

Ombudsman for Good Governance in Bangladesh: Why Now, and How?¹

Iftekharuzzaman²

I. OMBUDSMAN – WHY NOW?

As enshrined in Article 77 of the Constitution, establishment of the institution of Ombudsman³ was one of the commitments on the basis of which the state of Bangladesh was created on behalf of the people of this country. Successive governments have failed to meet that commitment, except the passage of the Ombudsman Act of 1980 and subsequent setting up of the Office of Tax Ombudsman, which has at best remained symbolic. If in thirty-six years after independence nothing has practically happened, why now and how? What follows here is an attempt to answer this question.

Bangladesh is going through an unprecedented stage of opportunities for democratic institutionalization and creation of the basis for accountable and pro-people governance. The Government has placed corruption and governance failure at the core of its agenda.⁴ For the first time in the history of Bangladesh specific multi-pronged initiatives have been taken that may translate this highest level Government commitment into tangible results. A process has started to make corruption punishable irrespective of the level of authority and power. Some fundamental institutional and policy reforms have been started. These include concrete progress made towards separation of the Judiciary, reconstitution of the Election Commission that has triggered the process of long-overdue electoral reforms, revamping of the Anti-Corruption Commission to make it effective; and a highest level commitment to reform the Public Service Commission.

On 28 February 2007, Bangladesh became a State Party to the UN Convention against Corruption committing itself to a comprehensive range of fundamental reforms and initiatives for policy and institutional change, especially to ensure, as per Article 6, existence of anti-corruption bodies like the Anti-Corruption Commission and Ombudsman, and to grant them full independence.

Given the window of opportunity created by the present government to strengthen the institutional foundations for good governance, it has become incumbent upon the Government to set up the Ombudsman. If democracy and good governance are about preponderance of citizen's voice on matters of public interest, and if these are about preventing unlimited discretion of the

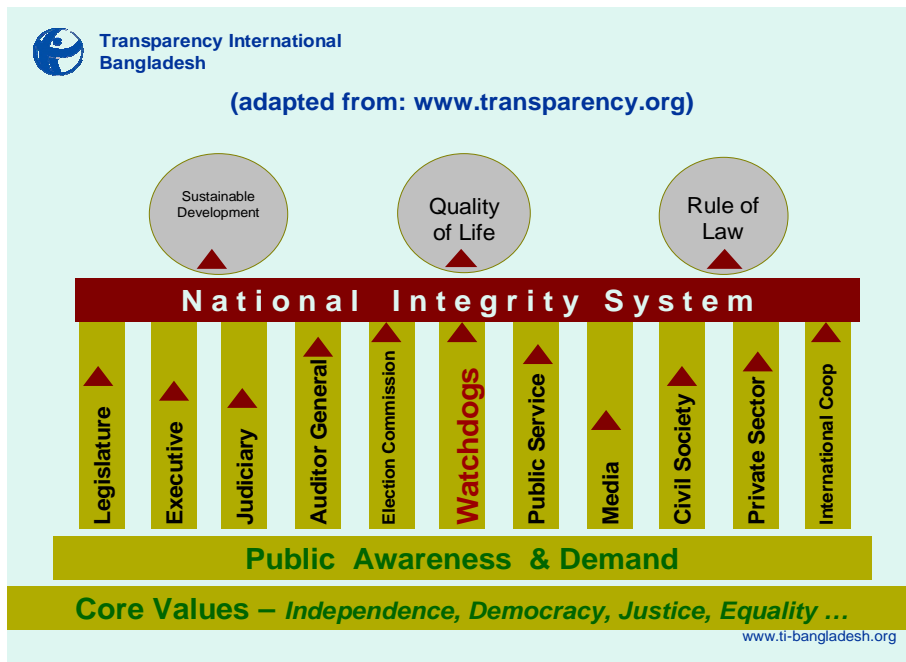
¹ Presented at the Seminar organized jointly by Manusher Jonno Foundation and Transparency International Bangladesh, Dhaka, 15 May, 2007.

² Executive Director, Transparency International Bangladesh.

Government and administration and ensuring social accountability in the governance process, the Ombudsman institution must be set up without any further delay.

