

The potential of an international Ombuds for humanitarian and development aid

A scoping study



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Cover photo: left to right: Dorothea Hilhorst, Asmita Naik, Doris Voorbraak, Reintje van Haeringen, Marinus Verweij and Bart Romijn

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1. Summary

Over the summer of 2018, professor Thea Hilhorst, Asmita Naik and Andrew Cunningham studied the potential of an international Ombuds for humanitarian and development aid in preventing and addressing sexual exploitation and abuse. This study was requested by the Ministry of Foreign Affairs of the Netherlands. Sigrid Kaag, the Dutch Minister for Foreign Trade and Development Cooperation, has included the international Ombuds in her plan in response to the allegations of sexual exploitation and abuse made against Oxfam. The Ombuds addresses an issue that has been present within humanitarian aid for decades, and identifies one possible way of preventing sexual exploitation and abuse, reporting it and assisting victims.

The report was presented by:

- **Thea Hilhorst**, professor of humanitarian aid and reconstruction at the Erasmus Institute of Social Studies,
- **Asmita Naik**, International Development and Human Rights Consultant. Afterwards, a panel of humanitarian and development professionals responded to the outcomes.

The panel consisted of:

- Reintje van Haeringen, CEO of CARE and chair of the Dutch Relief Alliance
- **Marinus Verweij**, CEO of ICCO-Cooperation and chair of the Foundation of Cooperating Aid Organisations (Giro 555)
- **Bart Romijn**, director of Partos
- **Doris Voorbraak**, senior advisor with the Dutch Ministry of Foreign Affairs and currently responsible for this dossier

Peter Heintze (KUNO) moderated the event.

The scoping study concluded that there is a strong need for an international Ombuds for humanitarian and development aid. This Ombuds could be a relevant factor in preventing sexual exploitation, abuse and harassment of people in vulnerable situations, and could be a support for victims. There are, however, also challenges related to logistics, security and jurisdiction, and ensuring an

appropriate follow-up. Of these, three major challenges were highlighted during the panel discussion:

- **Coverage.** All humanitarian and development organizations should be held accountable by the international Ombuds. Therefore, all humanitarian and development organizations should acknowledge its existence, including independent institutions like the United Nations and the Red Cross. While some individuals have already expressed their commitment, it is not yet expressed on an institutional level.
- **Accessibility/nesting.** This relates to the geographical location from which an Ombuds and his team operates. Should they operate on a global scale, or should offices be situated nationally or even locally, so that the national/local context can be taken into account? If one main office is chosen, should it be housed within an international organization? Or should it be completely independent?
- **Authority.** The scoping study identified that an Ombuds should function as second tier. This means that an Ombuds is complementary to accountability mechanisms that are already in place. However, these are not always as advanced as desired. Where does his main authority lie?

The following report elaborates on the presentation and subsequent discussion between the panellists and audience.

2. Introduction

Coherency in the Netherlands

Before Hilhorst presented the report, she wanted to mention that the Dutch Ministry of Foreign Affairs has included the Ombuds as a point of action following sexual exploitation and abuse scandals in Haiti in the spring of 2018. This includes close collaboration and amazing coherency between NGOs – led by the Dutch Ministry of Foreign Affairs – in finding solutions to sexual exploitation and abuse. Many actors are publishing documents and reports on integrity systems, sexual exploitation and abuse. In this regard, the Netherlands can be seen as a forerunner compared to the rest of the world, and Hilhorst hopes that the international community will acknowledge and support this special approach that aims to address an unaccountable system and culture.

Background to the report

The approach presented in this Ombuds scoping study is two-fold. First, it takes a sanction-based and legal approach to perpetrators. At the same time, it is geared towards education, cultural change and integrity within the humanitarian and development system. The report outlines how the international Ombuds can fit within and complement this system.

Hilhorst stressed that the core problem that underlies this report is not abuse, because the threat of abuse will always be present. Hence, this report does not aim to stop all abuse and incidents. Rather, it is the fact that organizations do not do enough to stop abuse from happening.

