

ADVISORY LETTER

**AN OMBUDSMAN FOR
DEVELOPMENT COOPERATION**

No. 13, December 2007

Members of the Advisory Council on International Affairs

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Foreword

On 30 August 2007 the government asked the Advisory Council on International Affairs (AIV) to produce an advisory letter on an Ombudsman for intergovernmental relations between development cooperation partners.

The AIV set up a committee, chaired by Prof. A. De Ruijter, to prepare its advisory letter. The Ombudsman Committee comprised the following members of the AIV: Prof. R. Fernhout, Prof. B. de Gaay Fortman, H. Kruijssen, Ms A.N. Papma, Prof. N.J. Schrijver (corresponding member) and A. Van der Velden. The civil service liaison officer was Ms D.J. Roelofs. The committee was supported by Ms W.A. van Aardenne, with the assistance of Ms S. Hardus (trainee).

A number of staff at the Ministry of Foreign Affairs, and Ms M.J.A. van Putten, were consulted. The AIV would like to thank them for their contribution.

The AIV finalised this report during its meeting on 7 December 2007.

AN OMBUDSMAN FOR DEVELOPMENT COOPERATION

1. Introduction

On 30 August the Minister for Development Cooperation asked the AIV to produce an advisory letter on whether an Ombudsman,¹ as an instrument for introducing an element of *mutual* accountability, could play a role in intergovernmental relations between development partners, and what this role might be. The minister also asked how an Ombudsman should be established, should the Council see added value in the instrument.

The minister asked that the AIV present its advisory letter before the end of 2007. The Council was therefore limited to answering the question put by the minister. In the advisory letter the AIV first describes in brief the current situation. Potential problems which an Ombudsman may be able to solve are also indicated,² as are possible ways of resolving them.

We first need to establish that intergovernmental relations can involve different kinds of bilateral humanitarian and development aid which are sometimes embedded in international agreements. Budget or sector support can be given under an agreement. A Memorandum of Understanding can be concluded between a group of donors and the partner country in question. The Netherlands can have a leading role as donor or can be part of a silent partnership agreement.³ Bilateral aid could be channelled through a UN agency, such as the United Nations Development Programme (UNDP), or through international financial institutions (IFIs) such as the World Bank. The Netherlands also finances national and international NGOs, who carry out a range of activities in development cooperation countries through local NGOs. In every development cooperation relationship between partners, be they governments, donors, international organisations, NGOs or other implementing bodies, arrangements are drawn up and agreements made regarding financing and implementation. These set out the objectives and how they will be achieved. The form of the arrangement or agreement also determines whether it constitutes a legally binding obligation on States (or international organisations) or is simply politically and morally binding on governments, ministers, local authorities or international organisations.

Relations within a partnership can go wrong for a number of reasons. Poor planning, poor implementation, lack of timely impact assessment, bad will or an unequal balance of power that makes *ownership* uncertain are all possible causes. This can have both a direct and indirect negative impact on the quality and effectivity of aid. It is rarely a question of clear breach of contract, but usually something to do with the grey area of miscommunication,

- 1 The term Ombudsman originates from Sweden and denotes a man or woman given a mandate by parliament to investigate the civil service. The emphasis on mandate (and, thus, the term's gender neutrality) is clearer from the Danish term describing the same function, *ombudsmand*.
- 2 See Alan Fowler, Discussion Brief, Enhancing Accountability in Development Co-operation, Introducing an Ombudsman, 19 June 2007.
- 3 A silent partnership agreement is drawn up between two or more donors, usually working in the same sector, to the effect that one donor will take responsibility for implementation and represent the other donor (the silent donor). The leading donor regularly reports back to the silent donor.

mismanagement, betrayal of trust, raising then failing to meet reasonable expectations, or the negative, unforeseen impact of aid.