II. OMBUDSMAN: A KEY PILLAR OF THE NIS

Key to establishment of good governance is accountability and transparency of government which depends on the strength and sustenance of the National Integrity System (NIS). NIS is the sum total of the institutions and practices that have key roles in maintaining the honesty and integrity of the government, and thereby promoting good governance. It is through a holistic approach, involving each of the pillars of the NIS that accountable and transparent governance can be established and sustained. Ad hoc reforms are unlikely to succeed.



The NIS is like a Greek Temple – it rests on public awareness & demand, and society’s core values – the stronger are these, the firmer is the foundation. At the roof is the nation’s integrity held by a series of mutually reinforcing pillars. The three balls on the roof emphasize that the roof must be kept level, failing which they can roll off. Pillars are interdependent, but may be of differing strengths from society to society. There can even be trade-offs in some cases. For instance, in Singapore restricted media freedom is compensated by efficient civil service and

³ Ombudsman is treated here as a gender-neutral term referred to individuals – women and men – who hold the office of the Ombudsman. Ombudsman is also viewed more as an institution than a person.

⁴ The conceptual thrust of the first address to the nation delivered by the Chief Adviser Dr. Fakhruddin Ahmed was governance failure and corruption. The same thematic focus was clear in his second address to the nation on 12 April.

highly committed executive. Each pillar needs some core tools, e.g., media must be backed by freedom of information law, civil society must have the legal space to organize itself and articulate its demand.

Basic Requirements of the Effectiveness of the NIS Pillars

Pillar	<i>Rules of the Game</i>
Parliament	<i>Fair Elections, Code of Ethics, Conflict of Interest Rules, Effective Committees</i>
Judiciary	<i>Independence, Integrity</i>
Auditor General	<i>Independence, Public Reporting & Debate</i>
Watchdogs - ACC/Ombudsman	<i>Independence, Capacity, Enforceable Law and supportive environment</i>
Election Commission	<i>Independence, Integrity, Capacity</i>
Public Service	<i>Non-partisan, Professional, Code of Ethics</i>
Media	<i>Freedom of Information Law, Integrity</i>
Civil Society	<i>Freedom of speech, Conducive Environ, Whistleblower Protection</i>
Private Sector	<i>Competition, Openness, Integrity – Publish What you Pay, Corporate Social Responsibility</i>
International Cooperation	<i>Linkage of national efforts with international - UNCAC</i>

Complementing other watchdog bodies like the Anti-corruption Commission (ACC), and depending upon the effective functioning of other pillars, especially Judiciary, Parliament, and Auditor General, the Ombudsman has a key role in the national integrity system. Given due legal and institutional capacity for independent and effective functioning, the Ombudsman can play a catalytic role in ensuring social accountability of the public institutions and functionaries.

III. ACCOUNTABLE GOVERNANCE & OMBUDSMAN

An essential prerequisite of good governance is the systemic and institutional capacity to ensure accountability in the functioning of the state, its various organs and vital institutions of public interest in and outside the government. Among the most important factors behind governance failure are the absence of openness, lack of checks and balance with regard to exercise of power and discretion, and lack of institutional opportunities for raising citizen’s voice against abuse of power, maladministration, violation of rights, negligence, nepotism and corruption that take place at the interface between citizens and the administration.

Concern about enhancing performance and accountability of government is nothing new, though it has grown over the recent years. Accountability means holding individuals and institutions answerable for decisions and actions as objectively as possible. The problem of

accountability exists in all levels of government as well as in public enterprises and other institutions or agencies whose services and products are of public interest. At the national level of governance, accountability for policies, actions and programmes are sought through such mechanisms or institutions as elections, parliamentary oversight or legislative reviews, judicial route, legal accountability, audits, etc. At the delivery end the focus of accountability is on the level of satisfaction of the service recipients about content and quality. At both levels there have always been concerns that citizens have only limited and indirect capacity to hold governments accountable. Moreover, in most cases of public service, the government and its organs and institutions not only take the responsibility for policies and actions of public interest, but they are also the regulators and monitors of their own performances, which most often limits the scope of objectivity. This is where lies the imperative for alternative institutions and approaches to accountability, and therefore, the need for creation of watchdog bodies which are created by the Government but operates outside Government control.

