

**International  
Institute of  
Social Studies**

# International Ombuds for Humanitarian and Development Aid Scoping Study

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## Acronyms and Abbreviations

|        |  |
|--------|--|
| AAP    | Accountability to Affected Populations                                   |
| CHS    | Core Humanitarian Standard   |
| DFID   | Department for International Development                                 |
| HAP    | Humanitarian Accountability Partnership                                  |
| IASC   | Inter-agency Standing Committee  |
| (I)NGO | (International) Non-governmental Organisation                            |
| ISS    | International Institute of Social Studies, Erasmus University, Rotterdam |
| MFA    | Ministry of Foreign Affairs  |
| OCHA   | Office of the Coordinator of Humanitarian Affairs (UN)                   |
| OECD   | Organisation for Economic Cooperation and Development                    |
| SEA    | Sexual Exploitation and Abuse  |
| PSEA   | Prevention of Sexual Exploitation and Abuse                              |
| RCRC   | Red Cross/ Red Crescent  |
| UN     | United Nations   |

# Executive summary

## Introduction

The scoping study on the *'International Ombuds<sup>1</sup> for Humanitarian and Development Aid'* was commissioned by the Netherlands Ministry of Foreign Affairs as a contribution to the work of the Ad Hoc Donor Technical Group on Safeguarding, set up in the wake of the sexual exploitation, abuse and harassment scandals that emerged in 2018. The aim of the study was to assess whether there is a need for such a mechanism and, if so, how it might function and fit with existing governance mechanisms in the sector<sup>2</sup>. The study was carried out in August and September 2018 by a three-person team with diverse experience, supported by a small advisory group.

The study used a qualitative methodology comprised of interviews involving 76 participants representing different parts of the sector, including donors, host governments, the UN, INGOs, local NGOs, the Red Cross, the private sector, and persons with specialist knowledge relevant to the study (Annex 1). A desk review of around 125 documents and websites was also carried out (Annex 2). The interviews solicited the personal views of participants rather than organisational positions; at this initial stage of scoping, it was important to understand whether there was a need for such a mechanism from experienced aid practitioners rather than to receive institutional responses.

The study researched a number of background issues in terms of the concept of the Ombuds as an institution, and particularly its classical role as an accountability tool enabling citizens to raise complaints about public institutions and services. It also looked at the history of the Ombuds idea and the evolution of complaints mechanisms in the sector. The interviews explored various questions including the need for an Ombuds in light of existing initiatives; the way it would work in terms of scope, focus and role; and the challenges faced.

A review of existing mechanisms yielded a list of key characteristics, including that these mechanisms usually function as a last resort, serve to make recommendations instead of as a direct enforcement authority, publish their findings, actively reach out to make themselves known and proactively instigate enquiries. Key lessons identified from existing initiatives are the need to have a variety of methods available (face to face, phone, complaint boxes, help desks, etc.) and the need to be open to all complaints to be responsive to the true concerns of aid recipients. A typical challenge of existing complaint and reporting mechanisms is low usage unless efforts are made to publicise the methods, to reach out to target groups and to embed such mechanisms in a wider portfolio of accountability measures.

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1 The term 'Ombuds' is used in this report in place of the term 'Ombudsman'; the term 'Ombuds' is commonly used to avoid modern-day connotations of gender bias inherent in the use of the suffix 'man'.

2 See Annex 3 for the Terms of Reference.

## Findings

The key findings based on interviews and documentary review are as follows:

### Need

There was a strong consensus among participants that there is a need for an Ombuds mechanism in the sector to provide independent recourse for complainants. Primary responsibility for dealing with complaints should nonetheless be retained by organisations and existing mechanisms. There was wide agreement that donor governments could do more to lead strengthened oversight, including by using donor conditionality to incentivise accountability to affected populations.

### Authority

The Ombuds requires authority if it is to be effective. This can come from a range of sources such as voluntary agreement, moral pressure, donor conditions, and national or international law. Constituting the Ombuds within the framework of international law would give it strong authority and international reach, but this would require significant inter-governmental agreement. Authority derived from a mixture of donor conditionality, voluntary agreement and moral pressure is more readily achievable.

### Organisations covered

Many participants agreed that an Ombuds can only be effective (and acceptable) when it applies to all aid actors in humanitarian and development settings – (I)NGOs, the UN and other multilaterals, the Red Cross, private organisations and donors. The degree of authority over different types of organisations may vary depending on the type of voluntary commitments or agreements between donors and funding recipients. Nonetheless, even with entities that are not covered by voluntary commitments or donor requirements, the Ombuds would still have the ability to make enquiries and assist complainants in finding pathways for complaint. In situations of chain responsibility, where funding is contracted downstream from the donor through the primary recipient to NGO and private-sector implementing partners on the ground, the Ombuds could particularly add value by helping ensure a coordinated response throughout the delivery chain. It is not envisaged that the Ombuds would apply to peace-keeping operations or national governmental authorities because of the different lines of accountability involving national law and institutions. Nonetheless, grey areas may arise, and the Ombuds may assist to the extent possible.

### Issues addressed

It is widely agreed that the Ombuds needs to be open to all complaints in order to be responsive to the concerns of affected populations. Although it may have a priority focus, for instance, on sexual exploitation and abuse by aid workers, it needs to receive and then channel different types of complaints as appropriate.

### Persons covered

The mechanism should be for aid recipients and affected populations rather than agency personnel (staff or volunteers) to raise concerns on behalf of themselves. The rationale is that the Ombuds should exist for those who have no other recourse, whereas personnel are usually covered by other mechanisms (legal contracts, trade

unions, organisational Ombuds, ethics offices, etc.) that should be utilised first. A number of participants argued that flexibility needs to be retained for dealing with workplace concerns on an exceptional basis.

### **Role**

The primary role of an Ombuds is dealing with complaints. It should act, as Ombuds typically do, as a second-tier appeal function after internal organisational channels have been pursued and take a scaled problem-solving approach. Ombuds usually lack direct legal authority and rely on making non-binding recommendations to the organisations responsible. Sanctions in the case of continued non-compliance may include the ability to publish findings with the consequent threat to funding and reputation.

In addition, it was identified that the Ombuds should take on a proactive role in terms of audits of complaints mechanisms or thematic reviews of the sector. Advisory functions may include research, analysis, capacity development, convening and harmonisation. A second-tier reporting mechanism requires a first tier that is up and running in order to work to optimum effect. Much remains to be done in the sector in this respect, and the situation is also fluid, with new initiatives emerging in the wake of recent safeguarding scandals. The Ombuds may therefore need to take a staged approach, focusing more on a proactive role in the initial phase, which involves helping, alongside other initiatives, the strengthening of first-tier complaints mechanisms. This can then give way incrementally to an increased focus on the responsive role of complaints handling.

### **Accessibility**

The question of how affected populations would access the Ombuds was often raised in interviews, given issues of geographical proximity, language and cultural barriers, as well as the difficulties in capturing sensitive complaints, for instance, related to sexual misconduct. To be directly accessible to all, an Ombuds would require a multiple and global presence. This, in turn, raised serious concerns about the creation of parallel structures and the scalability of such a model given the costs, logistics and complications of national jurisdiction. An international aid Ombuds limited to an international office with global- and national-level networks of supporters and the capacity to undertake field missions could add value if it is seen as an appeal mechanism rather than a first port of call. As with all reporting mechanisms, efforts would be required to conduct outreach and publicise its existence to ensure utilisation. In addition, the Ombuds could receive complaints from others speaking on behalf of complainants (e.g. staff, visitors or community members), as is often the case with complaint mechanisms dealing with vulnerable persons.

### **Ownership and governance**

To be successful, there is agreement that the Ombuds will need to have a multi-stakeholder approach that includes host countries and agencies (international and local NGOs, multilaterals, and private organisations). If the mechanism relies on donor funding as one of its sources of authority, there was also broad agreement among participants that donors may take a key role in initiating the mechanism. When discussing structure, a great deal of emphasis was placed on the creation of something flexible and with a 'light touch'. In terms of where the Ombuds should be nested,

various options were considered including housing the mechanism in a donor coordination body, in existing sectoral coordination mechanisms, in national bodies and in international organisations. There are advantages and disadvantages to each of these options, which merit further discussion. Considerations of the cost of running an Ombuds mechanism were not part of the initial scoping. Beyond the truism that accountability costs money, there was desire for a lightweight, agile structure that functions with a minimal secretariat and a flexible on-demand roster of specialists. The need for broader investment in agency or inter-agency complaint mechanisms remains paramount to ensure that the Ombuds can have its envisaged role as a second-tier mechanism.

Challenges: The research has suggested a clear need for an independent aid Ombuds and a direction in terms of its mandate, scope and modalities. There are also a number of key challenges in setting up and operating an Ombuds mechanism. Important practical challenges revolving around the logistics and administration of such a mechanism must be addressed, as must the management of the security of complainants and those involved with investigations.

A key challenge is to develop the entity in such a way that the sources of authority and instruments available to the Ombuds to apply pressure on agencies add up to ensuring proper follow-up of complaints in order to meet the expectations of those who muster up the courage to file a complaint.

Many legal and jurisdictional issues as well as how the Ombuds would link with domestic laws and relevant national authorities must be clarified. The question of authority will need to be addressed: From where does the authority of an Ombuds come? Sector-wide buy-in would be important, but the authority of the Ombuds over those organisations choosing not to actively support the Ombuds must be clarified. The right balance must be found between financial and moral incentives. Coordination with already-existing standards, mechanisms and processes should be assured. There are many challenges connected to the accessibility of the mechanism by aid recipients and in terms of how communication about the Ombuds is conducted. Finally, it will be a process for the Ombuds to become fully effective. Clarity about its role, parameters and limitations is necessary to avoid disillusion, unmet expectations and disappointment.

## **Proposed Model**

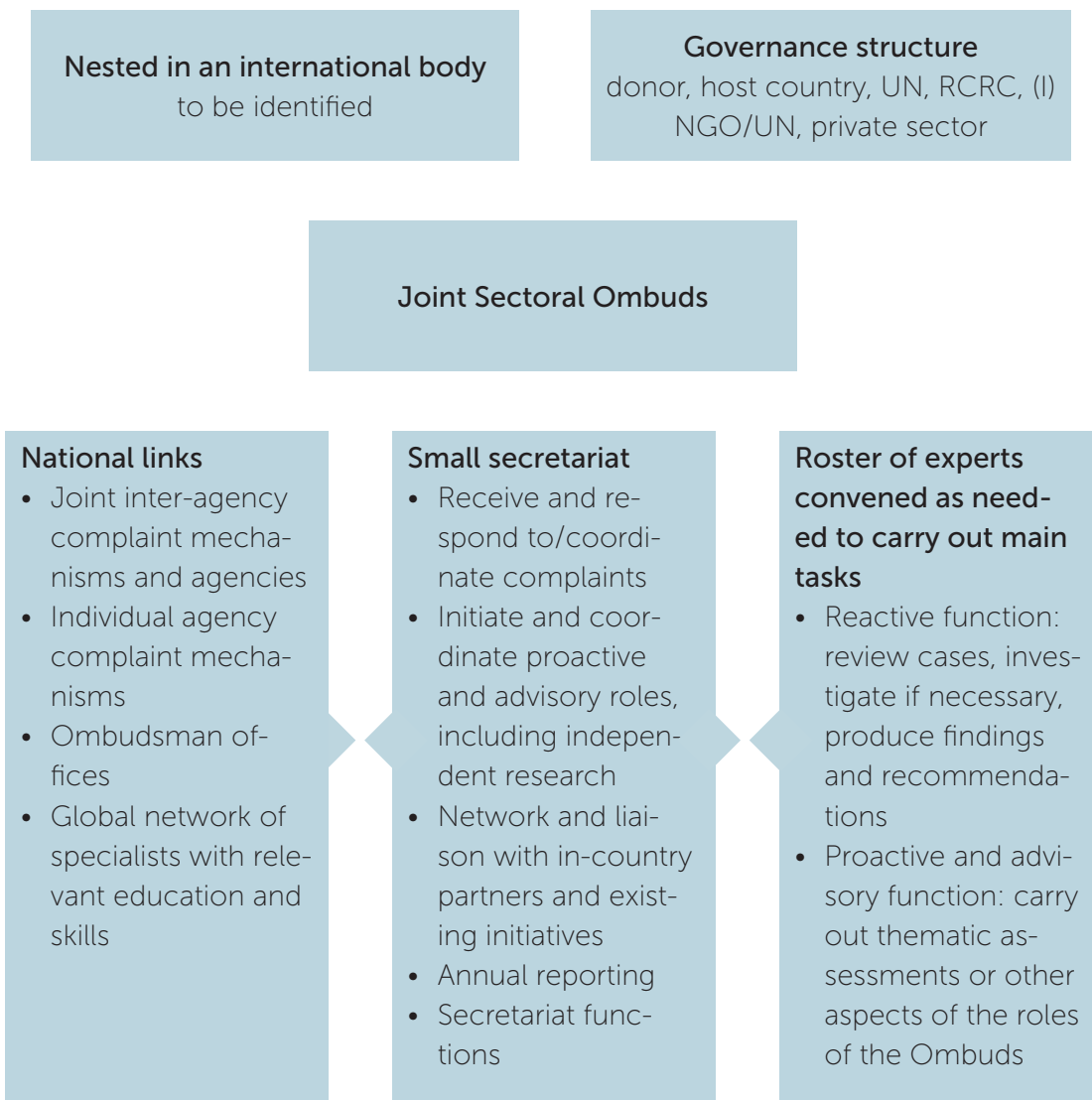
There are different possible models for an Ombuds, but the study found substantial convergence on how an Ombuds for the sector might best work, taking into account the various challenges noted above. Based on the findings, the following model of a Joint Sectoral International Aid Ombuds emerges as the most viable. In this model, the Ombuds would derive its authority from donor funding, voluntary agreement and moral pressure. This model is therefore more readily achievable than are systems that require new international legal agreements. The lack of direct authority and the reliance on non-binding recommendations to organisations themselves mean that the mechanism would not encroach on the role of national authorities or their jurisdiction. This approach proposes exercising influence and enhancing practice by optimising the pathways of accountability and complaints in the aid delivery chain. It provides



a collective approach to existing oversight mechanisms, such as reporting hotlines and complaint mechanisms, and to existing practices in terms of investigations, enquiries and assessments. This is not to say that other oversight models, particularly those which offer more direct legal authority, should not continue to be considered, now or in the future.

