

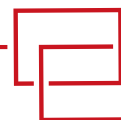
A UN Ombudsperson on counter-terrorism: Advancing human rights



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1. Executive Summary

1. Since the 9/11 attacks, the United Nations (UN) has been heavily involved in addressing what governments describe as matters of counter-terrorism. In recent years, the Global Counterterrorism Strategy (GCTS) review process has become central to the UN counter-terrorism framework, an expanding set of institutions and appointed experts that have now dominated the debate within the international community for two decades. The counter-terrorism bodies that make up this architecture have rarely prioritised human rights protections or the inclusion of civil society -- non-governmental groups that often have promoting equality and other human rights as their missions. While the UN Charter affirms in its preamble the centrality of equality and human rights for the maintenance of international peace and security, UN counter-terrorism institutions today often strengthen or justify governments' efforts to restrict people's rights in the name of preventing terrorism – a term that still has no commonly agreed definition in international law, meaning that governments often feel free to apply it however they like, including to peaceful movements.
2. Rights & Security International (RSI), along with other members of the informal Civil Society Organisations (CSO) Coalition on Human Rights and Counter-terrorism, has advocated for an oversight mechanism to ensure that the UN respects and promotes human rights whenever it acts in the name of counter-terrorism.
3. In 2021, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism issued several recommendations for the establishment of a “properly functioning Office of the Ombudsperson consistent with the creation of a distinct UN entity with independence and capacities to undertake a greater degree of meaningful oversight.”¹ Following this, the CSO Coalition's request for an Ombudsperson office at the UN GCTS was put forward for the scrutiny of the UN Secretary General.
4. To aid this effort, RSI has conducted in-depth research on other Ombudsperson offices and developed recommendations regarding how a new Ombudsperson focused on the UN's involvement in counter-terrorism policy and rule-making could effectively promote and ensure respect for human rights.
5. The first section of this report examines the history and existing normative framework of Ombudsperson institutions. It then lays out best practices for Ombudspersons, based on key national and regional cases and relevant guidance. Finally, it examines recommendations from civil society organizations (CSOs) to help ensure the effectiveness of this potential new Ombudsperson.
6. Ombudsperson offices were first created as means to prevent maladministration in public services, but over time, they have often taken on broader human rights obligations. The Paris Principles of 1993 formed the basis for this transformation by aiding UN member states to make provision for the setting up of national institutions that would monitor, report on and enforce fundamental human rights principles; these national bodies are widely known as National Human Rights Institutions (NHRIs).
7. The European Commission for Democracy through Law, known as the Venice Commission, which advises the Council of Europe on constitutional matters, applied the fundamental aspects of the Paris Principles to Ombudspersons, recognizing that these institutions play a fundamental role in promoting

¹ Although “ombudsman” remains a widely used term, the UN Terminology Database (UNTERM) states that this term is rendered gender-neutral by the use of either “ombudsperson”, “ombuds” or “ombud.” This report uses gender-neutral terms except, as necessary, when directly quoting a source. [UNTERM](#).



human rights and stating that they should have discretionary powers to investigate cases based on complaints, among other competencies.

8. The second section of this report addresses the work of the Venice Commission and confirms the importance of its recommendations to ensure efficient human rights Ombudsperson institutions. We compare the Venice Principles with the cases studied during our research to outline best practices for a potential Ombudsperson office on counter-terrorism issues at the UN.
9. In sum, independence, legitimacy and credibility are necessary pre-conditions for Ombudsperson offices to fulfil their human rights mandates. Professionalism, fairness and accountability then help ensure efficient and impactful performance in the promotion and defense of human rights.
10. The third section of this report presents the recommendations of CSOs we interviewed regarding how to ensure the effectiveness of a potential counter-terrorism Ombudsperson at the UN. First, given the highly political nature of the UN, the Ombudsperson should possess solid communication and negotiation skills. Second, the CSOs we consulted recommended the creation of an advisory committee to help the Ombudsperson engage with civil society. Third, they recommended institutional engagement with international human rights mechanisms such as the Office of the UN High Commissioner for Human Rights. Finally, they advised that the Ombudsperson should deliver annual reports that are publicly accessible.
11. The last section of the report lists RSI's final recommendations, including, among others:
 - Create an independent Human Rights Ombudsperson office on counter-terrorism to improve compliance with international human rights laws and standards across the various UN bodies engaged in counter-terrorism-related work.
 - Provide discretionary powers to the Ombudsperson office to conduct investigations on its own initiative into the human rights impact of counter-terrorism policies, including on vulnerable communities and civil society.
 - Promote a victim-centred approach in all the activities of the Ombudsperson office. In this context, "victim" includes not only survivors of attacks, but also victims of human rights violations stemming from harmful counter-terrorism or counter-extremism activities.
 - Define clear pathways for affected individuals and communities to access the Ombudsperson office, and include a power for the Ombudsperson to make country visits.
 - Define clear policies and procedures that allow the Ombudsperson office to request cooperation from other institutions, review privileged information, and demand responses from member states and UN authorities.
 - Allocate sufficient resources to ensure the adequate functioning of the Ombudsperson office. Resource allocation should be set up in a way that maximises independence and minimises conflicts of interest.
 - Request the delivery of annual reports to the UN General Assembly that are available to the public. These reports will serve as a navigation chart for individuals and organisations advancing human rights.
 - Recruit professionals with relevant experience in the defence and promotion of human rights.
 - Create an advisory committee that includes individuals and organisations with proven records in the defence and promotion of human rights in contexts of counter-terrorism. This committee will help provide guidance and provide an additional engagement mechanism for CSOs.



