

Models of Ombudsman and Human Rights Protection

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ABSTRACT

There is a worldwide trend of establishing the office of ombudsman at sub-national, national, and supra-national levels with general or specialized jurisdictions. Since the first establishment of the modern form of ombudsman, the jurisdiction and powers of ombudsman are ever evolving. One major development is to extend its jurisdiction from purely supervision over maladministration by public authorities to human rights infringement committed by public authorities or even private bodies. The aim of this article is to examine the different models that have been adopted by ombudsmen in different countries in protecting human rights. The human rights situation in a particular jurisdiction, the historical, political, constitutional and cultural environments of the jurisdiction, the institutional design of the ombudsman as well as the self-consciousness and self-perception of the ombudsman will all determine the degree of intensity of human rights issues that the ombudsman will have to encounter and is willing to handle. Six models are identified reflecting the varying degree of involvement by the ombudsman in human rights protection.

No one questions that there is a worldwide trend¹ of establishing the office of ombudsman at sub-national,² national,³ and supra-national⁴ levels with general or specialized jurisdictions. Since the first establishment of the modern form of

¹ Roy Gregory and Philip Giddings, 'The Ombudsman Institution: Growth and Development' in Roy Gregory and Philip Giddings (eds.), *Righting Wrongs: the Ombudsman in Six Continents*, (IOS Press, 2000); Mary Seneviratne, *Ombudsman: Public Services and Administrative Justice* (Butterworths LexisNexis, 2002), ch 1: 'Ombudsmen – A Worldwide phenomenon'; Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Martinus Nijhoff Publishers, 2004), ch 1; and Rhita Boust, 'The Ombudsman: Proposal for a Definition' (2005) 9 *International Ombudsman Yearbook* p 36, at p38-42.

² Michael Mills, 'Municipal Government Ombudsman' in Linda C. Reif, *The Ombudsman Concept* (International Ombudsman Institute; University of Alberta, Edmonton, 1995) and D. C. M. Yardley, 'Local Ombudsmen in England: Recent Trends and Developments' (1983) *Public Law* p 522.

³ John Robertson, 'The Ombudsman Around the World' (1998) 2 *International Ombudsman Yearbook* p 112.

⁴ The example is the European Ombudsman. See Katja Heede, *European Ombudsman: Redress and Control at Union Level* (Kluwer Law International, 2000).

ombudsman in Sweden in 1809, the jurisdiction and powers of ombudsman are ever evolving. One major development is to extend its jurisdiction from purely supervision over maladministration by public authorities to human rights infringement committed by public authorities or even private bodies.⁵

The aim of this article is to examine the different models that have been adopted by ombudsmen in different countries in protecting human rights.

As Robertson said, *“the core business of an ombudsman can correctly be said to include basic human rights violations which arise from the daily interaction of a government and its people. But they occur in different degrees of intensity.”*⁶ The human rights situation in a particular jurisdiction, the historical, political, constitutional and cultural environments of the jurisdiction, the institutional design of the ombudsman as well as the self-consciousness and self-perception of the ombudsman will all determine the degree of intensity of human rights issues that the ombudsman will have to encounter and is willing to handle. We observe that there can be six ombudsman and human rights models (OHRMs) reflecting the varying degree of involvement by the ombudsman in human rights protection.

i. The First Model: the Classical OHRM

The first OHRM is a variation of the classical ombudsman model or may even be just another description of the classical model from a different perspective. The classical ombudsman model has the general and core jurisdiction over administrative conduct and the main type of administrative wrongs under its supervision are acts of maladministration, administrative unfairness and noncompliance with the law.⁷ Seeing from the perspective of the classical ombudsman model, the emphasis is on the maintenance of the standard of performance of the public administration and the removal of official wrongdoing. However, seeing from the OHRM perspective, the emphasis is on the protection of citizens' rights.⁸

The classical ombudsman model⁹ was developed at a time when the language of

⁵ Philip Giddings, Vladimir Sladeczek and Laura Diez Bueso, 'The Ombudsman and Human Rights' in Roy Gregory and Philip Giddings (eds.), *Righting Wrongs: the Ombudsman in Six Continents*, (IOS Press, 2000).

