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المملكة المغربية
مؤسسة وسيط المملكة

*Institution du Médiateur du
Royaume du Maroc*

Speech of **Mr. Mohamed Benalilou**
Mediator of the Kingdom of Morocco, AOMF President

On the occasion of the Webinar

on

« **UN Resolution on the Role of Ombudsman and mediator institutions** »

- Tuesday February 23rd, 2021-

International Ombudsman Institute (IOI)
African Ombudsman and Mediators' Association (AOMA)
African Ombudsman Research Centre (AORC)

Mr. Peter Tyndall, IOI President and Ombudsman of Ireland
Mr. Werner Amon IOI Secretary General, Ombudsman of Austria
Mr. John Walters, Ombudsman of Namibia
Ms. Kholeka Nompilo Gcaleka, Deputy Public Protector of South Africa,
AOMA Representative, and AORC Head of Board
Mr. Brian Mc Arthur, Vice President of the University (UKWZN) and
Acting Dean of Law and Management College

Ladies and Gentlemen;

I am very glad to be amongst you and to be given the floor in this **special meeting**, both in terms of its **circumstances and topic**.

It is a special with regard to the circumstances in which it is held because of the spillover effects of the pandemic (Covid 19), such circumstances brought to our minds the main roles carried out by Ombudsmen institutions in guaranteeing the rights of the public-service-users and specific groups under the crisis.

It is also a special meeting because of its topic, given the UN General Assembly's adoption, during its 75th session held on December 16th, 2020, of the Resolution regarding « **the Role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law**».

Allow me, therefore, to say that I will tackle this topic according to different contexts, namely the Human Rights-centered institutional, the mobilizing, as well as the historical context.

As we all know, despite the key roles performed by the Ombudsman and mediator institutions, the latter lacked, for a long time, the « sufficient» interest by the United Nations, its bodies and ad hoc committees, in a way that would adequately respond to the missions carried out by such institutions.

Hence, such institutions have always been governed, concerning the international norms which recognize their roles and action, by the key general international standards, which regulate the action of all the other human rights promotion institutions (Principles and goals of the UN Charter, of the

UN Human Rights Declaration, of Vienna Programme of Action, as well as Paris Principles...), without having any specific norms which confirm their independent existence.

However, given the significant proliferation of such institutions worldwide, and bearing into mind their rights-protection-specific-roles, including public service rights, in addition to being a source of proposal aiming at redressing public policies and enhancing transparency, debate was launched concerning the relationship between the Ombudsman institutions and the UN Human Rights protection system. Debate also tackled the setting up of norms which meet the particular character of such institutions. Therefore, the Kingdom of Morocco, in cooperation with Sweden, took in 2008, through their foreign affairs ministries, the initiative to submit a Draft resolution about « **the Role of Ombudsman and mediator and other national human rights institutions in the promotion and protection of human rights**».

In coordination with Diwan Al Madhalim, the Kingdom of Morocco held consultations concerning such resolution with the African group as well as with the EU and US delegations to the UN Headquarters in New York. Consultations were crowned with the UN General Assembly's adoption of the Resolution on December 18th, 2008; its adoption was reiterated in the years 2010, 2012, 2014, 2016, 2017, with particular and gradual addenda incorporated in all these resolutions. Such Resolution stood for a key referential for Ombudsman and mediator institutions, and portrayed an entry to confirm the UN recognition concerning the role of such bodies in protecting human rights and to abide by the standards which govern their action and back up their role in this domain

At this level, I would like to note that reservations were expressed by some countries which lacked similar institutions, and difficulties arose during the consultations, mainly about:

- The term « mediation »;
- The absence of a reference to good governance in the institution's prerogatives;
- The functional anomalies found between Mediators and other human rights institutions.

However, the UN Resolution stood, then, for a driving force to create a new dynamic through encouraging member states to establish mediation institutions, to strengthen the existing ones, to equip them with the adequate constitutional and legislative framework, as well as to provide the financial resources likely to guarantee their independence and the credibility of their action.