2. Introduction

12. Rights & Security International is a London-based charity with more than 30 years of experience in promoting human rights and preventing discrimination when governments act in the name of national security. With an international mission to advocate for strong civic spaces in the global arena, RSI co-founded the informal Civil Society Organisations (CSO) Coalition on Human Rights and Counter-terrorism,² which addresses the impact of ever-expanding UN counter-terrorism initiatives and agencies on human rights as well as civil and democratic spaces.
13. This UN counter-terrorism architecture, including the biennial GCTS review process, contains few formal avenues for civil society inclusion and consultation, or for considerations of whether human rights protections are adequate. Therefore, in 2021, CSO Coalition members³ submitted a proposal for an oversight mechanism on UN counter-terrorism activities to ensure adherence to international human rights law and broader rule-of-law standards. Specifically, CSO Coalition members proposed the establishment of a Human Rights Ombudsperson Office, which would oversee, advise, support and review the work of the UN counter-terrorism entities.
14. To assist civil society and member states in evaluating and shaping this potential new Ombudsperson role, this report takes a global lens in exploring what an Ombudsperson institution is, how such institutions undertake their work and identifiable best practices.
15. RSI selected key national and regional Ombudsperson offices that have a clear mandate of defending and promoting human rights. Our selection process was based on four main criteria: the adoption of a human rights mandate, the scope of the Ombudsperson's jurisdiction, the institution's apparent compliance with reasonable professional and transparency expectations, and the level of its engagement with civil society organisations as well as other national and international human rights bodies. We then interviewed professionals working in these offices, and in some cases, the Ombudsperson themselves, all of whom provided us with key insights on the procedures, learnings and challenges for the institution.
16. Along with these interviews, RSI consulted various organisations in the Global South to gain knowledge of the challenges and learnings that civil society encounters when using Ombudsperson services. Our exchanges with these groups, which are often the main link between directly impacted people and the Ombudsperson, helped shape the final recommendations of our study.
17. A human rights Ombudsperson is advantageously placed to decide cases and complaints in the light of what is fair and reasonable, and not just what is legal.⁴ This places the Ombudsperson in a privileged position, making it a unique mechanism for addressing systemic problems within any institution.

² Rights & Security International (RSI). [Civil society as partners in counter-terrorism](#). October 2019.

³ As the CSO Coalition is informal, it does not take collective positions, and therefore the proposals described here did not necessarily reflect the institutional views of all members. However, members often produce documents or other outputs through collaboration and seek internal consensus regarding many matters.

⁴ O'Brien, Nick. 'What Future for the Ombudsman?' *The Political Quarterly*, Vol. 86, No. 1, January–March 2015. 72.80.



3. Normative Framework

3.1 Brief history of human rights Ombudsperson offices

18. Human rights Ombudsperson offices are one of the defining features of modern democracies. The first known Ombudsperson was appointed in Sweden in the early nineteenth century, with the mandate of tackling maladministration in public services by investigating complaints brought by members of the public.⁵ Thus, Ombudspersons originated as a complaint-driven mechanism intended to ensure people's rights to access basic services provided by both public and private entities. This mission later changed in light of the historic events that similarly shaped broader developments in human rights.
19. The dominant model of what an Ombudsperson role should look like originated in Spain during the post-fascist transition in the 1980s,⁶ when the remit of advancing and promoting human rights was added to the concept of the Ombudsperson institution. Soon after, the idea of establishing Ombudsperson institutions was successfully replicated with the creation of various *Defensorias del Pueblo* (Ombudspersons) throughout Latin America,⁷ cementing the notion of states' obligations to respect and uphold international human rights standards.

3.2 Developing the idea at the United Nations: The Paris Principles

20. In 1993, the UN General Assembly adopted a resolution on *National Institutions for the Promotion and Protection of Human Rights*,⁸ which provided the basis for UN member states to set up National Human Rights Institutions (NHRIs). These 'Paris Principles' approve NHRI responsibilities of monitoring, reporting and enforcing fundamental human rights at the national level. Although the 'Paris Principles' were specifically written for NHRIs, some scholars highlight the effect they have had in accelerating a shift in Ombudsperson roles from being oversight mechanisms for public services to institutions with broader human rights mandates.⁹ Some Ombudsperson offices also serve as NHRIs.
21. These 'Paris Principles' laid the groundwork and remain the basis for various UN member states' NHRIs. The principles spelt out a number of standards to be met by the member states when setting up NHRIs, including autonomy, financial independence and a pluralistic representation of civil society actors. On the latter point, the Paris Principles list specific criteria to enable cooperation with different individuals and organisations promoting and advancing human rights.¹⁰
22. There are three fundamental ideas in the Paris Principles that would later inform and strengthen the development of human rights Ombudsperson institutions. These were:

⁵ Tai, Benny Y. T. 'Models of Ombudsman and Human Rights Protection' *International Journal of Politics and Good Governance*, Volume 1, No. 1.3 Quarter III 2010, p. 2-3.

⁶ Glusac, Luka. 'A Critical Appraisal of the Venice Principles on the Protection and Promotion of the Ombudsman: An Equivalent to the Paris Principles?' *Human Rights Law Review*, 22, Oxford, 8 January 2021, 22-53.

⁷ Moreno, Erika. 'The Contributions of the Ombudsman to Human Rights in Latin America, 1982–2011' *Latin American Politics and Society*, Volume 58 issue 1, Cambridge University Press. 02 January 2018. 98.120.

⁸ UN. '[Principles relating to the Status of National Institutions](#)', General Assembly resolution 48/134. 20 December 1993.

⁹ Sześciło, Dawid & Stanisław Zakroczyński. 'From Paris to Venice: the international standard of the ombudsman's independence revisited', *The International Journal of Human Rights*, 25:10, 1819-1834, Routledge, 2021 DOI: 10.1080/13642987.2021.1895761.

¹⁰ UN. Paris Principles.