⁶ Robertson (note 3 above), p 120-121. Robertson is the former Chief Ombudsman of New Zealand.

⁷ Robertson (note 3 above), p 116. See also Dean M. Gottehrer and Michael Hostina, 'The Classical Ombudsman Model' in Roy Gregory and Philip Giddings (eds.), *Righting Wrongs: the Ombudsman in Six Continents*, (IOS Press, 2000).

⁸ Gerald E. Caiden, 'The Institution of Ombudsman' in Gerald E. Caiden (ed.) *International Handbook of the Ombudsman: Evolution and Present Function* (Greenwood Press, 1983), p 10. See also Judge Anand Satyanand, 'The Ombudsman Concept and Human Rights Protection' (1999) 29 *Victoria University of Wellington Law Review* p19, at p 23.

⁹ The classical ombudsman model may be a pre-OHRM and most classical ombudsman may have

rights was far from “*dominating political debate.*”¹⁰ With the advancement of the human rights era, most ombudsmen of the classical ombudsman model might have been repackaged to become the first OHRM to indicate that the work of the ombudsman under its classical jurisdiction is already protecting citizens’ rights. The right of the citizen that is being protected is her right to make complaints against acts of maladministration committed by public officials.¹¹ The ombudsman in exercising its powers and interpreting whether a particular act of the public officials is an act of maladministration may not explicitly or consciously refer to the generally accepted international standards of human rights. This may be called the classical OHRM.

The best example is the Swedish Ombudsman, the first modern ombudsman.¹² The office of *Justitieombudsman* was established in Sweden according to the Swedish constitution of 1809 acting as the “*parliament’s watchdog.*”¹³ The reason for establishing the office at the beginning was the desire of the Swedish Parliament to have an independent officer separated from the King of Sweden to ensure laws and regulations were observed by public officials. As time goes by, the office evolves more as a citizen-defender, concerns mainly with resolving public complaints against public officials.¹⁴ We can see the shift from the classical ombudsman model to the classical OHRM.

ii. *The Second Model: the Implicit OHRM*

already reoriented themselves to become at least an ombudsman of the first or second OHRM. One may say that most ombudsmen in the world are now some kinds of OHRM.

¹⁰ A. W. Bradley, ‘The Ombudsman and the Protection of Citizens’ Rights: A British Perspective’ in Gerald E. Caiden (ed.) *International Handbook of the Ombudsman: Evolution and Present Function* (Greenwood Press, 1983).

¹¹ John McMillan, ‘The Role of the Ombudsman in Protecting Human Rights’ presented in the Conference on ‘Legislature and the Protection of Human Rights,’ University of Melbourne, Faculty of Law.

(Available at

<http://cccs.law.unimelb.edu.au/download.cfm?DownloadFile=DBD41757-1422-207C-BACB1D1EB3CEFE7>. Last visited on 4 March 2009.)

¹² It is believed that similar offices like the ombudsman could be dated back to the complaint officers of the Egyptian kings in ancient Egypt, the grievance officers appointed by Moses among the Hebrews, the censors under the Roman Republic, and the Control Yuan in the Han Dynasty in China. See Caiden, (note 8 above), p 9 and Hwang Yueh-chin, ‘Role and Responsibility of the Control Yuan’ in Linda C. Reif, *The Ombudsman Concept* (International Ombudsman Institute; University of Alberta, Edmonton, 1995).

¹³ Victor O. Ayeni, ‘The Ombudsman Around the World: Essential Elements, Evolution and Contemporary Issues’ in Victor O. Ayeni, Linda Reif and Hayden Thomas (eds.) *Strengthening Ombudsman and Human Rights Institutions in Commonwealth Small and Island States: the Caribbean Experience* (Commonwealth Secretariat, 2000), p 2. See also Tore Modeen, ‘The Swedish and Finnish Parliamentary Ombudsman’ in Roy Gregory and Philip Giddings (eds.), *Righting Wrongs: the Ombudsman in Six Continents*, (IOS Press, 2000).