The Ombudsman is one such independent institution that receives and probes into citizen's complaints against government officials and institutions, and recommends corrective action. Ombudsman has the authority to investigate into allegations of maladministration, but not with same power as the court of law, nor do recommendations of Ombudsman have mandatory implications for reversing any government decision. However, the key impact of an effective Ombudsman lies in its power to focus public, legislative and government attention to grievances of citizens.

Ombudsman is a Swedish word which refers to someone who takes upon herself or himself the responsibility to do something for another person. The Ombudsman is responsible for impartially and independently investigating citizens' complaints against a public authority or institution and tries to facilitate a fair settlement. From a practical point of view the Ombudsman is an institution for raising citizen's voice and catalyzing accountability of the administration.

The world's first office of Ombudsman was set up by the Swedish Parliament in 1809.⁵ It was called Ombudsman for Justice with the key objective of ensuring parliamentary protection of justice and citizens rights against any possible excesses committed by government that functioned in the name of the King. Hence looking back at the origin Ombudsman is about a check and balance against unlimited discretion of the chief executive or in the name thereof.

⁵ The remaining part of this section of the paper draws heavily from an unpublished exploratory study on *Ombudsman for Bangladesh* conducted in 2006 for Transparency International Bangladesh by S.R. Molla, to whom the author is grateful. For other sources on the subject see, *Legislative Advocacy for the Establishment of the Office of the Ombudsman in Bangladesh*, BLAST 1988; Md. Awal Hossain, "Ombudsman for Bangladesh: Theory and Reality", (mimeo) University of Rajshahi; and Website of International Ombudsman Institute.

The Swedish Ombudsman model has indeed been followed throughout the world with local adaptations. While in classical terms Ombudsman is about maladministration in public offices, it has gradually embraced private and non-government organizations. Accordingly, while Ombudsman is conceptually a Parliamentary Ombudsman for public administration appointed by the Legislative organ, in practice Ombudsman can be for any institution within or outside the Government appointed by the appropriate authority acting in public interest. Ombudsman's key jurisdiction is to receive citizen's complains and conduct fair, neutral, objective, non-partisan fact-finding, following which the Ombudsman decides if the complaint is justified and makes recommendations to the relevant authority for fair solution.

Ombudsman started to gain popularity and credence since the early 1960s, with the introduction of the office in various Commonwealth and other countries, including some European states. According to the information of International Ombudsman Institute, by 2005, the Ombudsman's office existed in 129 countries around the world.⁶ These include states with well-established democratic systems as well as those with shorter experiences of democratic experimentation.

Based on literature survey and practical experiences in various countries the following features of the Ombudsman system are notable:

1. The Ombudsman is an important and mutually reinforcing pillar in the national integrity system, complementing the work of other watchdog institutions like the Anti-corruption Commission;
2. Ombudsman is an independent and non-partisan institution established usually by the Parliament. It may also be established by the president, or an institutional authority (e.g., Board of Directors/Trustees if it is private or non-government organization);
3. Where Parliament exists the Ombudsman provides independent assistance to the legislative body, with regard to its oversight function to make the government, public institutions and officials accountable to people;
4. The Ombudsman receives complaints from aggrieved persons against concerned institutions, departments, officials and employees;
5. The main mandate of Ombudsman is to represent citizen's voices and concerns about possible abuse of power and discretion by the administration, officials and/or institution;

⁶ See Annex for a list of countries and territories with Ombudsman of one or other type. The European Union has created a European Ombudsman under the Maastricht Treaty. The first European Ombudsman was appointed in 1995.

