

**監察院出席
第 11 屆國際監察組織(IOI)世界會議
出國報告**

出國期間：中華民國 105 年 11 月 13 日至 11 月 20 日

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壹、前言

各國監察事務依各該國政府權力分配與制衡機制設計之不同，呈現不同之面貌，有設於立法權之下者，有設於行政權之下者，亦有獨立為政府權力之外者。因側重及關注事務重心之不同，對不同議題之回應、涉入程度，自亦有所差異，雖各國均著重獨立行使監察職權及強調直接受理人民陳情，惟國情不同，往往培育出不同的監察文化，透過彼此相仿但未盡相同的監察制度間的對話，恰可為各國監察制度的自省改善及未來的進步發展提供契機。

本院自民國 83 年(即 1994 年)成為世界監察組織(International Ombudsman Institute，以下簡稱 IOI，IOI 之架構梗概詳如後述)之正式會員以來，不斷藉由協力分擔 IOI 會務、主動參與 IOI 國際會議、分區會議等，汲取各會員國監察制度之長，作為發展我國監察事務之參考。與 IOI 組織與所屬各會員國，亦逐步建立穩固篤實之情誼，進而提升我國在國際上之能見度及在國際監察事務上之話語權，對於我國外交工作之推展，亦不無助益。

今年(民國 105 年)11 月 13 日至 11 月 19 日，「第 11 屆國際監察組織世界會議(以下簡稱為本屆 IOI 世界會議)」假泰國曼谷舉辦(議程詳如附錄一)，大會主題為「監察職權的變革」(Evolution of Ombudsmanship)，本院甚為

重視，積極組織會議代表團前往參加，由張院長博雅擔任團長，包委員宗和、陳委員小紅及江委員明蒼為團員，黃秘書聖雯為隨團秘書；並由國際事務小組汪執行秘書林玲協助國際事務小組黃秘書聖雯先行聯繫外交部、駐泰國台北經濟文化辦事處及會議主辦單位，確實掌握本屆議程及相關行程細節，於行前召開 2 次會前會議並編製「監察院參加第 11 屆國際監察組織世界會議行程概覽」（如附錄二），供代表團成員閱覽。國際事務小組並先行將「105 年 11 月 15 日 IOI 會員大會議程草案」英文版提供會議代表團成員參考(附錄三)。復因適逢主辦國泰國國王浦美蓬逝世，張院長博雅除先行前往泰國駐台北貿易經濟辦事處留言弔唁外，本院復正式發弔唁信函致泰國監察使公署首席監察使 Viddahavat Rajatanun 將軍表達哀悼同泣之意(弔唁信函如附錄四)。泰國國喪期間應服膺之相關禮儀細節，本院亦秉入鄉隨俗之原則，於行前確實掌握，在在突顯本院於參與國際會議之餘，戮力協助發展我國外交之用心。

與會期間，會議代表團除參加各議程之討論外，並由張院長博雅擔任引言人(院長引言稿如附錄五)，由包委員宗和發表題目為「監察院有效保障人權之多元職能 (Multiple Functions of the Control Yuan's office to Effectively Protect Human Rights)」之論文(論文如附錄

六)，闡述我國於民國 98 年(2009 年)加入「公民與政治權利國際公約」及「經濟社會文化權利國際公約」(即「兩公約」)後，監察院就人權保障相關業務之因應調整。此外，會議代表團更專程前往駐泰國台北經濟文化辦事處巡察，聽取簡報，且與僑界代表會晤聆聽建言，確實瞭解僑情。

簡言之，參與本屆 IOI 世界會議，乃為監察院自身職掌之發展、外交工作之協助提升、僑務工作之落實服務等監察院多元職能發展目標之實踐，意義不凡。

簡要整理本次參加「第 11 屆國際監察組織世界會議(11thWorld Conference of IOI)」相關資訊如下：

- 一、 會議期間：民國 105 年 11 月 14 日至 11 月 18 日。
- 二、 主辦國：泰國。
- 三、 大會主題：監察職權的變革。
- 四、 會議代表團成員：張院長博雅(團長)、包委員宗和、陳委員小紅、江委員明蒼、黃秘書聖雯(隨團秘書)。
- 五、 發表演講主題：監察院有效保障人權之多元職能(張院長博雅引言，包委員宗和主講)。
- 六、 巡察單位：駐泰國台北經濟文化辦事處。
- 七、 會晤僑領：李淑雲女士等 14 名。

貳、國際監察組織(IOI)組織梗概

一、創設

國際監察組織 (International Ombudsman Institute, IOI)係一全球性國際非政府組織，會員以各國省級以上監察使機關為主體，成立於 1978 年，旨在促進各國監察機關互動與瞭解，促進全球監察制度發展。IOI 總部原設於加拿大艾德蒙頓亞伯達大學 (University of Alberta, Edmonton, Canada)，由該校法學院提供國際監察組織秘書單位辦公場所、圖書以及行政資源。至 2009 年第 9 屆 IOI 世界會議時，經全體會員決議，秘書處總部遷移至奧地利國家監察使辦公室，由奧國監察使辦公室提供並支援所有行政資源，並由該辦公室監察使擔任秘書長。

二、會員分佈

IOI 的成立，成為全球各國監察機關之聯繫橋樑與溝通平臺，目前約有 180 個會員體。為顧及區域特性，轄下分為 6 大地理區域，分別為：非洲區(26 個會員體)、亞洲區(21 個會員體)、澳紐及太平洋區(17 個會員體)、歐洲區(80 個會員體)、加勒比海及拉丁美洲區(24 個會員體)、北美區(14 個會員體)等，各區定期舉行區域會議。

三、組織架構與運作

IOI 由理事會(Board of Directors)代表全體會員掌理組織運作。理事會由各區域會員選出，執行委員會

(Executive Committee)則掌理一般常務會務，為組織的核心，成員包括理事長、第一副理事長、第二副理事長、財務長以及秘書長。6 大區域各設有 1 位區域理事長，並依各區域會員數目，推選 3 至 4 位理事。

參、IOI 世界會議簡介

IOI 每 4 年定期舉行 1 次世界會議，並於該會議中召開全體會員大會(General Assembly)與研討會，為該組織最高權力會議；亦賦有加強會員連繫交流，以促進全球監察制度研究、發展之目的。IOI 自成立迄今已舉辦 11 次世界會議，過往舉辦年度與地點分別為：1978 加拿大艾德蒙頓、1980 以色列耶路撒冷、1984 瑞典斯德哥爾摩、1988 澳洲坎培拉、1992 奧地利維也納、1996 阿根廷布宜諾斯艾利斯、2000 南非德班、2004 加拿大魁北克、2009 瑞典斯德哥爾摩、2012 紐西蘭威靈頓。本年(2016 年)首度於亞洲地區泰國曼谷舉行。

肆、本屆 IOI 區域性會議晤談

於 105 年 11 月 14 日正式會員大會前召開 IOI 區域性會議晤談，本院於所屬之澳紐太(APOR)區域晤談中簡要提出至本年(2016)度 6 月 30 日之重點工作摘要，包含受理陳情、調查、與糾正、彈劾之數量，展現績效成果，令在場同為 APOR 區域會員之同僚國如紐西蘭、庫克群島、巴布亞新幾內亞之監察使印象深刻。

除了區域內各會員簡要口頭報告工作紀要外，與本院互動良好的 APOR 區域理事長 Colin Neave 同時在會晤中宣布即將辭任，並提名香港申訴專員公署專員劉燕卿女士接任該職位擔任此區之理事長，同時提名紐西蘭監察使 Peter Boshier 法官出任區域理事。參與會員們皆無異議同意此次會談結論。



圖 1. 包委員宗和於澳紐太區域會議晤談中提出本院本年(2016)度迄 6 月 30 日之重點工作摘要

伍、第 11 屆國際監察組織世界會議「會員大會」紀略

本屆 IOI 世界會議於 105 年 11 月 15 日會員大會召開前，先於 11 月 13 日召開 IOI 執委會/理事會之會前會，復於 11 月 14 日召開 IOI 理事會與分區理事會後，方於 105 年 11 月 15 日召開會員大會，大會相關時程及參與資格詳如下表：

時間	項目	參與者
0830-0900	報到	
0900-0930	開幕儀式	全體大會

		參加者
0930-1500	-秘書長報告 -選舉改革 -亞洲比較研究/IOI 歷史 -IOI 財務 -IOI 策略計畫 -受威脅的監察使/曼谷宣言 -其他事項	限 IOI 會員
1530-1700	現任與新選任之委員會議	限 IOI 理事會
1800-2200	晚間集會/晚餐	全體大會參加者

本日會員大會主要重點為「選舉改革」，次要重點分別為「IOI 財務(IOI 會員費新架構)」、「IOI 策略計畫及受威脅的監察使」及「曼谷宣言」，分述如下(105 年 11 月 15 日 IOI 會員大會議程草案英文版，詳見附錄三)：

一、 IOI 選舉改革

(一) 關於電子投票部分

基於先前紐約會議中倡議改革電子投票一事，本屆 IOI 世界會議會員大會決議以「Survey Monkey」系統作為電子投票系統¹，使用於下列事項：

1. 理事長、第一副理事長、第二副理事長及財務長之選舉。

按 IOI 執行委員會係由理事長、第一副理事長、第二副理事長、財務長及秘書長共同組成，由在相關

¹見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 1 概述、第 1.1 點」。

選舉開始前完成繳交下次世界會議/大會前之年度會費者(即具投票適格 Voting members in good standing)之理事會成員選舉之²。

為確保具投票適格但無法參與會員大會會員之投票權，本屆 IOI 世界會議會員大會以 78.5% 的同意率決議採行電子投票方式，辦理理事長、第一副理事長、第二副理事長及財務長之選舉(秘書長因係 IOI 執行委員會之當然成員，故無電子投票之適用)，緩解每四年一次之選舉皆須經過數輪投票方能產生結果之費時與不便³。



圖 2. 張院長博雅於會員大會中投票，表達是否同意進行電子投票選舉 IOI 執委會成員

²見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 1 概述、第 1.1 點及第 1.3 點」。

³見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 1 概述、第 1.3 點及第 1.6 點」。



圖 3. 新的 IOI 執委會成員選舉制度

2. 區域理事長、區域理事之選舉。

是否使用電子投票，則由各區自由選擇，惟鼓勵採用⁴；若選擇不使用電子投票之區域，須將其投票結果提供予理事會，並在秘書長指定之時間內，代表參與執行委員會之投票⁵。

承前，執委會之組成將可反映更廣泛之會員意向。

(二) 關於執行委員會選舉

執行委員會共設 4 職，即理事長、第一副理事長、第二副理事長、財務長；秘書長則為執行委員會當然成員⁶。為兼顧區域平衡及決策利益，同一區域內至多 2 人得擔任

⁴見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 1 概述、第 1.1 點及第 1.5 點」。

⁵見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.1 區域理事會選舉、第 2.1.1 點」。

⁶見前揭註，註 2，及 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.2 執行委員會成員選舉、第 2.2.1 點」。

執委會成員，且理事長與第一副理事長不得來自同一區⁷。又，於各區選舉出區域理事時，即可舉行 IOI 執行委員會成員及區域理事長之選舉，惟因當選為執委會成員者，須辭任區域理事長一職，故宜先選舉出執委會成員⁸。

執行委員會採候選人提名制度，惟僅 IOI 理事會成員得出任執行委員。由秘書長受理成員提名，每位候選人可被提名於不只一個職位，惟須由具投票適格之理事會成員提名，並由 2 位具投票適格之理事會成員附議後提出⁹。每位 IOI 理事會成員僅有單一選票(即採單記不讓渡制)，投票期限為 14 日；如少於 1/4 理事會成員進行投票，則投票期間再延長 14 日¹⁰。

(執行委員會每一職位)由得票最高者當選，票數相同時，則再次投票以決定當選人¹¹。

執委會理事長選舉後即選舉副理事長，並於排除當選為理事長之人選後，製作(副理事長)候選人名單。若當選為理事長者亦獲提名參選副理事長，則與該理事長同區域之候選人僅得被提名參選「第二副理事長」。承此，選舉後得票數最高者當選為「第一副理事長」(需與理事長分

⁷見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 1 概述、第 1.7 點」。

⁸見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.1 區域理事會選舉、第 2.1.6 點」。

⁹105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.2 執行委員會成員選舉、第 2.2.1 點」。

¹⁰105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.2 執行委員會成員選舉、第 2.2.2 點」。

¹¹105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.2 執行委員會成員選舉、第 2.2.2 點」。

隸不同區域)，次高者當選為「第二副理事長」¹²。

財務長之選舉方式同前所述¹³。

如執委會理事長於兩次選舉之間出缺，則由第一副理事長遞補之，並由第二副理事長遞補第一副理事長職位¹⁴。

執行委員會理事長以外之其餘職位如於兩次選舉之間出缺，則以電子投票方式補選之。此時，如僅有一位候選人，則得以簡便方式(即以詢問理事會成員是/否同意該候選人出任之方式)，使該候選人任職。又，若該缺任產生於距下次選舉前一年內，可從缺該職或以共同商議方式暫代¹⁵。

此外，各區域章程中，亦應制定遞補「區域理事長或理事」空缺之方式¹⁶。

(三) 關於區域理事會選舉

「區域理事長」採書面候選人提名制度，候選人須為具投票適格之成員，須由一位具投票適格之成員提名，並由二位具投票適格之成員附議後，以專門之候選人提名表格提名，受理提名期間則為 28 日¹⁷。

提名候選人需簡述候選人職涯成就，與其當選後之願

¹²105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.2 執行委員會成員選舉、第 2.2.3 點」。

¹³105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.2 執行委員會成員選舉、第 2.2.4 點」。

¹⁴見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.4 臨時空缺、第 2.4.1 點」。

¹⁵見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.4 臨時空缺、第 2.4.2 點」。

¹⁶見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.4 臨時空缺、第 2.4.2 點」。

¹⁷見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.1 區域理事會選舉、第 2.1.1 點」。

景，字數以 250 字為限。每位候選人並應提供電子郵件信箱，以供投票之用¹⁸。

有關區域理事之投票，每一選舉人擁有與應選名額相同之選舉權，即選舉方式採「累積投票制」，候選人依得票數多寡依序當選。會員將對一位或多位候選人進行投票，視其區域理事之席次數量決定票數（舉例來說，若該區有三個理事席次，則會員可投三票）。投票期間為開始投票日起算至第 14 日止¹⁹。

於區域理事會之席次較 IOI 理事會席次多時，得票數在前之區域理事，得依其意願，同時依序當選為「IOI 理事會」成員，如不具意願，則由得票數在後者依序遞補²⁰。又，於各區選出區域理事時，即可舉行 IOI 執委會成員及區域理事長之選舉，惟因當選為執委會成員者，須辭任區域理事長一職，故宜先選出執委會成員²¹。

承前述，因當選為執行委員會成員需同時辭任區域理事長，該區域理事長之懸缺，亦得採電子投票方式辦理。又此時亦採候選人提名制度，提名候選人需提簡述候選人職涯成就，與其當選後之願景，字數以 250 字為限。再者，候選人須非執行委員會成員，須由一位具投票適格之成員

¹⁸見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.1 區域理事會選舉、第 2.1.2 點」。

¹⁹見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.1 區域理事會選舉、第 2.1.3 及第 2.1.4 點」。

²⁰見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.1 區域理事會選舉、第 2.1.5 點」。

²¹見前揭註，註 7。

提名，並由二位具投票適格之成員附議後提出，受理提名期間則為 14 日²²。此時每位具投票適格之理事會成員僅有單一選票(即採單記不讓渡制)，投票期限為 14 日；如僅有一位候選人，則得以簡便方式(即以詢問理事會成員是/否同意該候選人出任之方式)，使該候選人任職²³。

(四) 關於選舉委員會

在每次會員大會之最後一次會議前，IOI 理事會應指派選舉委員會，監督選舉。選舉委員會共設 6 員，宜由無參選資格之前執委會成員任之，並由 IOI 秘書長擔任主席。選舉委員會之成員亦不得擔任任何職務。各成員應監督其區域內之選舉過程，並於選舉後向選舉委員會回報²⁴。

以上選舉制度之變更，待新任 IOI 執行委員會新修正「新版 IOI 組織章程」後，國際事務小組將賡續追蹤，並確認內容是否一致。而 105 年 11 月 15 日 IOI 會員大會議程草案所附「IOI 組織章程之修訂 電子投票之實施與執委會成員選舉之普選(見附錄三)」，內容是否與新任 IOI 執行委員會新修正「新版 IOI 組織章程」一致，國際事務小組亦將持續追蹤瞭解。

(五) 本次世界會議有關理事會之選舉結果

新選任之理事會成員如下，自 2016 年 11 月 20 日上任。

²²見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.3 區域理事長選舉、第 2.3.1 點」。

²³見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 2 選舉過程、第 2.3 區域理事長選舉、第 2.3.2 點」。

²⁴見 105 年 11 月 15 日 IOI 會員大會議程草案，「第 1 概述、第 1.9 點及第 1.10 點」。

Executive Committee	IOI President Mr Peter TYNDALL (Ireland)
	IOI First Vice-President Ms Diane WELBORN (USA)
	IOI Second Vice-President Mr Chris FIELD (Australia)
	IOI Treasurer Mr Viddhavat RAJATANUN (Thailand)
	IOI Secretary General Mr Günther KRÄUTER (Austria)