¹⁴ Ayeni, *Ibid.*

The second OHRM is a variation of the first but the difference between the two may be very fine. Under both models, there is no express and direct reference point for the ombudsman to be connected to the protection of human rights. However, the relevance of human rights under the second OHRM does not limit to the right of citizens to complain. Guaranteeing human rights is considered to be an intrinsic element of “*good administration*.”¹⁵ In some cases, the ombudsman may have jurisdiction over discriminatory actions.¹⁶

In addition, the ombudsman of the second OHRM may comparatively have a stronger self-consciousness and self-perception that her work is connected with the protection of human rights though human rights principles still will not provide direct guidance to the ombudsman in exercising her powers. Some ombudsmen of the second OHRM may specifically choose to mention in the report of their work that certain areas of their activities fall under some major categories of human rights enjoyed by citizens. The work of the ombudsman exercising the classical jurisdiction in certain sectors of the public administration coincidentally advances the protection of human rights of the affected citizens in those sectors.¹⁷ This may be called the implicit OHRM.

An example is Anand Satyanand. He was New Zealand’s Parliamentary Ombudsman. In an article explaining his work,¹⁸ he referred to several distinct areas in which he considered his work abutted the protection of human rights.¹⁹ John McMillan, the current Commonwealth Ombudsman of Australia also made similar reference to the relevance of human rights protection in his work in areas of government activities like immigration, policing and the counter-terrorism response.²⁰

¹⁵ Milan Ambrož, ‘The Mediating Role of the Ombudsman in the Protection of Human Rights’ (2005) 14 *International Journal of Social Welfare* p 145, at p 147.

¹⁶ Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (M. Nijhoff, 2004), p 86.

¹⁷ Bernard Frank, ‘The Ombudsman and Human Rights - Revisited’ (1976) 6 *Israel Yearbook on Human Rights* p 122, at p 152-157.

¹⁸ Satyanand (note 8 above), p 23-24.

¹⁹ The areas included complaints by prisoners touching on Article 5 of the Universal Declaration of Human Rights involving the right against degrading treatment or punishment, complaints concerning administrative procedures in either suspension or expulsion of pupils from schools touching on Article 26 of the Universal Declaration of Human Rights involving the right to education, and complaints by social welfare beneficiaries touching on Article 25 of the Universal Declaration of Human Rights involving the right to a standard of living adequate for the health and well-being of himself and of his family.

²⁰ McMillan (note 11 above), p 3 and 8. It may also be the case of the Ombudsman of Belize. See the First Annual Report and the Seven Annual Report of the Ombudsman of Belize. The relevant paragraphs are reproduced in Paul Rodriguez, ‘The Ombudsman of Belize and the Human Rights Mandate’ presented in the Commonwealth Conference of National Human Rights Institutions, Marlborough House, London, 26-28 February 2007.

(Available at:

http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/EE8F18E0-0D2B-47AD-B882-9

iii. *The Third Model: the Explicit OHRM*

Comparing with the second OHRM, the ombudsman under the third OHRM more explicitly refers to national and international bill of rights in exercising its powers to deal with maladministration. The notion of human rights is not a concept subsumed in the concept of good administration. Human rights principles will be referred to in interpreting the empowering laws of the ombudsman as well as the constitutional, statutory and administrative standards that public officials are required to conform with though she still will not apply the human rights principles directly to scrutinize all administrative acts and decisions. This model of ombudsman may more likely exist in constitutional systems with an entrenched bill of rights. It is also more likely that its existence precedes the bill of rights. This may be called the explicit OHRM.

The current Ombudsman of Ireland, Emily O'Reilly, is an example of the third OHRM. The office of Ombudsman was established in Ireland in 1984. According to s. 4 of the Ombudsman Act, the Ombudsman may investigate any action taken by public officials if it appears to the Ombudsman that the action has or may have adversely affected a person and that *“the action was or may have been taken without proper authority, taken on irrelevant grounds, the result of negligence or carelessness, based on erroneous or incomplete information, improperly discriminatory, based on an undesirable administrative practice, or otherwise contrary to fair or sound administration.”* The European Convention on Human Rights Act was enacted in Ireland in 2003.