The question is whether an Ombudsman could introduce an element of *mutual* accountability to this complex of arrangements and agreements that determine relations between partners and influence the quality and effectivity of aid. In answering this question the AIV has assumed that the kind of problems involved are:

- a. between parties contractually bound to each other in an intergovernmental relationship. This contractual relationship needs to be interpreted more widely than exclusively as “relations between States”, given the fact that aid flows bilaterally through a number of different channels (multilateral channels, programmes run by the business community, NGOs);
- b. experienced by those receiving aid, or other interested parties (stakeholders), whose interests have been, or may be, seriously affected by conduct on the part of contracting parties that was not proper.

It is clear that the relationship between contracting parties (a) is different to the relationship between contracting parties and third parties (b). In this advisory letter the AIV considers whether an Ombudsman, whose work depends on autonomy, can introduce an element of *mutual* accountability by providing a mediation and/or complaints mechanism.

In order to properly answer the minister’s question, the AIV will first establish the underlying partnership on which the relationship is based. What problems could arise that an Ombudsman might be able to solve? We will then examine the mediation and/or complaints mechanisms for *mutual* accountability currently available within such partnerships.

If these partnerships do require an Ombudsman, what form should it take and what would be the minimum conditions? Relevant to this is the question of what an Ombudsman should investigate and assess. A frame of reference would be required to determine what was “correct” and what was “wrong”. What norms or rules were, or are being, violated? These norms or rules can differ from sector to sector. However, are there basic rules, or generally accepted principles of proper conduct which could be applied across the board? If so, what are they?

The final question relates to whether an Ombudsman would bring added value and, if so, how it could be introduced. The AIV concludes that an Ombudsman providing an independent external complaints mechanism within the framework of the Paris Declaration, can have added value, as long as it is set up under the right conditions. The AIV’s answer to the minister’s question is given in several steps. First, we examine the situation in the Netherlands. After all, it is important to look at whether our own affairs are in order, and what changes can be made nationally, before making suggestions at international level. The AIV also proposes that a pilot be set up, parallel to national initiatives and in collaboration with like-minded parties within the Organisation for Economic Cooperation and Development (OECD), to assess this added value in a practical setting.

2. Strengthening cooperation between development cooperation donors: the Paris Declaration

The focus of development cooperation at international level is shifting towards cooperation between donors and recipient countries on the basis of the 2005 Paris Declaration on Aid Effectiveness.⁴ The Paris Declaration is in effect a partnership agreement governing commitments and *mutual* accountability. On the donor side, the World Bank, the International Monetary Fund (IMF), the UN, regional development banks and members of the Development Assistance Committee (DAC) have all committed themselves to this agreement and more than 100 countries and international organisations are now signatories. In this Declaration, the partner countries and donors established clear agreements on improving aid effectiveness and public finances. The participating countries and organisations have established 56 partnership commitments. The Declaration specifies 12 indicators of progress, which have been supplemented with specific goals to be achieved by 2010. These will encourage donors to align aid with national procedures more effectively and harmonise their work. In the next stage the OECD will focus on monitoring the agreements. The World Bank has an important role at country level.

The guiding principles of the Declaration are:

- *Developing countries exercise leadership over their development policies and plans (ownership).*
- *Donors base their support on countries' development strategies and systems (alignment).*
- *Donors coordinate their activities and minimise the cost of delivering aid (harmonisation).*
- *Developing countries and donors orient their activities to achieve the desired results (managing for results).*
- *Donors and developing countries are accountable to each other for progress in managing aid better and in achieving development results (mutual accountability).*

In answering the minister's questions the AIV has decided to focus on cooperation within the framework of the Paris Declaration. Given the number of countries, international organisations and IFIs that are parties to the Declaration, it can be seen as the broadest and most far-reaching agreement in development cooperation. At a later stage the eventual results of our advice may well prove to be relevant to the UN reform process triggered by the "Delivering as One" initiative.⁵

4 Paris Declaration on Aid Effectiveness: Ownership, Harmonisation, Alignment, Results and Mutual Accountability. High Level Forum, Paris, 2005.