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				Ms Lucia FRANCHINI (Italy)	
				Mr Peter TYNDALL (Ireland)	

二、 IOI 財務(IOI 會員費新架構)

本屆 IOI 世界會議決議 IOI 理事會所制定之會員費收費架構，以能公平反映會員之預算能力²⁵為原則，會員分級簡表如下：

等 級	105-106 年會費
級別一：104-105 年預算超過 600 萬國際元之會員	1500 歐元
級別二：104-105 年預算介於 150-600 萬國際元之會員	750 歐元
級別三：104-105 年預算低於 150 萬國際元之會員	375 歐元

國際元：在特定時間與美元有相同購買力的假設通貨單位。世界銀行公布之轉換工具：<http://data.worldbank.org/indicator/PA.NUS.PPP>

會員僅需在上開會費新制架構之第一年選擇級別，日後若因預算變更因素，可申請移級；未選擇級別者，則自動列為「級別二」。

建議每 4 年調整會費費率，以反映通貨膨脹。

會費新制下，仍有 IOI 章程第 13 條第 8 款「申請部分或全部免除會費條款」之適用。

又，我國於會費新制下，現為「級別二」之會員。

三、 IOI 策略計畫及受威脅的監察使²⁶

本屆 IOI 世界會議決議 IOI 於 105 年至 109 年之策略計畫(詳下述)，IOI 理事會及執行委員會肩負密切關注時局發展，務實推動及執行此等策略計畫之責任與義務。

²⁵計算公式如 105 年 11 月 15 日 IOI 會員大會議程草案所附「貳、有關會員費新架構之建議文件，附件一(見附錄三)」。

²⁶詳見 105 年 11 月 15 日 IOI 會員大會議程草案所附「參、IOI 策略計畫及受威脅的監察使」(見附錄三)。

願景：

1. 強化監察使之概念
2. 鼓勵創設監察組織或機構。
3. 舉辦相關會議或訓練課程，有利資訊共享或交換。
4. 贊助與監察使相關之區域研究計畫。
5. 支持面臨威脅或挑戰之監察使。
6. 加強與重要且關鍵之國際監察組織或利害關係人(團體)等之互動。
7. 從更包容與多元的角度，深入解決及探討與全球性之監察使相關議題。

策略目標：

1. 擴大 IOI 成員組成，加強與相關區域組織或專業監察使簽署 MOU 合作計畫。
2. 透過與重要國際監察或人權相關組織之對話與合作，以幫助並支持受威脅的監察使。
3. 積極辦理監察使相關訓練課程，以達資訊共享與交換。
4. 強化傳播、出版及學術論文之重要性，以提升監察使在國際組織之角色與地位。
5. 維持健全的財務狀況，策略性累積 IOI 資金，以提供會員最佳之服務與協助。
6. 迎接監察使所面臨之各項新的挑戰(例如：監察使

專業化及私有化問題、監察使面臨之威脅與挑戰)。

本屆 IOI 世界會議中並提出「波蘭監察使公署於行使監察職權遭受掣肘案」之調查報告，說明原波蘭監察使公署得向憲法法庭提案，惟近年來波蘭政府逐步立法取消獨立行使職權機關(包括波蘭監察使公署)之免責權利，並刪減預算，進而使波蘭監察使公署於行使職權時，面臨許多新的威脅及挑戰，凸顯波蘭政府對監察使、憲法、相關國際慣例及民主法治之不重視。會中並做出如下結論：

1. 波蘭監察使公署是符合國際法與國際慣例，並致力於保障人民權益、為改善與提升政府行政效能而努力的監察使組織。
2. 波蘭監察使公署的職權行使，不應受到立法、行政甚或是政治等外力的介入與干擾。
3. 當代監察使職權行使應是多元且議題廣泛的，削減監察職權是民主倒退的表現。
4. 波蘭的司法風波應儘速落幕，俾使監察使公署履行憲法所賦予之任務與職責。
5. IOI 強烈呼籲，請波蘭政府恪守相關國際規範行事；IOI 也將提供波蘭監察使公署所有必要之協助。
6. IOI 將提交此份調查報告予波蘭有關當局，以及上述國際相關監察或人權組織。

四、曼谷宣言²⁷

本屆 IOI 世界會議並做出曼谷宣言，摘略如下：

重申起源於瑞典斯堪地那維亞的監察初衷，包括監察使保障人權的精神、確保良好治理的核心原則、致力貢獻於透明化、民主化、且能及時且通盤的行使調查，不受威脅影響也盡力給予同僚支持。

吾等需牢記在心，以泰國的現今情況，IOI 強烈地

—譴責任何對人權的危害攻擊，並表達對泰國人民與監察使的支持，無論是現任監察使與公署本身。

—呼籲泰國政府確保不會發生任何人權危害，且避免限制言論、集會及傳播自由。

—驅策泰國政府即刻透過舉行自由公平的選舉，恢復泰國民主。

陸、本屆 IOI 世界會議演講摘要(擇要摘錄)

本屆 IOI 世界會議於 105 年 11 月 16 日開幕式舉行後，即以「監察職權的變革」為題進行大會演說，亞洲地區之監察制度，較側重於防貪堵弊，泰國代表及香港代表分別於會議中各自介紹其監察制度之歷史進程。其中，「泰國監察使公署(Office of the Ombudsman)」源於「宮門前繫鈴陳情制度」，百姓於王宮門外繫鈴，泰皇聽聞即

²⁷詳見 105 年 11 月 15 日 IOI 會員大會議程草案所附「參、IOI 策略計畫及受威脅的監察使」(見附錄三)。

現身聆聽冤屈，後因百姓陳情案日益增多，泰皇無力負荷，方設專職監察使代行，於 1974 年首次於憲法中明文設置「國會監察使」，後因軍事政變更迭，於 2007 年頒布現行憲法，明文規定「國會監察使」為獨立機構，負責監督行政及司法機關，並定期向國會提出建言。渠主要職責在確保法治及善治原則，並保障泰國憲法所賦予個人之權利與自由。而「香港申訴專員公署(Office of the Ombudsman, Hong Kong)」則設置於 1989 年，前身為港英政府行政事務申訴專員公署，回歸中國後，於 2001 年設立專法確立申訴專員公署為直接向香港政府行政長官負責之法定機構，獨立於政府之外，專責監察政府運作，負責處理及解決因政府部門及公營運機構行政失當所引起之不滿和問題。各國監察使發展淵源有所不同，饒富趣味。

柒、本屆 IOI 世界會議分組研討之一(簡述本院所發表「監察院有效保障人權之多元職能」)

本屆 IOI 世界會議分組研討會中特由張院長博雅為引言人，並由本院包委員宗和發表題目為「監察院有效保障人權之多元職能」專題演講，精簡扼要地闡述我國監察院發展多元職能政策，並引若干監察案例作為佐證，內容略述如下：

一、人權保障之趨勢浪潮

近年人權保障已蔚為國際性之議題，各國紛紛制定與人權保障相關之法案，並建置人權保障及推動之專責組織。鑒於 1993 年聯合國起草《巴黎原則》，鼓勵各國建立具備 6 大特色即：(1)於法律或憲法上具備獨立地位、(2)由多元成員組成、(3)具有自主性、(4)具足夠之調查權、(5)具足夠之資源及(6)與國際接軌等特色之人權組織，國內遂有倡議應設置「國際人權委員會」以服膺《巴黎原則》者，監察院就此一意見亦進行討論，蓋監察院於國內人權保障議題上，扮演十分吃重之角色，此部分將略述如後。

二、監察院之傳統角色與功能

我國監察院源自秦、漢代之巡迴御史制度，巡迴御史官代天子巡狩，查探民情並接受百姓陳情，若干角色功能於中華民國建國後，為監察院所承繼。

民國建立後，監察權為憲法的五權之一，與立法、行政、司法、考試權並立，相互分權而制衡，機關位階為「院」(按我國中央政府組織結構，「院」級為最高層級)，監察院具有預防政府組織悖離法律，並具有促使政府施行善治服膺法治(rule of law)之職責。

我國監察院採委員會制，包含監察院正、副院長，監察委員共計 29 人，任期均為 6 年，由總統提名，立法院同意任命之，因而具有間接之民意基礎，各監委皆

獨立行使職權。

又，監察院人員編制約 450 員，協助各監委獨立行使職權，為堅強厚實之支援及後盾。

監察院主要職責如下：

1. 調查行政不彰
2. 彈劾違法失職之公僕
3. 糾舉無能懈怠之政府官員
4. 糾正無效之行政措施
5. 對效率不彰之政府機關提出建言
6. 受理公職人員財產申報
7. 處理利益衝突迴避
8. 受理政治獻金申報
9. 監督國家考試流程
10. 政府及其所屬財務之審計

三、監察院之多元職能

自民國 89 年(2000 年)起，監察院設置「人權保護委員會」，功能包含：調查並揭露人權遭迫害之情形、建議編列與人權相關之預算案、監督各級政府是否履踐國際人權規範、協調國內外人權團體、舉辦各類人權事務之研討會及出版專題/系列性人權調查報告。

與其他國之監察機關相同，監察院對於我國各級政府之失職事項進行調查，監察院接獲百姓陳情案件數，

每年約為 15,000 件，部分案件經謹慎評估及分析後，由監察委員進行調查。監察委員亦得於調查政府缺失或病徵後，主動於媒體上揭露調查結果。

又，監察院於 104 年(2015 年)完成 210 件調查報告，其中，114 件與人權議題相關，占比為 54.3%。下表為此類人權相關案件之類型：

案件性質	調查完成	
	2015 年 (1 月至 12 月)	
	案件數	百分比(%)
總數	210	100.0
非關人權之調查案	96	45.7
人權調查案	114	54.3
1. 自由權	4	1.9
2. 平等權	3	1.4
3. 生存權及健康權	20	9.5
4. 工作權	10	4.8
5. 財產權	27	12.9
6. 參政權	1	0.5
7. 司法正義	14	6.6
8. 文化權	4	1.9
9. 教育權	6	2.9
10. 環境權	12	5.7
11. 社會保障	6	2.9
12. 其他人權	7	3.3

資料來源：監察院。

四、人權事實上保護者：一個獨特的功能

多數人權受迫害案件與政府相關，且多數調查文件

直指政府失職或施政錯誤。於機關首長使用行政權力不當時，即可能侵害人權，渠可能直接侵害人權，亦可能對人權濫用之案件無動於衷。一般稱為「第三代人權(third generation of human rights)或集體權(collective rights)」者，包含經濟、社會文化，如同其他已發展的基本權，此類權利亦需政府之保護及積極介入。因此，藉由監督政府此類保護及積極介入第三代人權之行為，監察院從中得發揮保護個人基本權及促成集體權發展之功能。

監察權為源自傳統中國的既有系統，被賦予成就特殊任務的使命：彈劾任何嚴重違反律法的公務員，儘管監察院不像其他監察組織一樣，會以協商、調解或談判方式尋求爭議之解決。

五、案例研討：舉出監察院如何行使彈劾職權兩案例，以有效提升人權保障

擇案 1：少年輔育院虐待案(案件編號 1040830925)

擇案 2：國軍下士洪仲丘的死亡揭露國軍對人權的侵害(案件編號 1030830891)

六、結論

全球皆熱衷關注發展中的保障人權議題，特別是公部門被高度期待需倡議並保障人權。此議題需要跨部會的一致努

力與妥善處理。儘管各國有不同的歷史、政治、法制系統，與因不同名稱或組織架構的國家人權機構產生對人權保障不同的優先順序，監察機關都在其中扮演推動人權保障非常重要的角色。藉由致力於獨立且公正的處理人民陳情，監察機關可不改初衷的發揮監察角色本質，有效地保障人權。

上開演講使與會各國得以明瞭我國監察院職務發展現況及展望，並紛紛表達高度讚賞之意，對我國監察權行使及監察外交事務之推動，有相當大的幫助。



圖 4. 張院長博雅與包委員宗和於會中發表引言與演講
捌、本屆 IOI 世界會議分組研討之二(各國監察使就大會主題
「監察職權的變革」(Evolution of Ombudsmanship)所提
出之觀點與意見)

本屆 IOI 世界會議，與會之各國監察使就大會主題「監察職權的變革」(Evolution of Ombudsmanship)進行廣泛而深入的討論與意見交流，綜合整理各國監察使意見如下：

1. 制衡(check and balance)

為確保監察權之獨立行使，須具備足夠之權能以制衡行政權、立法權甚至司法權，監察權宜定位為憲法上之獨立一權(如我國)。

就此議題，非洲監察研究中心主任 Arlene Brock 亦提出「監察使與人權的合流」一文加以分析，指出傳統分立已不可行之結論。

2. 接受陳情(collect people complaints)

監督施政、促進善政為監察權之目的所繫，對於政府施政所及之對象百姓，監察權自應直接接觸、聆聽民意。無法與人民同在之監察權，不啻為政府之樣板及橡皮圖章。

如何便利陳情管道，使人民以更簡易之方式接近使用監察機構為本屆 IOI 世界會議分組研討會熱門議題之一，如亞洲區理事長/巴基斯坦監察使 Salman Faruqi、塞爾維亞監察使 Vladana Jovic 均發表「與當地公共圖書館合作，提供公民接近監察機構的簡易電子化通路」之演講；比利時撫恤金監察使 Jean Marie Hannedu 則提出「新

的後電子化社會，新的比利時撫恤金監察使」一文供做討論，其他與會者如賴索托監察使 Leshele Able Thoahlane 等亦紛紛發表意見，討論熱烈踴躍。

3. 維護憲法

政府各機關具有忠誠執行憲法之義務，蓋憲法為人民意志最高共識之展現，作為保護人權、聆聽民意之監察權，自當竭力維護憲法文本所展現之精神與所捍衛之價值。

4. 促進政治改革

政治改革除由民意機關(如國會)發動外，於政府行政及司法體制內，亦可自發性地進行改革，而監察權對於同為政府憲政體制下之行政權和司法權，得以各種方式監督其行政責任，提供建議以促請改革。

5. 公正公平之監察

監察權之自我評量亦為達成公正監察不可或缺之環節，就此議題，本屆 IOI 世界會議分組討論中，加拿大 Hydro One 監察使 Fiona Crean 提出「以多倫多監察使職權研究，發展監察使工作的影響評估概念」、非洲監察使研究機構主任 Arlene Brock 提出「非洲監察使法制系統的比較分析，監察使概念的適應性範例」，及伊朗調查組織總會會長 H.E. Justice Naser Seraj 提出「監察使工作的評量與演進」一文對此議題進行爬梳，值得借鏡參考。

6. 反貪腐

貪腐於歷朝歷代均為施政之大敵，亦為百姓對政府失去信賴之肇因。伴隨貪腐的往往為失能、不公平，甚至剝削百姓，為政府體制中之毒瘤。

對於反貪腐議題，本屆 IOI 世界會議分組討論中，國際反貪腐學會 Marin Kreutner 特別發表「監察使與反貪職能」一文進行闡述。

7. 獨立公正之國家機構

監察權必須保持獨立性並摒除任何掣肘，其公正性方能期待。而 IOI 國際監察組織存在的功能之一，即為透過國際組織之呼籲、相互支援，使任何國家內監察權行使遭受阻礙之情形，能有所改善。

此次 IOI 世界會議分組討論亦制定「危機年代下受威脅之監察使」之題綱由與會各國代表進行討論，IOI 理事長/納米比亞監察使 John Walters 發表「在危機時代 IOI 支持同僚的政策與角色-近期的成果」一文、荷屬聖馬丁島監察使 Nilda Arduin 提出「受威脅監察使-加勒比海的情形」與會員分享、百慕達監察使 Victoria Pearman 則撰寫「受威脅的監察使-回應不當與錯置的政府官員批評」，而波蘭人權專員 Adam Bodnar 則強調 IOI 支持的影響而提出「IOI 波蘭真相調查任務-IOI 支持的影響」進行報告。

8. 人權保障

人權保障為監察權之核心目的之一，亦為 IOI 會議中歷來討論之重心所在。本屆會議中，各會員先後提出專論互相交流，如北愛爾蘭公共服務監察使 Marie Anderson 撰寫「以人權為導向的監察使處理陳情工作」、加拿大亞伯達大學法律學院 Linda Reif 教授撰寫「人權監察機構-益處挑戰與限制」、墨西哥國家人權委員會執行秘書長 Mtra. Consuelo Olvera Treviño 提出「監察機構與新的國際行事規範：以人權觀點的永續發展目標」一文及國家聯盟機構世界聯盟特使 Florence Simbiri-Jaoko 等，均紛紛就「以人權為導向之監察使工作」議題參與討論，巴布亞新幾內亞首席監察使 Michael Dick 更分享了巴布亞新幾內亞之自身經驗，與會者均獲益甚多。

值得一提的是，11 月 17 日會議後，禁止酷刑協會 (APT)特別邀請所有具有國家防治機制(NPM)職能之監察使機構參與午間會議，就監控防治領域交換經驗與想法，該會 Jeehan Mahmood 先生並於當日下午分組討論中發表「以監察使作為國家防治機制」一文，使人權保障議題更加完備。

9. 促成善治(good governance)