In parallel to this historical context, there was an important human rights-centered institutional context incarnated by the reality of Ombudsman institutions and their importance within the national human rights tissue for most countries, and the achievements made by these institutions insofar as widening the freedom's scope and strengthening rights are concerned.

Moreover, we may mention the motivating mechanisms created by institutional networking, through the different international and regional organizations, which contributed to highlighting the role of Ombudsmen in the institutional human rights tissue, namely the International Ombudsman Institute, the Francophone Ombudsman and Mediator Association, the Mediterranean Ombudsman Association, the African Ombudsman and Mediator Association, the Ibero-American Ombudsman Federation, the European Ombudsman Network, and the Asian Ombudsman Association).

Such human rights-centered institutional context drove to thinking about the best ways to increase the notoriety of such institutions internationally, having them integrated at the UN agenda and structures, and setting up standards and norms regarding their methods of action, while strengthening the jurisprudence relevant to their remit and raising awareness about their roles.

Besides the human rights-centered institutional context characterized by the will to strengthen the role of Mediators and Ombudsmen in protecting rights and freedoms, one must not neglect the important mobilizing role embodied in the advocacy process, starting from the technical tasks carried out by the IOI ad hoc committee, to the diplomatic work undertaken by the Moroccan diplomacy in connection with many countries who expressed interest in the issue.

I have to tell you that the coordination work of the preparatory committee which lasted for about eight months, ended with introducing amendments to the previous Resolution, framed by a key orienting principle, which lied in devoting the amended resolution only to the Mediator and Ombudsman institutions, excluding, therefore, other human rights institutions, unlike the previous versions, in such a manner as to stress the identity-centered independence of mediation institutions.

These initiatives aimed at reaching an advanced status for Ombudsman and mediator' institutions within the UN human rights arena, through enhancing their presence and notoriety while inciting countries to strengthen the role of institutional mediation and granting them the position likely to help such mediation convey its message inside the human rights system and democratic space.

Such an idea framed the process, in which the institution of the Mediator of the Kingdom engaged with a sense of responsibility, through being eager to follow up the draft with the Moroccan Permanent Mission to the UN. The latter led with professionalism all the consultations conducted on the ground, including advocacy about the subject, resorting to inclusive mobilization of diplomatic delegations, to passing the initiative of the Kingdom of Morocco, which held itself accountable for submitting and defending this important human rights project. As a result, 90 countries adopted the amended version of the UN Resolution on December 16th, 2020, about « **the Role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law**».

Therefore, it must be stressed that the amendments made to the UN Resolution are not merely formal or harmonizing ones, but rather stand for central gains regarding the relationship between Ombudsman and Mediator institutions and the UN on the one hand, and the standing of such institutions among the institutional, human rights, and democratic edifice within countries on the other hand. That being said given the independence principles they have implemented, the pioneering roles they have performed in establishing good governance, and the concern they have shown while monitoring Rule of Law observance by public authorities and agencies. Such amendments also meant to improve the relationship between these

administrations and their users, and to provide public services in conformity with transparency, accountability, and equity principles.

In addition, we shall not neglect the fact that the final version included substantial amendments which altered the UN Resolution content and naming. Such naming included, for the first time, a referential framework peculiar to the mediation institutions, as it was previously shared with other human rights institutions, in such a way as to reinforce their position among the UN mechanisms.

Likewise, as highlighted in the Resolution's title, its naming confirmed the competence of the mediation institutions in fostering good governance and the rule of law principles, in such a way as to strengthen good governance and the relevant principles of moralization, transparency, administrative integrity, while bestowing upon it, thus, an added value compared to other human rights institutions.

At the level of drafting, the new resolution was formulated using a strong language which supports the position of mediation institutions, through adopting an « affirmative » style concerning a number of principles which, for the first time, instated their key roles, as well as the express « recognition » style with regard to some prerogatives and means of intervention. All these changes aimed at reformulating the Ombudsman institutions' role in regulating the relationship between citizens and the administration to meet objectivity, transparency, and impartiality requirements.