6. The Ombudsman is headed by a non-partisan individual of high integrity, credibility, and professional experience reputed for commendable contribution in public life;
7. The Ombudsman conducts a free, fair and impartial investigation into the allegations and recommends corrective actions by the concerned authority, which may be a relevant institution of the government, the parliament, the judiciary or another watchdog body which has legal authority to take corrective measures;
8. The Ombudsman reports to its creating authority, e.g., the Parliament if it is the Parliamentary Ombudsman for Administration;
9. The Ombudsman does not have the same power as the court of law. Its recommendations may not have mandatory implications, but constitute an obligation on the part of the respective authority to take corrective action;
10. Ombudsman can be a national as well as regional, sub-national or local institution⁷;
11. There can be public as well as private and non-governmental sector Ombudsman;
12. There can be Ombudsman with omnibus jurisdiction areas such as administration, but there can also be Ombudsman with issue-based coverage⁸;
13. The Ombudsman is an expert and impartial grievance redress institution for citizens that acts informally, without delays and complexities of courts and administrative procedure, without counsel, and without expense;
14. The presence of an effective and resourceful Ombudsman has a moral and psychological value for all parties. The citizens are confident as there is a watchdog that serves as deterrent to misuse of power by the bureaucracy. The officials, on the other hand, are assured that trivial and frivolous complains without proper evidence will be dropped and no undue harassment of legal and administrative procedures will be applicable.

⁷ Some countries have the Ombudsman at both national and local levels, such as Australia, Argentina, Mexico and Spain, while others have the Ombudsman only at the local government levels, as in Canada, India and Italy.

⁸ For instance, Ombudsman for human rights, gender equality, minorities rights, disabilities rights, child rights, etc. At the same time there can be Ombudsman for specific sectors of public interest like health, education, land rights and land administration, local government, police service, tax service, as well specific institutions of national interest like public and private universities, hospitals, NGOs, etc. There can be Ombudsman for access to information, armed forces, ethical conduct of officials, protection of the environment. The ombudsman model has also been adapted for use by the private sector as a form of internal dispute resolution or to handle complaints made against the private entity, e.g., for private health care facilities, corporations and banks.

IV. OMBUDSMAN IN BANGLADESH: HOW?

As earlier indicated, Article 77 of the Constitution of Bangladesh provides that Parliament may, by law, provide for the establishment of the office of Ombudsman in order to remedy injustice or correct administrative action. The 1980 Ombudsman Act stipulates appointment of the Ombudsman by the president on recommendation of the Parliament. Neither the Constitution nor the Act prevents appointment of Ombudsman through any legal process other than Parliament. In view of the historical opportunities mentioned earlier in the paper, the institution of Ombudsman may indeed be set up by an Ordinance subject to the following.

Appointment

In the absence of the Parliament, the Ombudsman may be appointed by the President on the recommendation of a Search Committee consisting of the following:

- Chief Justice or his nominee;
- One retired Cabinet Secretary/Secretary of high integrity and credibility nominated by the Chief Executive
- President of the Supreme Court Bar Association
- An eminent citizen nominated by the Chief Executive
- Chairman of the Anti-corruption Commission

Qualifications

The Ombudsman must have proven record of being a non-partisan individual of high integrity, credibility, and professional experience reputed for commendable contribution in public life.⁹

Tenure

The Ombudsman shall hold office for **five** years (rather than three years as stipulated in the Act).

Jurisdiction

Under the 1980 Act, ministries, statutory public authorities and public officers all fall within the jurisdiction of the Ombudsman. However, the jurisdiction does not include several categories of public functionaries. Recommendation of the Law Commission may be considered which proposed widening of the mandate of Ombudsman including illegal acquisition of property by public functionaries.¹⁰

⁹The Public Administration Reform Commission (PARC) made several recommendations which include the possibility of appointing a sitting or retired Judge of the Appellate Division of the Supreme Court.

¹⁰The term 'public functionary' according to the Law Commission implies: a public officer as defined in the Code of Civil Procedure; chairman, mayor, director, member, trustee, officer or other employee of a statutory public authority or of any other authority, corporation, body or organizations established, owned, managed or controlled by the Government; Member of Parliament; and the Prime Minister, a Minister, a Minister of State or a Deputy Minister. The

Exemption

The exemption provision under Article 15 of the Act which authorizes the Government to exempt any public officer or class of public officers from the jurisdiction of the Ombudsman should be dropped.

Staff of Ombudsman

Section 9 of the Act that makes the Ombudsman operationally dependent upon the Government for deploying the staff should be reviewed to give the Ombudsman full authority and independence to recruit its staff.¹¹

Power to make rules

Article 16 should be changed to fully empower the Ombudsman to make its own rules.