The proposed model has the capacity to combine response handling with proactive and advisory roles and can make recommendations that cover all types of organisations (NGOs and multilaterals) and respond to all aspects of a case (civil and criminal). The diagram below shows how such a model would work: nested in an international body with a governance structure comprised of all parts of the sector, operated through a small secretariat supported by a flexible workforce and linked to first-tier complaints mechanisms.

*Diagram: Possible Model for International Aid Ombuds*



## Next steps

This initial scoping study has identified a need for an Ombuds for the aid sector and proposed a potential model that endeavours to work around the challenges facing the set-up and operation of such a mechanism. The testing of feasibility needs to continue in a further phase in terms of unpacking the mandate, structure and modalities of such a body and assessing the support of stakeholders. The next stage requires more detailed planning but may comprise the following elements:

- Identification of a potential nesting location for the international aid Ombuds
- Further work to test and develop the proposed model in terms of its legal basis, organisational structure, costs, nesting, etc.
- Assessment of the state of complaints mechanisms in the humanitarian and development sector
- Sector consultations to garner buy-in and support within the sector
- Field work in humanitarian/development sites to further test the feasibility of the model
- Consider trialling a prototype of the international aid Ombuds

## **PART I**

# **Background**

# 1. Introduction

The humanitarian and development sector has struggled for years over the question of how to be accountable to the recipients of its services and to vulnerable populations in the contexts in which it works. One idea that has been discussed since the 1990s is the establishment of an international ombudsman as an independent complaints mechanism. In the context of recent safeguarding scandals involving sexual exploitation, abuse and harassment by personnel working for NGOs, the UN and the Red Cross<sup>3</sup>, the idea has again been revived with questions asked as to whether the sector needs an independent body to oversee the handling of complaints. This study was commissioned by the Netherlands Ministry of Foreign Affairs as a contribution to the work of the Ad Hoc Donor Technical Working Group on Safeguarding, set up in the wake of recent events in order to assess whether there is a need for such a body, and, if so, how it might function and fit with governance mechanisms in the sector.<sup>4</sup>

At the start of this study, we used the term 'Ombudsman' in accordance with the original Swedish mechanism, where the term *ombudsman* meant 'representative'. However, as our interviews progressed, we found that the suffix 'man' is seen as gender-biased. In this report, we therefore use the commonly used term 'Ombuds', without a suffix.

## 1.1 Problem statement

The scandals about sexual exploitation, abuse and harassment in the aid sector this year have drawn global attention and criticism. Aid agencies set up to 'do good' were found also to be affected by the sexual abuse that pervades all walks of life and that has increasingly been brought to light in recent years through '#MeToo'. The heart of the public outrage lies not in the fact that individual aid workers were exploiting or abusing vulnerable people, but in organisations' failure to take prompt and effective action to sanction offenders and stop further abuses. The core problem that the Ombuds thus seeks to address is how organisations can be required to take all reasonable steps to prevent and respond to abuse, and how an Ombuds, as an independent entity overseeing the way organisations deal with the concerns of victims/survivors, can provide the ongoing stimulus for correction.

The issue of sexual exploitation, abuse and harassment is currently the focus of much attention: The UN launched a revitalized comprehensive strategy in 2017<sup>5</sup> (prior to the current spate of scandals), and NGOs<sup>6</sup> and donors have strengthened their activities with a Global Safeguarding Conference scheduled to take place in October 2018 to seal commitments to tackling this issue. However, as the United Kingdom International Development Committee Parliamentary Inquiry into Sexual Exploitation and Abuse in the Aid Sector recently concluded, this level of response cannot be guaranteed

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3 Times newspaper, 21 February 2018; Guardian newspaper, 25 January 2018

4 See Annex 3 for the Terms of Reference

5 UN, 2017, A/71/818 and A/71/818/Corr.1

6 Ammerschuber, L. and Schenk, E., September 2017; InterAction, 2018.

once the spotlight has faded, noting in particular that the issue had been on the global policy agenda since the West African sex-for-aid scandal in 2002<sup>7</sup>:

*The aid sector, collectively, has been aware of sexual exploitation and abuse by its own personnel for years, but the attention that it has given to the problem has not matched the challenge. Repeatedly, reports of sexual exploitation and abuse by aid workers and/or peacekeepers have emerged, the sector has reacted, but then the focus has faded. This episodic response has led to the existence of safeguarding policies and procedures that have never been effectively implemented. This has meant that where worthwhile safeguarding measures have been developed, they have never been adequately funded. A reactive, cyclical approach, driven by concern for reputational management has not, and will never, bring about meaningful change.*<sup>8</sup>

Although the current scandals highlight one particular type of abuse in terms of sexual misconduct, there are, of course, other ways in which aid recipients suffer harm at the hands of aid workers for which they may wish to seek recourse. The challenge for addressing this falls on the entire aid chain: the donors that use funds, usually collected from tax payers, to pass on to public international organisations, NGOs or private agencies that are often working in partnership with local organisations to deliver services to poverty- and crisis-affected populations.

The particular problem faced by aid recipients who have been subjected to misconduct by aid agency personnel is the lack of any meaningful form of recourse. Incidents of sexual misconduct are notoriously difficult to address in all societies because of the surrounding stigma and under-reporting, coupled with challenges in investigation, sanction and redress. The difficulties are further compounded in contexts that have suffered from conflict or disaster triggered by natural hazards and where existing legal systems or traditional structures may have been weakened. The conduct in question may or may not amount to a crime and thus requires a tailored approach that considers the full spectrum of civil and/or criminal investigations and sanctions.

For example, in a country with a functioning rule of law, the abuse of a child by a teacher may lead to various outcomes – the teacher may be prosecuted for a criminal offence and/or be dismissed from the job; he or she may be disciplined by the professional regulator and be barred from teaching for life; or the teacher, school, and education authorities may be sued for damages. In an equivalent example of a child being abused by a teacher working for an international aid programme in a context where the rule of law has broken down, recourse in practice is often limited to the organisation, as the employer, sanctioning the offender. Of course, this is one example; in practice, there are many variables in terms of the institutional context, victims/survivors and perpetrators, as shown by recent cases with more or fewer options for recourse available.

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7 UNHCR/Save the Children, 2002

8 International Development Committee (IDC), UK Parliament, 'Summary' (2018)

## 1.2 Methodology

The study used a qualitative methodology comprised of documentary review (see Annex 2) and interviews via Skype or in person. Approximately 60 meetings were held, with a total of 76 participants, and around 125 documents and websites were reviewed. Several confidential and/or sensitive documents were reviewed but are not listed in the references list.

The participants were mainly purposefully identified, and snowballing techniques were also used to identify further contributors. Interviews were held with 76 participants from across the sector. These included representatives of donors, host governments, the UN, INGOs, NGOs from different geographical areas, the Red Cross, and the private sector as well as persons with specialist knowledge relevant to the study – for instance, from past experience with an earlier Ombudsman study. Annex 1 provides a list of the names and current affiliations of the interviewees. The interviews were adapted to each interviewee and usually comprised two aspects: brainstorming questions aimed at exploring the idea and tailored questions that tapped into specialised knowledge. The starting point for the interviews was assessing the need for an independent body to oversee the handling of complaints, followed by an exploration of how this might work if it were to be set up.

The interviews were carried out on a confidential basis and solicited the personal views of interviewees and not organisational positions. This was because, at this initial stage of scoping, the study team sought to understand the need for such a mechanism by talking to experienced aid practitioners rather than to receive responses filtered through vested institutional interests. The study was carried out in August and September 2018. Initial findings were shared with the Ad Hoc Donor Technical Working Group on Safeguarding at a meeting on 7 September 2018, with a view to finalising the report by the end of September 2018.

The team working on this report has a diverse background. The study sought to mitigate potential bias in the research team by ensuring a diverse team composition, also in terms of their previous exposure to the idea of an aid Ombuds. Interviews were carried out separately by different members of the team to enable triangulation and the validation of findings. The members of the team were as follows:

- Dorothea Hilhorst is a professor of humanitarian aid and reconstruction at ISS. She has done extensive research on humanitarian aid in many settings, and one of her focus areas is humanitarian accountability. She is also an independent board member of the Core Humanitarian Standard Alliance.
- Asmita Naik is an independent consultant in international development specialised in human rights/protection including sexual exploitation and abuse. She is a lawyer and holds positions on various regulatory bodies. She acted as core team member in this study.
- Andrew Cunningham is an independent consultant in the humanitarian field. He worked for many years managing programmes in response to humanitarian crises, mostly with Médecins Sans Frontières. His PhD research focused on humanitarian governance and state–NGO relations.

The team was assisted by a small advisory group, which commented on the draft report.

## 2. What is an ombuds?

The modern institution of the ombudsman originates in Sweden with the establishment of an independent office as far back as the 16th and 17th centuries to safeguard the rights of citizens and to ensure that officials acted in accordance with the laws. Scholars argue that a prototype of the ombudsman function can be found even further back in history in the Roman and Turkish empires as well as in ancient China in the form of inspectors reporting directly to rulers on the conduct of officials towards the populace. The term 'ombudsman' carries gender connotations in modern-day linguistics that are not inherent in the etymology of the Scandinavian word. Modern-day variations of this term include 'ombud', 'ombuds'<sup>9</sup>, and 'ombudsperson'.

The Ombuds mechanism has been adopted by most countries in the world and usually refers to a state official appointed to provide a check on government activity in the interests of the citizen, and in particular to oversee the investigation of complaints of improper government activity. The office may carry a different title such as Public Complaints Commission or be absorbed into other roles such as Inspector General, Citizen Advocate or National Human Rights Institution.

The typical duty of an Ombuds is to investigate complaints and attempt to resolve them through recommendations or mediation. The role is usually advisory unless it is given the authority under national law to make binding recommendations, to initiate legal proceedings or to prosecute. Ombuds may also identify systematic issues leading to poor service or breaches of people's rights. At the national level, Ombuds often have a wide mandate to deal with the entire public sector and sometimes also elements of the private sector (for example, contracted service providers). More recent developments include the creation of specialised Ombuds to cover, for instance, services for children or data protection.

The advantage of the mechanism is that it is independent and avoids the conflict of interest inherent in self-policing. Conversely, the disadvantage is the lack of direct authority and the reliance on the cooperation of those it investigates to provide information and to then implement its recommendations. This study found the same arguments applied to the mechanism's application in the aid sector (see Part 2).

Nonetheless, the mechanism is widely used across the world. There are now different strands in this usage. The term continues to be used in its classical sense as an accountability system for public institutions and services. In addition, there are many organisational Ombuds mechanisms, for example in corporations, universities and sometimes aid agencies, serving as an internal dispute resolution mechanism for employees. The model is thus flexible and adaptable, but the core of the idea is the independent handling of complaints with the key attributes of the system being independence, impartiality, neutrality and confidentiality.

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<sup>9</sup> This term is mainly used to refer to organisational Ombuds but is used in this study to refer to the Classical model of accountability for public services.

Ombuds are also linked internationally through several networking and umbrella bodies; the International Ombudsman Institute is the most important for linking to public Ombuds organisations around the world. There are also development projects aimed at strengthening ombudsman institutions around the world, for instance the National Ombudsman for the Netherlands.

## 2.1 Typical characteristics

An examination of the ways different Ombuds work suggests some typical operational approaches that provide important guidance for an International Aid Ombuds, namely:

- Functioning as a mechanism of last resort after the complainant has worked through existing complaints mechanisms;
- Can instigate enquiries and does not need to wait for complaints;
- Publishing findings (some take the approach of publishing findings on all cases, whatever the outcome; others publish cases where there is an adverse finding against an organisation or where the matter remains unresolved);
- Requiring efforts to make themselves known and accessible (variety of methods used, such as phone, online letter, Twitter, Facebook and audible websites). Accessibility for vulnerable groups is addressed through tailored methods and by allowing others to make a complaint on behalf of a vulnerable person;
- Acting as a backstop and deferring to legal recourse, which means not taking on a case if a legal process is ongoing or sometimes referring cases for legal action if better served through those channels;
- Making recommendations but not having direct enforcement authority to require action be taken against individuals or organisations; and
- Filtering out relevant complaints and having processes for dealing with malicious complaints.