政府職能擴張為各國皆難避免之狀況，監察權應如何因應此等擴張，而使監察之目的「促成善治」持續達成，實值得討論，因此本屆 IOI 世界會議特別設定「多樣

職能的挑戰」專題，使各會員進行分享交流，克羅埃西亞副監察使 Lidija Lukina Kezić 提出「克羅埃西亞的多樣職能監察使工作與國家人權委員會」一文加以爬梳、肯亞監察使 Otiende Amollo、泰國前首席監察使 Siracha Vongsarayankura 均紛紛闡述己見，阿根廷聖菲省監察員 Raúl Lamberto 並就「兒童保護監察使」之議題進行專論分享；京都大學法學院 Mahito Shindo 亦就環境領域提出「環境領域監察使的角色與功能」一文詳加論述。

10. 強化藉由媒體媒介與民眾互動之功能

接受陳情為監察工作之根本，為使民眾知悉自身權利，並使監察工作有機會關注百姓生活各個環節，以實際掌握政府施政對百姓之良莠影響，主動監察應予強調，故除定時巡迴監察外，藉由媒體工作，適時向人民呈現監察成效亦為良善之方式，監察陳情之管道越為人民所知，監察成效則越為顯著。

本屆 IOI 世界會議 11 月 18 日分組討論即集中在此議題，挪威國會監察使 Aage Thor Falkanger 發表「監察組織使用公關媒體之策略與經驗」、奧地利監察使 Günther Kräuter 提出「奧地利監察使的每周電視秀」、義大利托斯卡納監察使 Lucia Franchini 發表「社交網路與資訊科技的重要性」、立陶宛監察署 Vytautas Valentinavicius 提出「運用媒體宣傳監察使的人權保障職務」、泰國監察使公署秘

書長 Raksagecha Chaechai 發表「透過大眾媒體的主動監察途徑」及印尼監察使 Amzulian Rifai 教授發表「媒體策略與印尼監察機構的經驗」等 6 篇專論進行分析，討論十分熱烈，適時透過與具備「第四權」特色之媒體合作，監察權所能觸及之範圍將更為廣闊，所能發揮之影響力亦將更為深遠。

11. 提升問題處理反應及縮短解決問題時程

但凡組織皆有組織龐大後反應速度降低之困境，監察權自不例外，改善方式或可參考行政革新案例，例如電子化之公文系統之推動、簡便核章之科層流程、設置單一窗口受理案件或加強單位間協同解決問題之能力等。

本屆 IOI 世界會議分組討論中，韓國反貪腐與人權委員會 Keun-Ho Shin 則提出建構「E 化人民系統：一應俱全的與民溝通系統」之觀點頗值借鏡參考，以電子化(E 化)之方式整合監察系統，打造受理案件、分案、責成、進度查詢、與後臺資料庫連結查詢，日後甚至與其他行政部會之電子化系統進行水平連結，凡此在監察案件之處理上必能大幅縮短處理時程，整體性及全面性亦能大幅提升，但必須特別指出的是，網際網路影響力乃無遠弗屆，監察系統電子化之後，對於個人資料保護及資訊安全維護之要求，必須提升至最高層級，方能避免享用

電子化便利性之際，卻因疏忽而損害人民之權益。

12. 強化與非政府組織(NGO)之合作

監察權因職司「監察」，故本質上具備開放性格，並對問題之處理，呈現彈性及適應性，因此能夠適時扮演非政府組織與政府之間溝通的橋梁，亦能藉由本身監察職權之發揮，促使政府對於非政府組織給予協助或共同解決新時代衍生之新型問題(例如全球性環境問題之區域分工、網際網路不當使用或阻止病毒傳播、導正媒體亂象等)，而相較於政府機關受制於對各自職權法制上「依法行政」之要求及束縛，行政單位對前開問題之反應較慢，甚至無法可管、緩不濟急。監察權此時恰可扮演溝通整合意見，並給予行政單位建議之角色，亦能促成善治之實現。

針對「與公民社會合作」此一議題，奧地利監察使理事會 Gertrude Brinek 博士、烏克蘭國會辦公室人權專會 Mykhailo Chaplyga 分別於會議中分享奧地利及烏克蘭之經驗，科索沃監察使 Hilmi Jashari、泰國發展研究機構 TDRI 研究主任 Duenden Nikomborirak、IOI 第一副理事長/美國俄亥俄州道頓-蒙哥馬利縣監察使 Diane Welborn 等，亦紛紛闡述己見、參與討論。

13. 建置公開、透明、標準化(SOP)之陳情管道

標準化，乃摒除人為因素干擾監察權行使之不二法

門，也只有在標準化之要求下，陳情案件處理之速度方能有所提升；透明及公開化，乃贏得人民信賴之關鍵因素，陳情案件自受理至結案，每個環節均隨時得供人民檢視，人民對監察權之信賴自然會有所提升。進而，人民方願意放心地說出更多對政府施政的不滿或提供施政建言，促成政府善治目標之實現。陳情與監察，一體共生環環相扣，監察之道，求百姓放心陳情而已。

本屆 IOI 世界會議分組研討中，對於陳情管道之暢通、標準化及便利性之建置，均有著墨，例如愛爾蘭監察使辦公室主任 Jacqui McCrum 即提出「建構讓公共服務提供者使用之新專案管理系統計畫及受理陳情管道」之構想；韓國反貪腐與人權委員會 Keun-Ho Shin 則提出建構「E 化人民系統：一應俱全的與民溝通系統」等，均值得我國監察制度日後革新精進之參考。

14. 調查官之教育訓練與養成

對於前述新時代所衍生之新型問題，監察權自應與時俱進，因此監察調查官之養成，需具備廣泛之知識背景，方能確實查核施政有何缺失，因此，監察調查官之訓練，面向需廣泛、內容須具深度，對問題之發現，須具備敏銳度，並且對於監察工作須保持熱忱與堅持。亦即，調查官不應僅以考試制度加以育成，辦理案件經驗之累積，方為調查官養成之核心。

如何避免斷層或青黃不接？如何避免故步自封、辦案技巧落後等，乃各國監察權皆面臨之問題。此等問題可藉由 IOI 國際監察組織成員相互間之經驗交流而獲啟發。此次 IOI 世界會議分組討論中，IOI 財務長/西澳監察使 Chris Field 撰寫「給新設或發展中監察機構的新手線上手冊」一文供作分享。

總結上開各國各項意見或展望，於我國監察院現有職能中皆可覓得若干蹤影。如前所述，我國監察權奠基於憲法下之五權之一，位階高而充分享有獨立性，行使職權時所受掣肘較少，故無政府科層體制先天之包袱，更因職權內容為「監察」之開放性本質，因此先天即具有開創之機關性格，於全球化、去政府化之潮流中，反而能夠做為非政府組織與國家互動時之橋梁，並能就較新之議題保持彈性並快速做出反應，奧地利等國家之經驗值得我國借鏡。而監察院尚可藉由巡迴監察，主動發掘政府潛在失能之處，直接聆聽民意、檢視體制缺失，於整合可行方案後，直接對政府提出建言，促成善治之實踐。

再者，由本屆 IOI 世界會議分組討論之議題以觀，亦可知「監察」如同「行政」般，在法制上逐漸出現「監察總論」與「監察各論」之分流。換言之，監察本質、權源、目標宗旨及行使監察職權之基本原則等議題，乃監察總論須加以處理之範疇；而對於如何針對各類行政行為有無缺失進行監

察、對於新型行政行為之施政違失，監察權如何因應等，則應逐步建構與行政各論相對應之監察分論，例如針對環境行政之缺失，對應者即為環境監察；對於交通行政之缺失，則對應交通監察。如此，方能避免掛一漏萬或無從深入之弊。在監察分論化及功能取向化之潮流中，亦可推知本院日後必須戮力培養知識與經驗兼備之調查官人才，蓋政府職能日益擴張、分工日趨細緻，加以第三代人權或集體權意識蓬勃發展，在此變局下，本院自應加緊腳步，培養足以掌握時代脈動之團隊，方能在新時代中持續實踐「促成善治」之目標。

玖、本屆 IOI 世界會議我國代表團與各會員國成員互動側寫

IOI 會員來自全球 121 個國家及地區，約有 180 個組織，分為非洲區、亞洲區、澳紐及太平洋區、加勒比海及拉丁美洲區、歐洲區、北美區等六區。此次報名參加第 11 屆 IOI 世界會議之組織約 140 個，但因泰歐近期關係低迷，故歐洲多國缺席，實際與會之組織約為 80 個，報名出席者約為 173 名。

本院訪團於會議期間與多位 IOI 執委會成員、各區域理事長、抑或各國監察使互動密切，相談甚歡，談話中交換雙方之職權行使經驗，同時邀請外賓來我國訪問，藉機促進監察院與各國監察使間的友善互動。



圖 5. 會議歡迎晚宴適逢泰國水燈節，張院長博雅與瑞典首席監察使 Elisabeth Rynning 一同於遊艇上施放水燈



圖 6. 張院長博雅於歡迎晚宴中與執委會成員相談甚歡



圖 7. IOI 理事長 John Walters 與本次 IOI 世界會議主辦單位泰國監察使公署首席監察使 Viddhavat Rajatanun 將軍於歡迎晚宴中與本院訪團成員寒暄致意



圖 8. 張院長博雅與陳委員小紅與加拿大亞伯達大學法律學院 Linda Reif 教授合影

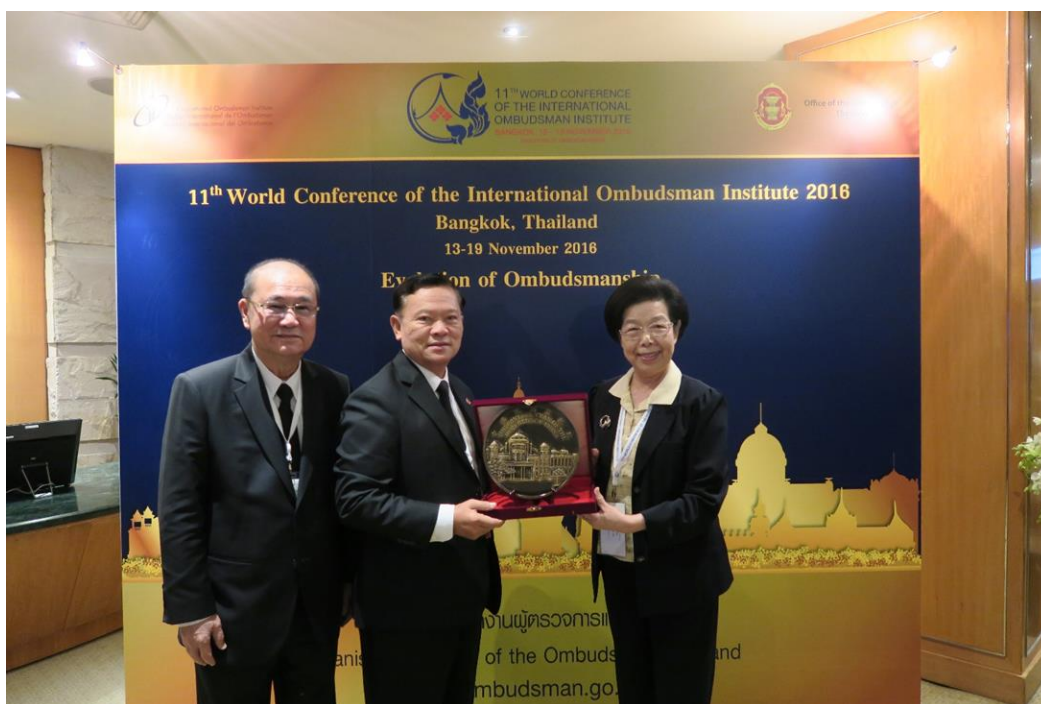


圖 9. 張院長致贈本院院景銅盤予本次會議主辦單位泰國監察使公署首席監察使 Viddhavat Rajatanun 將軍



圖 10. 監察院代表團與本次會議主辦單位泰國監察使公署首席監察使 Viddhavat Rajatanun 將軍及監察使 Boon Tapanadul 合影

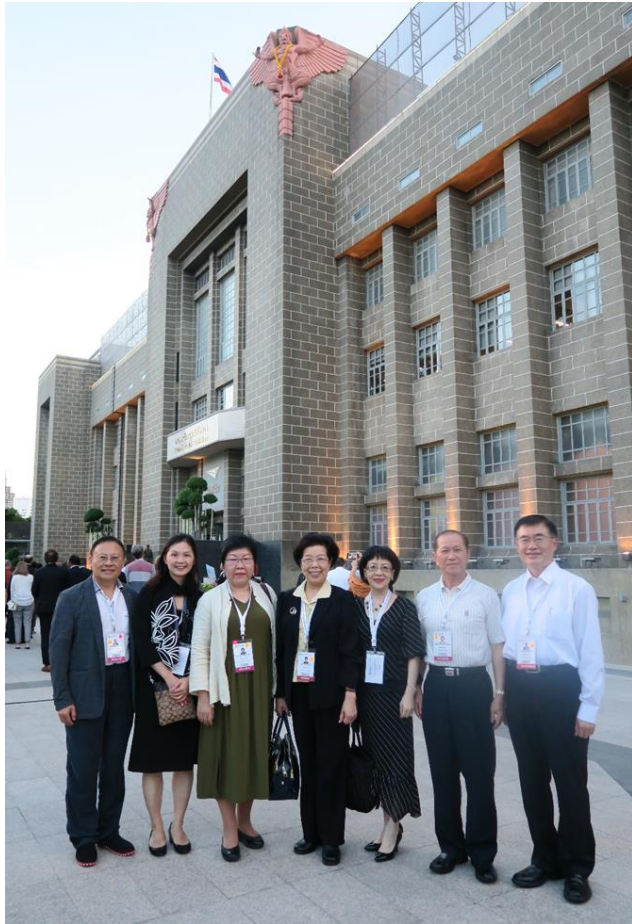


圖 11. 本院代表團於泰國郵政廳前與香港代表團合影



圖 12. 監察院代表團致贈本院百年紀念郵摺予泰國監察使公署秘書長 Raksagecha Chaechai



圖 13. 監察院代表團致贈本院百年紀念郵摺予 IOI 秘書長 Günther Kräuter



圖 14. IOI 秘書長 Günther Kräuter 與張院長及包委員合影

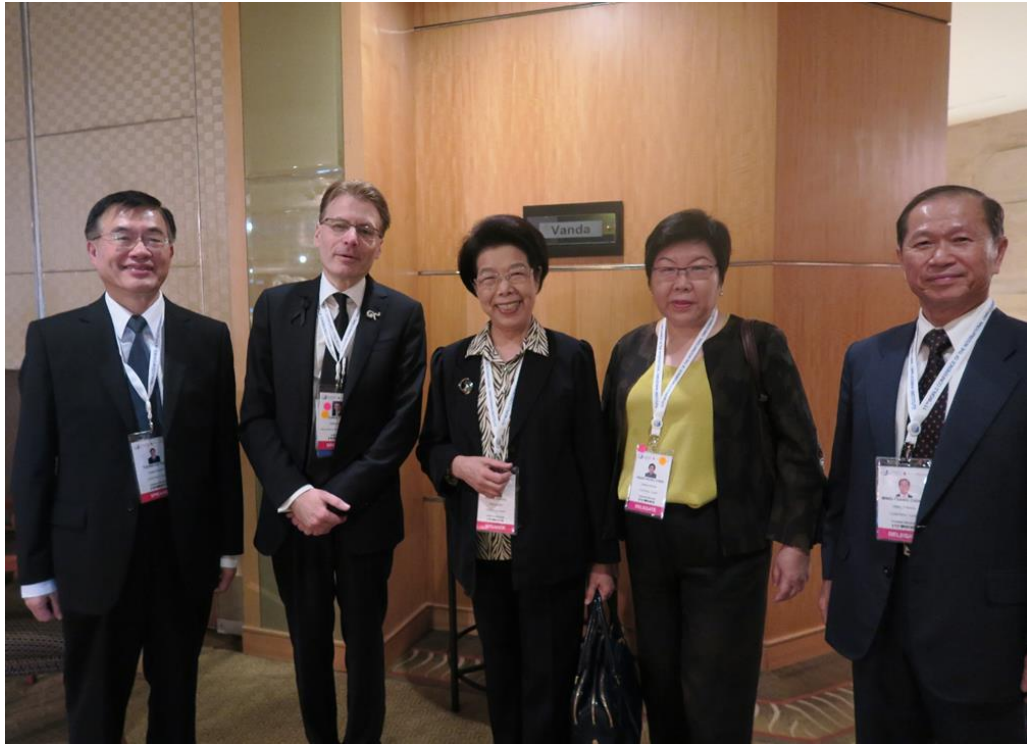


圖 15.本院代表團與 IOI 財務長 Chris Field 合影



圖 16. IOI 理事長 John Walters 於大會結束後與本訪團晤敘

壹拾、巡察「駐泰國台北經濟文化辦事處」之過程簡述

本屆 IOI 世界會議代表團特排定於 105 年 11 月 14 日前往「駐泰國台北經濟文化辦事處」巡察，並由駐泰國謝

大使武樵親自主持業務簡報，前後歷時約 3 小時，過程扼要記載如下：

一、首先為駐泰同仁業務簡報，內容遍及泰國國內之政治概況(包含憲政體制、王位繼承問題、泰皇蒲美蓬崩逝後泰國內政之走向及泰國平衡外交之政策取向等)、泰國之經濟概況、臺泰雙邊關係、新南向政策重點工作及駐泰辦事處未來之工作重點等五大部分，內容全面周詳，張院長博雅及與會團員皆對於駐泰同仁切實掌握泰國內政外交情事，予以高度肯定。聆聽業務簡報後，復由會議代表團包委員宗和、江委員明蒼及陳委員小紅先後提問，謝大使武樵於現場充分回覆²⁸並交換意見，過程融洽。