- a recommendation to set out clear legal frameworks at the constitutional or legislative level for institutions that address human rights;
 - duties to promote human rights and provide education and information about them; and
 - the institution’s power to make recommendations to increase compliance with international human rights standards.
23. According to a recent study, more than 60 percent of Ombudsperson institutions globally have an explicit human rights mandate.¹¹ This is an even more striking reality in Europe, where 90 percent of Ombudspersons are commanded to promote and advance human rights.¹²

3.3 The Venice Principles: Ombudspersons and National Human Rights Institutions (NHRIs)

24. Since the promulgation of the Paris Principles, international standards regarding NHRIs have evolved significantly.¹³ The UN General Assembly and the UN Human Rights Council have produced several resolutions on the role of the Ombudsperson and the NHRIs,¹⁴ providing more detailed guidance for governments and CSOs involved in the functioning of these institutions. The resolutions demonstrate an increasing global interest in how Ombudsperson institutions can support the overall goal of advancing and promoting international human rights at the local, national and regional levels.
25. One major lingering difference between Ombudsperson institutions and NHRIs, as currently conceived, is that Ombudspersons often are still concerned mainly with fairness and legality in public administration, while NHRIs will often be concerned with the actions of private bodies and individuals as well as of the government. In some countries, it is possible to find a joint model of these two types of institutions, placing Ombudsperson offices as the highest instance for promoting and advancing human rights. In other words, sometimes Ombudsperson offices ensure the functioning of NHRIs.
26. Such a structure illustrates the reality that fair and consistent public administration can be essential to preventing and addressing human rights harms. In fact, an important step for human rights Ombudsperson institutions came from the recent contribution of the European Commission for Democracy through Law, the Council of Europe’s advisory instance on constitutional matters.¹⁵ The Venice Commission recognised the fundamental role of Ombudsperson institutions in protecting and promoting human rights at various levels, along with their historic role of strengthening democratic systems and good administration.
27. The Venice Commission provides 25 principles intended to represent a “unique international reference text [and] the most comprehensive Ombudsman-related checklist ever compiled”.¹⁶ These Venice Principles would invest the Ombudsperson institution with discretionary powers to investigate cases

¹¹ Reif, Linda C. ‘The ombudsman, good governance, and the international human rights system’, Vol. 79. Leiden: Brill Nijhoff, 2020, 741.

¹² Reif. The Ombudsman.

¹³ Human Rights Council. ‘[Belgrade Principles on the relationship between National Human Rights Institutions and Parliaments](#)’, Serbia 22-23 February 2012, Belgrade.

¹⁴ UN. General Assembly. The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights. 20 December 2012. [A/RES/67/163](#); Also see resolutions [A/RES/66/169](#), [A/RES/68/171](#), [A/RES/72/181](#), [A/RES/72/186](#), [A/RES/71/200](#), and [A/RES/65/207](#).

¹⁵ European Commission for Democracy through Law (Venice Commission). ‘Principles on the Protection and Promotion of the Ombudsman Institution’ (“The Venice Principles”), 118th Plenary Session (Venice, 15-16 March 2019).

¹⁶ Council of Europe Venice Commission, ‘[Ombudsman institutions](#)’.



based on complaints from individuals, including the competency to request cooperation from other institutions, review privileged information, and demand responses from government authorities.

28. Overall, the Venice Principles adopt a flexible approach, allowing Ombudsperson institutions a certain degree of adaptability to ensure they can effectively uphold of core values such as independence, fairness and impartiality in various levels of jurisdiction. This combination of specificity and flexibility is probably one of the most celebrated achievements of the Venice Principles, as it has allowed governments, regional mechanisms and international organisations to embrace the crucial role Ombudsperson institutions play.
29. The notion of adaptability and flexibility honours the experiences of several countries that created Ombudsperson offices whilst transitioning from totalitarian regimes to democratic systems. The ability to take a tailored approach also recognises the various ways Ombudsperson institutions have evolved around the world to respond to specific issues that can affect rights and democracy. For example, since intergovernmental bodies such as the UN or European Union often are not bound to respect national employment laws, some have adopted organisational Ombudspersons to address work-related conflicts and whistle-blowing policies for employees.¹⁷ In other cases, thematic Ombudspersons have been appointed to provide expertise and assistance with human rights-related issues within these institutions, such as Ombudspersons for indigenous communities, LGBTQ+ people or children rights.

3.4 Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee

30. In 2009, the UN Security Council created an issue-specific Ombudsperson office with the mission of providing fair, transparent and independent assistance concerning delisting requests from people and groups whom member states have added to the ISIL (Da'esh) and Al-Qaida sanctions list.¹⁸ Several factors led to the creation of this office, including the historic *Kadi* judgment from the Court of Justice of the European Union in 2008,¹⁹ which shifted the legislation for international sanctions by upholding the authority of the national courts of the EU members states to review decisions at EU level that implement UN Security Council resolutions.
31. Under the process set out in Annex II to Security Council resolution 2610 (2021), this Ombudsperson is authorised to: acknowledge the receipt of the delisting request, provide information about the general procedure for processing requests, answer specific questions about the ISIL (Da'esh) and Al-Qaida Sanctions Committee and alert the requester if the petition has not properly addressed the original listing criteria.
32. The Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee is a unique example of the adaptability of this mechanism. Its creation aims to assist the Sanctions Regime over de-listing requests, by providing fair and consistent advice that takes into account both the threat to international peace and the human rights of the petitioners. Thus, the powers of this Ombudsperson, unlike other Ombuds-type institutions at the national level, are tailored to the requirements of the Security Council and the sanctions regime. This office preserves some of the core functions of Ombudsperson institutions at the national

¹⁷ UN. [Ombudsman and Mediation Services](#); OAS. [Office of the Ombudsperson](#).

¹⁸ The ISIL (Da'esh) & Al-Qaida sanctions list is one of the 14 sanction regimes administered by the UN Security Council. UN Security Council. [Resolution 1904 \(2009\)](#). 17 December 2009. S/RES/1904.

¹⁹ [Kadi And Al Barakaat International Foundation V Council And Commission](#) (2008). European Court of Justice.



and regional levels, such as access to confidential information, public reporting, dialogue and direct access to affected individuals and communities. However, other competencies remain out of its scope, like the power to start investigations under its own initiative and issue public statement regarding the work of the Sanctions Committee.