5 The UN is currently undergoing development reform, in response to the High Level Panel on Systemwide Coherence report. The panel's key recommendation is that the UN should apply the principle of "Delivering as One" to its work in all countries. This means that UN organisations in the field should be united under one leader, with one budget and one joint programme drawn up in close consultation with the country in question, preferably in one office. The "Delivering as One" pilot project has already been launched in eight countries: Albania, Cape Verde, Mozambique, Pakistan, Rwanda, Tanzania, Uruguay and Vietnam. Although it is not possible at the present time to anticipate the final outcome of the process, it is clear that people working within the UN system as a whole are looking to achieve greater harmonisation and coherence in cooperation. In contrast to cooperation within the Paris Declaration framework, no binding agreements have yet been reached.

3. Potential problems which an Ombudsman may be able to solve

As stated above, the starting point is cooperation within the framework of the Paris Declaration. In every form of cooperation problems can arise, both between partners and between partners and third parties. When such problems do arise, complaints will be dealt with in accordance with the Paris Declaration and the cooperation contract on which aid implementation is based.

A number of like-minded donors, such as Canada, Denmark, Finland, Ireland, the Netherlands, Norway, Sweden and the United States, have entered into an agreement on the form Joint Financing Arrangements (JFAs) should take. Budgets, Poverty Reduction Strategies and sector programmes are financed on the basis of JFAs. JFAs also form the basis for Multi-Donor Trust Fund financing, and lay the foundations for *mutual* cooperation and accountability. Both the Template for Joint Financing Arrangements and the Guide for Negotiating Joint Financing Arrangements for the Sector-Wide Approach (SWAp)⁶ are instructive in this respect.

The guiding principle remains that the developing country has ownership of its own development policy and plans. However, various problems can arise. On the one hand, through misuse of donor power countries can implicitly be forced to take decisions with which they do not entirely agree. On the other hand, there is the risk that ownership will result in certain groups being excluded or receiving preferential treatment. Also, parties sometimes make an incorrect joint assessment of the local situation and apply the incorrect instruments, and/or apply the correct instruments incorrectly.

Problems may also arise if one or more countries suddenly decide to withdraw aid without evaluating the impact this will have for the recipients. An entire educational or healthcare system can collapse if programmes are not properly phased out or transferred. It is also possible that a limited group will be disadvantaged by such a decision.

Likewise, one group can benefit from aid implementation to the detriment of another. An example of this is the impact of building a dam. The majority of the population benefits, at the expense of a minority who may end up losing their homes. In this case an appropriate safety net must be developed. If this does not happen, the latter group will be directly disadvantaged by aid. This means that efforts to investigate the social impact of the policy will have been either inadequate or entirely absent, or there will have been a failure to consider mitigating measures (Social Impact Assessment).

It is also possible for certain developments – however well meant – to cause serious or lasting damage to the environment. This means that efforts to investigate the environmental aspects and possible mitigation will have been either entirely lacking or inadequate (Environmental Impact Assessment).

It is quite conceivable that an Ombudsman may be able to offer a solution in those very cases in which contracting or third parties are affected, or risk being affected, by aid being entered into, implemented or terminated. It may be able to address complaints which fall within the framework of the Paris Declaration and the contract, but not within a strict legal framework. The Ombudsman could judge whether or not interests were properly considered

⁶ Legal Affairs Department, Ministry of Foreign Affairs, Model Legal Documents, Joint Financing Arrangements for the Sector-Wide Approach.

when the contract was entered into, implemented or terminated, and whether adequate (i.e. transitional or mitigating) measures were taken.

4. Instruments available within the framework of the Paris Declaration for fulfilling *mutual* accountability through a mediation and/or complaints mechanism

The Paris Declaration does not include an *independent external* complaints mechanism. Nor does it have an inspection/complaints mechanism, as some IFIs do.⁷ The OECD scores highly on transparency, participation and evaluation in the One World Trust's Global Accountability Report,⁸ but poorly in terms of complaints and reactions.⁹

Most international organisations have one form or another of internal mediation and/or complaints mechanism with guaranteed independence but they do not always have an independent external complaints procedure as well. In cases in which there is an unequal balance of power between parties it is questionable whether an internal complaints mechanism is adequate, and whether an independent external mechanism for complaints, mediation and/or dispute settlement would not be preferable. Without an external mechanism, there is certainly a risk that problems will be brushed under the carpet and situations made to look rosier than they really are. There is also a risk that the stakeholder's voice will not be heard and taken into account by an internal complaints body. Moreover, the knowledge built up by an independent external mechanism would be of considerable use to an organisation capable of learning from experience.