## 3. History of the humanitarian ombudsman

the idea of a humanitarian ombudsman was previously explored in a very different context in the late 1990s, in the aftermath of the Rwanda genocide. It emerged as a recommendation of the 1994 Joint Evaluation of Emergency Assistance to Rwanda, which highlighted the poor performance of aid agencies and the lack of coordination and accountability, and proposed an ombudsman function as a solution. The idea was discussed at the 1999 World Disasters Forum, leading to the establishment of a two-year feasibility study implemented by the British Red Cross and funded by the Department for International Development (DFID). The study looked at the feasibility of an ombudsman mechanism in humanitarian contexts and conducted field trials in three locations. It concluded that an ombudsman was feasible despite various legal/jurisdictional obstacles and other challenges.

A core principle of the original initiative was to be a 'voice for beneficiaries and eyes for agencies' on aid accountability. A key objective was to make proposals and recommendations for improving the overall quality of humanitarian aid deliv-



ery. Therefore, codes of practice such as the Sphere Standards and the Code of Conduct for International Red Cross and Red Crescent Movement and NGOs in Disaster Relief were to be the key references. This iteration of the ombudsman idea, however, seems to have been focused more on communities than on individual aid recipients. Another key element the initiative proposed was the voluntary nature of the scheme – organisations were to be free to sign on to the scheme or not. One issue during the pilot was the question of how much the ombudsman would be linked to national authorities. Some viewed their role as the default – if the national authorities had the capacity to perform the duties of the ombudsman, then they should be allowed to and would be supported to build capacity to take on that role over time. In this view, the ombudsman mechanism would be handed over to national authorities as quickly as possible. Identified challenges included beneficiary access, balancing facilitation and regulation, international jurisdiction and consensus, and financing.<sup>10</sup>

The Humanitarian Accountability Project (HAP) was established in 2000 with the aim of trialling the ombudsman structure, but, after further field work and discussions within the sector, the original idea of the ombudsman morphed into a self-regulatory and standard-setting initiative. This happened for a variety of reasons:

- An independent on-the-ground body was not seen as scalable, given the costs involved in setting up operations covering so many different organisations and contexts;
- The challenges of underpinning such a body with legal authority in places where the rule of law had broken down;
- A positive argument about the need for moral responsibility to be held within organisations themselves;
- A negative resistance and defensiveness regarding the idea of external scrutiny, particularly from larger organisations; and
- Buy in to the initiative was largely limited to NGOs because donors were not very involved and the UN remained detached.

By 2002, the ombudsman idea was lost in favour of voluntary self-regulation in the form of the HAP. The West African 'sex-for-aid' scandal hit the headlines in 2002 and highlighted chronic gaps in the accountability of aid agencies, implicating personnel from 40 aid agencies and nine peacekeeping battalions across three West African countries in acts of sexual exploitation<sup>11</sup>, but, by this point, the direction towards self-regulation was already set.

HAP continued to develop in the 2000s, in terms of standards for humanitarian operations and an external verification process. It also joined with other initiatives, namely Sphere and People in Aid, to become part of the Joint Standards Initiative. In December 2014, the Core Humanitarian Standard (CHS) was launched in Copenhagen. In 2015, HAP and People in Aid merged to form the CHS Alliance. The copyright of the standard is held by the CHS Alliance, Sphere and Groupe URD. The CHS is both a voluntary and a verifiable standard, and agencies can opt to undergo third-party verifica-

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<sup>10</sup> This is a composite characterisation of the first Humanitarian Ombudsman initiative based on a complete review of the original documentation as listed in the reference list.

<sup>11</sup> UNHCR/Save the Children UK, 2002

tion carried out by an independent organisation. Currently, the Humanitarian Quality Assurance Initiative (HQAI) is the only organisation providing this service.

The current exploration of the ombudsman idea takes place in a very different landscape. The sector now has a plethora of standards, aside from the CHS, there are other initiatives such as the Accountable Now 'Global Standard for CSO Accountability' and specific standards such as the Inter-agency Standing Committee Minimum Operating Standards on the Prevention of Sexual Exploitation and Abuse. The sector now also has the benefit of a long experience in the implementation of self-regulation. It is worth noting that the UN and other multilaterals have been on a similar journey of strengthening internal regulation.

These developments towards self-regulation are important but do not replace the need for an independent complaint mechanism. On the contrary, self-regulation is a critical precondition for a functioning independent mechanism. Overall, although self-regulation in any kind of organisation is a critical first and ongoing step, recent scandals raise the question of whether these are enough or whether accountability gaps remain.

## 4. Complaints mechanisms in aid programmes

accountability mechanisms in the sector have been emphasising the importance of feedback and complaints mechanisms since the early 2000s. The importance of community participation and consultation has continued to be reinforced since then, most recently in 2016 UN World Humanitarian Summit and 2016 Grand Bargain commitments. Uptake has been slow over the years, and data show that progress on the CHS commitment related to complaints handling scores lower than the other commitments.<sup>12</sup> Nonetheless, there is a visible and growing emphasis on complaints mechanisms in recent years. This is also driven by other developments that have required organisations to pay greater attention to the consequences of delivery and supply chain issues.<sup>13</sup>

- Many UN, (I)NGO and private sector organisations now have reporting lines comprised of websites, emails and phone numbers. Some use outsourced whistle-blowing hotlines; others operate their own reporting tools. Some donor governments have strengthened their oversight of complaints by ensuring grant agreements include strong mandatory reporting requirements (including enabling staff and aid recipients to report concerns directly) and by reserving the right to investigate complaints and in some cases the right to direct remedial action (e.g. the reinstatement

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<sup>12</sup> See, for example, CHS Alliance, 2018 'Evaluations against the CHS', which shows the least compliance on Commitment 5, related to complaints handling, as compared with the other eight commitments. In addition, see Times newspaper article, 29 May 2018, which reviews how 13 aid agencies implicated in the 2002 West Africa sex-for-aid scandal deal with complaints on sexual exploitation and abuse and finds less than a handful have credible systems for reporting and dealing with concerns.

<sup>13</sup> For instance, in the UK, the passing of the Modern Slavery Act in 2015.

of whistle-blowers). The USAID reporting mechanism<sup>14</sup> is said to receive thousands of reports each year, including directly from aid recipients on the ground. This is made possible by the use of a variety of reporting methods (phone/WhatsApp, email, post, etc.) as well as outreach work on the ground (talks with staff and aid recipients during country visits) and requirements that grantees publicise reporting lines through, for example, posters in delivery settings such as hospitals and leaflets in aid packages. To date, these donor reporting lines have mainly emphasised fraud and corruption, but sexual exploitation and abuse (SEA) is also becoming a priority following recent scandals.

- Work has been done to develop the concept of Joint Inter-agency Complaints Mechanisms as well as Prevention of Sexual Exploitation and Abuse (PSEA) networks as part of the Inter-Agency Standing Committee. Policies, standard operating procedures and good practices have been developed to enable agencies to work together in establishing joint mechanisms in common settings such as camps. In addition, a Common Reporting Platform,<sup>15</sup> a database to record and track SEA allegations, has also been developed. The policy was signed off at high level in 2015<sup>16</sup> and continues to be rolled out. The mechanisms are said to be established in all locations with peacekeeping and peace operations, in addition to other formal complaint mechanisms. The extent to which these mechanisms are operational in humanitarian settings is not known; feedback obtained by this study indicates that implementation depends on the lead provided by humanitarian coordinators in specific contexts,<sup>17</sup> the cooperation of individual agencies and the availability of funding and technical expertise.
- There are examples of well-developed systems of Ombuds-type mechanisms in the sector. For instance, the International Financial Institutions have a number of bodies, operational since the 1990s, that give voice to communities affected by large-scale infrastructure projects, such as the Compliance Advisor Ombudsman and the World Bank Inspection Panel.<sup>18</sup> Perhaps most similar to the function envisaged here is the CHS Alliance Complaints Board, which accepts complaints from any individual or entity about a CHS Alliance member organisation failing to adhere to CHS commitments or about concerns regarding a staff member in a CHS Alliance member organisation who has engaged in an act of SEA against an aid recipient. Its modus operandi involves working with organisations that have been complained about to resolve issues; in its experience, all complaints have been resolved collaboratively without recourse to the ultimate sanction, which is removal of membership by the CHS Alliance Board. The mechanism receives very few complaints, less

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14 USAID website

15 IOM, 2016, Final Report p. 9

16 IASC Principals Meeting, Final Summary Record and Action Points, 11 December 2015, '2) Fully implement the Minimum Operating Standards, including by developing operational tools and clear guidance for the field on agency commitments and activities to protect against sexual exploitation and abuse, both at the institutional and collective levels. This requires ensuring that global standard operating procedures on cooperation in inter-agency complaints mechanisms, and specifically on SEA case referrals and follow-up, are developed and endorsed by May 2016'.

17 See, for example, IOM, 2016, Final report, p. 14 which says: 'Securing sufficient support from senior management to prioritize implementation of PSEA activities is likewise a universal challenge'.

18 CAO, 2000

than a handful a year,<sup>19</sup> and these are mainly from staff members raising workplace issues. The reason for the limited number of complaints is not known and may be explained by the lack of publicity about the mechanism.

- Organisational Ombuds, available to staff and other personnel, are also found in the sector; most UN agencies have such a mechanism, GAVI and the Global Fund have recently set up a joint Ombuds,<sup>20</sup> and the ICRC Ombuds function has expanded in recent years to reach 18,000 colleagues through outposts in three regional offices and the inclusion of this function into some regular posts, with involved staff members contributing 10 per cent of their time to outreach and the promotion of the Ombuds function.

## 4.1 Key learning from existing complaint mechanisms

Interview participants who have worked intensively with complaints mechanisms over the years highlighted the following key learning points:

- The need to have a variety of methods available (face to face, phone, complaint boxes, help desks, etc);
- Being open to all complaints, both to be responsive to the true concerns of aid recipients and to enable better reporting of sensitive complaints, for instance, so that victims/survivors of SEA do not feel exposed or stigmatised by reporting through exclusive channels. Feedback is usually channelled accordingly (e.g. programme complaints to monitoring and evaluation/programme teams and safeguarding issues for close tracking by responsible persons);
- Concerns about SEA are most likely to come forward through face-to-face contact and through the appointment of focal points at ground level; and
- A typical challenge for all such mechanisms of reporting, whether they are Ombuds or reporting hotlines, is low usage unless efforts are made to publicise the methods, to conduct outreach among target groups and to embed such mechanisms in a wider portfolio of accountability measures.<sup>21</sup>

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<sup>19</sup> CHS annual reports for 2015 and 2016

<sup>20</sup> GAVI/Global Fund, 2018

<sup>21</sup> Schenck A, Zinsler J, (2014) p.29

## **PART II**

# **Findings on the international ombuds**

Part II of this report comprises the findings of the study. It reflects information, opinions and suggestions from the interviews and also draws on information obtained from the review of secondary sources. The interviews dealt with questions about the need for an International Aid Ombuds and its possible added value to enhance appropriate responses to abuse in the aid sector. The interviews further aimed to collect ideas on what such an Ombuds could look like, how it could be positioned in the sector and how it would work in practice.

## 5. Response to the idea

the need for an Ombuds-type mechanism was clearly felt by the large majority of interviewees. Self-policing was considered by many to be ineffective, and some thought it had never worked in practice. Thus, there was a need for a mechanism capable of providing recourse to complainants. Linked with this, a common theme in the interviews was that complaint mechanisms and safeguarding policies were merely 'box-ticking' exercises and that there was a need for 'moral' pressure on organisations to go beyond policy development. For many, this implied a need for a sector-wide culture change, which would necessitate external oversight and support to help ensure better adherence to principles and standards.

Many viewed the Ombuds from an ethical perspective in that it would give affected populations the ability to raise concerns about aid providers. As one stakeholder put it, *'It instinctively feels right that there should be recourse for the citizens of the world'*. It was also mentioned that an independent mechanism could potentially provide a clear point of reference for people who wish to raise a concern, but who may not be able to find their way through organisation-based mechanisms or have no trust in an organisation whose staff have committed the abuse. Another reason for supporting the idea was the perception among some that the sector is falling behind in terms of external regulation. As one person explained,

*Compared to other industries, like mining or banking, we look dinosaurish. Also compared to the professions in which we are embedded like health and law. They are all very ahead.*

The need for an independent aid Ombuds is underpinned by observations that internal regulations have not proven to be enough. Such mechanisms alone were seen as insufficient because of their inherent lack of independence. They were sometimes seen as overly bureaucratic and institutional or as suffering from the arbitrary application of agreed policies and procedures, which depends on the decisions of individuals. As one interviewee highlighted, there is an inevitable conflict of interest in organisations policing themselves:

*International commitments have been made, but there is no serious effort to translate them into practice, there is very obvious inertia especially among [aid agencies] to change something that affects their power and budgets and their dominance, the individual institutional self-interest is overriding and there is no serious transformation from within.*

Some interviewees went further and talked of a *'culture of cover-up'* holding back accountability.

