

The role of the Ombudsman in promoting good governance and protecting human rights

An address to a Control Yuan Plenary Meeting (and invited guests)

Vice President Chris Field¹

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Introduction

Ni hao.

President Chang, Vice President Sun, Members of the Control Yuan, Auditor-General, senior officers of the Control Yuan, Chief Ombudsman Boshier - it is a great privilege to be invited to address this Control Yuan Plenary Meeting. In my eleven years in office as the Western Australian Ombudsman, and member of the World Board of the International Ombudsman Institute since 2012, I have had the enormous privilege of attending a number of major events both in Australia and around the world. I can say that over that period, one of my fondest memories was attending, in 2011, the 26th Australasian and Pacific Ombudsman Conference hosted by the Control Yuan. What a pleasure it is to be back here with my friends and colleagues. The Control Yuan is one of the great institutional examples in the world of effective oversight of government and is a highly valued member of the International Ombudsman Institute.

Both Chief Ombudsman Boshier and I have been asked to address the topic of promoting good governance and protecting human rights. Before I commence addressing these very important topics, I want to take a moment to reflect on the itinerary that has been developed on the occasion of our visit. I express my sincere thanks for the level of thought, and obvious level of work, which has been undertaken to create an outstanding opportunity to share knowledge, experiences and strengthen friendships and cooperation. The itinerary includes meetings with the Control Yuan, a number of important government agencies and an opportunity to engage with a number of your great economic, social and cultural achievements.

As I have said, in this address, I will consider the topic of promoting good governance and protecting human rights. I will speak to each in turn, and in relation to each topic, I will consider each in two parts. First, examining initiatives being pursued at the global level and, second, initiatives at the local level, namely, initiatives of the office of the Western Australian Ombudsman.

Promoting good governance

Let me first turn to promoting good governance. There can be no doubt that good governance of the instrumentalities of the state is essential to community well-being.

¹ Western Australian Ombudsman, Second Vice President, International Ombudsman Institute, Chair, State Records Commission and Adjunct Professor, School of Law, University of Western Australia.

Put simply, high levels of governance are directly correlated with high performance in economic and social indicators. The institution of the Ombudsman has a central role to play in promoting good governance. It does so by ensuring that decisions of governments can be subject to citizen redress, by ensuring that decisions are transparent, by ensuring that series of decisions or whole areas of government activity can be subject to Ombudsman investigation. In doing so, the impartiality and independence of the Ombudsman is essential – it ensures that the Ombudsman's consideration of decision-making owes no debt other than to the law and the facts.

Promoting good governance at the global level

Having spoken about good governance generally, I now want to speak about its promotion at a global level. The International Ombudsman Institute now represents over 180 Ombudsman institutions. Ombudsmen are now woven into the governance fabric of more than 90 countries around the world. The Institute is undertaking a range of initiatives to ensure the promotion of the rule of law and good governance. The resonance of the rule of law with our work in mediating the relationship of power to those governed has only grown over the centuries and it is a concept truly embedded in all civilisations. It is for these reasons that the Institute has, and will continue, to undertake extensive work in supporting Ombudsman institutions that are supporting processes of good governance and the principles of the rule of law. This is done by the Institute through a whole raft of measures including monetary grants undertaken as part of a major regional subvention program, formal letters of solidarity and visits to countries by the Institute's Secretary General and the Institute's Executive Committee wherever it may be appropriate to do so, and advice provided by the Institute's Secretariat.

Promoting good governance at the local level

At a local level, the Western Australian Ombudsman promotes good governance by investigating and resolving complaints made by citizens. Indeed, in Australia, Ombudsmen deal with a similar number of complaints to courts and tribunals, and do so in a timely and cost-effective way. The redress that we provide, and the lesson learned from these investigations, enhances governance for all. But we also undertake a range of other functions that examine and enhance good governance. These include inspections of telecommunications intercepts, investigation of public interest disclosures (more popularly referred to as 'whistleblowers' complaints), investigation of complaints from overseas students, monitoring of the control of criminal organisations and monitoring of criminal code infringement notices.

More generally, societies continually change, and as a general rule, the role of government grows. It is particularly critical in these circumstances that the institution of the Ombudsman continually evolves to meet changes to the socio-political environment in which it exists and particularly the growth of the powers of government and the desire by citizens to ensure that these powers are performed with integrity, transparency and accountability. As you know, the Ombudsman fits within a governance framework bequeathed from the past but of absolute relevance today. The Ombudsman fits well into Parliamentary Westminster systems of government, but of course, the traditional Chinese system of government with five branches, including an integrity or control branch is embodied in its modern form by the Control Yuan. In all of its constitutional forms, the Ombudsman supports the well-being of the state and its citizens by promoting efficient, effective, fair and honest governance at all levels of government.