IFIs like the World Bank, the International Finance Cooperation (IFC)/Multilateral Investment Guarantee Agency (MIGA) and the Asian Development Bank (ADB) all now have their own inspection/complaints mechanism. It is beyond the scope of this advisory letter to examine each mechanism, and its advantages and disadvantages. However, the IFC/MIGA's phased mediation and dispute settlement mechanism is a positive example. It allows any individual, group, community, entity or other party directly affected by the social or environmental impact of an IFC or MIGA project to submit a complaint to the Compliance Advisor Ombudsman (CAO). This includes potential, as well as actual, complaints. Complaints may also be lodged by representatives of those directly affected by a project, as long as they can show that they are their legal representatives. A complaint will be deemed inadmissible if it is malicious, trivial or has been lodged to gain competitive advantage. Given the mechanism's position high in the organisation, its independence can be called into question.

7 Maartje van Putten, *Policing the World. Accountability Mechanisms for Multilateral Financial Institutions and Private Financial Institutions*, 2006.

8 One World Trust; 2006 Global Accountability report, *Holding Power to Account*, p. 7.

9 One World Trust; 2006 Global Accountability report, *H Holding Power to Account*, Table 2, p. 21. "Do they have the capabilities to create a safe channel for staff, partners, affected communities and the public at large to file complaints for non-compliance with organisational policies and other commitments and do they offer them a response."

5. Conditions a Multilateral Ombudsman would be expected to meet

An Ombudsman for intergovernmental relations between development cooperation partners differs from a National Ombudsman in the sense that it does not operate in a simple complainant-versus-government construction, but will often be required to work within a variety of development relationships. The investigation triggered by a complaint will examine the role of both the recipient State and the donors (both coordinating and silent), as well as that of any other actors involved. The Ombudsman will be required to determine whether the conduct about which the complaint is made can be attributed solely to the developing country that has ownership,¹⁰ or whether it can also be attributed to donors and any other parties involved. The investigation may raise questions as to how much ownership the developing country actually has.

The Multilateral Ombudsman's mediation and findings, conclusions and recommendations, if any, will often be addressed to a number of different actors. It is important that the Multilateral Ombudsman has access to all relevant documents and is able to hear what all of those involved have to say. In order for the instrument to work properly it is vital that all partners have confidence in it. This makes great demands on the structure and positioning of the Ombudsman.

The Multilateral Ombudsman is not supposed to take on the role of national institutions (parliament, justice, the National Ombudsman etc.), or do their work. As part of its response to complaints it could, however, legitimately observe that national institutions are not working as they should, and make suggestions for improvements.

According to the International Ombudsman Association (IOA)'s Code of Ethics,¹¹ an Ombudsman must operate according to the following ethical principles: independence, neutrality and impartiality, confidentiality and informality.

In order to operate effectively the mechanism would, as a minimum, need to meet *additional* conditions. It must:

- operate in the development cooperation country in question;
- be simply constructed, offer high-quality service and be decisive;
- enjoy the trust of all development cooperation partners;
- be approachable and easily accessible;
- offer complainants the choice of submitting their complaint orally or in writing (the former is particularly important in countries with a strong oral tradition);
- have the authority to instigate investigations and made recommendations;
- have access to all relevant documentation and be able to hear what all of those involved have to say;
- offer a mediation and, where necessary, complaints procedure.

¹⁰ In this case the Ombudsman would declare the complaint inadmissible and refer it to the National Ombudsman of the recipient country.

¹¹ See *IOA Code of Ethics* at www.ombudassociation.org.

6. The assessment standards for a Multilateral Ombudsman

As stated above, the starting point is cooperation within the framework of the Paris Declaration and contracts agreed between parties. Complaints would be directed to the Ombudsman regarding conduct between parties that is not proper, and/or towards third parties, in entering into, implementing or terminating a development cooperation contract.