A small number of interviewees felt that existing approaches were enough and did not see the added value of an Ombuds. They conceded that current mechanisms were not being adequately supported or implemented and wanted to invest more in understanding and resolving why these mechanisms do not work properly: *'We need to step back and ask what is stopping that from working'*.

Some participants were unsure about the need for a new mechanism. They recognised the necessity of additional measures (such as a joint whistle-blowing mechanism, capacity building, support in investigations and avenues to enable affected people's voices to be heard) but were uncertain as to whether these measures amounted to an Ombuds.

## 5.1 Cautionary notes

Although a good idea in theory, a key challenge of establishing an International Aid Ombuds is ensuring sector-wide support. Some respondents cautioned that organisations may not support such a mechanism if they prioritise reputation<sup>22</sup> and funding above more principled arguments and see external oversight as a potential threat to institutional interests. It is also worth highlighting that the documentary review showed some advocacy groups do not regard an Ombuds mechanism as an adequate substitute for accessible legal remedies.<sup>23</sup>

Other cautionary responses included the fear of over-institutionalising the concept – Would a new mechanism simply become another layer of box-ticking or lead to more bureaucracy? The idea of mission creep was also raised, as structures of all types tend to expand their role over time. In relation to mission creep, there was also a caution that an aidOmbuds may bypass national judiciary systems.

Finally, as one humanitarian manager said, having such a mechanism in place may lead to the idea that *'if nothing is heard, it means nothing more needs to be done'*. In other words, organisations may feel that they are doing an adequate job if no complaints are made. Linked to this was concern about the moral hazard implicit in the construction. Without mitigation, some organisations could take the perspective that the Ombuds mechanism would take care of cases on their behalf.

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<sup>22</sup> See also concerns about emphasis by organisations on protecting their reputations expressed by UK Parliament/IDC, 2018 'Summary' – 'But fundamental culture change is required to channel organisational energy into taking care of victims and tackling perpetrators rather than taking care of reputations and tackling whistleblowers.'

<sup>23</sup> Aids Free World, 31 July 2018, BAI 2018

## 5.2 Complementary function

Interviewees were clear that the Ombuds needs to leave the primary responsibility to organisations themselves. It is the primary responsibility of agencies to prevent and address abuse. Those who supported the idea recognised that an Ombuds is not a 'silver bullet'; it needs to be part of a raft of measures aimed at prevention and response – an additional tool that fits with other initiatives. As one person said, *'[It] strikes me that it is not either/or [...] we should be thinking about a set of complementary options which offer checks and balances at different levels.'*

An important challenge for the Ombuds is to ensure that it works in a way that bolsters existing initiatives, such as individual complaints mechanisms, joint inter-agency complaints mechanisms under the Inter-agency Standing Committee (IASC), the CHS and various other initiatives, rather than supplanting them. It was stated that all actors involved in the aid chain must continue to be open to improve and innovate accountability practices such as joint complaint mechanisms. There are many ways in which operational agencies can work together better, and donors should be prepared to respond positively to such initiatives. In addition, support for initiatives that specifically exist to raise awareness of rights and carry out consultations of aid recipients (for instance, the Communicating with Disaster Affected Communities Network, Transparency International and Ground Truth) was also highlighted. Whereas some called for links to be formalised by the creation of information streams between organisations and the possible Ombuds, others pointed out the logistical complexities in making links at every level, given the incalculable number of different organisations and contexts.

Regulators and donor governments stressed the importance of ensuring that the mechanism did not overwrite regulatory interests or cede the authority ascribed in grant agreements to individual donors. Moreover, as regulatory standards vary enormously across the world, the Ombuds would have to navigate a path through existing mechanisms and channels of redress on a case-by-case basis; this in itself is an important aid to a complainant, who may not, on their own, be able to find such pathways of complaint.

A distinction was made by several respondents between using pre-existing codes of practice versus the creation of new benchmarks. There are a wide variety of codes and standards available, and participants generally agreed on a preference to build on existing standards and better utilise these in practice. Stressed by many, however, was the view that principles, values and norms were more central to accountability mechanisms than were technical standards, particularly concerning PSEA.

## 5.3 Need for more donor engagement

Although the primary responsibility for preventing and addressing abuse lies with agencies and requires commitment from the whole sector, interviewees unequivocally expressed a need for donor governments to do more to lead strengthened oversight and accountability in the sector:



*[...] We should not shy away from asking more from bilateral donors; they have the resources and ability to show leadership and drive meaningful and sustainable change.*

There was a broad consensus that donors could play a constructive role in helping to give a voice to recipients at the end of the aid chain. There was frustration that donors, as a whole, did not appear to invest in or incentivise accountability initiatives.

Many interviewees thought that donors should be prepared to provide both necessary funding and support to organisations as they work towards improving their systems of complaint and response (i.e. setting up individual agency complaints mechanisms and participating in joint inter-agency complaints mechanisms, where they exist). They suggested donors use their leverage to encourage the introduction of and compliance with these mechanisms. This could mean, for example, asking more critical questions when reviewing grant applications and project reports. In addition, donors could foster adherence to accountability mechanisms, including a potential Ombuds if one was set up, by making compliance a condition of funding. As one person put it,

*If only donors would start asking questions of the UN and NGOs and not be satisfied with a two-paragraph answer; they need to have procedures in place so that they can ask deeper questions.*

Furthermore, donors would need to assert their influence to enhance accountability throughout the entire implementing sector, including the UN, the Red Cross, (I)NGOs and the private sector, rather than only target parts of the sector:

*[...] Donors have a tendency to be stronger with the weak and weaker with the strong and less demanding of the UN than they are with NGOs, even though most of financial flows goes to the UN.*

## **6. Authority options of an international aid ombuds**

A critical challenge for the International Aid Ombuds is from where it would draw its authority. As many participants observed, without some form of power over the organisations it aims to oversee, the Ombuds would, in effect, be nothing more than a 'paper tiger'. The Ombuds' authority could come from a range of sources, ranging from voluntary agreement or moral pressure through to national or international laws.

The question of authority must be seen in relation to the type of mechanism being discussed. As it appears from the interviews, there are many different Ombuds-type mechanisms that could be contemplated. Diagram 1 sets out a spectrum of possible options.

Diagram 1. Spectrum of options

|  |                                      |   |                           |  |                             |
|--|--------------------------------------|---|---------------------------|--|-----------------------------|
| Self-regulatory sectoral Initiatives (NGOs, the UN/multilaterals) and internal –regulation | National NGO or private organisation | Individual donor government oversight mechanism | Joint Sectoral Aid Ombuds | New inter-governmental mechanism under existing structures (e.g. the UN) | New inter-governmental body |
|--|--------------------------------------|---|---------------------------|--|-----------------------------|

On the left of the spectrum are options that rely entirely on voluntary commitments, and an inter-governmental body set up under a new international treaty is found on the right of the spectrum. In between, other options include setting up a national NGO or private organisation authorised by national law, an individual donor mechanism that draws its authority from funding agreements, a Joint Sectoral Ombuds underpinned by donor funding requirements and a mechanism set up under an existing inter-governmental body such as the UN that would acquire a legal basis through a resolution of that body. This latter option was mentioned in a few interviews and resonates with calls from external sources for the set-up of independent tribunals in response to allegations of abuse in the aid sector.<sup>24</sup>

The different options require different prerequisites to be set up and vary in terms of how easily they can be done in terms of the international buy-in required and the cost and complexity in setting them up. For instance, it would be possible to set up a national NGO, but it would lack authority over NGOs and multilaterals working in an international space. In contrast, a new inter-governmental body would have the legal authority of all governments who sign up to it, but time and effort would be required to solicit this level of international support given the sovereignty issues involved. In addition, although the mechanisms towards the right of the spectrum have more legal authority, their scope is usually fragmented in terms of the types of issues they deal with (e.g. criminal or civil only) or the types of organisations they cover (e.g. the UN or NGOs). Even the strongest legal responses to the right of the spectrum would not be a complete answer and would inevitably need to be part of a broader package of responses.

Oversight mechanisms, such as reporting hotlines, are already utilised by some donors, including USAID and DFID. In a similar way, an independent aid Ombuds could be set up by one donor alone to cover its own aid programmes, perhaps by embedding this mechanism in its own national Ombuds institutions. The Joint Sectoral Ombuds in the middle of the spectrum can be seen as an extension of this model. It would be a joint mechanism of donors and implementing agencies. It would draw on voluntary agreement, moral pressure and donor conditionality as its base of authority.

<sup>24</sup> See, for example, Bradlow, 2016

## 6.1 Joint Sectoral Aid Ombuds

Even though the range of mechanisms described in Diagram 1 were referred to in interviews, many interviews converged towards the model of a Joint Sectoral Aid Ombuds. This is larger than a single donor or agency, without requiring the long-term preparation and buy-in of an international legal mechanism. Although it lacks direct control over organisations (and certainly has none over the individuals employed by those organisations), it has the capacity to take a holistic view and make recommendations that cover all types of organisations (NGOs and multilaterals) and may respond to all aspects of a case (civil and/or criminal). It also has the advantage that affected people who want to file a complaint can address this Ombuds without having to navigate a narrowly defined Ombuds mechanism belonging to one agency or donor. Because it is a joint effort, there is power in the collective, as one interviewee put it:

*[...] It will only work if there is power in the collective; there has to be some sort of collective agreement to use it, not only two countries, so that funders can jointly leverage their aid.*

## 6.2 Soft power is also power

In the review of the Ombuds role in Chapter 2, it was found that most Ombuds-type mechanisms, even those grounded in law, rely mainly on soft power. Nonetheless, there are different ways in which an Ombuds can command power.

Donors can use financial incentives and restrict or cut the budgets of agencies that repeatedly fail to respond adequately to cases of abuse. Besides the option of the financial incentive, the Ombuds would have a certain amount of 'moral' authority. For the interviewees from aid organisations, the moral pressure was complementary to the financial incentive and was comprised of different aspects.

One of these aspects was peer pressure – with a focus on encouraging increased collective capacity and responsibility in the sector, such as through joint complaint mechanisms, and strengthening peer support, learning and pressure. The threat of negative publicity would be a constant, but this would be coupled with enough oversight to ensure transparency by organisations, so inadequacies could not be hidden away. Reputational risk should also be understood as a risk to an organisation's ability to negotiate access in the field, locally and nationally, and so this idea is not solely about potential loss of funding. In the end, organisations may work harder to ensure that cases do not go to the Ombuds if faced with the triple punch of moral pressure coupled with reputational and financial risk. Perhaps unsurprisingly, for many humanitarian and development managers, such moral pressure would also be useful within their own organisations to encourage a positive change in mind-set.

## 7. Working components and operational aspects

In this chapter, we will review a number of pertinent questions with regard to a possible International Aid Ombuds, exploring which organisations are overseen; the scope of issues; which individuals are covered; whether it would be an international mechanism and/or have a national presence; the roles of the possible Ombuds; issues of ownership, governance, and the role of national institutions; and where the possible mechanism could be nested as well as costing issues.

### 7.1 Which organisations are covered?

To which organisations would the International Aid Ombuds apply? There was consensus in the interviews that the Ombuds needs to apply to all aid actors in humanitarian and development settings – (I)NGOs, the UN, the Red Cross, private organisations and donors. It could also pertain to actors surrounding aid operations, such as research institutions, universities, consulting firms and media outfits. This introduces some challenges in terms of how different organisations would come under the purview of a potential aid Ombuds. An Ombuds that relies primarily on donor funding as a tool of conditionality would depend on agreements between donors and grant-holders. Although these agreements may vary considerably, they would nonetheless provide a means for the Ombuds to exercise oversight over a range of organisations. Other organisations that do not receive donor funding, or that fall under other donor oversight modalities, might have a different relationship with the Ombuds. There might also be space for voluntary commitment to the mechanism.

#### **(I)NGOs and the Red Cross**

In the case of (I)NGOs, collaboration with the Ombuds would be based primarily on individual agency commitment and sector-wide peer pressure. The authority of the Ombuds could also be strengthened by incorporating it into grant or partnership agreements between donors and grant-holders. Donors that currently have their own oversight mechanisms incorporate these into their agreements in varying ways, and such provisions could be extended to the Ombuds. For instance, some funding agreements include mandatory reporting requirements when incidents arise, the publicising of the availability of donor reporting lines to staff and aid recipients, the right to intervene and investigate when things go wrong, and, under some jurisdictions, the right to direct remedial action.

#### **Multilaterals**

A key question is how the Ombuds would apply to multilaterals and whether immunity provisions would be a barrier here. Certainly, the support of (I)NGO interviewees who were in favour of the Ombuds idea was strongly conditional on its coverage including the UN. These interviewees said that NGOs should not be singled out if multilaterals escape the mechanism's scrutiny.