二、IOI 會議代表團返國後，駐泰國代表處更於 105 年 11 月 25 日專程以電報方式回覆本院《張院長博雅視察駐泰國代表處詢答情形暨相關書面資料》，針對巡察當日委員提問回答不足之處，逐一加以回覆，使本院對駐館工作之掌握更為詳實。

²⁸ 當日巡察錄音檔案，另由國際事務小組開立檔案妥為保存。



圖 18. 監察院代表團聽取業務簡報後與駐泰國台北經濟文化辦事處謝大使武樵及同仁們合影

壹拾壹、會晤僑領、掌握僑情及僑界建言之精要報導

本院代表團於參加本屆 IOI 世界會議期間，特於 105 年 11 月 13 日與前僑委李淑雲女士會晤、於 11 月 17 日與 10 位僑領晤敘，聽取僑民於泰國當地經營與生活狀況、有無需政府協助事宜或對政府之建言等。其中二點為真知灼見，深值本院於返國後協調相關機關提供後續協助：

一、請求於駐泰國台北經濟文化辦事處派駐觀光局駐外人員。

此因臺泰觀光交流日盛，人數漸多，故有派觀光局駐外人員宣揚觀光、辦理簽證、提供諮詢或旅行協

助之實需。

二、 請求勞動部長期蒐集「在臺泰籍勞工」於臺灣之工作情形，予以追蹤觀察，彙整後提供泰國僑商之用。

此係因於泰國經商之僑民甚眾，而曾於臺灣任職謀事之泰籍勞工，因曾與臺籍雇主合作，彼此較為熟稔，該等泰籍勞工於返回泰國後，如能直接與當地僑商所經營之事業接軌合作，即得免去僑商在地招募新工需時磨合溝通之不便。本院將後續照會勞動事務相關機關，建議討論是否開放實施。



圖 19. 本院訪團於 105 年 11 月 13 日晚間與前僑務委員李淑雲、蘇林妙芬，及世界華人工商婦女企管協會泰國分會會長黃受合女士等人晤敘



圖 20. 本院訪團於 105 年 11 月 17 日晚間與泰國當地僑領與駐泰國台北經濟文化辦事處同仁晤敘



圖 21. 本院訪團於 105 年 11 月 19 日巡訪泰國暹邏代天宮



圖 22. 本院訪團於 105 年 11 月 19 日巡訪泰國臺灣會館

壹拾貳、結論與建議

如同前言所述，各國之監察事務依各該國政府權力分配與制衡機制設計之不同，而呈現出不同之面貌，然而，為確保政府施政之誠正性(integrity)、促進政府善治，避免行政部門發生不良施政及貪污腐化戕害人民等情事，位列我國憲法五權之一的監察權，其法律位階崇高，因而得以確保監察權行使之獨立性與超然性，此一特色更可使監察院參與國際監察事務時，有充分之話語權及經驗得與各國監察使分享交流，進而提高我國於國際外交場域之能見度。本院行使監察權，因而間接具有促進外交工作成效之作用。

而由本屆 IOI 世界會議分組討論之議題以觀，亦可知

「監察」如同「行政」般，在法制上逐漸出現「監察總論」與「監察各論」之分流，亦即，就典型的監察之本質、權源、目標宗旨及行使監察職權之基本原則等議題，乃監察總論須加以處理之範疇；而對於如何針對各類行政行為有無缺失進行監察、對於新型行政行為之施政違失，監察權如何因應等，則應逐步建構與行政各論相對應之監察分論，例如針對環境行政之缺失，對應者即為環境監察、對於交通行政之缺失，則對應交通監察，如此，方能避免掛一漏萬或無從深入之弊。自然，各論監察逐步建置之同時，調查官之建置與培訓，亦須區分專才、分組訓練，方能使監察工作之質量，再次獲得提升。

又，本次參與第 11 屆 IOI 世界會議，會議代表團專程巡察駐泰辦事處，聽取簡報，於回國後基於憲法忠誠及機關相互協力等義務，亦得將第一線外交人員或僑民之期盼，適時反映相關部會並敦促予以支援，對外交工作之協力及僑胞向心力之促進，均亦有所助益。

承此，監察權之行使業已超脫固有監察權之範疇而具時代新意，除人權保障功能外，更衍生出促進第三代人權發展、協助外交工作推展及與行政權協同建構人權順遂發展之積極功能。

以三權分立之思維檢視位列憲法五權之監察權，此等憲政爭議是否具有實益尚有疑義，蓋在人權保障及實

踐兩公約之思潮下，監察權除作為伸張人民權益管道之一外，亦已開創出前開新時代之新功能，監察權亦因時代演進而不斷蛻變前行。

壹拾參、處理意見

- 一、本報告壹拾壹、一之僑界建言，函請外交部、觀光局、僑務委員會參考。
- 二、本報告壹拾壹、二之僑界建言，函請勞動部、觀光局、僑務委員會參考。

壹拾肆、附錄

附錄一：第 11 屆 IOI 世界會議議程中譯版

附錄二：監察院參加第 11 屆國際監察組織世界會議行程概覽

附錄三：105 年 11 月 15 日 IOI 會員大會議程草案英文版

附錄四：本院致泰國監察使公署之泰國國殤弔唁函

附錄五：第 11 屆 IOI 世界會議張院長博雅引言稿

附錄六：論文「監察院有效保障人權之多元職能」

第 11 屆國際監察組織(IOI)世界會議議程 中譯版

11 月 13 日 (星期日) IOI 執委會/理事會會前會		
時間	項目	參與者
0900-1200	IOI 執委會會議	限 IOI 執委會
1400-1800	IOI 理事會會議	限 IOI 理事會

11 月 14 日 (星期一) IOI 理事會與分區會議		
時間	項目	參與者
0830-1230	IOI 理事會會議	限 IOI 理事會
1230-1400	IOI 會員午餐	限 IOI 會員
1400-1700	區域性晤談	限 IOI 會員
1830-2200	歡迎晚宴	全體研討會參加者

11 月 15 日 (星期二) IOI 會員大會		
時間	項目	參與者
0830-0900	報到	
0900-0930	開幕儀式	全體研討會參加者
0930-1500	-秘書長報告 -選舉改革 -亞洲比較研究/IOI 歷史 -IOI 財務 -IOI 策略計畫 -受威脅的監察使/曼谷宣言 -其他事項	限 IOI 會員
1530-1700	現任與新選任之委員會會議	限 IOI 理事會
1800-2200	晚間集會/晚餐	全體研討會參加者

11 月 16 日 (星期三) 第 11 屆研討會		
時間	項目	講者
0830-0900	報到	
0900-1000	開幕式	John Walters (IOI 理事長/納米比亞監察使) Viddhavat Rajatanun (泰國首席監察使) Laurent Meillan 東南亞聯合國人權事務高級公署區域辦公室講者
1000-1030	茶敘	
1030-1200	主題演說：監察制度的演進 主持：Howard Sapers 加拿大矯正調查員	Chris Field (IOI 財務長/西澳監察使) Thuli Madonsela (前南非護民官) Viddhavat Rajatanun 將軍(泰國監察使) Connie Lau (香港監察使)
1200-1300	午餐	
1300-1430 分場研討		
1	監察使工作的評量與演進 主持：Peter Hourihan (加拿大亞伯達監察使)	2 以人權為導向的監察使工作 主持：Elisabeth Rynning (瑞典首席監察使)
Fiona Crean (加拿大 Hydro One 監察使) 以多倫多監察使職權研究，發展監察使工作的影響評估概念		Marie Anderson (北愛爾蘭公共服務監察使) 以人權為導向的監察使處理陳情工作
Arlene Brock (非洲監察研究機構主任) 非洲監察使法制系統的比較分析，監察使概念的適應性示例		Linda Reif 教授 (加拿大亞伯達大學法律學院) 人權監察機構－益處、挑戰與限制
Asad Ashraf Malik (巴基斯坦信達省監察使) 以賠償金做為可能性指標的成功陳情處理作業		Mtra. Consuelo Olvera Treviño (墨西哥國家人權委員會執行秘書長) 監察機構與新的國際行事規劃：以人權觀點的永續發展目標
Ucha Nanuashivili (喬治亞監察使) 待公布		Florence Simbiri-Jaoko (國家人權機構之世界聯盟特使) 以人權為導向的監察使工作
H.E. Justice Naser Seraj (伊朗調查組織總會會長) 監察使工作的評量與演進		Michael Dick (巴布亞紐幾內亞首席監察使) 以人權為導向的監察使工作－巴布亞紐幾內亞經驗

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11 月 16 日 (星期三)	
1430-1500	茶敘
1500-1630 分場研討	
3 監察機構的多重管轄權 主持：Chris Field (IOI 財務長/西澳監察使)	4 以人權為導向的監察使工作 主持：Megan Philpot (澳大利亞副維多利亞監察使)
Colin Neave (澳洲聯邦監察使) 多重管轄權對產業監察使的參考	Arlene Brock (非洲監察研究中心主任) 監察使與人權的合流：傳統分立已不可行
Howard Sapers (加拿大矯正調查員) 立法專長的監察使與一般管轄的監察使	Orly Levinson-Sela (以色列審計長辦公室資深經理暨監察使) 以色列審計部與監察使對保障人權的雙重貢獻
Paul Dube (加拿大安大略省監察使) 推動從監察使管轄權中排除擴張實體公共部門—當你有了管轄權該拿它怎麼辦?	Lorna McGregor (英國艾塞克斯大學教授) 國家人權委員會(NHRI)的角色—監察使做為正義途徑的典範
Fiona Crean (Hydro One 監察使) 法定與私部門監察使：兩者的異同	Po-Ya Chang/Tzong-Ho Bau (中華民國監察院) 監察院有效保障人權之多元職能
Mahito Shindo (京都大學法學院) 環境領域監察使的角色與功能	
Nicola Williams (英國國防監察使) 監察使與多重管轄權	

11 月 17 日 (星期四)	
時間	大會主題：監察領域的創新觀念 主持：Fozia Amin (衣索比亞監察使)
0900-1000	第 1 回 創新計劃簡報與簡短問答
	<p>Salman Faruqui (亞洲區理事長/巴基斯坦監察使) 與當地公共圖書館合作，提供公民接近監察機構的簡易電子化通路</p> <p>Jean Marie Hannedouche (比利時撫恤金監察使) 新的後電子化社會，新的比利時撫恤金監察使?!</p> <p>Vladana Jovic (塞爾維亞副監察使－公民保護者) 與當地公共圖書館合作，提供公民接近監察機構的簡易電子化通路</p>
1000-1030	茶敘
1030-1200	第 2 回 創新計劃簡報與簡短問答
	<p>Leshele Abel Thoahlane (賴索托監察使) 監察領域的創新觀念</p> <p>Jacqui McCrum (愛爾蘭監察使辦公室主任) 建構讓公共服務提供者使用之新專案管理系統計畫及受理陳情管道</p> <p>Keun-Ho Shin (韓國反貪腐與人權委員會) E 化人民系統：一應俱全的與民溝通系統</p> <p>Chris Field (IOI 財務長/西澳監察使) 給新設或發展中監察機構的新手線上手冊</p>
1200-1330	<p>午餐/NPM 午間會議</p> <p>禁止酷刑協會(APT)邀請所有具有國家防治機制(NPM)職能的監察使機構參與本簡短會議，期在監控防治領域交換經驗與想法。</p>

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11 月 17 日 (星期四)	
1330-1500 分場研討	
5 <p>多樣職能的挑戰 主持：Peter Tyndall (IOI 第二副理事長/ 愛爾蘭監察使)</p>	6 <p>與公民社會合作－益處與挑戰 主持：Keursly Concincion (克拉索監察使)</p>
<p>Lidija Lukina Kezić (克羅埃西亞副監察使) 克羅埃西亞的多樣職能監察使工作與 國家人權委員會</p>	<p>Gertrude Brinek 博士 (奧地利監察使理事會) 與公民社會合作-奧地利經驗</p>
<p>Otiende Amollo (肯亞監察使) 多樣職能的監察使工作挑戰</p>	<p>Hilmi Jashari (科索沃監察使) 與公民社會合作</p>
<p>Sinracha Vongsarayankura 教授 (泰國前首席監察使) 多樣職能的監察使工作挑戰</p>	<p>Duenden Nikomborirak (泰國發展研究機構 TDRI 研究主任) 與公民社會合作-益處與挑戰</p>
<p>Marin Kreutner (國際反貪腐學會) 監察使與反貪職能</p>	<p>Mykhailo Chaplyga (烏克蘭國會辦公室人權專會) 人權委員會與公民社會合作-烏克蘭經驗</p>
<p>Jeehan Mahmood (禁止酷刑協會 APT) 以監察使工作作為國家防治機制</p>	<p>Diane Welborn (IOI 第一副理事長/美國俄亥俄州道頓- 蒙哥馬利縣監察使) 與公民社會合作的益處與挑戰</p>
<p>Raúl Lamberto (阿根廷聖菲省監察員) 兒少保護監察使</p>	
1500-1530	茶敘

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11 月 17 日 (星期四)	
1530-1700 分場研討	
7 <p>訊息自由與監察使 主持：Cynthia Astwood (土克凱可群島申訴專員)</p>	8 <p>危機年代下受威脅的監察使 主持：Günther Kräuter (IOI 秘書長/奧地利監察使)</p>
<p>Peter Tyndall (IOI 第二副理事長/愛爾蘭監察使) 訊息策略的自由</p>	<p>John Walters (IOI 理事長/納米比亞監察使) 在危機時刻 IOI 支持同僚的政策與角色-近期的成果</p>
<p>Hye-Kyung Park (韓國反貪腐與人權委員會與利益舉報 檢查政策組組長) 韓國的公共利益舉報者保護系統</p>	<p>Nilda Arduin (荷屬聖馬丁島監察使) 受威脅的監察使-加勒比海的情形</p>
<p>Lynette Stephenson (千里達與托巴哥監察使) 監察使與訊息自由</p>	<p>Victoria Pearman (百慕達監察使) 受威脅的監察使—回應不當與錯置的 政府官員批評</p>
<p>Aage Thor Falkanger (挪威國會監察使) 監察使與訊息自由</p>	<p>Adam Bodnar (波蘭人權專員) IOI 波蘭真相調查任務—IOI 支持的影響</p>
<p>Tearoa John Tini (庫克群島監察使) 監察使與訊息自由</p>	

11 月 18 日 (星期五)		
時間	大會主題：媒體工作坊 主持：Diane Welborn (IOI 第一副理事長/美國俄亥俄州道頓-蒙哥馬利縣監察使)	
0900-1030	第 1 回 創新專案簡報與提問討論	
	Aage Thor Falkanger (挪威國會監察使) 監察組織使用的公關媒體策略與經驗	
	Günther Kräuter (奧地利監察使) 奧地利監察使的每週電視秀	
	Lucia Franchini (義大利托斯卡納監察使) 社交網路與資訊科技的重要性	
1030-1100	茶敘	
1100-1200	第 2 回 創新專案簡報與提問討論	
	Vytautas Valentinavicius (立陶宛監察署) 運用媒體宣傳監察使的人權保障職務	
	Raksagecha Chaechai (泰國監察使公署秘書長) 透過大眾傳媒的主動性監察途徑	
	Amzulian Rifai 教授 (印尼監察使) 媒體策略與印尼監察機構的經驗	
1200-1300	閉幕式	John Walters (IOI 理事長/納米比亞監察使) Viddhavat Rajatanun 將軍 (泰國首席監察使)
1300	午餐	
1700-2200	惜別晚宴	

監察院參加第11屆國際監察組織世界會議行程概覽

天數	日期	星期	時間	行程	住宿地
1	11月13日	日	07:15	搭機：台北-曼谷(華航CI 833)	曼谷 (下榻會議指定飯店 Royal Orchid Sheraton Hotel & Towers)
			10:05	抵達曼谷國際機場	
2	11月14日	一	上午	巡察駐曼谷台北經濟文化辦事處	
			下午	IOI分區會議	
			晚上	IOI世界會議歡迎晚宴	
3	11月15日	二	上午	開幕式	
			全天	IOI會員大會	
			晚上	會議餐敘	
4	11月16日	三	08:30-10:00	研討會：報到與開幕式	
			10:00-12:00	大會講座：監察職權的演進 (Evolution of Ombudsmanship)	
			下午 13:00-16:30	分場研討 Breakout Session II、IV： Human rights based approach to the Ombudsman's work-part1、2	
			晚上	與駐處同仁餐敘	
5	11月17日	四	上午 09:30-12:00	大會講座：監察領域的新想法 (Innovative ideas in the Ombudsworld)	
			下午 13:00-16:30	分場研討 Breakout Session VI、VIII： Collaboration with civil society-benefits and challenges Ombudsmen in times of crises or under threat	
			晚上	與僑界晤敘	
6	11月18日	五	上午 9:30-12:00	媒體工作坊	
			下午 13:30-14:30	閉幕式	
			晚間	IOI世界會議餞別宴	
7	11月19日	六	全天	巡訪泰國臺灣會館	
8	11月20日	日	11:10	搭機：曼谷-台北(華航CI 834)	
			15:40	抵達桃園國際機場	