The aim would not be to strictly assess the lawfulness of the dealings, but to assess their propriety, taking into account intended and unintended side effects. There are a number of elements to consider when assessing propriety. One of them (see point d. below) is whether or not the expectations raised when a contract or agreement is entered into are met. The development cooperation contract and the Paris Declaration serve as the primary basis for the assessment. The frame of reference for proper conduct also consists of:

- a. The fundamental principles of International Human Rights and principles of Good Governance,¹² including anti-corruption policy, based on various contracts, agreements and treaties.

The UNDP report *Governance for Sustainable Human Development* (1997) sets out the following core characteristics of good governance.

Core Characteristics of Good Governance

UNDP Report, Governance for Sustainable Human Development, 1997.

Participation – All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

Rule of law – Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.

Transparency – Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

Responsiveness – Institutions and processes try to serve all stakeholders.

Consensus orientation – Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and, where possible, on policies and procedures.

Equity – All men and women have opportunities to improve or maintain their well-being.

Effectiveness and efficiency – Processes and institutions produce results that meet needs while making the best use of resources.

Accountability – Decision-makers in government, the private sector and civil society organisations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organisation and whether the decision is internal or external to an organisation.

Strategic vision – Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.

¹² The World Bank *Governance Matters: Worldwide Governance Indicators, 1996 – 2006*, cites the following six elements of governance: Voice and Accountability; Political Stability and Absence of Violence; Government Effectiveness; Regulatory Quality; Rule of Law; Control of Corruption.

- b. Achieving the Millennium Development Goals (MDGs), an international priority. Partnerships which do little to further the MDGs, or indeed work against them, are on the wrong track.
- c. The do-no-harm principle. However well-intentioned the intervention is, its side effects must not cause serious harm to third parties, the immediate surroundings and/or the environment.
- d. In general, the duty of care and the principles of substantive and procedural propriety¹³ can also be considered:
Substantive: prohibition on abuse of authority, reasonableness, proportionality, leniency, legal certainty (including legitimate expectations), equality and reasoned arguments.
Procedural: impartiality/neutrality, the principle that both sides must be heard, reasoned arguments and fair play.

7. Mutual accountability mechanisms

There are a number of existing mechanisms within OECD development relationships to guarantee *mutual* accountability and the effectivity of aid. One example is the 2006 *Survey on Monitoring the Paris Declaration*, a baseline against which the progress of indicators specified in the Declaration is measured. An interim review will be performed in 2008; the goals must be achieved by 2010.

There are also *Performance Assessment Frameworks (PAFs)*. Indicators for the country in question are monitored on the basis of these agreements, which are made at country level. They differ from country to country. A PAF thus has two goals: (a) to allow all partners to monitor progress and, where necessary, to adjust policy and implementation; (b) more specifically, to offer a basis for decisions on the distribution of donors' money.

Poverty Reduction Strategies (PRSs) are another mechanism. PRSs outline how a country aims to achieve the Millennium Development Goals, and the social and economic measures required to do so. The idea is that parliaments and social organisations discuss what form these plans will take and, moreover, monitor their implementation. The World Bank, the IMF and bilateral donors have all pledged to base their own programmes on these plans. The key principles of PRS programmes are: participation, establishing priorities and ownership.

There are also joint evaluations. These are intended to determine what impact, if any, aid is having, whether it is being correctly spent and whether recipient countries are acting properly and in accordance with the rules agreed. For example, there are donor peer reviews, in which "equals" assess the strengths and weaknesses of each others' policy in terms of implementation and application. This allows donors to learn from each other; but a peer review remains just that and cannot be compared with an independent external mechanism. The same applies to the *African Peer Review Mechanism (APRM)*,¹⁴ a multinational

¹³ The Dutch National Ombudsman, *Behoorlijkheidswijzer*, Den Haag, 2004.

¹⁴ The APRM's mandate is to ensure that policy and practice of participating countries conforms with the agreed norms and values of politically, economically and socially responsible enterprise as defined in the *Declaration on Democracy, Political, Economic and Corporate Governance*, 9 March 2003, Ajuba, Nigeria.

mechanism which allows members of the African Union to voluntarily undergo self-monitoring.