33. The Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee has the authority to engage with relevant UN member states and request information before updating the Sanctions Committee on pending delisting requests. Since the creation of its office, the Ombudsperson has submitted 23 reports to the Security Council and dealt with 105 delisting requests. From this total of petitions, one was withdrawn and four others rendered moot. The Sanctions Committee granted 68 de-listing requests and denied 23.²⁰ Several resolutions have since extended the mandate of this office until the present day,²¹ raising the profile of the Ombudsperson and reinforcing the relevance of this mechanism to the Security Council.
34. However, many concerns have been raised by academics and human rights organisations about this Ombudsperson institution's apparently limited access to confidential information, as well as a lack of institutional independence. The latter was confirmed by former Ombudsperson Daniel Kipfer Fasciati, who stated that "it has not proven possible to create an institutionally independent Office" to explain his resignation in 2020.²² Similarly, most critics of this particular Ombudsperson institution point at the structural flaws of the sanctions regime with which the institution deals. However, those who advocate for a more efficient Ombudsperson office recommend the extension of this mechanism to other sanction regimes in the Security Council.
35. Since this institution is the only example of a non-administrative UN Ombudsperson to date, it is necessary to examine the body's jurisdiction. Currently, the jurisdiction of this Ombudsperson is very strictly defined. With regard to delisting complaints, the Ombudsperson first has an information gathering period: it must determine whether a petition is valid (in terms of meeting basic criteria) and return it to the petitioner with an explanation if it is not. The Ombudsperson must also consult with the state of residence of the petitioner to determine its position on the request.²³ This requirement to alert the state could have the practical effect of preventing people in repressive countries, or even ones widely described as democratic, from making petitions.
36. After gathering information, the Ombudsperson may partake in a dialogue with certain limited parties, including the petitioner and relevant state(s), to locate any additional relevant information. The Ombudsperson must then make a report to the Sanctions Committee, with specific recommendations on the de-listing of the individual or entity for the Committee's consideration.²⁴ The only other functions listed for the Ombudsperson are to distribute non-confidential information to the public, notify individuals about the status of their listing and submit biannual reports to the Security Council summarizing the institution's activities.²⁵
37. Thus, this Ombudsperson has functions that are far more constrained than those of a typical Ombudsperson at the national level. For example, there is no provision that allows this Ombudsperson

²⁰ UN Security Council. Ombudsperson home. Status of Cases. [Current statistic](#).

²¹ Resolutions 1989 (2011), 2083 (2012), 2161 (2015), 2253 (2015) and 2610 (2021).

²² [Resignation letter submitted by Daniel Kipfer Fasciati to the UN Secretary General](#). New York. June 2021.

²³ UN Security Council. Adopted by the Security Council at its 7587th meeting, [S/RES/2253](#). 17 December 2015.

²⁴ Ibid.

²⁵ Ibid.



to compel the release of sensitive information, begin an investigation on its own initiative or recommend changes in legislation. It thus appears that this Ombudsperson institution replicates much of the opacity and lack of binding accountability that is common to states' counter-terrorism operations worldwide, and that allegedly facilitates and shields human rights abuses.

3.5 The path of Ombudsperson institutions at the regional level

38. During the fifteenth regular session of the Organisations of American States (OAS) in 2010, the Carter Center (a US-based human rights organisation) and the “*Amigos de la Carta Democrática*”, a group of Latin American ex-presidents and experts on human rights working to secure compliance with the Inter-American Democratic Charter in the region, proposed the creation of an Ombudsperson for the Inter-American System.²⁶ Among the various ideas contained in the proposal, one key point was the need for a mediating body that could prevent the escalation of disputes between OAS member states.²⁷ The proposed Ombudsperson would have the power to undertake country visits without government authorisation and be placed outside the Inter-American Commission of Human Rights, the executive organ of the regional body, to ensure independence and impartiality. Although this proposal did not get the support it required, the OAS adopted other oversight mechanisms as well as an organisations Ombudsperson to deal with work-related issues.
39. Other cooperation mechanisms have followed this path successfully, appointing regional Ombudspersons with a clear mission of advancing and promoting human rights. In 1995, the European Union (EU) elected the first European Ombudsman, an office that is now being run and managed by Emily O'Reilly, Ireland's first female Ombudsperson. In 2011, the African Union (AU) appointed the First Permanent Observer of the African Ombudsman and Mediators – Association, a leading role overseeing the adequate cooperation between the national Ombudsperson offices in the African countries.

4. Human Rights Ombudsperson – institutional mechanisms and distinctive approaches

4.1 Actions under own initiative

40. Institutional independence is one of the most valuable assets of human rights Ombudspersons. This principle runs across the core institutional processes, including access to adequate financial resources, the appointment procedures, the publishing of reports, and the power of the Ombudsperson to undertake actions upon their own initiative.²⁸ The International Ombudsman Institute (IOI), one of the biggest and more prestigious Ombudsman associations providing guidance on good governance and capacity building to more than 200 independent Ombuds institutions from across the globe, highlights that one of the defining features of own-initiative investigations is the substantial systemic component that the Ombudsperson aims to address.²⁹
41. The European Ombudsman can launch *ex officio* investigations to approach systemic issues of maladministration, whether or not they relate to complaints submitted by the public.³⁰ This has been one

²⁶ De Noriega, Jorge S. 'Should the Office of Ombudsman for Democracy Be Created in the Inter-American System?' *Latin American Policy*, Volume 3, Issue 1, June 2012. 102-110 .

²⁷ De Noriega. Should the Office of Ombudsman. 110.

²⁸ European Commission for Democracy through Law (Venice Commission). [Compilation On The Ombudsman Institution](#). Strasbourg. 1 December 2011. p 12.

²⁹ International Ombudsman Institute (IOI). [Own Initiative Investigations. IOI Best Practice Paper – Issue 3](#) – July 2018.

³⁰ European Ombudsman. [All strategic inquiries](#).



of the main strategies used by the European Ombudsperson in recent years, based on a detailed assessment of public concerns to ensure that all interests are considered.