In general, an Ombuds has been present globally for many years. Hilhorst makes two general notes regarding this universal mechanism. First, people often refer to an 'Ombudsman'. During the research, it became clear that, despite its neutral roots, people often link the suffix '-man' to sexism. Therefore, in the report the authors specifically refer to an 'Ombuds (mechanism)'. Second, roughly two traditions concerning the Ombuds can be identified globally: an external, independent body that can investigate abuses by authorities and power holders, and an internal Ombuds who is employed within an organization that considers complaints by the staff. In this report, the Ombuds is meant to be an independent body that is supported by all humanitarian and development organizations and provides an external oversight.

3. The scoping study

Lessons learned

All 76 interviewees identified gaps in current accountability structures and therefore see a need for an external body. Even though not all agree on what this mechanism should look like, the authors drew the following conclusions:

- The Ombuds should be a second-tier response mechanism. This means that the Ombuds is a last resort, and is therefore embedded in a system that is already in place, without replacing this system. It can thus easily refer complaints to organizations, but should also consist of a team of experts to follow up in case organizations lack these internal mechanisms.
- The Ombuds has soft power. They can recommend sanctions and monitor progress through the writing of reports, but they are not directly enforcing and thus cannot officially sanction.
- Findings can be published by the Ombuds.
- One of the major issues is that the Ombuds should very actively reach out to make themselves known.
- The Ombuds could proactively instigate inquiries.
- The Ombuds can make use of a variety of measures to reach out.

The lessons learned indicate a challenge for the proposed Ombuds mechanism. It is a second-tier mechanism and should therefore be low in usage, but should also make efforts to publicize methods, reach the target group and embed the measures in a wider portfolio of accountability measures. It should thus not replace existing accountability measures.

Main challenges

A key issue for the international Ombuds concerns **authority**. Hilhorst argued that the most ideal form that underlies this authority consists of a mixture of donor conditionality, voluntary agreements and moral pressure. The authority of the Ombuds should be based on the fact that agencies themselves feel that it is important. Furthermore, peers and other agencies should apply moral pressure on reluctant organizations to provide authority to the Ombuds. A large number of interviewees identified the major role of donors by asking agencies to participate in this mechanism unconditionally. This implies that, if someone lodges a complaint, NGOs have previously indicated cooperation with this international

mechanism and will thus follow the recommendations of the Ombuds, despite obvious threats to the funding and reputation of the organization that might result from the investigation.

A second issue is **coverage**. Hilhorst stressed that an Ombuds can only work when all aid actors in humanitarian and development settings acknowledge its presence and authority. This includes national and international NGOs, UN agencies, donors and researchers, even though some might already have internal Ombuds mechanisms in place. No organization can be exempt from scrutiny.

As previously mentioned, the Ombuds deals with complaints as a second tier. The Ombuds cannot investigate everything, because many complaints can be referred to internal organizational complaints mechanisms. If internal mechanisms seem to fail or are non-existent, investigation can be initiated. Furthermore, the Ombuds can improve existing mechanisms. The **main task** of the Ombuds should be defined clearly.