IOI GENERAL ASSEMBLY

11th IOI World Conference – Bangkok, Thailand

15 November 2016

Draft Agenda

Chair: IOI President Adv. John R. Walters

1. Formal opening of the meeting (President Walters)

- 1.1 Welcome by IOI President
- 1.2 Approval of the agenda*
- 1.3 Approval of participants

2. Secretary General's Report (Secretary General Kräuter)

- 2.1 Highlights, achievements and projects of past four years
- 2.2 Membership progress evaluation

3. Electoral reform¹ (Secretary General Kräuter)

- 3.1 Summary electoral reform paper*
- 3.2 Final comments on draft
- 3.3 Briefing on voting procedure
- 3.4 Conduct of vote

4. Asian Comparative Study (Executive Director Grieshofer)

- 4.1 Presentation of publication

*asterisks indicate agenda items for which written documentation is available

¹ The electoral reform will be given priority; any other business will be dealt with if required and provided sufficient time is remaining

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- 5. IOI Finances (Treasurer Field)**
 - 5.1 Treasurer's report
 - 5.2 New IOI fee structure*
 - 5.3 Briefing on voting procedure
 - 5.4 Conduct of vote
 - 6. IOI History (1st Vice-President Welborn)**
 - 6.1 Project presentation and progress report
 - 7. IOI Strategic Plan (2nd Vice-President Tyndall)**
 - 7.1 Presentation of strategic plan 2016-2020*
 - 7.2 Final comments on draft
 - 7.3 Approval of final version
 - 8. Ombudsman under threat (Secretary General Kräuter)**
 - 8.1 Presentation of IOI support to colleagues under threat
 - 8.2 Report on IOI fact finding mission to Poland*
 - 9. Bangkok Declaration (President Walters)**
 - 9.1 Final comments on draft*
 - 9.2 Adoption by General Assembly
 - 10. Reports from the Regions (Regional Presidents)**
 - 10.1 African Region
 - 10.2 Asian Region
 - 10.3 Australasian and Pacific Region
 - 10.4 Caribbean and Latin American Region
 - 10.5 European Region
 - 10.6 North American Region
 - 11. Any other business**

Electoral Reform

Universal suffrage by electronic means for the Officers of the Executive Committee

Introduction

Following the approval in principle of the paper on Electoral Reform at the New York meeting of the IOI Board of Directors, a reconstituted Sub-Group was asked to bring forward detailed implementation proposals for consideration at the IOI Board of Directors meeting now scheduled for Vienna. The original group comprised

- Mr Peter Tyndall (Wales), Chairperson
- Mr Alex Brenninkmeijer (Netherlands), Regional President, Europe
- Mr Peter Kostelka (Austria), Secretary General
- Mr Alan N. Lai (Hong Kong/China), Treasurer
- Mr John R. Walters (Namibia), First Vice-President

The new Sub Group includes all Regional Presidents in addition to those members of the original group who remain on the Board. Since the Sub-Group was originally formed, Günther Kräuter has replaced Peter Kostelka as Secretary General, Alex Brenninkmeijer and Alan N. Lai have resigned from the Board having relinquished office and Peter Tyndall has become Ombudsman of Ireland and European Regional President. The Sub-Group was asked to conduct its business electronically.

The revised membership is as follows.

- Mr Peter Tyndall (Ireland), Chairperson, Regional President Europe
- Ms Caroline Sokoni (Zambia), Regional President Africa
- Mr Colin Neave (Australia), Regional President APOR
- Mr Salman Faruqui (Pakistan), Regional President Asia
- Ms Lynette Stephenson (Trinidad & Tobago), Regional President Caribbean & Latin America
- Mr Peter Hourihan (Canada), Regional President North America
- Mr John R. Walters (Namibia), 1st Vice-President
- Mr Günther Kräuter (Austria), Secretary General

The use of electronic voting was trialled in elections for vacancies on the European Board following the New York meeting, and for the election of the Regional President. The elections were conducted utilising the commercial Survey Monkey package by the secretariat of the European Region which is provided by the Irish Ombudsman's Office and by the General Secretariat which undertook the Regional President elections. Broadly speaking, the process went smoothly.

A number of issues were encountered in the way Survey Monkey was initially utilised. It was possible to vote more than once, although it was equally possible to see where this had happened and delete the duplicated vote. It was also theoretically possible to identify how a particular member had voted.

Since then, further testing with Survey Monkey has identified solutions to both of these problems and it is now possible to offer assurance that each member can only vote once, and that no individual votes can be identified. It has also been tested on a variety of platforms including smart phones because it is acknowledged that in some developing countries this form of access to the Internet may be more common and more readily accessible.

Consequently, it is now possible to recommend the use of Survey Monkey in any future election. The remainder of this paper sets out the proposed arrangements for future elections.

1. Overview

1.1 The proposed system will be based on electronic voting for all Elections to the Executive Committee while the adoption of electronic voting for Regional Ballots will remain a matter for decision by the individual regions, but will be encouraged. All Voting members in good standing (hereinafter referred to as “members”) will be able to participate in elections ensuring that those who cannot attend the General Assembly are not excluded from participation. Members in good standing are those whose fees (i.e. of the membership year previous to the next World Conference / General Assembly) are paid up to date two weeks before the commencement of the relevant election. Where there are a series of elections, members who pay their fees too late to take part in the first round may participate in subsequent rounds provided the fees are paid two weeks prior to the commencement of that round. Special arrangements could be put in place for the small number of members for whom internet access is problematical. Currently, only one member does not have an email address suggesting that this is a small and soon to disappear problem. Anyone who can access email should also be able to vote electronically, so it is possible that no alternative arrangements other than the additional provision in 2.1.3 will be required.

1.2 The electronic voting system will be administered by the IOI Secretariat for Elections to the Executive Committee and usually by the Regional Secretariat for elections to the Regional Board or of the Regional President. The elections will make use of the commercially available Survey Monkey product. Each Regional Secretariat using electronic voting will need to acquire a Survey Monkey license but many offices already have one. Advice on using Survey Monkey for Regional elections will be available from the office of the Irish Ombudsman. As is the case with the current arrangements, the Secretariat in Vienna will consider requests to undertake Regional Ballots from the Regions.

1.3 The process will apply to the election of the President, First and Second Vice-Presidents and Treasurer (the Officers) who together with the Secretary General form the Executive Committee. The post of Secretary General is ex-officio and is not included in these arrangements. The process for using electronic voting in the election of Regional Presidents and Regional Directors is also included here, but is to be seen as an optional guideline for Regions, should they consider electronic voting.

1.4 All members will be eligible to vote for candidates for Officer positions, but only members of the IOI Board of Directors elected by their Regions will be eligible to stand for election as Officers.

1.5 Candidates for Regional President and Regional Director positions in each region will be elected solely by Voting members of that region.

1.6 It follows that the four-yearly election will involve more than one round of voting by members but this eventuality is easily accommodated by electronic voting.

1.7 The composition of the Executive Committee (other than the Secretary General position) will reflect the voting intentions of the wider membership. However, in the interests of regional balance and decision making, no more than two members from the same region will be permitted to hold seats on the Executive Committee and the President and First Vice President positions cannot be held by members from the same Region.

1.8 Any one person's tenure as President is limited to two consecutive terms of four years and no region can hold the Presidency for more than two consecutive terms.

1.9 At its last meeting before each General Assembly, the IOI Board will appoint an Election Committee which will be chaired by the IOI Secretary General and consist of up to six members (ideally outgoing regional Board members, who are not standing again for election), each from a different region, to oversee the elections. No member of the Committee may stand for office.

1.10 The Committee will receive a report about the arrangements for the forthcoming election. Each member shall oversee the process in their own region and report to the Committee after it has taken place. Members must have full access to the electoral process. The Committee will conduct its business by email and report to the Board on the conduct of the elections making recommendations for any necessary changes.

2. The Electoral Process

2.1 Regional Board Elections

2.1.1 The initial process described here is for Regional Elections which are conducted electronically. Regions which decide not to conduct elections electronically will nonetheless be required to provide details of the outcome of their elections for Board Members at a date to be notified by the Secretary General to enable their representatives to be included in the electoral process for the Executive Committee. Before the World Conference and taking into account the date notified by the Secretary General, each Regional President (or the Secretary General if the position of the Regional President is vacant or the Regional President is standing for re-election) will invite written nominations for candidates, initially for the Regional Boards. Each candidate must be a member in good standing, and be nominated and seconded by two other members who are also in good standing by using a specific nomination form. 28 days will be allowed for nominations to be received.

2.1.2 Each nomination must be accompanied by a brief (250 word maximum) statement setting out the candidate's career achievements and outlining their aspirations for the IOI if elected. Video messages as such cannot be included in the Survey Monkey tool but links to video messages (e.g. to the website of the candidate's institution) can be included in the brief statement. On the closure of the nomination process, each Regional President (or the Secretary General if the position of the Regional President is vacant or the Regional President is standing for re-election) will prepare lists of properly nominated candidates for each region. The statement can also be accompanied by a photograph.

2.1.3 Each Member must provide the Secretariat with an email address to be used for electoral purposes. This must be an address specific to the Office Holder or a designated assistant and not a generic email address. Members will be invited by email to view the election page on Survey Monkey where the list of candidates will be displayed along with their statements. (The candidate details will also be included on the IOI website). Members will be invited to vote for one or more candidates up to a maximum of the number of seats available on the Regional Board (for example, if there are three seats available members could cast three votes). Once the vote has been submitted by the member invited to do so, the electronic voting provider is able to ensure that no further responses can be sent using the specific link encoded for that recipient. Votes must be submitted by a closing date and time to be notified by each Regional President (or the Secretary General if the

position of the Regional President vacant or the Regional President is standing for re-election) which will be 14 days after the voting has commenced.

2.1.4 Following the closure of the ballots the outcome will be announced by each Regional President (or by the IOI Secretariat in Vienna, if the position of the Regional President was vacant or the Regional President was standing for re-election). The Regions undertaking their own ballots will need to notify the Secretariat of the outcome of the Regional ballots once the closing date has been reached. No count is necessary and the results will be immediately available once the ballots close. The candidates with the most votes will be deemed elected up to the maximum of the available seats for the specific region. Thus, in the event of there being four seats available, for example, the four candidates with the greatest number of votes will be elected. In the event of a tie, the candidates with equal votes will be placed on a list and a further election will be conducted to decide who will be elected.

2.1.5 Where the Regional Board has a greater number of seats than it has places on the IOI Board of Directors, the candidates with the most votes will be deemed elected to the IOI Board of Directors. If, for example, the Regional Board has seven members but only five places on the IOI Board of Directors, then the five candidates with most votes will be elected to the IOI Board of Directors and will also serve on the Regional Board while the remaining two candidates with fewer votes will serve on the Regional Board only. Candidates will be asked to indicate in their statement whether they are prepared to serve on the IOI Board of Directors and the Regional Board, or just on the Regional Board. Should a candidate who has sufficient votes to gain a place on the IOI Board of Directors decide to sit on the Regional Board only, then the candidate with the next largest number of votes will take the available place.

2.1.6 Once each Region has elected its Regional Board members, elections can take place for the Officers of the IOI and for the Regional Presidents. These could take place simultaneously, but as any Officer elected would need to step down from the post of Regional President, it is preferable that the Officer positions are elected first.

2.2 Election of Officers

2.2.1 Nominations will be invited by the Secretary General for the four officer posts seven days after the notified date to present the outcomes of the regional Directors of the IOI Board of Directors. Members will have up to 14 days to submit nominations. Candidates can be nominated for more than one office. Only members of the IOI Board of Directors will be eligible to serve. Again, each candidate must be nominated and seconded by two other members in good standing. Nominees may either submit a new statement in support of their candidacy, or rely on that already submitted in support of their candidacy for their Regional Board.

2.2.2 Once the nomination period has closed, the Secretary General will again email all members entitled to vote to follow a link specific to them where a list of candidates for President is displayed. Members will have one vote only and 14 days will be allowed for the ballot. If less than 25% of all members entitled to vote cast a vote, the deadline will be extended once for another 14 days. Following the closing date, the outcome will be announced. The person receiving the most votes will be deemed elected. In the event of a tie, the candidates with equal votes will be placed on a list and a further election will be conducted to decide who will be elected.

2.2.3 Following the election of the President, the election will take place for the Vice Presidents. The relevant voting list of candidates for this election will be prepared following the election of the President and will exclude the successful Presidential candidate, if this person has also been nominated for the role of Vice President. Any other candidates from the same region as the President will only be eligible for the Post of Second Vice President. The arrangements will then follow those set out above for the President. The person with most votes who is not from the same Region as the President will be elected First Vice President while the person with the second largest number of votes (or largest if they are from the same Region as the President) will be elected Second Vice President.

2.2.4 The process for Treasurer will be administered on the same basis. While this will present a series of distinct electronic voting stages in a relatively short period of time, the demand on individual member time would in total still be small. Alternatively, if the nominations of candidates permit, the President and the Treasurer may be selected in one single round of election.

2.3 Election of Regional Presidents

2.3.1 Following the election of the officers, the outgoing Regional President, or, if the outgoing person intends to stand again, the Secretary General, shall invite nominations for Regional President. Again, the electronic process described here is to be seen as optional. There will be a further 14 days to submit nominations. Only members of the IOI Board of Directors who have not been elected as Officers are eligible for nomination.

The nomination process will otherwise be the same i.e. each candidate must be a member in good standing, and be nominated and seconded by two other members who are also in good standing and each nomination must be accompanied by a brief (250 word maximum) statement setting out the candidate's career achievements and outlining their aspirations for the IOI if elected. Nominees may either submit a new statement in support of their candidacy, or rely on that already submitted in support of their candidacy for their Regional Board.

2.3.2 Members in good standing will be entitled to one vote and will be given access to a list of candidates with their statements and invited to vote accordingly. Where there is only one candidate, the process will remain the same but members will be given the opportunity to endorse the candidate concerned. This will involve a simple yes/no response to a question asking members if they agree to the candidate being appointed.

Again, 14 days will be allowed for the ballot, and the result will be announced on its conclusion. The regional ballot will be overseen by the regional representative on the Election Committee.

2.4 Casual vacancies

2.4.1 Should the President stand down between elections, the post should be filled by the First Vice President with the Second Vice President becoming First Vice President (see Article 19.11 of the IOI By-laws).

2.4.2 Any other casual vacancies on the Executive Committee occurring between elections should be filled through electronic ballot. Where there is only one candidate, the process described at 2.3.2

will apply. However, if the vacancy occurs within 12 months of the next election, member positions can be left vacant or filled by co-option and Officer Positions can be filled by election in the IOI Board of Directors. Regions should make provision for filling casual vacancies of Regional Presidents or members in their By-laws.

3. Next Steps

3.1 The revised system will need to be incorporated into the By-laws of the IOI. This will require a vote at the General Assembly in Bangkok in 2016.

3.2 In order to allow that next elections to be conducted using electronic ballot it is proposed that the elections should be deferred until early the following year (around February/March 2017), when elections using the **new** arrangements can be conducted. The existing Board of Directors and Executive Committee will remain in place until the newly elected Board holds its constituent meeting around May/June 2017. After that, elections of the Officers of the IOI will be held electronically prior to the General Assembly and the first constituent meeting of the newly elected Board will be held at the next General Assembly and/or World Conference.

3.3 Any changes to elections to Regional Boards and Presidents will also need to be incorporated into the respective Regional By-laws

IOI By-laws Amendment

Implementation of Electronic Voting and Universal Suffrage for the Elections of the Officers

Article 8

Fundamental rights and duties of members

- (1) Any member shall have the right to participate in the activities sponsored by the IOI.
- (2) Only a Voting member in good standing shall have the right to vote and be elected at any meeting of the IOI or by electronic voting.
- (3) A Library member cannot attend an international or regional conference or meeting, unless it is invited by the relevant host.
- (4) Only a Voting member in good standing of the relevant Region of the IOI shall have the right to vote and be elected at any regional meeting sponsored by the IOI or by the relevant Region of the IOI or by electronic voting.
- (5) – (8) [...]

Article 9

Membership fees

- (1) – (2) [...]
- (3) Any Voting member who failed to pay the membership fees of the previous membership year shall be considered as a member not in good standing and shall be ineligible to vote and be elected at a meeting or by electronic voting.
- (4) – (5) [...]

Article 10

[...]

Article 11

Board of Directors (the Board)

- (1) The property and business of the IOI shall be controlled on behalf of the membership by a Board of Directors. The Board shall consist of:
 - a) A President, a First Vice-President, a Second Vice-President and a Treasurer elected by the Voting members in good standing using electronic voting ~~the Board from among its members (the elected Officers of the IOI). The Board should ensure, as far~~

~~as is practicable, and having regard to the capacity and capability of those nominated, To ensure that there is~~ regional balance within the Executive Committee no more than two members from the same region will be permitted to hold seats on the Executive Committee. The President and First Vice President positions cannot be held by members from the same region.