Emily O'Reilly in an article said:

“It is important to note that maladministration can encompass human rights issues, although it is not always seen in these terms by public servants or, indeed, by ombudsmen and their staff. Ombudsman offices are often not accustomed to analyzing complaints from this wider perspective and, indeed, staff may lack the knowledge and expertise to do so. But ombudsmen and their staff do need to recognize that if [human] rights are not properly or adequately protected, there may be difficulties for them in ensuring that their traditional preserve – sound and fair administration – operates in a proper manner. In essence, this means that ombudsmen should take the broadest possible view of their role and see it as encompassing two principal aims namely, promoting respect for human dignity

and protecting individuals who are dependent on public authorities.”²¹

She suggested that even if the ombudsman may not be granted a specific human rights mandate, on the condition that she is not expressly precluded from doing so, she can still refer to the norms provided in international human rights instruments no matter whether they are the international treaty obligations of the state or whether those instruments have been given effect domestically or not.²²

If they are already a part of domestic law, either because the international laws are automatically incorporated as part of the domestic law or effected through the passage of domestic enabling legislation, the ombudsman can rely on them directly in investigating complaints and in making recommendations. One may argue that it may even be the legal duty of the ombudsman for doing so. If they are not incorporated into the domestic legal framework, the ombudsman may still rely on them as an interpretative guide to existing domestic laws. Even if they are not part of the international obligations of the state, the international human rights norms can still be an informal source of principles of fairness and equity.²³

The first, second and the third OHRMs may still be compatible with the classical ombudsman model because the jurisdiction of the ombudsman basically still concerns maladministration. They may not be distinct models but models fall on a spectrum depending on how prepared and how explicit does the ombudsman utilize human rights norms in implementing her duties as an ombudsman in fighting against individual and systemic errors in the public administration for the well-being of the citizens.

The difference is just that the ombudsmen of these three models use the language of rights in varying degrees to guide and justify their work and are working in different constitutional and legal environments.

²¹ Emily O'Reilly, 'Protecting Rights and Freedoms' (2003) 7 *International Ombudsman Yearbook* p 24, at p 29. Similar comments were also made by Jens Møller, Director General of the Parliamentary Commissioner for Civil and Military Administration in Denmark. (Jens Møller, 'The Danish Ombudsman and the Protection of Human Rights' in Franz Matcher (ed.) *Ombudsman in Europe* (N. P. Engel, 1994). See also the view of Hayden Thomas, Ombudsman of Antigua and Barbuda and President of the Caribbean Ombudsman Association in his paper, 'Ombudsman and Human Rights – Steps forward to Embracing a Human Rights Mandate, Recent Developments' presented at a workshop on the Promotion and Protection of Reproductive Rights through the Work of the Ombudsman of the Caribbean, held at Kingston, Jamaica on March 18-20, 2003. (Available at: http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD_426718980/Ombudsman%20and%20Human%20Rights%20paper%20thomas.doc?url=%2FBibliotecaWeb%2FVarios%2FDocumentos%2FBD_426718980%2FOmbudsman+and+Human+Rights+paper+thomas.doc. Lasted visited on 18 March 2009.)

²² *Ibid*, p 32.

²³ *Ibid*, p 36. See also Reif, (note 1 above), ch 4 and Reif (note 12, above).

iv. *The Fourth Model: the Co-existing OHRM*

The first three OHRMs may also coexist with a national human rights institution vested with the authority to promote and protect human rights. They become the fourth OHRM and may be called the Co-existing OHRM.²⁴

Using Ireland as an example again, the Irish Human rights Commission was established in 2001. On the relationship between the ombudsman and national human rights institution,²⁵ Emily O'Reilly said:

*“Should an Ombudsman get involved in what might be seen as probing human rights inquiry when another body – the Irish Human rights Commission – exists to do precisely that? I must emphasize that I am not proposing that the Office of Ombudsman would compete with or in any way challenge the role of the Commission. Rather, I see both bodies working in a cooperative manner.”*²⁶