UN immunity<sup>25</sup> is a complex area of law, but, from a pragmatic perspective, it is possible to assume that there should be few difference in terms of the application of the Ombuds to the UN or NGOs for the following reasons:

- Requirements to cooperate with the Ombuds could be included by donors in all types of funding agreements, whether these are formal contracts with private organisations, grant agreements with NGOs or memoranda of understanding with multilateral agencies.
- The Ombuds role is to make recommendations, not to override the authority of the organisation itself to act, and immunity is therefore not threatened. In addition, Ombuds usually work, as stated in Chapter 2, as a last resort, after internal mechanisms have had a reasonable opportunity to address the issue in hand.
- There are signals that the UN itself does not consider its immunity to be absolute, especially in cases of SEA.<sup>26</sup>
- The UN has stated that it is open to cooperation with external inspectors (*'Commit to joint investigations with the United Nations or with independent, external experts so as to enhance transparency'*<sup>27</sup>) and joint donor/UN investigations have happened in practice.<sup>28</sup>
- Donors may give preferential treatment to organisations that are willing to cooperate with an Ombuds and favour them when awarding grants, particularly for competitive project funding. This could be part of the risk assessments typically carried out before awarding funds.<sup>29</sup>

### **Organisations outside of the International Aid Ombuds authority**

Another question that arises is how the Ombuds would deal with complaints about entities that are not covered by voluntary commitment or through donor requirements, for instance, the many organisations and activities that are not funded by donors participating in the International Aid Ombuds. The Ombuds would still have the ability to make enquiries, assist the complainant in finding a pathway to raise concerns, and intervene on their behalf with the organisations involved. Even in cases where it has no direct authority, the Ombuds would not be prevented from looking into a case and could make its findings public to add pressure to its recommendations. In a similar way, although it is not envisaged that the Ombuds would apply to peacekeeping operations because of the different lines of accountability going back to UN Member States, it could still assist with individual cases to the extent possible.

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25 Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946

26 See, for example, UN, 2008, paragraph 12.; UN Member State calls for prosecution of perpetrators in UN sixth committee, 72nd session 2017; data on case-handling in UN, A/71/818, pp. 42-65; as well as citations of UN commitments in 'AIDS-free World 2018 Primer', although the same document claims that the UN has not always been forthcoming on waiving immunity in practice.

27 UN SG report - A/71/818 46, p. 15, (ix)

28 See for example, USAID OIG, Semi-annual Report to Congress 2018, p. 30 *'A joint OIG investigation with the UNDP Office of Audit and Investigation found indications of fraud and corruption in an Iraqi stabilization project'*.

29 See, for example, Semi-annual Report to Congress 2018, p. 32, *'USAID's Assistance to Public International Organizations This audit will determine what assessment of risks USAID's offices are conducting before awarding funds to public international organizations, and how the offices mitigate risks they identify. The audit will also determine how public international organization programs and funds are overseen by USAID's offices and whether other vulnerabilities exist with this type of assistance'*.

Mention should be made of the role of national authorities in the functioning of an Ombuds mechanism. As conceived, the Ombuds would cover abuse perpetrated by aid workers working for aid agencies but would not investigate complaints against those working for government agencies, as these people should be covered by domestic systems. Grey areas may be envisaged, however, where aid agency personnel and government employees work in close proximity, such as in a Ministry of Health hospital or when government services are funded by international donors. It may also be feasible for a national government to seek the advice or services of an International Aid Ombuds in cases where abuse is suspected among agencies contracted by the government for service delivery. As the focus of the Ombuds is to provide a voice and right of appeal to victims of abuse, the mechanism would have to remain flexible enough to adequately handle cases falling in such grey areas, by entering into dialogue and coordination with the appropriate mechanisms in situ.

### **Chain responsibility**

Chain responsibility refers to the extent to which primary grant recipients, such as the UN and (I)NGOs, are held accountable for the actions of their implementing partner organisations, such as NGO or private-sector service deliverers. Efforts to strengthen this chain responsibility have increased recently. For instance, the UN is in the process of issuing the 'United Nations Protocol on Allegations of Sexual Exploitation and Abuse Involving Implementing Partners', which sets out obligations to report all incidents and reserves the right of the UN to take over an investigation involving downstream partners.

As mentioned above, a potential Ombuds could investigate complaints about every aid provider within and outside of its authority, while aiming to strengthen existing mechanisms and acting as a last resort. In the case of chain responsibility, the Ombuds could particularly add value by ensuring a coordinated response in the delivery chain whereby one credible enquiry/investigation is carried out for all parties concerned (local agency, international NGO or multilateral organisation, and donors). This is important to safeguard victims/survivors from repeat investigations. The harmonisation and integration of responses helps to minimise transaction costs and drives up efficiency. The role of intake and disposition by an Ombuds is therefore useful in such circumstances and builds on what is already happening between some donors when cases arise. An Ombuds could avoid or reduce the duplication of responses to complaints in larger organisations and identify the necessary structures and resources in the chain to assist smaller aid agencies/NGOs. A cautionary view expressed by many was that small, local NGOs should not be penalised for their lack of resources, but should, in the first instance, be adequately supported in developing their capacity for preventing and responding to abuse.

## **7.2 Which issues are addressed?**

In terms of the focus of the mechanism, there was a mixed response. Some argued for SEA to be a priority, as one of the most serious and neglected types of misconduct by aid workers. Others suggested stretching the focus to cover other types of misconduct against aid recipients, such as violence, physical harm, discrimination,

bullying, withholding of aid and other types of abuses. Fraud/corruption might also be covered, although these issues are well-addressed by other processes. A few respondents mentioned including safety and security concerns, but most felt these would be outside the scope of an Ombuds mechanism. The calls for a narrow focus were largely because of concerns that the Ombuds would become challenged and over-stretched with too wide a remit.

However, others argued that the Ombuds must be open to all complaints in order to be responsive to community concerns; these may include abuse and exploitation, but also complaints about the quality of aid. As one interviewee said, it is not for us as an international community to determine what constitutes the worst form of abuse: *'The mechanism should be open to any individual who does not feel heard'*.

If the remit were too specific, there would be a risk of under-use, and the mechanism would become too bureaucratic and soon lose people's confidence if it were to turn away complainants. As one participant said,

*If someone comes forward with a complaint that is not resolved at field level, it is not possible to say you won't deal with it. If you have an Ombudsman, it has to deal across the board; it can't take one thing and not another.*

Making the mechanism open for all kinds of complaints is also in keeping with the way other Ombuds usually work.

To keep the scope manageable, interviewees suggested staggering the process, for instance, time-wise, by starting with a narrower function focused on SEA and then broadening the focus over time. An alternative identified was being open and inclusive from the start but prioritising certain types of complaints (e.g. SEA) and having different ways of filtering and channelling other types of complaints, including by referring complainants to other complaints mechanisms and accompanying them through these processes.

### **7.3 Who is covered?**

In terms of who should have recourse to the Ombuds, there was consensus that the mechanism needed to be for aid recipients and affected populations rather than agency personnel (staff or volunteers) raising concerns on their own behalf. The rationale for this was the need to be available for those who had no other recourse, *'complaints that fall through the cracks'*, whereas agency staff members are covered by other mechanisms (legal contracts, trade unions, organisational Ombuds, ethics offices, etc.). In view of the principle of exhausting other mechanisms first, the International Aid Ombuds would not normally be open to workplace concerns raised by staff members, although there may be exceptions, for instance, in the case of lower-level local staff without contracts and those working on a completely voluntary basis.

## 7.4 Accessibility: an international and/or national mechanism?

An important question is whether the potential independent aid Ombuds would be positioned internationally, or whether it would also avail itself of national offices. This relates to the important challenge facing the Ombuds in terms of how to make itself accessible to those who need its help.

Accessibility was a common concern among interviewees, who found the idea of a vulnerable person in Africa accessing a remote body in a Northern capital '*fanciful*'. It is worth noting that this issue is not only related to geographical remoteness; accessibility concerns are faced by all systems of protection aiming to find out about vulnerable persons who are suffering abuse. Many interviewees stressed the need for accessibility. There is wide agreement that people who feel abused must be able to find a safe space, will require face-to-face contact and should be able to speak in their own language. The human touch is important in communication, particularly in cultures oriented more towards verbal communication, and it is necessary to take differences in cultural understanding into account in terms of whether and how to raise concerns. Some people mentioned that, even within one country, to be truly accessible, an Ombuds would require multiple facilities, considering distance, language and other factors. In addition, any system must consider the security of complainants, ensuring complete confidentiality and addressing the inherent risks in the reporting on such sensitive subjects as SEA.

The idea of an aid Ombuds with one or multiple offices in all countries where aid is delivered raised immediate concerns in the interviews in terms of the scalability of such a model, given the costs, logistics, issues of national laws and jurisdiction, and the bureaucracy involved. There is also the concern that such an office might replace or duplicate complaint mechanisms that are already in place in the country and within aid operations.

If the Ombuds is limited to an international office, this would nonetheless have an added value and potential impact in a number of ways, even in individual cases:

- In accordance with standard Ombuds practice, the Independent Aid Ombuds can operate as an appeal mechanism, where organisations and joint complaints mechanisms (where they exist) are the direct contact. The Ombuds may play a role in strengthening, or overseeing, these country-level mechanisms.
- The Ombuds should nonetheless be accessible to people and have the capacity to investigate individual cases when necessary. The Ombuds would need to set up different methods of access and publicise these, for example, by requiring grantees to advertise in aid delivery sites through posters (e.g. in hospitals), leaflets (e.g. in packages) and outreach work involving talking with staff and members of the public in aid-receiving communities and/or through a network of in-country supporters promoting its work, including through activities on awareness of rights, communication and consultations.
- Learning from existing Ombuds mechanisms around the world that deal with vulnerable people shows the importance of enabling and/or encouraging others to complain on behalf of the affected person. It is therefore envisaged in this case that the complaint may come from a staff member, a visiting consultant, a donor



or other persons in the locality with the ability to report, rather than from the vulnerable person him- or herself.

### **Pilot countries?**

An approach that has been suggested is for the Ombuds to start with work in pilot countries. This requires further consideration but could involve the following alternatives:

Option 1: This could involve the initiation of country-level Ombuds offices in a number of pilot countries for a period of several years as branches of an international office. This would put the Ombuds in the position of being on the ground, with the ability to receive complaints directly from affected populations and work to resolve them. Taking this approach could help to intensify the strengthening of country-level mechanisms, enable testing of how accessibility operates for the Ombuds, and provide an opportunity to innovate and enhance the possible work of an aid Ombuds.

Option 2: The international Ombuds could be located in an international office only but work with priority countries through regular visits, with a particular focus on strengthening complaint mechanisms and investigations within existing structures and aid agencies, rather than being a primary receiver and resolver of complaints.

## **7.5 Roles of Aid Ombuds**

The possible aid Ombuds could play a number of roles. This section will present these different roles and explore how they could be executed, based on feedback from interviewees and a review of experiences of Ombuds worldwide.

### **Responsive role**

The responsive role of dealing with complaints is at the heart of an Ombuds function. It was mentioned previously that an Ombuds needs to be people-centred and open for all complaints. At the same time, the Ombuds can have priorities, such as SEA and other direct forms of abuse. This means that responding to complaints must be wider than investigating and also incorporates channelling functions to advise complainants about where to bring their complaint and/or inform those responsible about the complaint.

The interviewees were generally in agreement that having the Ombuds as an appeal function after existing channels were exhausted was the best use of the mechanism and the most fair to organisations, as it allowed them a chance to resolve complaints first while also giving complainants further recourse if necessary. This would imply a scaled problem-solving approach that first involves assessing complaints, filtering out malicious complaints and channelling concerns falling out of the priority remit of the Ombuds to the appropriate mechanisms. Second, once the validity and relevance of the complaint has been established, the Ombuds would ask organisations if they have investigated and, if so, review their investigation; if the organisation has not investigated, it may ask them to conduct an investigation under the oversight of the Ombuds. Finally, the Ombuds may directly investigate where it has the authority to do so. Ad-

ditionally, although the Ombuds would serve as a last resort, it was noted that timeliness is an important factor, and the Ombuds may need to intervene at earlier stages if organisations' internal processes are taking too long.

Part of the responsive role is the question of follow-up. In line with common practice, if a determination is made against an organisation in terms of the way it has handled complaints, the Ombuds would make advisory findings and non-binding recommendations, as it has no direct control over organisations or individuals. It would rely on the agency concerned to take follow-up measures (e.g. dismissing or sanctioning perpetrators, making referrals for criminal prosecution to national authorities, offering remedial support to victims/survivors, etc). Again, a scaled approach may be required, which involves first making recommendations, then monitoring whether the recommendations are followed up, and third, in case the agency has not responded adequately, escalate sanctions, for example by making the findings public or recommending that donors apply financial penalties. There were repeated calls from a range of interviewees for donors to apply conditionality in this way and use funding as a tool to enforce compliance by organisations, as the following typical comment illustrates:

*Donor involvement is the only thing that will make a difference; it is not until donors withhold funding that we will see a change in organisational behaviour.*

There are different approaches to publicity as a sanction. Ombuds are seen to deploy a spectrum of responses, ranging from discreet resolution to public naming and shaming. Some only publish cases that are not resolved adequately, whereas others publicise all admissible cases as a matter of course, irrespective of their findings. There are pros and cons to each policy: The first policy enables publicity to be used as a tool of compliance. It also avoids agencies being affected by publicity when complaints are found to be ungrounded after investigation. The latter policy avoids the politicisation of decisions about publication. Most interviewees were of the view that publicity is an important sanction, providing it is used carefully and only in cases of non-compliance in order to avoid detrimental effects.