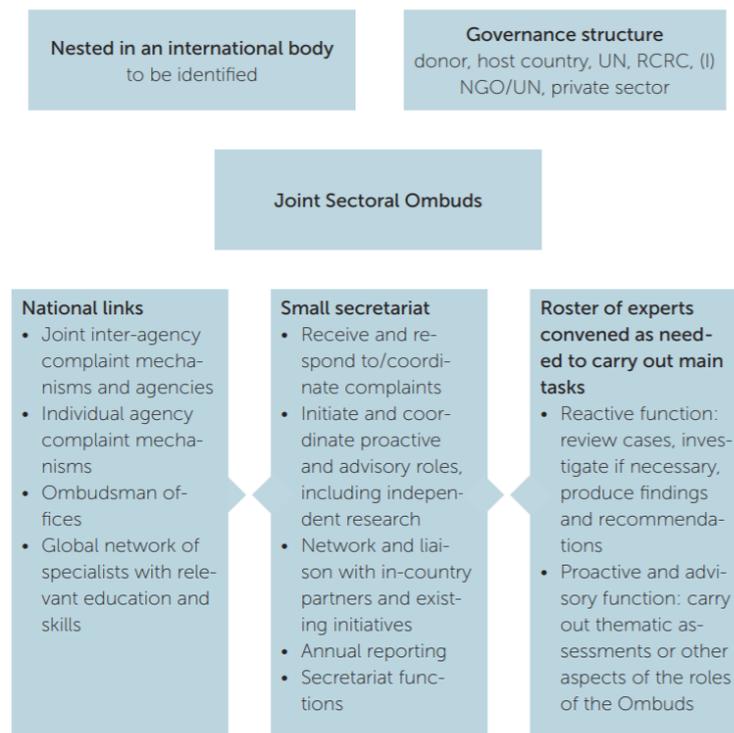
The biggest challenge is **accessibility**. The geographical proximity and language and cultural barriers are heavily discussed subjects. Should every country in the world have an Ombuds? Or should every province in every country in the world have an Ombuds? There are obvious challenges of costs, sustainability and the presence of parallel systems. However, this Ombuds should have very clear links to and serve national mechanisms, without interfering with their accountability mechanisms and jurisdiction. In practice, the Ombuds mechanism would be a small organization that can do research globally, while being supported by a wide network of specialists and researchers. Furthermore, the Ombuds can also address complaints by people who make submissions on behalf of complainants.

Finally, in terms of accessibility, there is the physical **nesting** of the Ombuds. Hilhorst et al. argued against housing this initiative separately. Rather, their research has indicated that it is preferable to nest this mechanism within an existing organization that already has experience with integrity.

The creation of a model

Since all respondents agreed on the need for an external body, Hilhorst et al. model what this mechanism could look like. (See the model from the scoping study for the results)

Possible Model for International Aid Ombuds (Hilhorst, Naik, Cunningham, 2018, p.7)



Next steps

- 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, organizational structure, costs, nesting, etc.
- Assessment of the state of complaint 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

Does this mean that national and international humanitarian and development agencies are ready to adopt the Ombuds? No. There are still many unanswered questions and issues that need to be worked on. The discussion below elaborates on some of these issues.

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4. Discussion

The Panellists

Reintje van Haeringen, CEO of CARE and chair of the Dutch Relief Alliance

Van Haeringen identified the difference between zero tolerance of sexual abuse and zero tolerance of not acting against sexual abuse. This scoping study focuses on the latter. However, she stressed that humanitarian organizations should continue to focus on preventing sexual exploitation and abuse by addressing power imbalances and social norms.

In principle, Van Haeringen was positive about the idea of an international Ombuds mechanism. She argued that it is indeed a mechanism that humanitarian and development organizations need. However, Van Haeringen was concerned about the statement that an Ombuds will work only when first-tier mechanisms are in place, because according to her, this is not the case. Rather, practices and information exchange are necessary to prevent exploitation and abuse. Furthermore, an eventual pilot will only work if there are enough organizations that fully commit to this pilot from the very beginning.

Finally, even though the Ombuds is a mechanism that could work, Van Haeringen argued that real accountability lies at the local level. This mechanism should focus on ensuring local accountability of NGOs, donors and so on, and ensuring that people trust the mechanisms enough on a local level.

Marinus Verweij, CEO of ICCO cooperation

In general, Verweij thought that the Ombuds mechanism is a positive initiative. He emphasized the fact that it is a second-tier mechanism. However, in contrast to Van Haeringen, he believed a lot of work had already been done this year on joint collaboration to strengthen first-tier mechanisms and systems that are already in place. For Verweij, the elephant in the room is coverage. He was sceptical of whether NGOs will buy in when there is uncertainty about the participation of the United Nations and the Red Cross. Their position needs to be clarified.

Furthermore, Verweij had three remarks:

- The current target group are aid recipients and affected populations. He wonders if this mechanism, as second tier, should also be applicable to local staff.

- The publishing of reports and soft power does not match with policies of 'do no harm'. This means that victims are often penalized by publishing reports.
- A complicated component remains chain responsibility. There are many partners involved, and one has to respect that organizations are independent. More work is needed on the chain side for this mechanism to really be a second-tier mechanism for the whole chain.