As ombudsmen gradually engage in a wider range of activities for the protection of human rights, the distinction between the two offices are more blurred. One major difference between the two may be that ombudsman concerns mainly with fairness and legality in public administration but national human rights institutions will often concern themselves with the actions of private bodies and individuals as well as of the government.²⁷ Another difference is that a national human rights institution usually has pluralist representation in the governing structure while the office of ombudsman is usually a single person appointment.²⁸

²⁴ There may be some countries that only have a national human rights institution but without an office of ombudsman. However, in most case, if one can find a national human rights institution, one may find the existence of an office of ombudsman. See also the fifth and the sixth OHRM described below. In some jurisdictions, there may not be a national human rights institution with general jurisdiction but a human rights institution with specialized jurisdiction like ant-discrimination.

²⁵ New Zealand also has a Human Rights Commission co-existing with the New Zealand Ombudsman. The Human Rights Commission is subject to the jurisdiction of the Ombudsman. The office of Commonwealth Ombudsman of Australia is subject to the jurisdiction of the Human Rights and Equal Opportunity Commission.

²⁶ Emily O'Reilly, 'Human Rights and the Ombudsman' presented in the British and Irish Ombudsman Association Conference in 2007 at the University of Warwick. (Available at: <http://www.bioa.org.uk/docs/HumanRightsOmbudsmanEmilyOREilly.pdf>. Last visited on 3 March 2009.)

²⁷ *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (United Nations, 1995), p 9. See also Leonard F. M. Besselink, 'Types of National Institutions for the Protection of Human Rights and Ombudsman Institutions: An Overview of Legal and Institutional Issues' in Kamal Hossain, Leonard F. M. Besselink, Haile Selassie Gebre Selassie and Edmond Volker (eds.) *Human Rights Commissions and Ombudsman Offices: National Experiences throughout the World* (Kluwer Law International, 2000).

²⁸ Morten Kjærum, "National human rights institutions implementing human rights' in Morten

Under the co-existing model, there needs to be arrangement for division of labour and better coordination between the ombudsman and the national human rights institution to avoid confusion.²⁹ Robertson observed that in a small number of cases of the fourth OHRM, *“the ombudsman has served or is serving on the national human rights institution in an ex officio capacity. This may facilitate cooperation and ensures a transfer of professional expertise in processing case.”*³⁰

v. *The Fifth Model: the Extended OHRM*

The fifth OHRM is explicitly granted with a human rights mandate through legislation or constitutional provisions. In addition to the classical jurisdiction, the office of ombudsman is directly vested with the authority to investigate into infringement of human rights. This may be called the Extended OHRM.

The Parliamentary Ombudsman of Finland is an example of such a model. The office was established by the 1919 Constitution of Finland.³¹ The original task of the Ombudsman was only *“to oversee that the courts of justice and other public authorities as well as public officials in the performance of their duties, the employees of public corporations and other persons performing public functions comply with the law and fulfill their obligations.”* This is more or less the jurisdiction of a classical ombudsman. In 1995, the Constitution was amended providing that *“in the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights.”*³² The jurisdiction of the Finnish Ombudsman is extended to cover human rights.³³

This is also the recommendation of the Committee of Ministers, Council of Europe for member states that if they have an ombudsman, they should consider to empower the ombudsman *“to give particular consideration, within his general competence, to the human rights matters under his scrutiny and, if not incompatible with national legislation, to initiate investigations and to give opinions when questions of human rights are involved”* and to *“consider extending and strengthening the powers of the ombudsman in other ways so as to encourage the effective observance of human rights and fundamental freedoms in the functioning of*

Bergsmo, *Human Rights and Criminal Justice for the Downtrodden* (Marinus Nijhoff Publishers, 2003).

²⁹ Besselink, (note 27 above), p 159.

³⁰ Robertson, (note 3 above), p 121-122. One example is Malawi. The Ombudsman of Malawi is an *ex officio* member of the Malawi Human rights Commission.

³¹ Article 49.

³² In 1999, the Finnish constitutional documents were consolidated and the current provision concerning the ombudsman is Art. 109.