Where complaints concern criminal acts that constitute violations of national laws, rather than misconduct breaching aid standards and employment contracts, questions are raised about referring alleged perpetrators/cases to national police authorities. Most interviewees had reservations and would prefer a discretionary approach that considered the capacities of national criminal justice systems, human rights issues and the views of the victim/survivor on a case-by-case basis. A 'do no harm' approach was advised, where referrals to the police should not do more harm than good to the victim/survivor of abuse or discrimination. Although the Ombuds would not directly report a case (unless required to do so by law), it could assist in making an objective analysis based on an assessment of criminal justice systems and other issues to allow for a systematic and consistent response. The involvement of the Ombuds could help guard against organisational interests blocking victims/survivors from reporting cases to authorities, which is a concern for some stakeholders.<sup>30</sup>

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<sup>30</sup> See also recent cases – Newsclick, 18 August 2018; Newsweek, 7 and 10 August and 29 September 2018

### **Proactive role**

In addition to the responsive role of a possible aid Ombuds, there was strong support for other roles. A proactive role and an ability to act on its own initiative rather than wait for complaints to come in was considered important. This could include, for example, conducting audits of the complaints mechanisms of individual agencies or thematic evaluations in specific locations to see how individual and joint complaints mechanisms are functioning and whether they are adequately responding to the needs of communities. Such visits could also include outreach work to proactively inform communities and staff about the availability of the mechanism. These activities would need to avoid duplicating the work of existing initiatives. For instance, the Humanitarian Quality Assurance Initiative carries out audits of CHS Alliance members against the CHS standard, which includes the aspect of complaint mechanisms; hence, the Ombuds would focus on complaint mechanisms of other agencies or a review of the sector overall. The Ombuds could also proactively launch an investigation, for example when multiple cases are reported from a particular area and it is feared that these signal a much wider problem.

### **Advisory role and capacity development**

The Ombuds could play an advisory role in terms of analysing trends in the sector through its own data analysis and annual reporting as well as commissioning other research. It could also play a convening and harmonisation role, for example through standard setting on investigations, as it appears there are no common recognised standards for investigations. Another issue highlighted was the difference in the burden of proof used by different decision-making bodies and external tribunals. The Ombuds could also map and seek to understand accountability mechanisms and regulatory frameworks worldwide and engage in capacity development and the promotion of good practices.

## **7.6 Reliance on first-tier mechanisms**

The way Ombuds normally work – and may feasibly work in the aid sector – is as a second-tier appeal mechanism (as a last resort within reasonable limits). This means that the Ombuds largely relies on the presence of first-tier mechanisms. These are complaint mechanisms within agencies or joint inter-agency complaint mechanisms. A model like this, which operates as a second-tier/final-resort complaints system, as is the case with most Ombuds, requires a first-tier system that is up and running in order to work to optimum effect.

A key challenge facing the set-up of an Ombuds is the current state of complaints mechanisms in the sector. Much remains to be done in terms of ensuring organisations have functioning complaints mechanisms in place. The present situation is also fluid, as much work is being done in the wake of the safeguarding scandal earlier this year and with the Global Safeguarding Conference planned for October 2018. It is therefore important that the International Aid Ombuds is complementary to other initiatives, able to adapt to the evolving context and capable of playing multiple roles. It is foreseen that, in a first phase of the initiative, while responding to individual cases plays a role, there would be greater emphasis on the Ombuds' proactive and advisory

functions, with the aim of stimulating and supporting the establishment of individual and joint complaints mechanisms in the sector. Activities in this first phase could therefore involve capacity development/training on good practices in setting up complaints mechanisms, auditing of existing complaints mechanisms, and field visits to particular locations to evaluate existing individual and joint complaints mechanisms in order to see how they are meeting the concerns of aid recipients, with a view to strengthening such mechanisms as necessary. The first phase would also involve continued development of the overall Ombuds function. This phase would then give way incrementally to an increased focus on the responsive side, where complaints could be received on an appeal basis; this would signal a second phase, where the Ombuds would be fully operational.

## **7.7 Ownership, governance and the role of national institutions**

Interviewees emphasised the need for a multi-stakeholder approach, which includes donors, host countries and agencies (INGOs and NGOs, multilaterals and the private sector) themselves. One way of bringing in this wide ownership would be through a governance structure comprised of representatives from all parts of the sector.

At the same time, interviewees pointed to the need for donors to take a proactive role in initiating the mechanism and actively promoting it. This would strengthen the basis of the model that builds on donor funding as one of its principle sources of authority.

The question of how the entity would link to national and regional structures was also often raised in the interviews. There has been a concern that an international Ombuds mechanism would unduly interfere with national laws and bodies. This concern would be borne out if a mechanism were created in international law with the aim of having direct sanctioning capacity. An aid Ombuds mechanism that is sectoral and relies on recommendations as outlined above and derives its mandate from the existing authority of donors and the voluntary commitment of aid agencies would have less risk of being seen as interfering.

Interviewees found it important to coordinate the aid Ombuds mechanism closely with national institutions, as they have a legitimate stake in the process. It was also felt that a lack of coordination would serve to foster a negative atmosphere and lead to distrust between governments and aid actors. It is foreseen that the Ombuds could bolster national institutions, which may have reservations about raising complaints concerning large international institutions on which they rely for funding and support.

The study suggested that the creation of formal links between the Ombuds and national authorities would lead to complexities in terms of the application of different national laws and relations with diverse institutions in different places with varying roles and capacities. A one-size-fits-all approach seems unlikely to work in terms of forging links; rather, relationships could be explored on a case-by-case basis, and, where possible, associations could be developed with national-level Ombuds, human rights institutions and the like.

## 7.8 Nesting and networking

As detailed in the section on the need for an International Aid Ombuds, interviewees contended that such a mechanism should build on and strengthen existing and evolving national and international standards, initiatives and mechanisms.

In line with this, there was a great deal of emphasis in responses to creating something 'light-touch' and 'flexible' that builds on existing mechanisms and allows them space to function. There was little desire to set up a large new bureaucracy with offices in every country. It was suggested that the structure could be based on sector agreements such as Good Humanitarian Donorship or the Grand Bargain, peace-mediation or special rapporteur models. A light-weight model such as this would require a small secretariat but could be agile in operation by having a flexible workforce comprised of technical experts and country-level specialists available on call as needed. The organisation would also need to ensure a fair representation of different parts of the sector and the Global North and South, both in the governance structure and in working-level technical expertise.

Consideration was also given as to which organisation could provide a secretariat function for the possible International Aid Ombuds. Nesting could be considered, not only for practical reasons, but also to signal the status and credibility of the body. In view of the latter, the choice of the nesting location is an important issue. Nesting the Ombuds in an individual donor or aid agency, for example, would fail to signal its sectoral character. The complexities of setting up and managing an International Aid Ombuds also imply that the nesting location should be a substantial organisation with the in-house legal, financial and organisational expertise needed to carry out such a function.

Various suggestions were put forward:

- Existing sectoral coordination mechanisms were one option. There was little support among interviewees for the UN/IASC, despite its recognisable technical knowledge on accountability to affected populations and sexual exploitation and abuse<sup>A</sup>, mostly because it was not seen by participants as sufficiently independent and effectual. As for NGO coordination bodies such as the CHS Alliance, these would not cover all parts of the sector (i.e. multilaterals, private entities) and might be constrained by their membership from imposing strong sanctions such as publicity or recommending the withdrawal of funding.
- A donor coordination mechanism, such as the Good Humanitarian Donorship network or the OECD/Development Assistance Committee (DAC), was viewed as a possibility, provided there is a means of engaging other players in the sector (host governments, NGOs, the UN, the private sector, etc.). OECD-DAC was mentioned by several interviewees as a well-regarded technical body with experience in standard-setting (and currently working on an instrument for development cooperation on PSEA). This choice would come with the risk of being seen as too oriented towards Northern donors, but this may be resolved by a broad, sectoral governance structure for the Ombuds mechanism.
- Evolving architecture on SEA, such as the International Centre for Safeguarding Excellence that is currently being scoped by DFID, was another possibility. It is uncertain how this will develop and how it would be compatible with the scope of an Ombuds that is not restricted to SEA.
- Nesting in an Ombuds network or umbrella body could be explored, but the capacity of such bodies to administer logistics and manage security and other risks associated with

implementing activities in challenging contexts may be an issue.

- An arbitration body might be explored, for example, the Permanent Court of Arbitration, which covers mass civil claims including claims about land rights. This body's remit is limited to civil rather than criminal issues, which would not cover the full scope of responses an Ombuds might wish to consider.
- Other suggestions made by the interviewees, namely the International Criminal Court and the International Court of Justice, were not applicable given the nature of the cases of concern vs. the mandates of the institutions.

The scoping study has not yielded a specific recommendation for nesting, and different options may need to be explored further, also depending on the willingness of the relevant bodies to develop and host a potential International Aid Ombuds.

## 7.9 Costing

Considerations as to the cost of running an Ombuds mechanism have not formed part of this initial scoping study. Nonetheless, costing came up in interviews, and some general remarks can be made beyond the truism that accountability costs money.

As related above, most interviewees favoured a lightweight, agile structure that builds on existing initiatives and functions with a minimal secretariat and a flexible on-demand roster of specialists. Although there are multiple reasons for this preference, costing is part of the consideration. Costing also appears heavily in the deliberations about whether the mechanism will rely on an international office alone, or whether (some) country-based offices should be part of it.

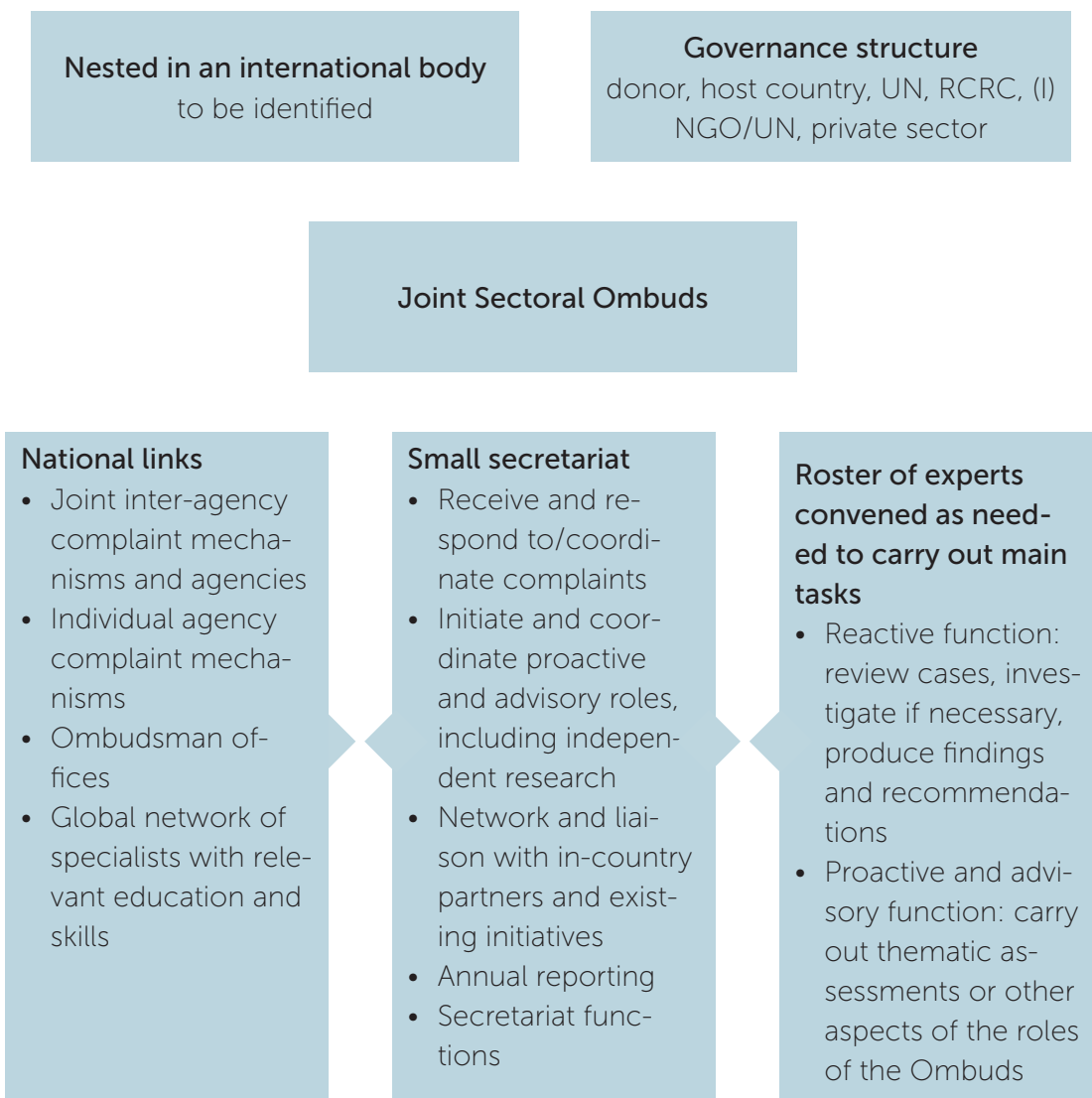
Interviewees expected donors to bear the costs of the mechanism, rather than build on membership fees. To protect its independence, the mechanism cannot be fully membership-based (i.e. statements of collaboration, but not membership, can link agencies to the mechanism). The model envisages working in such a way that agencies resolve issues through their own investigations and enquiries at their own cost first, giving way to intervention by the Ombuds and potential sanctions if issues remain unresolved.