With regard to the content, as clearly shown on the resolution's body, new paragraphs were added to the amended version. In fact, the Preamble, which portrays the main entry to reiterate the basic human rights framework, stresses the importance of recognizing **Venice Principles** concerning « **the Protection and the Promotion of the Ombudsman Institution** », and highlighting the significant interest accorded to the immunity principle, among other principles. This goes in line with the will previously expressed upon submitting the draft resolution, which aimed, inter alia, to vest the Ombudsmen and Mediators with judicial and functional immunity while in office, however, some countries expressed objections against such entitlement.

Moreover, we should appreciate « the recognition » made to the long history of mediation institutions and their role in « good governance and respect for the rule of law implementation through redressing the lack of power balance between the individuals and the public services providing bodies». Therefore, such assigned prerogatives should be considered as « an additional autonomous function » as well as a «recognition» of the importance of cases assessment, detection, and investigation, based on these institution's own motion.

Likewise, the Resolution defined the scope of independence vis-à-vis the executive and judiciary powers as well as the political parties, in order to allow the institutions fulfill their missions without any pressure or real or potential fear.

The Resolution also incited for mediation institutions creation and strengthening to harmonise with Venice Principles, through equipping them with the necessary and adequate constitutional and legislative framework, with the State's support and protection, as well as with the power to undertake painstaking investigation, communicate their results, and submit reports about their activities.

A number of concepts and tools included in this Resolution will not be dealt with in details, for time constraints. Such concepts and tools aim at strengthening the roles of mediation institutions, their means of intervention, instauring their independence, enhancing their capacities, protecting their personnel, and promoting their relationship with the United Nations, namely the High Commissioner for Human Rights(OHCHR), civil society and other stakeholders. All these efforts long for encouraging the organization of awareness-raising campaigns about the role of these institutions as well as maintaining the imperative of providing them with the necessary financial resources...etc.

All these gains may be translated into three main symbolic significations embodied in the UN Resolution, which portrayed the plus-value and novelties found in the new version, to be summarized as follows:

- ❖ The significance of obtaining further international recognition concerning the roles of these institutions and enhancing their visibility as important and effective tools, having proximity to

- citizens, effectively intervening among the Human Rights System, and contributing to the democratic edifice and to the rule of law;
- ❖ The significance of translating the UN key values, principles, and objectives for which mediation institutions were established;
 - ❖ The significance of the UN concern in encouraging countries to strengthen the role of institutional mediation, deemed as a means to boost rights and freedoms protection guarantees, including access to public service-centered rights.

Besides, the new version of the Resolution could be considered as a tool to establish advanced cooperation relations between the mediation and ombudsman institutions and the UN Mechanisms, and achieve further recognition of their roles in the field of defense of rights and freedoms.

Therefore, prior to concluding this intervention, I would like to note that any reading of the amended UN Resolution should always be carried out in harmony with the previously amended resolutions, as they reflect the evolving concept of mediation institutions and their competences, and how their understanding by the UN mechanisms evolved.

Ladies and Gentlemen,

I submit to your attention the gains we obtained as institutions, through this supporting tool. We should maintain that we are facing important challenges in translating the provisions of this Resolution into concrete programmes and activities, as well as into practices which strengthen our recognized roles and remits, in order to serve as the active voice of the voiceless, and to contribute, internationally, to the good governance, human rights, and rule of law oriented change. Thus, the post resolution period implies interaction with its provisions, through taking further promotion initiatives and carrying on further integration in the UN apparatuses.

At the other end of the spectrum, I would like to seize this opportunity, being the presence of my colleague, the Irish Ombudsman, in order to call for the renewal or setting up new mechanisms to assess the degree of organizational and legislative compatibility of the different mediation institutions with the UN Resolution requirements. In this respect, the

Institution of the Mediator of the Kingdom will be glad to share its experience with the IOI.

In addition, the Institution of the Mediator of the Kingdom declares, in implementation of the provisions of the UN Resolution, its constant disposal to share its best practices and expertise with the similar institutions, either at the bilateral, regional, or multilateral levels.

Thank you for your attention.

Mohamed Benalilou
Mediator of the Kingdom of Morocco
President of the AOMF