³³ Modeen (note 13 above), p 320.

the administration.”³⁴

vi. *The Sixth Model: the Hybrid OHRM*

The sixth OHRM is a more recent creation arising out of the specific needs of new democratic states which have been under totalitarian rule for some time.³⁵ The core business of the fifth OHRM may still be maladministration though it has the constitutional and legal authority to deal with human rights violation. However, the core business and the main purpose of establishing the sixth OHRM are for the protection human rights. Therefore, ombudsmen of this model are often given the name of human right ombudsman. In many ways, they are similar to national human rights institutions established in accordance with the Paris Principles.³⁶ The sixth OHRM may be called the Hybrid OHRM.

The Hybrid OHRM differs from the above models in several ways.³⁷ An ombudsman of the Hybrid OHRM may have duties and powers that cannot be found in the first three OHRMs. She may have the function of undertaking human rights education, research and law reform initiatives. She may also have the power to bring constitutional cases to court.³⁸

The first batch of ombudsman of this kind includes the Ombudsman of Portugal established in 1976³⁹ and the Ombudsman of Spain established in 1978.⁴⁰ They were both established at the time of their transition to democracy.⁴¹ Since then, the Hybrid

³⁴ Recommendation No. R (85) 13 of the Committee of Ministers to Member States on the Institution of the Ombudsman adopted by the Committee of Ministers on 23 September 1985 at the 388 meeting of the Ministers Deputies, Council of Europe. Reproduced in *Non-judicial means for the Protection of Human rights: the institution of the Ombudsman*, (Directorate of Human Rights, 1987).

³⁵ Iván Bizjak, ‘The Role and Experience of an Ombudsman in a New Democracy’ (1998) 2 *International Ombudsman Yearbook* p 57.

³⁶ UN Commission on Human Rights Resolution 1992/54 of 3 March 1992, annex (E/1992/22); General Assembly Resolution 48/134 of 20 December 1993, annex. For the differences, see the discussion of the fourth OHRM above.

³⁷ The sixth OHRM may share these differences with the fifth OHRM as against the first three models.

³⁸ Reif (note 12 above), p 87-88.

³⁹ Article 23 of the Portuguese Constitution provides that ‘citizens may submit complaints against actions or omissions by the public authorities to the Ombudsman, who shall assess them without the power to take decisions and shall send the competent bodies such recommendations as may be necessary in order to prevent or make good any injustices.’ It is supplemented by the Statute of the Ombudsman (Law n.º 9/91) that ‘the Ombudsman is a State body elected by Parliament whose main duties shall be to defend and to promote the rights, freedoms, guarantees and legitimate interests of the citizens, ensuring, through informal means, that public authorities act fairly and in compliance with the law.’

⁴⁰ Article 54 of the Spanish Constitution provides that ‘an organic law shall regulate the institution of the Defender of the People as the High Commissioner of the Parliament, appointed for the protection of the rights contained in [the Constitution] for which purpose he may supervise the activity of the administration, informing the Parliament of it.’

⁴¹ Laura Díez Bueso, ‘Spain’s Parliamentary Ombudsman Scheme’ in Roy Gregory and Philip

OHRM has been imported by many states in Eastern Europe, Africa and Latin America. An example in Eastern Europe is the Commissioner for Civil Rights Protection in Poland.⁴² Namibia is an example in Africa.⁴³ Guatemala is the first country in Latin America that establishes the office of ombudsman of the Hybrid OHRM.⁴⁴

There may be several reasons that cause or justify the development of the sixth OHRM.⁴⁵ First, because of the historical, political and cultural contexts in these states, abuses on the citizens' fundamental freedoms in their everyday life and their daily interaction with the government are more common phenomenon. Therefore, the institutional setup of the ombudsman has to be evolved and designed in a way to address these needs.⁴⁶

Second, the judicial mechanisms at least initially are not trusted by the people as defenders of their rights as they are perceived to have been too closely associated with the authoritarianism of the previous regime. The newly established ombudsman office with her explicit personal independence and impartiality provides a source of integrity and moral authority and is perceived to be more attractive.⁴⁷

Third, an integrated institution dealing with maladministration as well as human rights violation is preferred as this can save cost.⁴⁸ This is a major concern in states that cannot afford to fund several oversight institutions. A multipurpose ombudsman can limit institutional overlapping and duplication⁴⁹ and concentrate expertise.⁵⁰

Fourth, in some states, there are systemic discrimination against indigenous peoples and ethnic minorities. To provide protection to minorities' rights, the work of

Giddings (eds.), *Righting Wrongs: the Ombudsman in Six Continents*, (IOS Press, 2000), p329-331.