42. Another relevant example comes from the Office of the Police Ombudsman for Northern Ireland (OPONI), an influential institution established in the wake of the most intense periods of the conflict in the region (which is often described as having involved terrorism as well as counter-terrorism tactics).³¹ Although this office was initially established to deal with complaints from members of the public regarding the current misconduct of organisations exercising police functions in Northern Ireland,³² it later expanded its jurisdiction to include historical complaints.³³ These complaints deal with human rights violations committed during the conflict in Northern Ireland between 1968 and 1998, commonly known as “The Troubles.”³⁴ The OPONI has the power to conduct investigations into police misconduct and recommend the prosecution of police officers or disciplinary procedures against them.³⁵ In some cases, complaints could relate to institutional policies for interacting with vulnerable communities or dealing with extraordinary events.
43. Recently, the Police Ombudsperson conducted an investigation into the enforcement of the Coronavirus Public Health Regulations by the police during the Black Lives Matter and “Protect our Statues” protests in 2020.³⁶ Although the final report concluded that the police failed to understand their human rights obligations, it also highlighted issues of unfairness in the distribution of public responsibilities for dealing with public health regulation during the pandemic. This set of recommendations is evidence of the Ombudsperson’s ability to address systemic and cultural issues beyond the legal framework available for the context, which in turn is suggestive of independence.

4.2 Selection and appointment of the Ombudsperson

44. The appointment of the Ombudsperson is a milestone for the institution’s legitimacy before civil society and other human rights mechanisms. The designation process is usually vested in a country’s parliament or national assembly, and the Venice Principles recommend that it should be enshrined in the national constitution,³⁷ with further provisions in the respective legislation or statutory guidance.
45. The Venice Commission provides little guidance on the criteria for the appointment, stating that candidates must have “high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms.”³⁸ However, a more detailed approach comes from The Sub-Committee of Accreditation in The Global Alliance for National Human Rights Institutions (GANHRI), the main network of NHRIs globally. In its latest report, the sub-committee encouraged the Human Rights Commission of Benin to undertake a broader and more transparent

³¹ [The Belfast Agreement: an Agreement Reached at the Multi-Party Talks on Northern Ireland](#). April 1998.

³² The bodies falling within the jurisdiction of the OPONI cover designated civilians, The Belfast Harbour Police, The Belfast International Airport Police, The Ministry of Defence Police, The National Crime Agency, Mutual Aid police officers from Great Britain; and ‘serious’ complaints regarding certain Home Office employees (Immigration officers, designated customs officials and custom revenue officials).

³³ Committee on the Administration of Justice (CAJ). ‘[Human Rights and Dealing with Historic Cases - A Review of the Office of the Police Ombudsman for Northern Ireland](#)’. June 2011.

³⁴ The Belfast Agreement: an Agreement Reached at the Multi-Party Talks on Northern Ireland. April 1998.

³⁵ [Police \(Northern Ireland\) Act 1998](#).

³⁶ Police Ombudsman for Northern Ireland. ‘[Statutory report: Public Statement by the Police Ombudsman pursuant to Section 62 of the Police \(Northern Ireland\) Act 1998](#)’ Published 22 December 2020.

³⁷ Venice Commission. The Venice Principles.

³⁸ European Commission for Democracy through Law (Venice Commission). The Venice Principles.



process, with recommendations to maximise the number and scope of societal groups represented by candidates, promote broad consultations and assess candidates based on publicly available criteria.³⁹

46. An adequate selection and appointment process can promote strong engagement with CSOs as well as other human rights mechanisms. It could also facilitate higher levels of responsiveness from public institutions, especially when the Ombudsperson requests information and makes recommendations.

4.3 Access to confidential information

47. One key aspect for the efficient functioning of Ombudspersons is guaranteed access to confidential information. (At the national level, this would be statutory.) Such access enables the Ombudsperson to exercise its core competencies, such as conducting investigations and issuing recommendations to improve compliance with international human rights laws.
48. The Venice Principles, as well as the latest annual reports published by the IOI, envisage the Ombudsperson having unlimited access to sensitive and classified information. The ability to exercise this power functions as a benchmark of competent performance and a safeguard for the independence and impartiality of the institution. Access to relevant information allows Ombudsperson to review institutional practices and elaborate evidence-based recommendations to improve public services.
49. Some offices ensure access to information by establishing regulatory guidance and agreements with other institutions. This is the case for OPONI, which recently signed a memorandum of understanding (MOU) with the Police Ombudsperson and the Chief Constable of the Police Service of Northern Ireland (PSNI) to safeguard its access to necessary police data.⁴⁰ In this document, both institutions agreed on a set of principles to safeguard all data-sharing procedures between their staff, including: fairness, openness, confidentiality, transparency, proportionality, timeliness and collaboration.

4.4 Fairness and justice: the privilege approach of Ombudsperson offices

50. Fairness is one of the core principles envisaged by the Venice Commission for the functioning of Ombudsperson institutions. A fair approach to preventing, investigating and promoting justice for human rights violations entails comprehensive techniques that incorporate elements beyond the available legal framework. This is especially relevant when dealing with issues affecting populations that have historically faced discrimination or other serious abuses, such as people with disabilities, indigenous communities or LGBTQ+ people; individuals who belong to such groups may not otherwise have direct protection mechanisms or recognition in their respective national legislations.
51. The concept of fairness presents various challenges for Ombudsperson offices, as it incorporates issues of ethics, justice and equity; however, it is also essential for effectiveness and credibility, which are mutually reinforcing, and is also a principle that underpins much of the human rights framework.⁴¹ For Ombudspersons, fairness does not lie in the eyes of the beholder, but in the defence of the human rights

³⁹ Global Alliance of National Human Rights Institutions (GANHRI). [Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation](#) (SCA). 14–25 March 2022.

⁴⁰ Police Ombudsman for Northern Ireland. [Memorandum of Understanding Regarding the Disclosure of Information](#).