- b) An ex officio Secretary General who shall be an ombudsman nominated by the Austrian Ombudsman Board after consultation with the Executive Committee and agreement by the Board.
- c) An additional number of Directors elected from each region. The number of Directors from each region, elected Officers of the IOI included, shall be:
 - a maximum of three Directors where there are less than 30 Voting members;
 - a maximum of four Directors where there are 30 or more Voting members;
 - a maximum of five Directors where there are 60 or more Voting members.
- d) One member from the ombudsman office hosting the next International Ombudsman Conference.
- e) In appointing the persons specified in paragraph (a - c) due consideration should be given to achieving gender balance.

The following Regions of the IOI shall be recognized:

- Africa;
- Asia;
- Australasia and Pacific (APOR);
- Caribbean and Latin America;
- Europe;
- North America; and
- such other regions as may be determined from time to time by the Board.

- (2) The term of a Director elected under paragraph 1 (c) shall not exceed four years but a Director may be reappointed or re-elected in accordance with the rules adopted by the region electing the particular Director. The term coincides with the period between General Assemblies, but if the General Assembly is delayed or postponed, the incumbent would continue to serve in the post until the General Assembly is convened.
- (3) Any vacancy in the number of Directors representing a region shall be filled by that region without delay in accordance with the rules adopted by the region. However, if the vacancy occurs within twelve months before the next elections, the post of the Director can be left vacant or filled by co-option.

(4) – (9) [...]

Article 13

The Executive Committee

(1) – (4) [...]

- (5) Vacancies in the membership of the Executive Committee shall be filled by the Voting members

in good standing Board as described in Article 19.11.

- (6) Any member of the Executive Committee may be removed or replaced at any time by the Voting members in good standing Board and, with the exception of the Secretary General, shall immediately cease to be a member of the Executive Committee upon ceasing to be a Director.

(7) – (8) [...]

Article 14 **Meetings of Voting members (the General Assembly),** **the Board and the Executive Committee**

- (1) A regular meeting of the Voting members (the General Assembly) shall be held in conjunction with each International Ombudsman Conference, at least every four years.
- (2) A special General Assembly may be called at any time by the Board or the Auditors on their own motion or pursuant to the written request of at least ten per cent (10%) of the Voting members.
- (3) The quorum for General Assemblies shall be a majority of the total number of Voting members.
- (4) Only incumbents of Voting members in good standing are entitled to vote. In case that the incumbent of the Voting member is not present, he/she is obliged to communicate to the General Secretariat at least two weeks in advance which staff member will exercise the voting right for him/her.
- (5) Immediately after each General Assembly and after the regional Directors have been identified, the new Board shall meet for the purpose of organization and the transaction of business.

(6) – (8) [...]

Article 15 – Article 17 [...]

Article 18 **Other committees**

- (1) The Board may, at any time, establish such other standing committees and/or special committees, elected by the Board or appointed by the President, to perform such duties and make such investigations and reports as the Board shall by resolution determine. At least one of the committee members shall be a member of the Board. Such committees shall report to the Board. Such committees shall determine their own procedures.
- (2) The President may establish a Committee to assist the Secretary General in the determination of funding sources.

Article 19 Officers of the IOI

- (1) The officers of the IOI shall be the President, the First Vice-President, the Second Vice-President, the Secretary General, and the Treasurer and may include such other officers as the Board may from time to time by resolution determine. The officers shall be natural persons of full age.
- (2) The officers of the IOI, except the Secretary General, shall be elected by the Voting members in good standing ~~the Board~~ from amongst the Directors ~~its Members~~ using an electronic voting system. The Board may regulate the election process as it sees fit. The term of an officer shall be for 4 years, but at least until the next General Assembly, and shall commence at the close of the constitutive Board meeting following the General Assembly at which elected and cease at the constitutive Board ~~close of the~~ meeting at which a successor is appointed ~~elected~~. An officer may be re-elected for a further 4 year term but should not serve for more than 2 terms.
- (3) The Secretary General shall, in a communication to the Voting members ~~Board~~, call for nominations for officers of the IOI, except for the position of Secretary General. Such nominations shall be received by the Secretary General.
- (4) The Secretary General shall inform the Voting members ~~Board~~ of the nominations received, confirm that nominees meet the requirements for each position and forward any material that each nominee wishes to supply in support of their candidacy. Candidates may address the Voting members ~~Board~~ to amplify any element of their submission. The Voting members in good standing ~~The Board~~ will then vote for each position beginning with that of the President. The Secretary General will formally take the Chair for this process and the Secretariat will administer the electronic voting procedure ~~scrutinize and tally the votes for each candidate~~ and report to the Voting members ~~Board~~ the preferred candidate for each position.
- (5) The Board may remove any officer, employee, or agent elected or appointed by the Board at any time whenever in its judgment the best interest of the IOI will be served thereby, but such removal should be without prejudice to the contract rights, if any, of the person so removed.
- (6) The Voting members in good standing ~~The Board~~ shall have the power to fill any vacancy using an electronic voting system, except for the office of Secretary General, in any office occurring for whatever reason.
- (7) The Board may also appoint employees and agents by resolution upon the recommendation of the Secretary General.
- (8) The remuneration of all officers, employees and agents shall be fixed by the Board by resolution. No officer shall be precluded from receiving such remuneration by reason of the fact that he/she is also a Director of the IOI.
- (9) The officers of the IOI, except the Secretary General, shall hold office until their successors are elected or appointed in their stead. Officers may be re-elected for further terms as allowed for in paragraph 2.
- (10) An officer may resign at any time by giving written notice to the Board, or to the President, or to the Secretary General. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein.
- (11) Any vacancy in an office, except for the office of the Secretary General, arising between General Assemblies, shall be filled by the Voting members in good standing ~~the Board~~. If, however, the

President vacates office, he or she shall be replaced by the First Vice-President. If the First Vice-President vacates office, he or she shall be replaced by the Second Vice-President. If the Second Vice-President vacates office, the Voting members in good standing Board shall elect one of the Board its members to fill this vacancy until the next General Assembly. However, if the vacancy occurs within 12 months of the next General Assembly, officer positions can be filled by election in the Board.

(12) – (14) [...]

Article 20

General Secretariat, Secretary General

- (1) The Secretary General shall manage the General Secretariat of the IOI. The Secretary General is appointed by the members of the Austrian Ombudsman Board (*Volksanwaltschaft*) from amongst its members. In the event that the Secretary General's term as a member of the Austrian Ombudsman Board comes to an end and there is a gap before a replacement Ombudsman is appointed, the IOI accepts that the current IOI Secretary General can be maintained in post until another appointment is recommended by the AOB for the role of Secretary General.
- (2) In the exercise of his/her statutory functions, the Secretary General is accountable to the Board of the IOI. He/she may be removed by the Board at any time.
- (3) The Austrian Ombudsman Board (*Volksanwaltschaft*) shall administer the General Secretariat and cover the personnel and operating costs, including the costs related to the IOI website, as long as a member of the Austrian Ombudsman Board acts as Secretary General.

Article 21

Duties of officers

(1) – (4) [...]

- (5) All other officers elected by the Voting members in good standing by the Board shall have such authority and perform such duties as may from time to time be assigned to them by the Board.
- (6) If the President, the First Vice-President and the Second Vice-President are unable to perform the duties of their offices, the Board shall appoint any member of the Board to exercise the duties of the President for such period as shall be determined by a resolution of the Board.

Article 22

Regions of the IOI and regional Directors Officers

(1) – (4) [...]

- (5) If a Regional President is elected by the Voting members by the Board as President, First or Second Vice-President or Treasurer of the IOI according to Article 19.11, he/she shall resign from the office of Regional President and the Voting members of the region shall elect a new Regional President. Each region shall therefore make provisions for filling casual vacancies of Regional Presidents or Directors.

(6) [...]

(7) Each Regional President shall, in collaboration with the regional Directors and the region's Voting members, and within a reasonable time, set up a procedure whereby the regional Directors shall be elected democratically. If agreement cannot be reached within a region on a procedure, the Secretary General shall act as mediator, shall facilitate the reaching of agreement and shall support the region, if necessary, during the regional election process. Each region shall provide assistance for electronic voting to facilitate the election process for regional Directors and IOI officers.

(8) – (9) [...]

Article 28

Enactment, repeal or amendments of By-laws

(1) [...]

(2) Should the Board Consider that any amendment or repeal to the By-laws or an article thereof (including the Preamble and the Definition of Terms) is required as a matter of urgency, the procedure in Article 16-Article 17 of the By-laws may be used for such purpose provided at least 30 days' notice of the proposed amendment or repeal is forwarded to each Voting member. Any decision taken by the Board pursuant to this paragraph must be submitted to the next meeting of the Voting members for confirmation but until so submitted may be acted upon as if so confirmed.

(3) – (4) [...]

ANNEX Transitional Provisions

In order to implement the election reform as amended by the General Assembly in November 2016 as soon as possible, the election to the Executive Committee will start immediately after the World Conference 2016. All Voting members in good standing will be able to vote using an electronic voting system. The elections will be administered by the General Secretariat and overseen by an Election Committee to be appointed by the Board.

The following provisions of the By-laws will have to be amended for a transitional period. The transitional period starts at the end of the General Assembly 2016 and ends with the constitutive Board meeting of the newly elected Directors and officers (presumably in May/June 2017):

Article 14 (5): The meeting of the new Board will be deferred until the election to the Executive Committee will have taken place.

Article 11 (2): The current Directors will remain in office until the constitutive Board meeting of the newly elected Directors and officers is held.

INFORMATION PAPER FOR THE GENERAL ASSEMBLY REGARDING A PROPOSAL FOR A NEW MEMBERSHIP FEE STRUCTURE

1. PURPOSE

The purpose of this Paper is to provide information for the General Assembly regarding a proposal for a new, more equitable International Ombudsman Institute (IOI) Membership Fee Structure.

2. BACKGROUND

Article 9(1) of the IOI By-laws provides that: *The members shall pay such annual fees as may be determined from time to time by the General Assembly following a recommendation made by the Board or set by the Board for a category of members in accordance with Article 12.2 (f).*

Currently, membership of the IOI is a flat rate fee system. This system is inherently inequitable as it does not reflect members' budgetary capacity and is particularly unfair to those members with less financial resources.

Following extensive research by the IOI Treasurer, and with the assistance of the IOI Secretariat, the Board formed the view that the IOI should charge membership fees based on a member's ability to pay and, accordingly, establish a new, more equitable structure for IOI membership fees, that reflects members' budgetary capacity. In doing so, the Board was of the view that it was essential that the new fee structure not create an administrative burden and ensure that current total revenue for the IOI was maintained.

Accordingly, following consideration of the IOI Board at its meetings of 27-29 October 2014 and 21-23 September 2015, the Board resolved on 22 September 2016 to recommend a new Membership Fee Structure to the General Assembly for its consideration and determination at its Bangkok meeting.

3. PROPOSED MEMBERSHIP FEE STRUCTURE

3.1 Proposed Membership Fee Tiers

The Board recommends, for consideration of the General Assembly, a new simple, transparent and equitable fee structure consisting of three tiers (one the same as the current fee of EUR 750, one lower than the current fee and one higher than the current fee).

The three tiers would equitably reflect the budgetary capacity of members.

Tier	2016-2017 Fee
Tier 1: Members with a 2015-16 budget over 6 million international dollars	EUR 1,500
Tier 2: Members with a 2015-16 budget 1.5 to 6 million international dollars	EUR 750
Tier 3: Members with a 2015-16 budget under 1.5 million international dollars	EUR 375

The tiers apply to a member's budget converted from their local currency to international dollars, using the simple conversion described in **Annex I**.

3.2 Selecting a Membership Fee Tier

The tier selection process will only need to be undertaken in the first year of the new membership model and members can request a change if the budget for their office moves to a different tier.

If a member does not select a particular tier, they will be allocated to the middle tier by default (which is equal to the current membership fee of EUR 750).

3.3 Periodic adjustment to Membership Fee Tiers

It is proposed that each Membership Fee Tier will be adjusted every four years (to align with General Assembly meetings) to account for the effect of inflation.

3.4 Exemptions

This proposed determination by the General Assembly does not affect in any way the ability of a member to apply for a partial or full exemption from paying its fees as provided in the IOI By-laws Article 13(8).

4. TEST RUN OF THE NEW MEMBERSHIP FEE STRUCTURE

The feasibility of the proposed new Membership Fee Structure has been extensively tested by the IOI Treasurer and IOI Secretariat through both a desktop test run and a test run of the offices of the IOI Board Members.

Both test runs were completed successfully, and demonstrated that the proposed new Membership Fee Structure is considerably more equitable for IOI members, does not create administrative burden and maintains the IOI's current annual fee revenue.

5. IMPLEMENTING THE PROPOSED MEMBERSHIP FEE STRUCTURE

General Assembly Resolution:

In accordance with IOI By-laws Article 9(1), that the General Assembly determines the annual fees of IOI Members in accordance with the proposed Membership Fee Structure.

SELECTING A MEMBERSHIP FEE TIER

1. Background

Due to the international nature of the IOI membership, and for consistency and equity, to identify their appropriate Membership Fee Tier, members would convert their local currencies to international dollars adjusted for Purchasing Power Parity (PPP) using their country's conversion factor as most recently published by the World Bank:

<http://data.worldbank.org/indicator/PA.NUS.PPP>.

Members divide their office's budget in their local currency by the World Bank's conversion factor to obtain a standardised international dollar amount. **Further currency conversion is not required.**

2. Membership tiers and fees

Tier	2016-2017 Fee
Tier 1: Members with a 2015-16 budget over 6 million international dollars	EUR 1,500
Tier 2: Members with a 2015-16 budget 1.5 to 6 million international dollars	EUR 750
Tier 3: Members with a 2015-16 budget under 1.5 million international dollars	EUR 375

3. Selecting a Membership Fee Tier

1. Members' budget for 2015-16

Example: The Western Australian Ombudsman's budget for 2015-16 is AUD (Australian dollars) \$11,070,000

2. Members go to <http://data.worldbank.org/indicator/PA.NUS.PPP> and identify their country in the list and the most recent purchasing power parity (PPP) conversion factor for their country.

Example: The Western Australian Ombudsman identifies that the most recent (2015) PPP conversion factor for Australia is 1.49 (see the image on the next page).

3. Members divide their budget in their local currency by the applicable PPP conversion factor. The result is an internationally-standardised dollar amount (international dollars). **Further currency conversion is not required.**

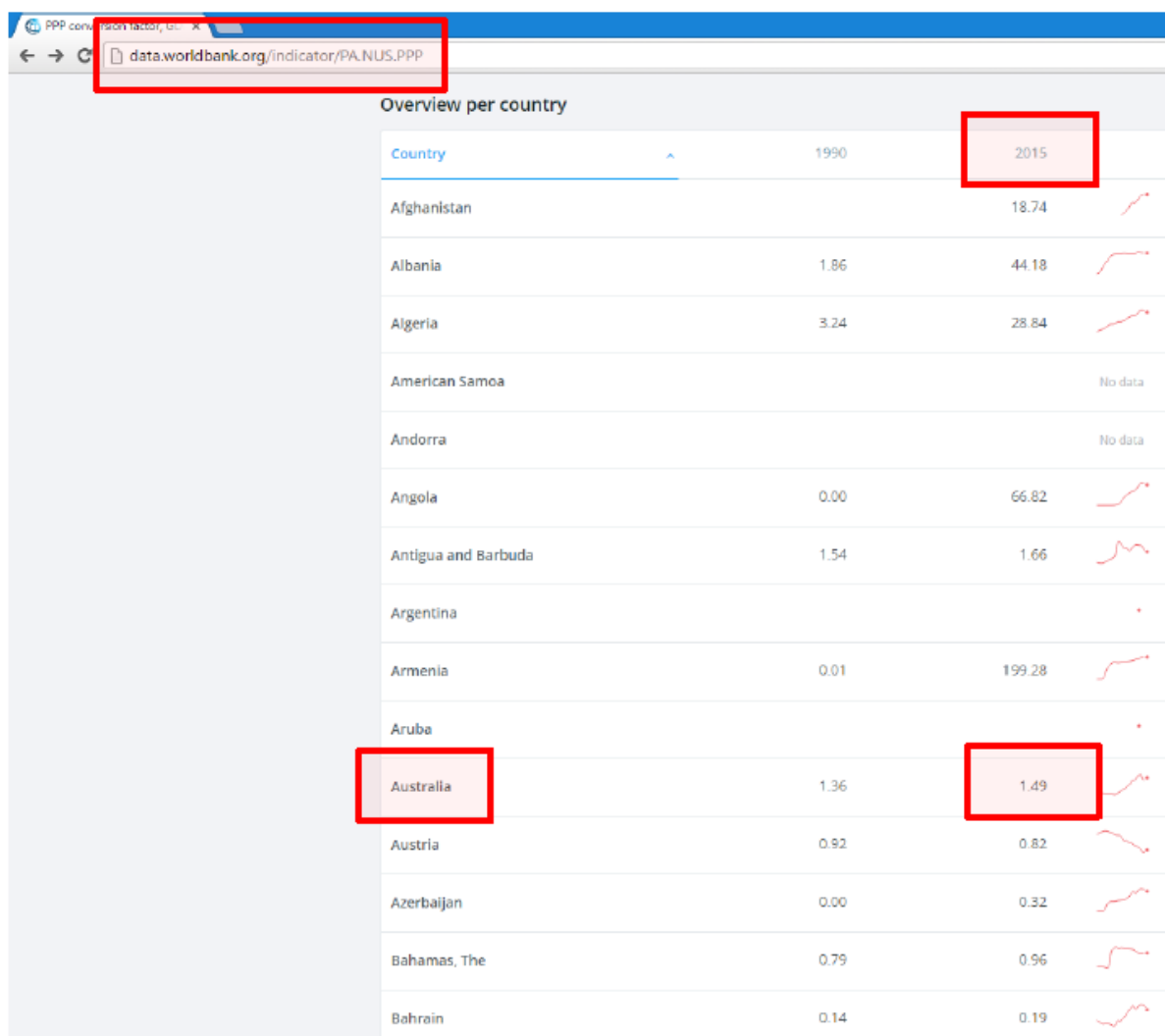
Example: The Western Australian Ombudsman divides its budget of AUD \$11,070,000 by its PPP conversion factor of 1.49.