Even though the initial investment in the Ombuds may be relatively modest, broader investment in agency or inter-agency complaint mechanisms remains paramount to ensure that the Ombuds can have its envisaged role as a second-tier mechanism.

## 8. Proposed model for an international aid ombuds

There are many ways in which an International Aid Ombuds could be shaped. In the previous chapters, we have reviewed the spectrum of possible options and a large number of the basic working components and practical aspects that could make up the International Aid Ombuds. A number of these aspects yielded different answers, leaving some questions open, such as the issue of nesting and the question of whether country-based offices would be required and feasible. However, on the whole, our findings were sufficiently convergent and consistent to allow us to propose a model for an International Aid Ombuds. The suggested model, which captures the elements discussed above, is set out in Diagram 2. The model illustrates a joint sectoral entity that complements and strengthens existing accountability mechanisms, is nested in an international body and governed by different parts of the sector, with the work carried out by a small secretariat supported by a flexible roster of technical experts and on-the-ground specialists.

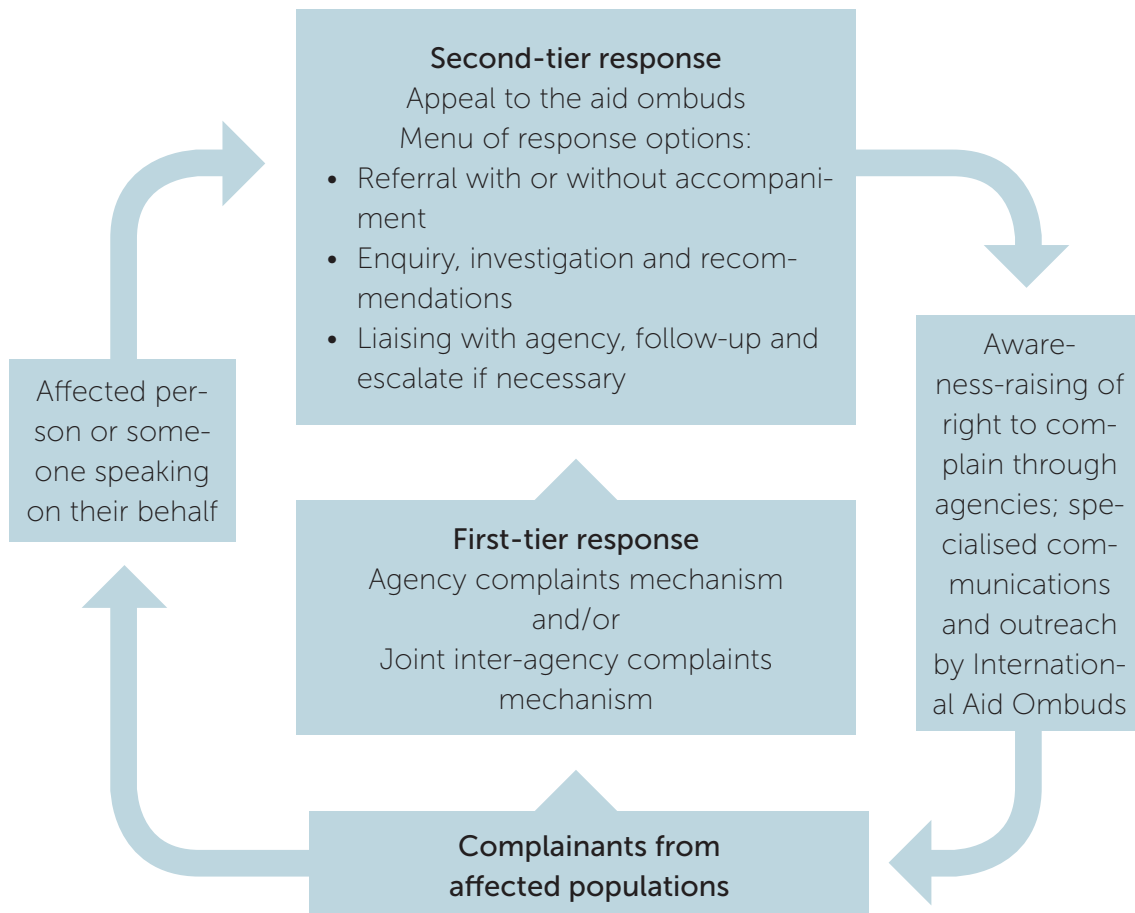
Diagram 2. International Aid Ombuds



## 8.1 Multi-tier complaints model

The model that is proposed works on the basis of a multi-tier complaint system, where the International Aid Ombuds operates as an appeal mechanism, even though it can also be approached directly by complainants. This is represented in Diagram 3.

Diagram 3. Multi-tier complaints





## 9. Conclusions

This study was commissioned by the Netherlands Ministry of Foreign Affairs to solicit opinions about the idea of an Ombuds for humanitarian and development aid and to scope the contours of what such a mechanism might possibly look like. In the course of the study, 76 individuals were consulted, representing donors, host governments, the UN, (I)NGOs, the Red Cross, standard and quality agencies, and persons with specialist knowledge relevant to the study.

A major finding was that the vast majority of interviewees support the idea of an independent International Aid Ombuds (even though cautionary remarks were also made). The need for this mechanism has become apparent because of the attention to sexual exploitation, abuse and harassment in the first half of 2018. However, it seems that, for many interviewees, the idea of the International Aid Ombuds as an external oversight entity also represents a natural next step for a sector that has been investing in policies and mechanisms for accountability and complaint handling for several decades. The Ombuds could give an added impetus to the more adequate application of existing mechanisms in order to enhance good and safe programming.

A second major finding was that there is a broad consensus that, although an aid Ombuds must be a joint effort of the entire sector and aid chain, there is a need for donors to enhance such a mechanism by initiating it and by encouraging its use through conditional funding and financial incentives.

It is important to emphasise that the interviewees were invited to share their personal opinions, rather than reflect their organisation's perspective. Without a clear proposition of what an aid Ombuds may look like, it would be premature to seek such official opinions. Although the consent of the sector can therefore not be predicted on the basis of this study, the two major findings were very strong and were found across the different groups of participants in the study.

The study further explored what an International Aid Ombuds might look like by reviewing existing practices and soliciting opinions of the participants about different aspects that are important for the functioning of such a mechanism, including its authority base, the scope of issues to be covered, who is covered, whether it would be an international mechanism and/or have a national presence, its roles, issues of ownership and governance, nesting of the mechanism and costing.

Different options for an International Aid Ombuds were identified. These options differ in terms of their source of authority. They also have different characteristics with regard to the buy-in and preparation process required to set them up, the likelihood of producing timely results and dealing with large volumes of complaints, the ability to combine different roles, and the level of cost and bureaucracy.

## Challenges

The study identified various challenges to setting up an Ombuds. Beyond obvious and important practical challenges revolving around the logistics and administration of such a mechanism, there are a number of other sets of challenges that must be considered.

A key challenge is developing the entity in such a way that voluntary commitments, donor requirements and moral pressure, as instruments available to the Ombuds to apply pressure on agencies, add up to a mechanism that is sufficiently weighty to ensure proper follow-up of complaints in order to meet the expectations of those who muster up the courage to file a complaint.

Another challenge concerns the management of the security of complainants and those involved with investigations, particularly given the sensitive nature of the themes concerned. Related to this are a number of legal and jurisdictional issues. How the Ombuds would link with domestic laws and relevant national authorities needs clarification, particularly concerning criminal cases. Jurisdictions must be respected, but a 'do no harm' approach to the victims/survivors must be ensured.

More fundamentally, the question of authority must be answered: From where does the authority of an Ombuds come? If it comes from the sector as a whole, then there must be a sufficient level of buy-in and continued support for the Ombuds. The mechanism cannot be viewed as just another 'box-ticking' exercise. The right balance must also be found between financial and moral incentives. In addition, even if it is considered to be a sector-wide mechanism, there will be organisations that choose not to actively support the Ombuds. The authority of the Ombuds over these organisations must be clarified.

The right balance between passive and proactive roles must also be reached. Additionally, the Ombuds must not duplicate efforts, but rather coordinate with already-existing standards, mechanisms and processes, including national authorities. Related to this is the necessity of determining more precisely the scope of the Ombuds in order to clarify the standards it would work to support. One challenge here would be constraining the expansion of the scope of activities of the Ombuds beyond its agreed-upon focus.

Further, there are many challenges connected to accessibility and communication. Ways would have to be found to ensure that the existence and usefulness of the Ombuds was properly communicated within the sector and – more importantly – to the recipients of aid. Many practical challenges concerning the language of communications and the means of appeal must be worked out. The aid sector is vast and deep, and all parts of the sector must be reached, down to the smallest local NGO.

A final challenge concerns expectations. Nurturing the initiative until it can fully fulfil its roles will be a long process. The full development, outreach and functionality of the Ombuds will take time. Clarity about its role, parameters and limitations are necessary to avoid disillusion and disappointment.

## Proposed model

On the basis of learning from other Ombuds functions, the discussions in the interviews, and the opportunities and challenges identified, the following model emerges as the most feasible. We have provisionally labelled this option the *Joint Sectoral Aid Ombuds*.<sup>31</sup> It is a joint sectoral entity that complements and strengthens existing accountability mechanisms, is nested in an international body and governed by different parts of the sector, with the work carried out by a small secretariat supported by a flexible roster of technical experts and on-the-ground specialists.

Key characteristics of this proposed option are as follows:

- Its authority comes from voluntary commitment, peer pressure and agreement between donors and grantees.
- The Ombuds acts as an appeal function when first-tier complaints mechanisms have not been able to resolve an issue. In exceptional cases, for example when timeliness is critical, the Ombuds will take on a case as first or parallel responder.
- It builds on, collaborates with and strengthens existing standards and initiatives that foster accountability and aid agencies' prevention of and response to abuse by their workers.
- It is open to all complaints from affected populations but prioritises SEA and other forms of abuse. It channels complaints outside of its priority areas to other mechanisms.
- A primary role of the Ombuds is to respond to complaints. Responses and outcomes are scalable, and only when complaints are not adequately handled will investigations be instigated.
- There is no direct authority to sanction. The Ombuds makes recommendations to the responsible agency, monitors follow-up and, in the case of lack of compliance, scales up to responses that may comprise publishing findings and recommending financial sanctions.
- Additional roles of the Ombuds are to proactively assess complaints mechanisms and their responsiveness to community needs and to provide advisory functions to develop capacity in the sector to prevent and address abuse.

Note that many of these characteristics could also be retained if such an Ombuds was initiated by a single donor operating alone, but the clear finding is that the power and authority of this mechanism comes from it being a joint enterprise.

The report identified a spectrum of possible options, ranging from voluntary standard-setting and compliance to an inter-governmental body with the specific focus and power to address issues of aid worker abuse. The proposition of this model is not to discount other mechanisms or, indeed, the different ways of setting up and designing an Ombuds function. However, it is to recognise that the suggested approach offers the opportunity for flexibility, agility, relative ease of set-up and cost-effectiveness, and a workaround to a number of complex challenges, particularly related to

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<sup>31</sup> This is not a proposed name for the International Aid Ombuds. Indeed, the word 'Ombuds' itself lacks common understanding, and, as such, if this entity is set up, a more straightforward name that captures the idea of independent oversight of complaints may be considered.

legal jurisdiction. The proposed model, through its reliance on authority from donor agreements, voluntary participation and moral pressure and through its approach to working in a collaborative manner using non-binding recommendations, can help to provide oversight and direction for how complaints are handled in the sector without the attendant complexities involved in seeking direct control.

While the study has led to a specific model, there are a number of issues that have not yielded a singular response. In particular, the different suggestions for nesting the international aid Ombuds require further exploration. A particularly complicated issue is the fact that an Ombuds – as an appeal mechanism – relies mainly on existing complaint mechanisms. These have not been developed in equal measure in all countries where aid operates.

It is likely therefore that the first phase of the initiative would require a greater emphasis on the proactive function of stimulating and supporting the establishment of individual and joint complaints mechanisms in the sector. The first phase would then give way incrementally to an increased focus on the responsive side where complaints can be received on an appeal basis and thus a second phase where the Ombuds is fully operational.

It is also worth noting that the situation is currently very fluid with various new initiatives emerging in light of the safeguarding scandal and October 2018 global safeguarding conference; as such the Ombuds initiative will need to fit with other activities in order to add value to a sector-wide strengthening of accountability.

Another issue to further explore is how the international aid Ombuds can effectively work in relation to country-based mechanisms, actors and authorities. While it is not considered feasible for several reasons to envisage national Ombuds offices, it may be worthwhile to explore an initial phase where the Ombuds focuses on a number of pilot countries.