⁴¹ Papica, Gerald R. 'The Ombudsman's Guide to Fairness'. Journal of the International Ombudsman Association. Volumen 4. Number 1. 2011. 26-34.



that the institution is mandated to uphold. In these scenarios, a multi-disciplinary approach is fundamental for creating thorough recommendations capable of lead to genuine changes in institutional practices.

4.5 Engagement with other human rights institutions and reporting

52. Institutional engagement with domestic and international human rights mechanisms is a key aspect of efficient human rights Ombudspersons. As explored in this report, peer institutions act as *de facto* advisory bodies for Ombudspersons, including when complex issues or cases are presented; they offer a form of precedent as well as a menu of relevant approaches that have previously been tried. Engagement and outreach to other human rights mechanisms can therefore help ensure competence and adherence to the highest standards of performance.
53. Finally, Ombudspersons' delivery of annual reports to a representative or other democratic body, such as a parliament or national assembly, help create a thorough assessment of – and a form of accountability for – the state's performance and its compliance with international human rights laws. These are public reports framing the human rights laws and norms applicable to the context and serving as a navigation chart for individuals and organisations advancing human rights. These documents often contain a series of recommendations for public and private entities, many of which can ultimately lead to changes in legislation even at the constitutional level.

5. Challenges for human rights Ombudspersons

54. Challenges to Ombudspersons' successful pursuit of their mandates often arise from the same events or trends that undermine government institutions' respect for human rights, or suggest that systems are not safe for everyone, across the world.
55. One of the main issues identified during our consultation was low reporting rates of rights violations by members of the public. Depending on the circumstances, this problem could reflect cultural practices, local histories, concerns among potential complainants about impartiality or confidentiality, or patterns of practice among local civil society organisations. For example, historically, most of the complaints received by the European Ombudsperson relate to services offered by the European Commission, which in turn is an important source of funding for civil society. In the past, concerns have been raised by the European Ombudsperson office that CSOs refrain from filing complaints about the Commission due to concerns about the potential impact this may have on future funding opportunities. Another example has arisen in Azerbaijan, where the UN Special Rapporteur on the right to food stated: “Justiciability of economic, social and cultural rights [...] entails that potential victims of violations of these rights are able to file complaints before an independent and impartial body.” This statement followed a claim by the local Ombudsperson that it never received complaints related to the right to food.
56. Another issue, illustrated by events during the COVID-pandemic, is responsiveness. Various institutions transitioned their platforms towards online services, aiming to facilitate the public's ability to submit complaints. Leaving aside concerns that online services are not equally accessible to everyone, we note that these cases indicate that greater accessibility by the public can lead to increased their expectations about the institutional response, which is not always matched with the Ombudsperson's actual capacity to deal with complaints. As we will explore in the next section, clear internal procedures are necessary to guide both public servants and complainants and help manage expectations in light of the institution's real capacity for response.
57. Finally, many Ombudspersons have been affected by cuts to the public budget resulting from economic crises or other factors. As is implicit or explicit throughout this report, the Ombudsperson should have



adequate resources to remain relevant, independent and efficient in the defence and promotion of human rights.

6. Best practices for a human rights Ombudsperson

58. Based on the research and observations described above, we have identified the following list of best practices, and elaborate on several in additional detail below.
- Create an independent Human Rights Ombudsperson office on counter-terrorism to improve compliance with international human rights laws and standards across the various UN bodies engaged in counter-terrorism-related work.
 - Provide discretionary powers to the Ombudsperson office to conduct investigations on its own initiative into the human rights impact of counter-terrorism policies, including on vulnerable communities and civil society.
 - Promote a victim-centred approach in all the activities of the Ombudsperson office. In this context, “victim” includes not only survivors of attacks, but also victims of human rights violations stemming from harmful counter-terrorism or counter-extremism activities.
 - Define clear pathways for affected individuals and communities to access the Ombudsperson office, and include a power for the Ombudsperson to make country visits.
 - Allocate sufficient resources to ensure the adequate functioning of the Ombudsperson office. Resource allocation should be set up in a way that maximises independence and minimises conflicts of interest.
 - Request the delivery of annual reports to the UN General Assembly that are available to the public. These reports will serve as a navigation chart for individuals and organisations advancing human rights.
 - Recruit professionals with relevant experience in the defence and promotion of human rights.
 - Create an advisory committee that includes individuals and organisations with proven records in the defence and promotion of human rights in contexts of counter-terrorism. This committee will help provide guidance and provide an additional engagement mechanism for CSOs.
 - Define clear policies and procedures that allow the Ombudsperson office to request cooperation from other institutions, review privileged information, and demand responses from member states and UN authorities.

6.1 Complaints mechanisms to facilitate the public’s access to the institution

59. Ensuring the public’s access to the Ombudsperson’s services remains one of the most fundamental tasks of the institution. Some offices resort to creating multiple avenues for submitting complaints, aiming to increase reporting rates and validate the institution’s mandate. The cases we studied indicate that multiple complaint mechanisms do increase people’s capacity to access Ombudsperson services, although this accessibility should be compared with the real institutional capacity of response. Creating a variety of complaint mechanisms can address specific challenges such as the situations of communities or individuals with no access to digital platforms, barriers faced by people with disabilities, and applicants requiring a customised approach due to the nature of the complaint (for example, special anonymity concerns).
60. Also, as we discussed in the previous section, thematic offices are another mechanism that may facilitate the access of vulnerable communities to Ombudsperson services. The professionals on the user-facing side of these offices can deliver specialised knowledge on the issues undermining the rights of these groups, and provide recommendations to the Ombudsperson about how to engage with them.



61. One of the pre-requisites for accessibility is the availability of relevant information about the Ombudsperson's services.⁴² Strengthening the Ombudsperson's visibility in the media can support the institutional aim of delivering accessible services to the public.
62. A human rights Ombudsperson on counter-terrorism activities should consider safe access channels for all relevant stakeholders, including the communities most directly impacted by these activities.