The result is 7,429,530.20 international dollars.

4. Members use this international dollar figure to check which membership fee tier applies to them. Members inform the Secretariat of the relevant fee tier.

Example: The Western Australian Ombudsman's converted budget of 7,429,530.20 international dollars aligns with Tier 1. The Western Australian Ombudsman informs the Secretariat that it is a Tier 1 member.

The Western Australian Ombudsman receives an invoice from the Secretariat for EUR 1,500 for membership fees.



Overview per country

Country	1990	2015
Afghanistan		18.74
Albania	1.86	44.18
Algeria	3.24	28.84
American Samoa		No data
Andorra		No data
Angola	0.00	66.82
Antigua and Barbuda	1.54	1.66
Argentina		
Armenia	0.01	199.28
Aruba		
Australia	1.36	1.49
Austria	0.92	0.82
Azerbaijan	0.00	0.32
Bahamas, The	0.79	0.96
Bahrain	0.14	0.19

Image: World Bank website at <http://data.worldbank.org/indicator/PA.NUS.PPP> showing the conversion factor for Australia

INTERNATIONAL OMBUDSMAN INSTITUTE (IOI)

STRATEGIC PLAN 2016 – 2020

presented to the General Assembly
in Bangkok, in November 2016

INTRODUCTION

The General Assembly held in Wellington in November 2012 endorsed the development of a longer term strategic plan to guide the IOI's operations and to help focus its work in the coming years.

The present document constitutes the first strategic plan of the IOI. It covers the 4-year period between General Assemblies, i.e. from 2016 to 2020, and was presented to the General Assembly in Bangkok on 15 November 2016.

While the IOI's mission and vision remain faithful to the IOI's core values of independence, objectivity and fairness and can be seen as the fundamentals on which this plan is based, the strategic goals identified are to be considered the IOI's most relevant priorities and will therefore guide the organisation's operations in the next four years.

The present document will be interpreted as general directions to be taken within the next four years; detailed plans and projects to implement the different priorities and goals will be defined and developed by the IOI's governing body, the IOI Board of Directors, and may change over time to reflect emerging events, feasibility and resources.

The key strategic goals which will guide the IOI's operation during the next four years are set out in more details in this document. The IOI General Secretariat aspires to align its activities towards achieving these goals while taking the IOI's mission and core values into account. The IOI Board of Directors and the IOI General Secretariat share responsibility for implementing the IOI's strategic plan while taking into account practicality and available resources as well as new developments.

MISSION AND VISION

The IOI strives to increase its presence, to further develop its influence, to strengthen its authority and to be **the** authoritative body on Ombudsman matters worldwide. It endeavours to be recognized as the voice of Ombudsman institutions within the international community.

The IOI is committed to promote the Ombudsman concept and encourage the creation of Ombudsman institutions where they do not exist, to promote best practice and innovation, to facilitate and foster information exchange and shared learning through conferences and training initiatives, to fund research and regional projects on Ombudsman-related topics, to support colleagues worldwide, especially when they are operating under challenging circumstances, to engage in an ongoing dialogue with key international organisations and stakeholders, to address Ombudsman-related topics and consider policy areas that are of specific importance to its members and to be a truly international organisation in a multi-linguistic as well as pluralistic sense.

By engaging on the international stage and with international partners, the IOI seeks to sensitise governments and stakeholders about its core values and the importance and relevance of being a member.

STRATEGIC GOALS

- **Goal 1:** Widening membership
- **Goal 2:** Supporting Ombudsmen under threat
- **Goal 3:** Training and exchange
- **Goal 4:** Communication and publications
- **Goal 5:** Financial good health
- **Goal 6:** New challenges

STRATEGIC GOAL 1: WIDENING MEMBERSHIP

One of the values that inform the IOI's purpose and work is inclusivity. The IOI recognises the diversity of Ombudsman institutions and acknowledges that different models and concepts have been developed in response to particular constitutional arrangements and cultures. With a view to become a truly pluralistic and international organisation, the IOI will reflect this diversity in its membership, while not losing sight of the core values which underpin the Ombudsman model. To widen its membership, the IOI proposes the following strategic approach:

- Strengthen the cooperation with relevant regional Ombudsman associations as well as international partner organisations by signing **Memoranda of Understanding**. Leverage this cooperation to lobby for IOI membership within the respective region and/or organisation.
- Continue **disseminating information** on the IOI's work and the incentives and services it offers to members, in order to emphasize the benefits and relevance of becoming a member.
- Utilise the **regional Boards** and their knowledge of colleagues in the respective region for that purpose.
- Work to **identify specialist public service Ombudsman** institutions (e.g. Children's Ombudsmen, Police Ombudsmen etc.) which qualify for membership and encourage them to join. Where specialist groupings exist, work with these to encourage membership and possible memoranda of understanding.
- Advertise the **IOI's regional subsidies** program as a clear service to the Ombudsman cause. Investing money in projects that bring about the advancement of the Ombudsman concept is not only to the benefit of one particular region, but have proven to be adaptable and have been of benefit to the wider membership as well. Utilise this program as a "sales" tool in terms of recruiting new members.
- Facilitate multi-lingual access to the IOI and its services. **Pave the way for an equal participation** of colleagues within the three official languages of the IOI (English, French, Spanish) and – as a consequence – be prepared to extend translation services to realise the organisation's multi-lingual ideal.

- Provide **advice and mentored guidance** to turned-down membership applicants as opposed to uninformed rejection. Inform institutions in question about the possibility of non-voting membership. Offer them advice regarding necessary improvements (e.g. through mentored assistance by peers or by the IOI's Pool of Experts) and present them with an opportunity to re-apply at a later stage to get upgraded.

STRATEGIC GOAL 2: SUPPORTING OMBUDSMEN UNDER THREAT

The IOI acknowledges the general need to support Ombudsmen coming under threat, facing reprisals or operating under difficult circumstances as a part of its core business. When supporting a member in need, the IOI will give due respect to its values and apply a “do-no-harm” principle. In doing so, the IOI will take all existing contextual elements into account and act with the necessary flexibility and the appropriate discretion. In its endeavour to lend support and assistance to colleagues in need the IOI proposes the following strategies to support this goal:

- **Raise awareness** among its members about the situation of specific offices, but also about generally worrying developments in the Ombudsman world. Encourage members to contact the IOI whenever they have concern about a possible threat to their institution or to a fellow Ombudsman institution.
- Being a champion for the international Ombudsman community by **adopting supportive declarations** at General Assemblies on topical issues.
- **Establish principles** to guide a general course of action to coordinate IOI support to Ombudsmen operating under difficult circumstances. Clarify all options available as well as the procedures to be followed should a case present itself.
- Foster a close and **continuing dialogue and cooperation with relevant international partner organisations** (e.g. Office of the UN High Commissioner for Human Rights, Council of Europe etc.) and join forces to ensure best possible support for Ombudsman institutions as core elements of democracy.
- Embark on **fact finding missions** to gain more insight on the specific situations at hand, to raise awareness on a national as well as international level and to ensure that support is demand-driven, sustainable and effective for the colleague concerned.

- Develop and publish a series of IOI “**best practice**” **papers** on relevant topics (e.g. a guideline on independence of offices) aimed at bodies responsible for the creation of Ombudsman institutions and to advocate the importance of high international Ombudsman standards.

STRATEGIC GOAL 3: TRAINING AND EXCHANGE

With the view to strengthen its members’ capability and to foster the exchange of expertise among Ombudsmen worldwide, the IOI acknowledges the importance of training, exchange and shared learning as a key priority for its members and for the international standing of the organisation itself. The IOI proposes the following strategies to support this goal:

- Identify on an on-going basis the training needs that are of specific concern to Ombudsman institutions and take account of the fact that member institutions in different world regions have different realities and therefore also **different training needs** to address the practical aspects and problems of their work.
- Document any **new developments** and emerging practice areas for Ombudsmen worldwide (e.g. NPM mandates or mediation functions) and make these topics a priority for (new) training formats.
- Utilise the existing expertise within the membership of the IOI to develop training formats with a view to offering them to IOI members as well as other organisations and/or institutions. **Encourage members to share their good practices** in this regard and incorporate them in the development of in-house training initiatives.
- **Encourage regions to utilise training on a regular basis**, e.g. by submitting project proposals within the IOI’s subsidies program (either by one single institution, by a group of institutions or by the Regional President on behalf of the entire Region).
- Identify training providers and negotiate **standing offers for “package deals”** available without to the regions without further negotiations.
- Identify and negotiate **multi-lingual training options** or the possibility of offering certain training formats in language pairs (e.g. English-French for the African region or English-Spanish for the Caribbean & Latin American Region).

- Utilise the **IOI Pool of Experts** more actively to support exchange and training of colleagues in need of assistance and expertise.

STRATEGIC GOAL 4: COMMUNICATION & PUBLICATIONS

The IOI acknowledges the general need to foster communication among members but also to the world, in order to bring the IOI to the attention of important stakeholders and to increase its standing as an international organisation representing Ombudsman institutions worldwide. The IOI is also mindful of the general wish to re-introduce scholarly papers on Ombudsman-related topics. To strengthen the goal of communication and publications, the IOI proposes the following strategic approach:

- Encourage **effective communication among members** through instruments such as the IOI website, the IOI newsletter and the IOI case database and strives to raise the knowledge of IOI members to a uniform level by using these communication tools.
- Foster **communication with international partner organisations** and important stakeholders and disseminate information on benefits and services with a view to strengthen the standing and reputation of the IOI.
- Produce and **publish guidance material** in the form of a series of best practice papers to address the key features which inform strong and independent control mechanisms.
- Produce **scholarly papers** on certain aspects of Ombudsmanship on a more regular basis.
- Promote cooperation with academia to **carry out research** on issues of mutual interest and concern.

STRATEGIC GOAL 5: FINANCIAL GOOD HEALTH

In order to provide its members with the full range of services and the best assistance possible, it is essential that the organisation operates on a sound financial basis. This solid financial basis became a reality, when the IOI headquarters were transferred to Austria in 2009. Since then, the overhead costs of the IOI General Secretariat have been covered by the Austrian authorities and this has allowed that money generated from IOI membership fees to be of direct benefit to members in the shape of regional subsidies, scholarships for training or the funding of Ombudsman-related studies. To support the goal of financial good health the IOI proposes the following strategies:

- Develop a culture within the organisation where **generating income by marketing in-house expertise and research products** (e.g. training, publications, conferences on a fee-basis etc.) becomes a possibility.
- Recruit members (see strategic goal 1) and **increase the annual income through membership fee payments**.
- Develop an **investment strategy for funding** (i.e. an IOI policy on external funding) and explore options of external funding more actively in order to increase the organisation's funding base.
- Engage in **joint ventures with partner organisations** (e.g. the World Bank or regional Ombudsman Associations etc.) to get co-funding for important projects.

STRATEGIC GOAL 6: NEW CHALLENGES

The IOI acknowledges the general fact that Ombudsman institutions will face new challenges in their work in the years to come. The IOI therefore demonstrates its willingness and preparedness to deal with emerging issues of concern (e.g. privatisation, security issue etc.) as an organisation and in doing so, seeks to put the focus on how such changes and developments can or may affect the citizens concerned and their right to redress.

REPORT

By the International Ombudsman Institute (IOI)

Following a Fact Finding Mission to Warsaw, Poland from 18 - 20 July 2016

Ombudsman Under Threat

RECOMMENDATIONS

- To acknowledge the internationally renowned Polish Commissioner for Human Rights that has served as a model institution in the region
- To support the Commissioner for Human Rights to independently exercise his mandate, by ensuring access to court, in particular access to the Constitutional Court without (further) undermining the credibility of the courts
- To ensure that the Commissioner for Human Rights is equipped with sufficient financial and staff resources to fulfil his multiple mandates in order to be able to continue to effectively and efficiently carry on his duties
- To oppose and condemn personal attacks against the Commissioner for Human Rights and his deputies
- To emphasize vis-à-vis international and regional organisations, e.g. the European Union, the Council of Europe, the Organization for Security and Cooperation in Europe, the importance of supporting the Commissioner for Human Rights in order to secure his continuing independence.

Vienna, October 2016

THE IOI

The International Ombudsman Institute (IOI), established in 1978, is the only global organisation for the cooperation of currently 175 independent Ombudsman institutions from more than 90 countries worldwide. The IOI is organised in six regional chapters (Africa, Asia, Australasia & Pacific, Europe, the Caribbean & Latin America and North America).

The role of the ombudsman is to protect the people against the violation of rights, abuse of power, unfair decisions and maladministration. Ombudsman institutions play an increasingly important role in improving public administration while making governments' actions more open and administration more accountable to the public.

In most countries around the world parliamentary control bodies are established, which monitor and implement the rule of law, the fight against corruption and good public administration. Although the specific role of the Ombudsman institution may vary, the holder of this office is legitimized by parliament – either through direct elections or through appointment by the head of state or government by or after consultation with parliament.

BACKGROUND - OMBUDSMAN UNDER THREAT

Different international organizations including the United Nations and the Council of Europe, have addressed the need for democratic States to provide themselves with an Ombudsman institution as an independent mechanism for the protection of human rights. The European Union requires that all candidate states should have independent Ombudsman institutions.

Two of the most recent international decisions are: Res. 69/168 (2014) of the UN General Assembly on “The role of the ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights”, and Res. 1959 (2013) of the Parliamentary Assembly of the Council of Europe on “Strengthening the institution of Ombudsman in Europe”. These resolutions, as well as international practice and academic research, delineate a number of features that an Ombudsman or Human Rights institution must meet.

Considering its general configuration, all international texts emphasize the fact that the creation of such institution is necessary, and not just optional. As for the regulatory standard of recognition, the Council of Europe expressly encourages the establishment of the

Ombudsman institution being effected in the Constitution. Its purpose must include the promotion and protection of human rights as well as the more conventional role of supervision of public administration. In this respect many European Ombudsmen have acquired specific competencies in areas such as the prevention of torture, gender and LGBTI rights or transparency and the right to access information in recent years. Needless to say, the defense of the most vulnerable groups, the ones that are most likely to be discriminated against (children, women, LGBTI people, migrants and asylum seekers, etc.), is at the core of an Ombudsman/Human Rights institution. Moreover, the efficacy and impact of the institution's final decisions must be derived not from a binding or coercive mandate, but from persuasion based on the rigor, objectivity and independence with which it conducts its activities.

The international framework also identifies the Ombudsman institution's independence as one of its fundamental traits. For this reason, it is necessary that the legal statute of the mandate-holder as well as the organizational structure provide the institution with the maximum independence and neutrality. This implies strict duties both for the mandate-holder and for the executive power. On the one hand, for instance, a candidate to hold the office of Ombudsman must not be an active member of any political party and his/her training and qualifications must be consistent with the duties of the Ombudsman. Once appointed, the incumbent must not engage in any other remunerated activities or in political activities.

On the other hand, the candidate must be chosen by a qualified majority of a legislative body and can only be forcibly dismissed "for incapacity or serious ethical misconduct", following a transparent procedure that also includes a qualified majority of parliament. Thus, the dismissal of an office-holder, which is absolutely exceptional in practice, must be based on legally assessed grounds of breach of the mandate, within a due-process based procedure, and with a parliamentary majority that exceeds the party supporting the government.

In order to guarantee the institution's independence, all levels of government have the duty to cooperate with it and respect its independence, without any political interference. The government must respect its organizational and budgetary autonomy, as ombudsman offices must be adequately resourced in order to be able to conduct the enquiries necessary to follow up complaints. In this respect, PACE Resolution 1959 (2013) urges member states "to make all efforts to avoid budget cuts resulting in the loss of independence of Ombudsman institutions".

The members of the IOI unanimously adopted the Wellington Declaration in New Zealand in November 2012 confirming their mutual understanding that "it is an expression of democratic maturity and the rule of law that governments and parliamentarian majorities shall allow

criticism voiced by independent Ombudsman institutions. As a consequence, an Ombudsman diligently fulfilling his/her mandate shall not be subject to any form of physical, mental or unjustified legal coercion.”

Reports relating to Ombudsmen operating under difficult circumstances or even under threat have come to the attention of the IOI more frequently in the past few years.

