsman are unlawfully removed from office, or new Ombudsman are not appointed.
- Political pressure is put on the Ombudsman and their staff.
- The political environment in the country is generally instable.
- There is actual ill-treatment, harassment or death-threats against the Ombudsman.

This is all very theoretical and I would like to give you some “real life” examples, which we’ve experienced in the past few years. These examples will not only paint a picture of what is happening to colleagues; it will also show that OM come under threat in every part of the world. It is not a phenomenon that is limited to certain regions or countries. Unfortunately, we find cases of colleagues under attack in Africa, Europe, Latin America, North America; simply everywhere.

- The Ombudsman of Slovakia and the Ombudsman for Bermuda, both experienced strong reactions from their governments for the criticism they voiced in their annual reports.
- The former Public Protector of South Africa even faced death threats, when she published an investigation report on the excessive spending behaviour of President Zuma.

- Sometimes the “threat” is less obvious. Restrictions of budget or staff also make it difficult for Ombudsman institutions to operate effectively. The Ombudsman of Poland for example faced severe budget cuts and potential limitations to his mandate.
- In Argentina, the position of the National Ombudsman and the National Ombudsman for Children has been vacant for years and Parliament simply fails to appoint successors, which also weakens these institutions significantly.
- The Ombudsman of Ontario (Canada) faced changes to the institution’s legislation, to enable the suspension of the Ombudsman without cause. This would have fundamentally undermined the independence of the office.
- In Italy and Spain, entire institutions at the regional level were abolished under the pretext of an economic crisis or austerity measures.
- Colleagues in Bolivia, Guatemala and Uruguay face damaging remarks and public attacks from government officials, simply because they do their work; for example they criticised the human rights situation in the country, or they spoke out in supported of vulnerable groups such as the LGBT-community.
- The situation becomes critical, when an entire country struggles with political instability and democracy itself is at stake. In situations like these, fellow Ombudsman can even face personal harassment, prison or death threats. Unfortunately, we lost an esteemed colleague when the Ombudsman of Baja California (Mexico) was shoot and killed in 2017.

## **IOI SUPPORT FOR OMBUDSMAN UNDER THREAT**

The alarming numbers of incidents raised some very important questions for us as an organization:

- What is the IOI’s role in such cases?
- What can members expect from the IOI as an organization?

- How can the IOI assist members in the best way possible and – as a non-political organization – still maintain the necessary distance to make sure we do not interfere in the political affairs of a State?

We took a first step at the 10<sup>th</sup> IOI World Conference in Wellington in 2012, where the IOI General Assembly adopted the [Wellington Declaration](#), which states that:

*“Ombudsman shall not be subject to any form of physical, mental or unjustified legal coercion or financial restrictions which limit their independence or their ability to protect the fundamental rights of all persons.”*

We once again spoke out in support of colleagues under threat at the 11<sup>th</sup> IOI World Conference in Bangkok in 2016, where the IOI General Assembly adopted the [Bangkok Declaration](#), which stipulates that:

*“Ombudsman diligently fulfilling their mandate shall not be subject to any form of physical, mental or unjustified legal coercion.”*

and that the IOI:

*“Condemns any intimidation and reprisals, such as restrictions of budget, staff or mandate against the independent work of Ombudsman.”*

and that the IOI:

*“Calls upon national governments to promptly investigate cases of alleged intimidation and reprisals against the Ombudsman and take appropriate action.”*

## **IOI GUIDELINES FOR OMBUDSMAN UNDER THREAT**

In Bangkok, the IOI Board of Directors also presented a set of [IOI Guidelines on the Support to Colleagues under Threat](#). These guidelines list different ways in which the IOI can lend its support and they help us coordinate our courses of action when we support Ombudsman under threat.

We usually hear about problematic developments from the Ombudsman institution itself, and from colleagues or the Regional President of the region. Sometimes the IOI Secretariat becomes aware of attacks against Ombudsman when we study online media coverage of different matters. In these cases, we pro-actively get in touch with the Ombudsman institution to see if they would require our help.

From our experience, we identified two general “rules”, which we try to apply if possible:

- (1) When somebody is under attack, you need to act quickly; immediate and timely action is essential.
- (2) Communication and coordination are important; any action at all stages of the process is therefore closely coordinated with the Ombudsman in question.

When we learn about a case, where a colleague comes under threat, what are the first steps we take?

### **Gathering information**

In order to strengthen our position and to have substantive arguments at hand, we first gather information from as many sources as possible. Different sources to develop a well-informed opinion usually are:

- The member institution in need of support itself;
- Fellow Ombudsman from the Region and the respective Regional President;
- Impartial contact points, such as embassies based in the country.
- Media coverage on the matter.

### **Selecting a course of action**

Once we have gathered enough information (at least as much information as the narrow time frame allows for), we select the most appropriate course of action. The IOI Secretariat presents the facts of the case to the IOI Executive Committee and the respective Regional President, who will then decide the appropriate course of action. This decision is made based on the following criteria:

- Did we take the best interest of the Ombudsman into account?
- Did we ensure the necessary sensitivity to the case?
- Did we evaluate the existing national context?

Finally yet very importantly, the chosen way forward is always **approved by the Ombudsman in need of support.**

The IOI's course of action can take different forms. As already mentioned, we need to evaluate the situation first and consult with the Ombudsman in question. Based on this information we then take one of the following actions:

- If a more discreet approach is recommended, we send a letter signed by the IOI President, the Secretary General and the respective Regional President directly to the Government or to Parliament addressing the matter and showing our concern.
- If we like to reach a broader public, we publish an open statement on our website, expressing the IOI's concern on the matter (this is usually also distributed via our weekly newsletter).
- If joined forces seem convenient to bring our message abroad more strongly, we coordinate our action with relevant national or regional stakeholders (for example regional Ombudsman associations or Ombudsman networks).
- Finally, we may consider conducting a fact-finding mission. In this case, we send an IOI delegation to the colleague in need of support, to take evidence in the country. The IOI has only carried out one fact-finding mission so far, to support our colleague in Poland. It was a combined effort with international partner organizations and we presented the results in a press conference in Poland, including a report of our findings and our recommendations to strengthen the Ombudsman.

Ladies and Gentlemen,

I hope I've been able to give you more insight into what the IOI can do and has done for colleagues, who have come under attack, who experience pressure or who operate under very difficult circumstances.

I would like to encourage all of you to get in touch with the [International Ombudsman Institution](https://www.theioi.org) whenever you have concern about a possible threat to your own institution or to a fellow Ombudsman institution.

Thank you very much!