Bart Romijn, Director of Partos

Romijn addressed the difference between hardware and software. Hardware, including the Ombuds, are norms, prevention, assessing vulnerabilities and implementing an enforcement system. Software, on the other hand, is cultural change, internal learning, discussions and moral systems. This software is complementary to hardware mechanisms, and together they form a complete integrity system. Romijn argues that we will not succeed in addressing sexual exploitation and abuse if this whole system of software and hardware is not addressed.

Furthermore, Romijn agreed with Van Haeringen that the primary accountability is towards local groups. However, he stressed that we are also accountable to ourselves and all organizations in the chain. This is much wider than local accountability, but also needs to be addressed. Alertness is needed on things that are not right within this entire chain, and organizations need to learn from this. The function of an Ombuds should be to facilitate this learning.

Doris Voorbraak, senior advisor at the Dutch Ministry of Foreign Affairs

Voorbraak is tasked with taking the idea of the Ombuds further. She argues that, despite it being an important issue for the Dutch Ministry of Foreign Affairs, it has not yet received the attention it deserves on an international level. For example, they are still wrestling with the issue of coverage. The UN has taken a defensive stance and there are already some international standards in place. Even though the Ombuds is an important mechanism to provide accessibility to people who are affected, many actors do not like an extra layer, even though this layer is embedded within first-tier mechanisms.

Voorbraak also highlighted the issue of embeddedness, nesting and authority, and the proposed model does not provide answers for this. Furthermore, Voorbraak is anxious that much relies on donor conditionality and voluntary agreements.

Response by Thea Hilhorst

Hilhorst indicated that the remark by Van Haeringen about first-tier systems might be based on a miscommunication. Ideally, the Ombuds will function complementary to first-tier mechanisms. However, she would rather start tomorrow than wait for first-tier mechanisms to be in place. In fact, a task of the Ombuds could be to improve first-tier mechanisms.

In response to the elephant in the room, Hilhorst agreed that it is present and “really annoying”. She did not understand that, to improve legitimacy, organizations like the UN or Red Cross do not see the need for external oversight as complementary to internal mechanisms, something that every system in the world has.

Hilhorst replied to the remark on chain responsibility by arguing that the Ombuds could have added value in this regard. It is often the case that a local NGO has multiple partners, and when a scandal occurs, all partners might conduct their own investigations without collaborating. The Ombuds could help improve chain responsibility to align the responses of the different partners of a local NGO.

Finally, Hilhorst added a new factor to the discussion: the Ombuds provides security not only for victims, but also for alleged perpetrators. Due to the great attention put on sexual exploitation and abuse, Hilhorst argues that some agencies have become overzealous in taking action. A second-tier mechanism can check whether procedures have been upheld and if the system is not pushing itself too fast.

Response by Asmita Naik

Naik agreed with Hilhorst that the Ombuds could improve chain responsibility by addressing the traditional laissez-faire approach and providing the overview that is currently lacking.

Concerning coverage, she argues that the UN and Red Cross need to be pushed back. Why can they decide for themselves? She refers to the remark by Voorbraak on being anxious about the donors, by arguing that it is precisely the role of

donors to hold these institutions to account and influence their participation. Furthermore, she argued that there should be another authority that people can go to. Naik felt that this is currently the media, but many scandals do not reach a journalist.

On the matter of cultural change and software, Naik agreed with Romijn that a lot depends on cultural change. For Naik, cultural change means leadership and accountability on every level. Every single manager has a core responsibility for inspiring values in their teams and to be accountable.

Naik also agreed that the Ombuds should be available for recipients of aid and for local staff. However, local staff often have other ways of addressing violations of integrity, such as internal Ombuds mechanisms. In their report they decided to focus on the most powerless, which are often recipients of aid who have no other avenue, but this does not automatically exclude local staff.

Questions from the audience

Question: You were talking about the elephant in the room: the UN and Red Cross. Do you have any gut feeling about or indication of their position?

Voorbraak: As already mentioned, many of these organizations have internal Ombuds mechanisms. They are thus very defensive. This tells me that we need to be clear and do research to identify what systems these organizations have, and what kind of gaps are present within these systems.