## **Next steps**

This initial scoping study has identified a need for an Ombuds-type mechanism for the aid sector and proposed a potential model which endeavours to work around many of the challenges facing the operation of such a mechanism. The testing of feasibility needs to continue into a further phase in terms of unpacking the mandate, structure and modalities of such a body and assessing the support of stakeholders. The next stages require further planning but may comprise the following elements:

- Identification of a potential nest for the international aid Ombuds enabling the nesting organisation concerned to play a role in preparing next steps.
- Further work to test and elaborate the proposed model in terms of its legal basis, organisational structure, costs, nesting etc.
- It can be considered to do an assessment of the state of complaints mechanisms in the humanitarian and development sector.
- Sector consultations to discuss the aid Ombuds idea among donors and aid agencies to garner institutional buy-in.
- Field work in a number of countries to test the feasibility of the international aid

Ombuds on the ground, to scope out how it can have optimal added value to existing mechanisms, possibly including a pilot run of the proposed model in locations where the first tier complaints mechanisms are sufficiently operational to trial a prototype mechanism for reporting and responding to complaints.

- Consider setting up a prototype of the international aid Ombuds while garnering support for a broader mechanism, for instance, by working with interested agencies and donors to set up a reporting hotline and testing methods for dealing with complaints received.

## ANNEX 1 List of Participants

|                                |   |  |
|--------------------------------|---|--|
| Miller Taylor, Amy             | Chief Network Officer   | CIVICUS  |
| Ali, Degan                     | Executive Director  | Adeso Africa– African Development Solutions  |
| Altunbas, Banu                 | Great Lakes Regional Manager  | International Alert  |
| Anwar Birzwa, Hero             | Programme Director  | REACH Iraq   |
| Axisa, Tanya                   | Task Team Coordinator, Accountability to Affected Populations Protection from Sexual Exploitation and Abuse | United Nations Inter-agency Standing Committee Task team on Accountability to Affected Populations and Prevention of Sexual Exploitation and Abuse |
| Bacal Mayencourt, Christie Joy | Accountability for Affected Populations Officer   | International Organisation for Migration   |
| Bhatt, Mihir                   | Director  | All India Disaster Mitigation Institute (AIDMI)  |
| Blagescu, Monica               | Director of Programmes and Accountability   | Disasters Emergency Committee  |
| Bord, Daniel                   | Group Compliance Manager  | Crown Agents   |
| Bröker, Laura                  | Assistant Desk Officer, Issues of fraud and corruption in humanitarian assistance                           | German Federal Foreign Office  |
| Buijs, Reina                   | Director General Development Cooperation  | Netherlands Ministry of Foreign Affairs  |
| Burnett, Tristan               | Head of Preparedness & Response Division  | International Organisation for Migration   |
| Cameron, Angela                | Head of Counter Fraud Section, Internal Audit Department  | Department for International Development (UK)  |
| Carter, Cat                    | Head of Humanitarian Child Safeguarding   | Save the Children International  |
| Carter, Matthew                | Emergency Coordinator   | Catholic International Development Charity (CAFOD)   |
| Casey-Maslen, Marian           |   | Communicating with Disaster Affected Communities Network (CDAC)  |
| Chowdhury, Reza                | Executive Director  | Coastal Association for Social Transformation Trust (COAST) Bangladesh   |
| Clare, Hannah                  | Global PSEA Adviser   | Norwegian Refugee Council (NRC)  |
| Cole, Susan                    | Safeguarding Manager  | World Vision UK  |
| Cruz, Anabel                   | Chair of the Board  | CIVICUS: World Alliance for Citizen Participation  |
| Cue, Wendy                     | Senior Coordinator on Preventing Sexual Exploitation and Abuse/Sexual Harassment of Aid Workers             | United Nations Office for the Coordination of Humanitarian Affairs   |
| Dabelstein, Neils              | Chair of Board of Trustees  | Humanitarian Exchange and Research Centre  |
| Drew Smith, Sheila             | Safeguarding Adviser to the Secretary of State  | Department for International Development (UK)  |

|                                    |   |  |
|------------------------------------|---|--|
| Fabre, Cyprien                     | Advisor, Crisis and Fragility; Global Partnership & Policy  | Organisation for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC)                  |
| Flaherty, Edward                   | Senior Partner/Juris doctor   | Schwab Flaherty & Associates   |
| Forsberg, Markus                   | Collaborative Centre Manager  | International Association of Professionals in Humanitarian Assistance and Protection (PHAP)                        |
| Gleadle, Andrew                    | Humanitarian Adviser  | Department for International Development (UK)  |
| Glisson, Karen                     | Membership Services Manager   | Core Humanitarian Standard Alliance  |
| Goldberg, Lynne                    | Senior Political Affairs Officer  | United Nations Office of Special Coordinator on Improving United Nations Response to Sexual Exploitation and Abuse |
| Greenwood, Judith                  | Executive Director  | Core Humanitarian Standards Alliance   |
| Guttman, Nick                      | Head Humanitarian Division  | Christian Aid  |
| Half, Kate                         | Executive Secretary   | Steering Committee for Humanitarian Response   |
| Henry, Jacquie                     | Director of People and Culture  | World Vision UK  |
| Hileman, Alexandra                 | Prevention of Sexual Exploitation and Abuse/Community-based Complaints Mechanisms Project Coordinator | International Organisation for Migration   |
| Ibrahim, Fatima                    | Humanitarian Affairs Officer  | United Nations Office for the Coordination of Humanitarian Affairs   |
| International Working Group on SEA |   | Medecins Sans Frontieres-International   |
| Ismail, Nasra                      | Deputy Director   | Somalia NGO Consortium   |
| Kandeh, Saramba                    | Legal and Gender advisor  | Aids free World/Code Blue  |
| Kaplan, Adam                       | Senior Counsel, Office of Inspector General   | US Agency for International Development (USAID)  |
| Kennedy, Jim                       | Internal Auditor  | Department for International Development (UK)  |
| Kluck, Gabrielle                   | Director, Office of the Ombudsman and Mediation Services  | World Food Programme   |
| Laing, Angharad                    | Executive Director  | International Association of Professionals in Humanitarian Assistance and Protection (PHAP)                        |
| Lazonby, Gillian                   | In-House Lawyer   | Tearfund   |
| Lockyear, Christopher              | Former Director of Operations   | Action Against Hunger (ACF)-USA  |
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|                            |   |   |
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| Patel, Smruti              | Founder and Co-director   | Global Mentoring Initiative   |
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| Russell, Michelle          | Director of Investigations  | Charity Commission of England and Wales   |
| Samara, Katharina          | Director, Issues Affecting Women Programme                              | Oak Foundation  |
| Schenk, Andrea             | Co-founder and Managing Principal                                       | Pacifica Human Communications   |
| Schenkenberg, Ed           | Executive Director  | HERE - Geneva   |
| Schwerdtfeger, Stephan     | Desk officer, Issues of fraud and corruption in humanitarian assistance | German Federal Foreign Office   |
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| Van Brabant, Koenraad      | Co-director   | Global Mentoring Initiative   |
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| Wallace, Sue Ann           | Chairman/ Vice-President  | Customer Owned Banking Code Compliance Committee/Humanitarian Quality Accountability Initiative |
| Wellhasen, Sonya           | Global Accountability Advisor   | Deutsche Welthungerhilfe (WHH)  |



|                |   |   |
|----------------|---|---|
| Williams, Lisa | Head of Unit, Gender Equality and Women's Empowerment | Organisation for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC) |
| Zinsser, John  | Chief Ombuds Officer                                  | International Committee of the Red Cross (ICRC)   |

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## Annex 3 Terms of reference

### **Term of Reference for a study to investigate the feasibility of an independent complaints mechanism/ombudsman in humanitarian and /or development settings.**

Netherlands Ministry of Foreign Affairs

Final draft (3)/23-05-2018

#### **Background**

In the wake of the recent scandals around humanitarian staff (sexual) misbehavior, in a number of countries discussions are taking place in the humanitarian and development sector on how to prevent or mitigate risks of future misconduct and how to react to misconduct.

Many of the proposed steps focus on actions that organizations need to take within their organizations (code of conducts, whistleblowers, internal focal points). Some proposed actions relate to steps that the sector needs to take as a whole, such as the idea for a 'humanitarian passport' and referencing system. Another action is to re-investigate the possibility of the creation of an independent mechanism, an ombudsman, to receive and investigate complaints from affected populations and from staff and to hold organizations accountable.

The idea of creating an ombudsman for humanitarian assistance was one of the recommendations of the Joint Evaluation of Emergency Assistance to Rwanda after the genocide in the mid-1990s. In 1997, at the World Disasters Forum, a decision was taken to start a (three year) project to study the feasibility of adapting the ombudsman concept to the field of humanitarian assistance. The results of this study were presented at a conference organized by IFRC in 2000. One of the results of the project was the creation of HAP (Humanitarian Accountability Partnership) in 2001. HAP decided to focus on the institutionalization of accountability systems within organizations and not to set up an independent structure. In 2015, HAP merged with People in Aid in what is now the Core Humanitarian Standard organization. The 'ombudsman' as collective and sector wide institution, however, never materialized.

More recently, there have been a number of special mandate holders put in place in the UN system related to protection from sexual exploitation and abuse (PSEA). This includes the appointment of a Victims' Rights Advocate for the UN and a Special Coordinator on improving the UN response to sexual exploitation and abuse.

In the aftermath of the 'me too' scandal, the idea to revitalize the 'ombudsman' concept came up<sup>32</sup>. This idea was discussed in meetings between development and humanitarian agencies and government officials, both in the Netherlands and in the UK. The ombudsman idea was also discussed in the 'Safeguarding' donor technical working group. It was agreed that the Netherlands would take the initiative to research the feasibility of an ombudsman

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<sup>32</sup> See the article by Dorothea Hilhorst, 'aid agencies can't police themselves. It's time for a change', IRIN 22 February 2018 and John Mitchell and Ian Christoplos 'a Qual ombudsman revisited', ALNAP blog 15 March 2018. See also the critical response to Hilhorst' article by Gregory Gottlieb, 'Opinion: how donors can address aid agency oversight', IRIN, 8 March 2018



## Objectives for the scoping and feasibility research

- Study and capture the main lessons and challenges from the former 'humanitarian ombudsman project' and other (former and existing) projects/pilots around collective/system wide complaints and/or accountability mechanisms (ea. the current pilots around Protection Against Sexual Exploitation and Abuse in a number of countries);
- Identify pros and cons of an ombudsman for different actors, considering ea. the following questions, which will also help to inform the design of the ombudsman function:
  - Should it have an advisory (i.e. 'name and shame') and arbitration, or and enforcement function? (What are the pros and cons of each?)
  - If enforcement – what are the legal barriers to its success? What jurisdiction could it have? What powers will it have and how will it enforce them? What legal structures will support its impartiality and independence? Could it investigate directly or should it act more like an arbitration service?
  - How much leverage could it have over the UN system?
  - Where would it sit? Who would it report to? What would be the costs?
  - What are the political barriers/enablers to an ombudsman function?
- Investigate if there is support within the sector (UN, INGO's, donors, NGO's, governments, Red Cross & Crescent Movement and if possible (representatives of) affected populations for independent, sector wide complaints/accountability mechanisms;
- Recommend on whether to pursue the Ombudsman further and if so, in what form and with what scope<sup>33</sup> and further steps to be taken.

## Deliverables

A report with:

- Key lessons and recommendations from the former ombudsman project and other pilots/projects around independent, system wide accountability/complaints mechanisms;
- A description of the views and support of different actors in the sector on 'independent, sector wide' accountability/complaint mechanisms;
- An advice on the scope or scopes of independent accountability mechanisms that might be successful;
- Advice on next steps.

## Planning

- The scoping research should take place in the period June – August 2018

## Suggestions for the methodology

- Study of project documents, studies and literature related to the former ('1997 – 2000) humanitarian ombudsman' project and other collective/system wide initiatives around accountability and complaints;

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<sup>33</sup> E.g. issues of focus: both developmental and humanitarian work? (sexual) misconduct or a broader focus? (see for this question also IASC, Best practice Guide: Inter-Agency Community Based Complaint Mechanism, p. 36 ff). Issues around governance, mandate & competences (inform & investigate or/and sanctions/enforcement), accountability, balance between facilitation and regulation, jurisdiction, flexible/fit for context specific purpose, finances and costing, (geographical) structure of an Ombudsman system (national, regional, global office structure).

- Interview people involved in former 'ombudsman' project and the follow up and people involved in other system wide initiatives (such as the IOM-led PSEA project);
- Contact and discuss the feasibility of or the functioning of an ombudsman with leadership within UN, INGO's and NGO's, Red Cross Movement, donors and governments and if possible (representatives of) affected populations;
- Contact and discuss it with the convenors of the Localization and Participation Revolution work streams of the Grand Bargain;
- Contact and discuss the concept with organizations specialized in accountability and communicating with affected populations such as CHS Alliance, HQAI, Ground Truth, IASC AAP and PSEA Task team

### **Budget for the study**

To be defined