Another *mutual* accountability mechanism is the cooperative relationship between the Economic Commission for Africa (ECA) and the OECD Development Assistance Committee (OECD/DAC), the Mutual Review of Development Effectiveness for Africa.¹⁵ In 2005, at the request of the New Partnership for Africa's Development (NEPAD), the two organisations compiled a joint report. The report details the main commitments made to Africa in the context of relevant international fora and the G8, and establishes performance indicators for 2007. These include vigorous monitoring efforts, which were set to begin in 2006. The Mutual Review is a biennial dialogue process between Africa and OECD/DAC leaders and policymakers on implementing development.

8. The added value of a Multilateral Ombudsman

Given the number of existing monitoring and evaluation mechanisms operating within the OECD, the question as to whether a Multilateral Ombudsman would offer added value in terms of mutual accountability is a valid one. The AIV's answer is a conditional yes. The most important argument is that, at present, the OECD has no *independent, external* complaints mechanism for mediation and dispute resolution. A mechanism of this kind has the following advantages:

- If it is set up and functions under the correct conditions, a complaints mechanism can play an important role as an early warning instrument and also in later stages of the relationship. It can identify problems with donors or partner countries not keeping to agreements made under the Paris Declaration, or to the contract, or implementing the contract incorrectly. It can also be an important instrument for third parties who are, or risk being, seriously affected by conduct of particular parties that is not proper.
- The instrument has added value because it operates within a number of relationships and is active throughout the entire process.
- External investigation of the complaint will be much more objective than an internal complaints procedure.
- An independent, external complaints mechanism will enhance the OECD and its member states' capacity to learn. This will allow a standard to be developed, or improved, which development partners will be expected to observe.

The AIV has in mind the phased introduction of a *mutual* accountability instrument for mediating and resolving disputes. The decisions taken would not be binding. The conclusions of an investigation and any recommendations would be published by the Multilateral Ombudsman. The parties involved would be required to disclose what they do with the recommendations.

¹⁵ Development Effectiveness in Africa – Promise is Performance: Applying Mutual Accountability in Practice, Senior-Level Meeting, 6-7 December 2005.

9. The Netherlands and setting up a Multilateral Ombudsman

The AIV is of the opinion that, before anything is introduced at international level, it is advisable for the Netherlands to first look at whether its own affairs are in order.

Parties who are directly affected in a development cooperation relationship by conduct on the part of the Dutch government that is not proper can submit complaints to the Ministry of Foreign Affairs and, subsequently, to the Dutch National Ombudsman. However the National Ombudsman can only act if the complaint is against the national government, and therefore has no authority to intervene in relationships in which other States or donor States are involved.

In various agreements concluded by the Netherlands the following options are available should problems in the relationship arise:

- communication and dialogue;
- the Permanent Court of Arbitration's Optional Rules for Arbitrating Disputes between Two States;
- discontinuing aid.

Firstly, in all its development relations the Netherlands should, as a priority, be able to stipulate that every entity with which it works must operate its own effective complaints/objection procedure for second and third parties. Specifically, the Netherlands can concentrate on ensuring that this is the case for all multilateral organisations (most of which already have such a procedure in place), donors, NGOs and others who receive financing in the form of Official Development Assistance (ODA).

The AIV is also of the opinion that a Multilateral Ombudsman for donors, partner countries, aid recipients and third parties directly affected may indeed be able to fill an important gap in terms of *mutual* accountability, in cases in which parties do not act properly in cooperation relationships based on the Paris Declaration and the financing contract. However, in practice things can be much more complicated than the theory suggests. The Netherlands may therefore wish to conduct a pilot study to test whether problems are likely to arise, if so what these might be, and whether a Multilateral Ombudsman would be able to offer a constructive, added-value solution.

The AIV suggests that a pilot be set up with like-minded parties in a country in which the Netherlands has an active role as leading donor within the framework of the Paris Declaration. It is, however, important that the country in question has its own National Ombudsman¹⁶ (to avoid the Multilateral Ombudsman taking on that role).