Van der Hoogen (Senior Humanitarian Advisor to the Dutch Ministry of Foreign Affairs): The UN system recognizes the weakness in their system. Currently, they are engaging in pilots on joint complaint mechanisms in North Kivu. This is not as advanced as the Ombuds mechanism, but they do recognize that their individual system is mainly intended for their own staff and might not be enough for recipients of aid. Furthermore, the InterAgency Standing Committee recognizes that more needs to be done. The Dutch Ministry of Foreign Affairs will engage in conversation with these actors.

Raymund Schütz, project leader integrity and behaviour with the Netherlands Red Cross answered that he thinks the proposal looks solid and should be considered and studied closely.

Ad Beljaars, senior security advisor with the Netherlands Red Cross, agreed. For him, it was the first time that he heard about possible reservations to the Ombuds mechanism. He argued that the Red Cross, like all aid organizations, should be held accountable. An international Ombuds could possibly be a mechanism to achieve this.

Hilhorst and Naik thanked the personal support of employees of the Netherlands Red Cross. Naik stressed that they did consult and interview various people within the Red Cross and United Nations institutions, and that within these organizations, most (if not all) individuals support the Ombuds. The main issue is the institutional position that organizations like the UN and ICRC take.

Question by Peter Zoutewelle, institutional relations manager of ZOA: Since the beginning of this year, the debate has mostly highlighted sexual abuse. But in his perspective, accountability is much wider, and should also focus on other kinds of abuse. What is the position of the Ombuds in the wider accountability system?

Hilhorst agreed, but stressed that the focus on sexual abuse in the report was a starting point. At the same time, they have reserved space for other types of complaints.

Question by Ton Huijzer, consultant: Why does the Ombuds focus on capacity building? Its main task is external scrutiny, which should be focused on very soon. Capacity building can be taken up by the United Nations and NGOs themselves.

Naik agreed with him that the Ombuds should focus on external scrutiny. What has been identified is an initial model, with all possible roles of the Ombuds. However, she stressed that we have to recognize that current complaint mechanisms are weak. The Ombuds does have a role in assessing the current state of the sector and highlighting what needs to be done. In turn, agencies can direct their efforts for capacity building accordingly. Therefore, lessons learned can feed back into capacity building.

Question by Hans van den Hoogen, Senior Humanitarian Advisor to the Dutch Ministry of Foreign Affairs: In his personal opinion, the biggest elephant in the room is not the institutional involvement of influential humanitarian organizations, which can be solved with willingness and political buy-in. Rather, the fact that most people depending on aid live in societies where they cannot trust the

accountability systems in their societies. You have to win the trust of these people in order for them to have confidence in this kind of mechanism.

In response, Hilhorst wanted to redirect this correct statement. What will be the role of an Ombuds if abuse is not coming from aid? It is a fact that there is much more abuse outside the aid sector, for example by the police. In her opinion, the biggest elephant in the room is talking with local and national authorities to identify when an Ombuds can respond to abuse and where his authority lies.

5. Final thoughts and the way forward

Reintje van Haeringen is positive about the Ombuds in general. However, she emphasized that, if a pilot is started, there is only one shot. Even though it is well thought through already, the pilot requires a set of stakeholders with real commitment. This can be with or without the UN.

Marinus Verweij built on the fact that there is a strong political signal, which shows that the Ombuds mechanism can be piloted. For him, the big question is the actual hosting location. This important question and decision is crucial if you want to prevent the pilot from failing.

Bart Romijn argued that change often fails to occur if people wait for the biggest players. He stressed his explicitly strong stance that the Ombuds mechanism needs to be piloted. If the UN does not participate, they should be revisited with the benefits and positive results of this pilot.

Doris Voorbraak stressed the challenge of external accountability in the aid sector, and the fact that this should be improved. The Netherlands has initiated a mechanism with this scoping study, but friends and allies are needed to achieve this. The Dutch NGO community cannot work this mechanism out alone and decide where to nest it. This requires homework to think the mechanism through. However, all things considered, the way forward is positive. It will take some time, but the path is laid out by this study. There is an international diplomacy challenge ahead, but due to strong political commitment, the pilots are on the books.