Protecting human rights

The second part of my address will focus on protecting human rights. While legislation that creates Ombudsmen will not necessarily speak of a human rights role, the institution of the Ombudsman deals on a daily basis with fundamental human rights. Whether it is the right to complain and seek access to justice, whether it is the right to freedom from government overreach from Ombudsman-achieved redress or through Ombudsman investigation of government actions that effect the most vulnerable members of society, Ombudsmen are protectors of human rights.

Protecting human rights at the global level

To explore this further, I will first discuss the role of the Ombudsman in protecting human rights at the global level. It is very much with the idea of our human rights role in mind, that the Institute is currently undertaking an initiative to build upon and strengthen our human rights mandate at the international level. Building upon previous UN Resolutions on Ombudsmen and the World Forum of Human Rights in Marrakech in November 2014 and the Marrakech Declaration, the Institute has been undertaking considerable work to further our human rights commitments.

In April this year, I and Institute colleagues, including Chief Ombudsman Boshier, attended the United Nations in New York for an event that simultaneously celebrated the 40th Anniversary of the Institute, launched a written history of the Institute and, most importantly, a formal event at the United Nations hosted by Ambassador Jan Kickert, Permanent Representative of Austria to the UN and Ambassador Geraldine Byrne Nason, Permanent Representative of Ireland to the UN. This was followed by a reception at the Austrian Ambassador's residence, attended by a number of Permanent Representatives, including Ambassador Gillian Bird, Permanent Representative of Australia to the UN. The meeting was held immediately prior to our 2018 World Board meeting in Toronto. This development is, I think, a very important one for the Institute and the institution of the Ombudsman, as we seek further commonality and collegiality at the domestic and international level to further our human rights work.

More recently, our European colleagues have been developing the Venice Principles that will help further enumerate and enshrine the role of the Ombudsman, including in protecting human rights.

Protecting human rights at the local level

Second, I will discuss the protection of human rights at the local level, in this case, the work of the office of the Western Australian Ombudsman. Today I want to mention three areas of focus in my office on the protection of human rights.

Our first area of focus in our human rights work is the promotion of child well-being and the prevention of child deaths. Since 2009, my office, using the full powers of a standing Royal Commission, has undertaken three major own-motion investigations regarding the rights of some of the most vulnerable members of our community. The first investigation was dedicated to the prevention of deaths of children by suicide. The second investigation was dedicated to the prevention of deaths of children by drowning. The third investigation was dedicated to the prevention of the sudden deaths of infants. Collectively, these investigations, all tabled in the Western Australian Parliament, have made 70 recommendations to prevent child deaths. Each one of

these recommendations has been accepted. We have most recently expanded our work to include visiting places of out of home care for children, both in government and non-government care and juvenile detention facilities.

Our second area of focus in our human rights work is the promotion of women's human rights. In particular, this work has been focused on the fundamental and inalienable human right for women to be safe in all circumstances and always free from violence. Among a range of other activities, my office has undertaken a major own-motion investigation, again tabled in Parliament, dedicated to preventing family and domestic violence fatalities. The report made 54 recommendations about ways to prevent fatalities. Each recommendation was accepted. Most recently, we undertook a further major report, again tabled in Parliament, into the implementation of these recommendations.

Our third area of focus in our human rights work is the promotion of the rights of the first Australians. Aboriginal Australians have an extraordinary continuous connection to culture and land for over 70,000 years. Our office undertakes a major visiting program to regional Western Australia to bring our services to Aboriginal Australians. Our aim is to listen to, work with, and respectfully include in every aspect of our decision-making the views of Aboriginal Australians. To this end, we have developed a comprehensive Aboriginal Action Plan to guide our work. We will also shortly recruit a new position of Assistant Ombudsman, Aboriginal Affairs who will lead a team of staff dedicated to Aboriginal policy issues and all of our investigations will, wherever relevant, include early, specific and comprehensive consultation with Aboriginal Australians.

Conclusion

In conclusion, the Ombudsman has evolved to be a central point of access to justice, a promoter of good governance and the rule of law, a standing commission of investigation and a protector of human rights. Parliaments and citizens have given us a special responsibility – one that must be exercised with humility and studious attention to the mandate that we have been given; not less, but certainly never more.

Lastly, on a personal note, to my friends and colleagues of the Control Yuan, I have always been humbled by your warmth and graciousness – I have, as you know, long been an admirer of the work you do. Thank you for inviting us to join you here this week – as I earlier noted, the last time I was in Taipei was in 2011. I am determined that it will not take me another seven years to come back to this great city.