6.2 Positive public's perception over the institution's role

63. One issue affecting the performance of Ombudspersons is the apparently increasing rates of public frustration and dissatisfaction with traditional democratic institutions, as evidenced by populist movements in a range of states.⁴³ The public's perception of the Ombudsperson can have a serious impact on the office's mandate, and – if negative or ambivalent – presumably could reduce the numbers of complaints the institution receives. The example of the Office of the Ombudsman in Ireland, which has addressed rights violations suffered by asylum seekers, offers useful insights in this regard. This Ombudsperson's office has developed a programme of visits to Direct Provisions centres⁴⁴ to increase the institution's outreach and tackle the barriers that asylum seekers might face in accessing the Ombudsperson's services.⁴⁵
64. It is worth re-emphasising some of the best practices identified by this study to ensure credible performance. The recruitment of professionals with relevant experience, engagement with international human rights mechanisms, and the ability of the institution to access sensitive information and conduct impartial investigations are some of the most impactful strategies identified during our consultations. In addition, the use of public statements is one of the resources most valued by the CSOs we interviewed. The Ombudsperson's declarations are usually preceded by specific actions, and seek to raise awareness of pressing issues reflected in public opinion and prevent further exacerbation of rights violations or conflicts.

6.3 Allocation of adequate financial resources

65. Ombudsperson offices should have sufficient resources for the smooth operation of their core functions. The budget allocation should follow the same principles as the selection and appointment procedure to safeguard the institution's legitimacy and independence. Thus, the sources of funding should be transparent, facilitate independence and not undermine the Ombudsperson's commitment to the defence and promotion of human rights. The Venice Commission highlights that the idea that organ deciding the budget allocation for the Ombudsperson should be the parliament (or equivalent representative body) and not the executive. Insufficient resources could endanger the mission of the Ombudsperson even in contexts of solid democratic institutions and high reporting rates from the public.⁴⁶
66. According to its most recent quarterly statistical bulletin, the Police Ombudsperson for Northern Ireland saw an increase of 17 percent in the number of complaints received between 2021 and 2022. The same pattern was recorded for historical complaints concerning "The Troubles," which amounted to a total of

⁴² Parliamentary Assembly of the Council of Europe 1959 (2013).

⁴³ Eatwell, R and Goodwin M. 'National Populism: the revolt against liberal democracy.' 2018, p. 120.

⁴⁴ Direct Provision is the system designed by the Republic of Ireland to support those waiting for the outcome of an application for international protection or asylum. The centres refer directly to the accommodation in place within the system.

⁴⁵ Office of the Ombudsman. [The Ombudsman & Direct Provision: Update for 2018](#). March 2019.

⁴⁶ Police Ombudsman for Northern Ireland. [Annual report and account](#). 2020–2021, p. 15.; Police Ombudsman for Northern Ireland. [Police Ombudsman's Office cuts 'historical' workforce by 25%: Major investigations to be delayed](#). Publication Date: 01.10.2014.



440 cases in 2021.⁴⁷ However, RSI confirmed during its consultation that almost half of the historical complaints are not being investigated due to a lack of the resources needed to recruit investigators. Notably, OPONI is funded by the UK Department of Justice,⁴⁸ which is also the government's body in charge of allocating resources to police institutions – raising concerns about priorities, independence and potential conflicts of interest.

6.4 Definition of clear institutional policies and procedures

67. Institutional policies and procedures serve as a navigation chart for the professionals working at Ombudsman offices, as they face challenging scenarios regarding the institutional mandate. Policies and procedures can help ensure a sense of continuity for the public and civil society organisations throughout various Ombudsman mandates, especially in the context of fragile institutional frameworks. But, more importantly, these documents safeguard impactful performance in scenarios of widespread rights violations or maladministration.⁴⁹
68. Within international organisations, robust procedures can help prevent bureaucratic processes from undermining the mission of the Ombudsman. Clear roles and responsibilities, protocols for action, and monitoring mechanisms facilitate institutional performance.

6.5 The professionalisation of the Ombudsman roles

69. The professionalisation of the Ombudsman roles is a critical element for ensuring compliance with best practices and international standards.⁵⁰ This practice entails capacity-building processes for staff members, especially those acting as the first point of contact to the public and members of vulnerable communities. Although professionals with legal training tend to occupy most of the roles at Ombudsman offices, the presence of other specialists has proven crucial for the adoption of a comprehensive approach to human rights and public administration. These other specialists have sometimes included social scientists, journalists, medical personnel or officials with previous experience in state security forces.
70. The institutional budget will define to a great extent the Ombudsman's ability to recruit competent and appropriate professionals for its office, although other factors are also relevant, such as the recruitment practices and the institution's reputation among the public. The cases discussed during RSI's consultations point to three core functions comprising the Ombudsman's role: investigation, communication and leadership. The presence of staff with expertise in conducting impartial and objective investigations will define the institution's ability to deal effectively with complaints from the public. Meanwhile, competent communication officers can design mechanisms to provide timely information to the public about the institution's services, a prerequisite for ensuring public access to the Ombudsman's services.
71. Both areas complement the leadership role of the Ombudsman themselves, whose performance will largely define the institution's reputation within civil society and the international community. These are fundamental considerations for ensuring a fluid dialogue and efficient collaboration between a potential

⁴⁷ Police Ombudsman for Northern Ireland. '[Complaints and Allegations Received by the Police Ombudsman for Northern Ireland: Quarterly Statistical Bulletin up to 31st March 2022](#)'. Published in April 2022.

⁴⁸ Police Ombudsman for Northern Ireland. Annual report and account. 2020–2021, p. 88.

⁴⁹ Parliamentary Assembly of the Council of Europe. Recommendation 1615 (2003): The institution of Ombudsman. 08 September 2003.

⁵⁰ IOI. [Hybrid Corruption Ombudsman. IOI Best Practice Paper – Issue 7](#) – March 2022, p. 13.



human rights Ombudsperson on counter-terrorism activities and the various member states and human rights bodies at the UN.