The idea is to set up a Multilateral Ombudsman, in fact an Ombudsman panel consisting of three people. The partner country and donors would each appoint one trusted person. They would then jointly appoint a third person, who would be required to fulfil the ethical conditions of a Multilateral Ombudsman (independence, neutrality and impartiality, confidentiality and informality) and have the trust of all development partners. The three-person panel would be appointed for four years by the development partners, with a mid-term review taking place after two years. At the end of the four years an evaluation would be conducted to determine whether or not the Multilateral Ombudsman had brought the added value expected.

¹⁶ A number of African countries already have a National Ombudsman. See the African Ombudsman Association Strategic Plan 2003-2006.

The Multilateral Ombudsman would be required to operate according to the conditions specified in this advisory letter. Any individual, group or community, entity or other party *directly* affected by the contractual partnership between donors and recipient governments in the context of the implementation of the Paris Declaration should be able to submit complaints to the secretariat of the Multilateral Ombudsman either orally or in writing. A straightforward, non-legal complaints procedure, coupled with the Ombudsman's own investigation, where required, would be the best way of addressing these complaints. A complaint will be deemed to be inadmissible if it is malicious, trivial or has been lodged to gain competitive advantage.

The Multilateral Ombudsman needs to have sufficient stature to be able to operate effectively. It also requires adequate financial means to enable expert investigations to take place when required. In practice, most cases require investigation. The costs of maintaining an Ombudsman are considerable.

The Multilateral Ombudsman's secretariat could be led by an official released by the OECD for this purpose and would need to be established in the partner country as a clearly independent office. Copies of complaints could be sent to the OECD for information. The complaints procedure would need to be publicised in the partner country.

At this stage it is important to look into:

- the kind of problems that arise;
- whether the Ombudsman for intergovernmental relations would be able to offer a solution by acting as intermediary and settling disputes between partner countries and donors, and between contracting parties and others;
- whether the Ombudsman would be able to help enhance observance of the Paris Declaration, and what lessons can be learned;
- identifying the financial and non-financial costs and benefits.

The Multilateral Ombudsman's conclusions and recommendations could also be included in the peer reviews. This would enhance the instructional nature of the instrument.

At this stage, the AIV would prefer not to elaborate further on these proposals. The minister required an answer in the form of an advisory letter before the end of 2007. The AIV is of course prepared to elaborate further on suggestions and conditions for such a pilot, should the minister deem this relevant.

Request for advice

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Advisory Council on International Affairs
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Effectiveness and Quality Department
Bezuidenhoutseweg 67
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Date 30 August 2007
Reference DEK/BA-123/07
Re Request for advice regarding the Ombudsman

Dear Mr Korthals Altes,

All societies have both official and traditional forms of conflict mediation. In Europe the prevailing traditional institution is the office of the ombudsman. The main characteristics of this institution are its autonomy and transparent methods. Whether or not an ombudsman's recommendations are binding depends on the situation, but the more binding they are the more they contribute to the institution's authority.

In development cooperation, relationships between partner countries are governed by an array of agreements and procedures. But these are not relationships of equals: donors impose their will on their development partners, despite all the talk of ownership. It would attest to the maturity of relations between development partners if both were willing to be called to account regarding aspects of the relationship that are unclear, raise questions or even cause resentment. An ombudsman-like instrument could fill this gap but would need to be adapted to the requirements of intergovernmental relations.

Against this background, the government would ask the Advisory Council on International Affairs to issue an advisory letter on the desirability of establishing an instrument of this nature to introduce an element of mutual responsibility into relations between partner countries. You are requested to pay particular attention to the political aspects and potential implications of introducing such an instrument.

Questions

1. What role would an instrument of this kind play in intergovernmental relations between partners?

A characteristic of the institution of ombudsman is its autonomy, which immediately raises the question of the parties' sovereignty.

2. If the Council sees added value in the instrument, how should it be structured?

I ask that the AIV present its advisory letter before the end of 2007.

Yours sincerely,

(signed)
Bert Koenders
Minister for Development Cooperation

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