⁴² Ewa Letowska, 'The Polish Ombudsman and Human Rights' in Franz Matcher (ed.) *Ombudsman in Europe* (N. P. Engel, 1994) and Howard Elcock, 'Making Bricks without straw: The Polish Ombudsman and the transition to democracy' in Neil Hawke (ed.), *The Ombudsman: twenty-five years* (Cavendish Publishing, 1993).

⁴³ Philip Giddings, Vladimir Sladecsek and Laura Diez Bueso (note 5 above), p 452- 455.

⁴⁴ Jorge Luis Maiorano, 'The Defensor del pueblo in Latin America' in Roy Gregory and Philip Giddings (eds.), *Righting Wrongs: the Ombudsman in Six Continents*, (IOS Press, 2000).

⁴⁵ See Reif (note 12 above), p 88-89.

⁴⁶ Fernando Alvarez de Miranda y Torres, 'Human Rights and Their Function in the Institutional Strengthening of the Ombudsman' (1998) 2 *International Ombudsman Yearbook* p 146 at p 147 and John Robertson, 'The Ombudsman – World Trends' in Linda C. Reif, *The Ombudsman Concept* (International Ombudsman Institute; University of Alberta, Edmonton, 1995).

⁴⁷ Philip Giddings, Vladimir Sladecsek and Laura Diez Bueso (note 5 above), p 436.

⁴⁸ Linda C. Reif, 'Building Democratic Institutions: The Role of National Human rights Institutions in Good Governance and Human Rights Protection' (2000) 13 *Harvard Human Rights Journal* p 1 at p 13.

⁴⁹ Victor O. Ayeni, 'The Ombudsman in the Achievement of Administrative Justice and Human Rights in the New Millennium' (2001) 5 *International Ombudsman Yearbook* p 32 at p 48; and John Hatchard, Muna Ndulo and Peter Slinn, *Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and South African Perspective* (Cambridge University Press, 2004), p 225.

⁵⁰ John Hatchard, Muna Ndulo and Peter Slinn, *Ibid*.

the ombudsman needs to cover any violation of their rights.⁵¹

Fifth, it is more likely that independent monitoring body like the ombudsman or national human rights institution will have to face executive attempts to weaken or undermine her work. By focusing attention on one single body can raise the public profile of the office to counter such pressure.⁵²

Sixth, the education level of citizens may not be high. To avoid uncertainty and confusion of which institution has jurisdiction in a particular complaint matter, it is better to provide a one-stop solution.⁵³

As stated above, which OHRM will be adopted by a jurisdiction will depend on institutional as well as personal factors. Summarizing the development of the OHRM, in choosing which of the first three models should be adopted, the self-consciousness and self-perception of the ombudsman may be the more important factor. As these models could operate within the same institutional environment, the ombudsman, by giving a more or less expansive reading into the empowering laws, may inject her personal preference on human rights protection into the system. Nevertheless, the institutional environment may still be relevant as it may limit her possible interpretations and shape her internal thinking.

However, if the fourth, fifth or the sixth OHRM were to be adopted, the decision has to be made by authority beyond the ombudsman herself. Then, institutional factors like the existing human rights situation in that jurisdiction, the historical, political, constitutional and cultural environments of the jurisdiction, and the institutional design of the ombudsman will be determining. Nevertheless, that does not mean that the personal style of the ombudsman would not affect the scope and effectiveness of human rights protection in these systems.

⁵¹ Robertson (note 46 above).

⁵² John Hatchard, Muna Ndulo and Peter Slinn (note 49 above).

⁵³ *Ibid.*