6.6 Embracing the role of civil society organisations

72. CSOs are paramount in ensuring efficient human rights Ombudsperson offices, both as potential partners and as watchdogs that help ensure the Ombudsperson's effectiveness and accountability. In many countries, CSOs invest significant efforts and resources in building productive relationships with Ombudsperson institutions, since these are often the main (and sometimes are the exclusive) mechanism for address human rights violations. The development of this engagement depends on the institution's policies, the public's perception of the Ombudsperson, and advocacy strategies adopted by the CSOs.
73. Although the Venice Commission provided little guidance on the role of civil society in the creation and functioning of Ombudsperson offices,⁵¹ the UN General Assembly has confirmed the importance of CSOs' contributions for the adequate performance of such institutions.⁵²
74. CSOs' engagement with Ombudsperson offices can foster good practices and institutional accountability. The mechanisms for formally overseeing the performance of Ombudspersons will depend largely on the context and model of the institution. However, civil society organisations can serve as natural agents to monitor progress and ensure that Ombudspersons pursue their ultimate mission. The Ombudsperson's annual and thematic reports, as well as public statements when issuing recommendations, are primary sources for CSOs as they monitor the Ombudsperson's performance.
75. Some human rights Ombudspersons have embraced the role of CSOs by creating advisory councils. These councils are monitoring bodies that help safeguard the Ombudsperson's role in advancing and promoting human rights.⁵³ They should be pluralistic in their representation of the organisations that form civil society, and ensure that Ombudspersons act impartially and independently, whilst providing advice and broadly scrutinising performance. In addition to spokespersons from CSOs, advisory committees can include academics, religious leaders and other individuals essential to the understanding and promotion of human rights in the relevant context.

6.7 Thematic Ombudspersons and community offices

76. Public access to Ombudsperson services to a large extent determines the institution's capacity to fulfil its human rights mandate. As a complaint-driven mechanism often seen as an alternative to the courts, the Ombudsperson offers direct channels to fact-finding and accountability. At the national level, and depending on the availability of resources, some Ombudspersons create community offices to increase the institution's outreach. These offices contribute to the Ombudsperson's core mandate by advising the public on the use of the judicial system and mediating conflict resolution at the local level. At the same time, they enhance the Ombudsperson's capacity to collect information, allowing a level of granularity when reporting on the human rights of remote and vulnerable communities.
77. One significant development in the expansion of Ombudsperson institutions is the creation of thematic offices for assisting vulnerable communities and dealing with sensitive issues. Among the most widespread cases are Ombudspersons for LGBTQ+ people, children's rights or indigenous communities. There are also common examples of Ombudspersons on access to information and financial services.

⁵¹ Venice Commission. The Venice Principles.

⁵² UN. General Assembly. A/RES/72/186.

⁵³ [Ley 24](#). Congreso de Colombia. December 15 1992.



78. However, some questions have been raised around the suitability of thematic Ombudspersons. In 2013, The Council of Europe Parliamentary Assembly established a position regarding “Ombuds-type” institutions, calling upon member states to abstain from creating multiple specialised bodies that could cause confusion among the public. Meanwhile, some scholars have highlighted the problems that thematic offices could create in terms of coordination, competence and accountability. Despite the disagreements on the effectiveness of thematic Ombudsperson, this continues to be a growing trend in contexts lacking pathways to justice mechanisms and with high levels of impunity for human rights violations.

7. Importance of an Ombudsperson on UN counter-terrorism activities

79. The 2021 GCTS review stresses the importance of maintaining a human-rights-focused approach in counter-terrorism activities.⁵⁴ It lists a number of fundamental factors to ensure the compliance of counter-terrorism policies with international human rights laws, including non-discrimination in the enjoyment of rights; due process; the right to freedom from torture and cruel, inhuman or degrading treatment or punishment; respect for private life; and the right to a nationality.⁵⁵ The review process stressed that upholding these rights is not optional but fundamental, as rights violations while implementing counter-terrorism efforts can ultimately exacerbate violence. However, it is also crucial to remember that international human rights inherently belong to the individual and that states must respect their human rights obligations; neither the proposed Ombudsperson nor the UN at large should treat the upholding of rights simply as an instrument for more effective counter-terrorism endeavours.

80. At present, there is not yet a mechanism to ensure that the UN architecture on counter-terrorism is working properly to uphold people’s rights. This omission is important for several key reasons, since the complex UN architecture on counter-terrorism can result in or reflect significant conflicts of interest between members states, especially in the Security Council. The degree to which these bodies coordinate joint actions to ensure compliance with international human rights law is currently unclear. More transparency and accountability, as well as a heavier emphasis on the need for respect for international human rights laws and principles, are necessary to ensure that the UN framework is actually living up to the standards set out in the GCTS and the UN Charter.

81. A well-functioning Ombudsperson could help provide the transparency and accountability needed and ensure that the UN counter-terrorism framework lives up to its ideals and complies with the Charter. An institution that is separate and fully independent from the Security Council would be in the best position to assess whether all UN organs responsible for addressing counter-terrorism are upholding and defending human rights, including by coordinating with each other when necessary.

82. The 2021 GCT states that CSOs should be enabled to contribute to counter-terrorism strategies both in member states and at the UN, and encourages member states to assist CSOs in this work. Given that many well-designed Ombudsperson institutions have a high level of engagement with CSOs, this would make the institution particularly well suited to this situation.

The Venice Principles: independence, objectivity, transparency, fairness, impartiality, accountability, adaptability, flexibility, high institutional rank, authority, legitimacy, integrity, professionalism, ethics, efficiency.

⁵⁴. UN General Assembly. Adopted by the General Assembly at its 75th session. [GA/RES/75/291](#). 30 June 2021.

⁵⁵ Ibid.



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Rights & Security International (RSI) is a London-based NGO with over 30 years of experience in ensuring that measures governments take in the name of national security respect human rights. This report aims to bolster joint advocacy efforts for the creation of oversight mechanisms to ensure the UN's respect for human rights when it acts in the name of counter-terrorism.

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