Budget

The Act has made no provision of financial resources of the Ombudsman, which should have full freedom to draw its own budget to be provided under the category of “charged expenditure” of the national budget.

Commitment

Success of Ombudsman will depend on the will and capacity of the competent authority to which Ombudsman’s recommendation would be forwarded. Provisions should be made for such authorities to act upon Ombudsman’s recommendation and report back within a specified time. If the Ombudsman is satisfied with the action taken or proposed to be taken, the case shall be closed. But where Ombudsman is not satisfied a special report may be made to the higher authority including the courts.

Self-regulation

Apart from reporting requirement to the appointing authority, to ensure Ombudsman’s own transparency and accountability, internal self-regulatory mechanisms should be in place. Information on all activities including those on complains received and action taken without revealing identities should be made available and regularly updated for public information through website and other means of communication.

Law Commission of Bangladesh, *Proposal for amendment of Ombudsman Act, 1980 and enactment of new law under the title, “Forfeiture of Illegally Acquired Properties of Public Functionaries”*, 2000.

¹¹ In line with recommendations of FBCCI in connection with effective functioning of the Tax Ombudsman, provisions may be made to secure services of experts with relevant experience from the private sector, professional bodies, academe and non-governmental organizations.

V. LOOKING AHEAD

The Ombudsman should be viewed as an institution composed a Chief Ombudsman, and several others to be appointed in phases with specialized sector-specific jurisdiction, such as Ombudsman for Administration; Public Procurement Ombudsman; Education Ombudsman; Health Ombudsman; Human Rights Ombudsman; Women and Child Rights Ombudsman; Land Rights and Land Administration Ombudsman; Environment, Water and Forest Ombudsman; Local Government Ombudsman; Banking Ombudsman; Ombudsman for the Rights of Minorities & other Disadvantaged Communities; Power & Energy Ombudsman; and Labour Rights Ombudsman, etc.

The appointment of Tax Ombudsman was a welcome development. However, if the experience of the Tax Ombudsman's first year in office¹² is any indicator, it only reaffirms the fact that the Ombudsman, like any other watchdog body cannot function effectively without the necessary institutional capacity and resources, nor can it deliver without financial and operational independence free from political or administrative interference, influence, fear or favour.

Powers and jurisdiction of the Ombudsman should be clearly defined and sufficiently communicated to the members of the public to avoid over-expectation and possibility of the Ombudsman being overburdened with activities of other institutions. To avoid overlapping jurisdiction with ACC, for instance, it should be clear that Ombudsman is a watchdog against maladministration, abuse and incompetence that has caused harm or loss to the aggrieved citizen. When it comes to abuse of power for financial or other material gain it becomes jurisdiction of the ACC. There should be close mutually complementary relationship between the Ombudsman and other pillars of the national integrity system.

Finally, key to success of the Ombudsman is unqualified access to all information from the concerned institution, office or persons. Hence enactment and enforcement of Right to Information Law are critical. There should be public information and awareness campaign by all stakeholders, especially non-governmental organizations to further intensify demand for setting up of the institution of Ombudsman and making it effective functioning thereof.

¹² He is working with only 4 staff members whereas provision has been made for 41; moreover both operationally and financially, the office of Tax Ombudsman remains fully dependent on the Government; even the staff members, who are deputed from the government have allegiance to their respective ministry or department.

Annex

List of Countries having Ombudsman

Africa	Asia	Australasian & Pacific	Caribbean & Latin America	Europe
Angola, Botswana, Burkino Faso, Djibouti, Ethiopia, Gabon, Gambia, Ghana, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Tanzania, Tunisia, Uganda, Zambia, Zimbabwe	India, Indonesia, Japan, Macao, Pakistan, Philippines, South Korea, Sri Lanka, Thailand	Australia, Cook Islands, Fiji, Hong Kong, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Taiwan, Tonga, Vanuatu,	Antigua/Barbuda, Argentina, Barbados, Belize, Bermuda, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Grand Cayman, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rica, Saint Lucia, Trinidad & Tobago, Venezuela	Albania, Andora, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Union, Finland, France, Georgia, Germany, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kosovo, Kyrgyz Republic, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, Uzbekistan