Threats, intimidation and reprisals against Ombudsman are often a result of the Ombudsmen’s work, the increasing efforts they make to protect and promote human rights and the fact that they hold governments to account. While the nature of these threats may vary, the reason for them is often the same, namely to affect its very existence and functioning and to undermine its independence and legitimacy.

Any action that is directed towards an Ombudsman institution or an incumbent directly or indirectly and that potentially puts the independent operation and exercise of the Ombudsman’s duties at risk can be seen as such impediment or threat to the Ombudsman.

Concern about these incidents has led the IOI to discuss the question of how it can support and assist colleagues under threat, while still maintaining the necessary distance to avoid interfering in the political affairs of a State.

The IOI Board of Directors acknowledged that the supporting member institutions under threat, facing reprisals or operating under difficult circumstances is one of the IOI’s core tasks. At a workshop held in Barcelona in April 2016, a possible IOI approach to assisting Ombudsmen operating under difficult circumstances was discussed using examples from various regions of the IOI. The very specific and topical situation of the Office of the Polish Commissioner for Human Rights led the present IOI Board members to organize an IOI fact-finding mission and to send a delegation to Poland to evaluate the situation of the Polish Commissioner for Human Rights and to gain more insight into the general situation in the country by meeting representatives of Parliament, of Government, of supreme courts, of NGOs and other stakeholders. In organizing this mission, the IOI also endorsed the opinion of European bodies such as the European Commission or the Council of Europe Commissioner for Human Rights.

The IOI carried out this fact-finding mission with full respect for the values and principles of its member and by applying a “do-no-harm” principle. The delegation took the existing national context as well as other contextual elements into account and exercised full discretion when and wherever necessary. The present report gives an account of the observations made by the IOI delegation.

REPORT

Taking into account

- The International Ombudsman Standard as defined in the Article 2 of the IOI By-Laws
- The IOI Guide on Developing and reforming Ombudsman schemes
- The International Framework of the Ombudsman Institution developed by the Catalan Ombudsman institution and the University of Barcelona
- Reports by the bodies of the Council of Europe and the European Union

The Office of the Commissioner for Human Rights in Poland (OC) was established in 1987, it has provided the model that many other Ombudsman institutions in central and Eastern Europe have followed and it has been regarded as one of the most effective Ombudsman offices in its region.

The OC has been a very active participant in Ombudsman networks and has operated as a model for other institutions as they were established and provided active support to them.

According to the Polish Constitution (Art. 208-212) the Commissioner for Human Rights shall safeguard the freedoms and rights of persons and citizens specified in the constitution. The Commissioner shall be independent in his activities, independent of other State organs and shall be accountable only to the Sejm (the Parliament).

The Polish Commissioner for Human Rights is accredited with “A-Status” at the Global Alliance of National Human Rights Institutions (former: ICC - International Coordinating Committee for National Human Rights Institutions), fulfilling all the requirements set out in the Paris Principles. The Commissioner is also a Voting member of the International Ombudsman Institute.

Following reports that the OC in Poland was facing difficulties, the IOI decided to send a fact finding mission to investigate the situation in Poland and to ensure that the office continues to be independent, continues to carry out its mandate and continues to provide an effective service to the people of Poland.

The IOI fact finding mission had the opportunity to meet a wide range of stakeholders, to understand the context in which the Commissioner for Human Rights is operating. It looked

particularly at the Commissioner's access to courts and the Constitutional Court because that forms an important part of the work of the OC.

Constitutional Court:

The Commissioner for Human Rights (the Ombudsman) has far-reaching responsibilities vis-à-vis the **Constitutional Court**, that are enshrined in the Constitution of the Republic of Poland (Art. 188 and Art. 191). From the early inception of both institutions all Ombudsmen made use of the possibility to file abstract motions with the Constitutional Court as a way of shaping jurisprudence concerning different issues, e.g. criminal law, civil law, taxation etc. These motions can be filed on the basis of actual cases or complaints brought before the Ombudsman or on his own motion, i.e. ex officio. On average 20-25 motions per year are sent to the Constitutional Court. Additionally, the Ombudsman can join constitutional complaints, which was done in the past in 15-20 cases per year. Since an amendment of the Act on the Constitutional Tribunal in June 2015 the Ombudsman can also join proceedings in which preliminary questions are put to the Constitutional Court by regular courts and he can join abstract motions by other actors.

In the current situation, it is of concern that the Constitutional Court has been hampered by delays in having its judgments published, with some judgments not being published for extended periods, and by not having the three elected judges sworn in. There is a concern that the effort which goes into preparing motions to the Constitutional Court by the Ombudsman's Office may be in vain, if they cannot be dealt with effectively by the Court.

We were told that the Ministry of Justice intends to reform the judiciary. While no proposals had been put forward at the time of the inquiry, many of those we spoke to expressed grave concern about the future independence of the judiciary and the possible politicization of appointments.

The National Council of the Judiciary (NCJ), a body that is comprised of judges as well as representatives of parliament, and the Minister of Justice, plays an important role in the process of nominating and selecting judges. According to the Polish Constitution (Art. 179) the NCJ presents a candidate to the President of the Republic, who will then nominate the candidate. Recently the President refused to nominate 10 judges without giving any justification to the NCJ. This fact in combination with proposed amendments to the Act on the NCJ stipulating that the President would obtain the right to choose from among the candidates has the potential of leading to a damaging erosion of the separation of powers.

Equally the potential reduction of the retirement age of Supreme Court judges from currently 70 years to 65 years might lead to a large scale replacement of judges, because it would

affect approx. 40% of all the Supreme Court judges, who are currently 65 years of age or older.

Immunity:

We were also informed that a law establishing a procedure for waiving **immunity** of various independent institutions in Poland, such as the Ombudsman, the Ombudsman for Children, the Inspector General for Personal Data Protection, the Head of the Institute of National Remembrance, was introduced and entered into force¹. Many of the persons we met were concerned that the new law does not provide sufficient guarantees protecting the Ombudsman and other independent institutions from arbitrary criminal prosecution by the executive power.

Funding:

As to the **funding** of the Ombudsman office the IOI fact finding mission found that the OC has the power to submit his budget to the Minister of Finance, who transfers it to Parliament. Parliament is then free to decide how to go along with the budget. For 2016 the OC asked for an increase of approximately 16% (from 9 million EUR to 10.5 million EUR), because important renovation works were scheduled in order to make the office building accessible for persons with disabilities and also because the OC staff has not seen an increase in salaries since 2008, whereas civil servants have. The procedure in Parliament is that one deputy is the rapporteur and checks the feasibility of the proposed budget and reports on it. Despite the fact that the rapporteur agreed with the proposal, the budget was neither increased nor maintained at the same level, but cut by 8%. Other institutions saw quite substantial increases in their budget, suggesting the drastic cut in the Ombudsman's budget was not due to general austerity measures in Poland.

To properly fulfil all the important duties of the Polish Commissioner for Human Rights his office is dependent on access to court and sufficient resources. The Fact Finding mission therefore notes with great concern that by limiting the Ombudsman's access to court, reducing his budget, limiting competences, changing immunity provisions are symptomatic of a lack of respect and support for accountability mechanisms, the Polish Constitution, international best practice and the rule of law.

¹ Law of 18 March 2016 amending the Law on the Commissioner for Human Rights and some other laws (Journal of Laws, item 677). The law entered into force on 31 May 2016.

CONCLUSIONS

1. The Polish Commissioner for Human Rights is a renowned institution that meets the requirements and criteria established by international law to be considered an Ombudsman institution.
2. We have been impressed by the work of Dr Bodnar and his office, and we look forward to seeing that work continuing into the future to build on its success to date and to extend it to all to provide greater opportunity for the people of Poland to receive redress when things go wrong. The work of the Ombudsman can also continue to help to improve public services by identifying problems affecting multiple service users and recommending changes to service delivery, regulations and legislation.
3. The independence must not be compromised by legislative, administrative or political measures.
4. It is of paramount importance to ensure that the Ombudsman's Office has a sufficient budget to enable it to undertake its work on behalf of the people of Poland.
5. The powers of the Ombudsman should be extended and not diminished, because it needs a wide mandate in order to properly fulfil its duty to make sure that the people using public services and living in Poland have access to a truly independent office which is properly resourced and has the power which enables it to deal with their complaints in an effective and efficient manner.
6. The office should continue to have access to the Constitutional Court and courts and we are concerned that measures are being taken which are limiting this access. We are also concerned that there are problems with the functioning of the Court that make it more difficult for the Commissioner for Human Rights to do its work.
7. Upon our return from the fact-finding mission, we have learnt about a petition by Foundation *Ordo Iuris* to dismiss Mr. Adam Bodnar from his position as Commissioner for Human Rights, i.e. the mandate-holder of the Polish Ombudsman institution, based on his positive stand concerning LGBTI rights. In this respect, as stated in the open letter issued by the IOI, we believe that:

- It would be entirely unacceptable for such a petition to take effect, as the defense of LGBTI rights can in no way be considered to be a breach of Mr.

Bodnar's mandate, according to international standards. Moreover, the European Union has consistently established, including in Article 21 of the Charter on Fundamental Rights, the right to non-discrimination based on sexual orientation. It is worth to underline that the Polish Parliament nominated, by the virtue of law as of 3 December 2010, the Commissioner for Human Rights to fulfill the tasks of the independent equality body according to the European Union anti-discrimination directives. The Commissioner's mandate, broadened by the Parliament, includes the protection of LGBTI people.

- Any future decision in this respect must be made by a qualified majority of the Parliament, within the framework of a pre-determined procedure and including a hearing with the Ombudsman himself.

8. We strongly urge the Parliament and Government of Poland to behave in accordance with these international principles, as set out in the first section of this report.
9. The IOI is ready to help with all available means to ensure the independence of the Polish Commissioner for Human Rights and his staff.
10. The IOI will deliver this report and its conclusions to the Polish authorities, while also providing copies to the above mentioned international institutions.

PARTICIPANTS OF THE FACT FINDING MISSION

Rafael Ribó – Regional President IOI Europe

Peter Tyndall – IOI 2nd Vice President

Günther Kräuter – IOI Secretary General

Ülle Madise – IOI Europe Board Member

Ulrike Grieshofer – IOI Executive Director

Judith Macaya – Secretariat IOI Europe

ANNEX:

LIST OF INSTITUTIONS/STAKEHOLDERS MET (IN CHRONOLOGICAL ORDER)

Ambassador Dr. Thomas M. Buchsbaum, Ambassador of Austria
Dr. Adam Bodnar, Commissioner for Human Rights
Dr. Sylwia Spurek, Deputy Commissioner for Human Rights
Ms. Katarzyna Kacperczyk, Undersecretary of State, Ministry of Foreign Affairs
Prof. Tadeusz Ereciński, President of the Civil Chamber of the Supreme Court
Katarzyna Gonera, Judge at the Supreme Court
Waldemar Płóciennik, Judge at the Supreme Court
Mateusz Kijowski of the Committee for the Defence of Democracy (KOD)
Wojciech Kaczmarczyk, Government Plenipotentiary for Civil Society and Equal Treatment
Prof. Andrzej Rzepliński, Chairman of the Constitutional Tribunal of Poland
Prof. Michał Seweryński, Chairman of the Commission for Human Rights, Rule of Law and
Petitions of the Senate of the Republic of Poland and additional
members of the Commission
Dariusz Zawistowski, Chairman of the National Judiciary Council
Krzysztof Wojtaszek, Vice-Chairman of the National Judiciary Council
Waldemar Żurek, spokesman of the National Judiciary Council
Dr Marcin Walecki, Head of Democratization Department, OSCE/ODIHR
Omer Fisher, Deputy Head, Human Rights Department, OSCE/ODIHR
Anne-Lise Chatelain, Legislative Support Officer, OSCE/ODIHR
Marc van Gool, Human Rights Adviser, OSCE/ODIHR
Mr Marek Michalak, Ombudsman for Children Rights

INTERNATIONAL OMBUDSMAN INSTITUTE (IOI)

BANGKOK DECLARATION

adopted unanimously by all present and voting

at the General Assembly held on 15th November 2016

in Bangkok, Thailand

WHEREAS the Ombudsman offers independent and objective consideration of complaints, aimed at correcting injustices caused to an individual as a result of maladministration; and

WHEREAS a further important objective of the Ombudsman is to improve services provided to the public by ensuring that systemic failings are identified and corrected; and

WHEREAS from its early beginnings in Scandinavia, the Ombudsman concept has now been adopted and extended across the world, and includes the promotion and protection of human rights; and

WHEREAS the Ombudsman idea has proved extraordinarily adaptable and innovative while remaining true to its original core principles of independence, objectivity and fairness.

On motion duly made by the International Ombudsman Institute (IOI) and unanimously carried, it:

1. *Recalls* the findings of the Wellington Declaration that Ombudsman institutions form an integral part of Good Governance and make an important contribution to the Rule of Law, Transparency, Democracy and Human Rights.
2. *Reiterates* that an Ombudsman diligently fulfilling his/her mandate, shall not be subject to any form of physical, mental or unjustified legal coercion.
3. *Opposes* any restrictions which would limit the independence of the Ombudsman and restrict his/her ability to protect the fundamental rights of all persons.
4. *Calls upon* all nations to give constitutional status to Ombudsman institutions.

5. *Calls upon* national governments to recognize the importance of strong and independent Ombudsman institutions in order to guarantee that the fundamental rights of all persons are respected and to contribute to a transparent and accountable democracy.
6. *Condemns* any intimidation and reprisals, such as restrictions of budget, staff or mandate against the independent work of Ombudspersons around the world.
7. *Takes* threats against Ombudsman institutions very seriously and supports members facing restrictions through all available means.
8. *Calls upon* national governments to promptly and thoroughly investigate cases of alleged intimidation and reprisals against Ombudsman or staff of Ombudsman institutions and take appropriate action

Bearing in mind the current situation in Thailand, the IOI strongly

9. *Condemns* any attacks on human rights and expresses its support to the Thai people and the Thai Ombudsman, both in the person of the current mandate holder and the institution itself.
10. *Calls on* the Thai government to ensure that no human rights violations occur and to avoid any restrictions of freedom of speech, freedom of assembly and freedom of the press.
11. *Urges* the Thai government to promptly restore democracy in Thailand by holding free and fair elections.



THE CONTROL YUAN

Oct. 20, 2016

General Viddhavat Rajatanun
Chief Ombudsman
Office of the Ombudsman
Bangkok, Thailand

Dear General Rajatanun,

On behalf of the entire Control Yuan, I would like to express our deepest condolences and sympathies for the passing of His Majesty King Bhumibol Adulyadej.

His Majesty was a gentle and wise monarch who was much loved by the people of Thailand. His enormous contribution to Thailand's development into a prosperous modern nation is greatly admired by the international community.

The great King was a good friend to Taiwan and visited the island with Her Majesty Queen Sikirit in 1963. The people of Taiwan will always cherish His Majesty's friendship, and we join the people of Thailand in mourning his loss.

Sincerely,

Po-ya Chang, MD; MPH; Dr.MSc.
President
The Control Yuan
Republic of China (Taiwan)

第 11 屆 IOI 會議院長引言

Introductory Remarks by President Chang of the CY

Good afternoon, Honorable Chair, distinguished participants, ladies and gentlemen.

On behalf of the Control Yuan (we call it the CY), the R.O.C, I am very pleased to attend the 11th World Conference of International Ombudsman Institute (IOI) in Bangkok. The CY became an IOI institutional member in 1994 and has since benefited greatly from its activities: fostering positive relationship with other member institutions and keeping abreast of the latest Ombudsman developments. On this special occasion, I would like to highlight the functions of the Ombudsman's office in protecting human rights from the Taiwanese perspective.

As some of you might already know, my nation runs on a unique five-branch government, with checks and balances among the five powers (we also call five “Yuans”). In addition to the Executive, Legislative, and Judicial Yuans, we have the Examination Yuan in charge of validating the qualification of civil servants and the CY for ensuring good governance in the public sector. This five-branch system allows the CY independence to monitor public administration. The CY is vested by our Constitution to receive citizen’s complaints against any government’s misconducts, to conduct investigation into maladministration, and to make recommendations to government agencies. It is also accorded with the power to initiate impeachments against government officials who have been found to severely violate the law. In practice, however, the CY functions as a protector of human rights, because more than half of the cases it handles are related to human rights issues.

Following my introductory remarks, now I would like to introduce Dr. Tzong-ho Bau. He is an eminent Member of the Control Yuan, having been a professor and Vice President of National Taiwan University for many years. Dr. Bau is well-experienced in conducting investigations. He will talk more at lengths about the Control Yuan’s unique functions in protecting human rights. Dr. Bau, please.

Multiple Functions of the Control Yuan to Effectively Protect Human Rights

by

Dr. Po-ya Chang

President, the Control Yuan, Republic of China (Taiwan)

and

Dr. Tzong-ho Bau

Member, the Control Yuan, Republic of China (Taiwan)

11th IOI World Conference
Bangkok, 13 – 19 November 2016

Opening

Good afternoon, Honorable Chair, distinguished participants, ladies and gentlemen. My talk today discusses the functions of the Control Yuan, as the national Ombudsman office in Taiwan, in protecting human rights.

The Tide with Human Rights Protection

Human rights have become universal in recent years. Based on practical experience, a country must fulfill at least two prerequisites to realize human rights protection. The first is to establish norms by means of passing domestic human rights-related bills and ratifying the international human rights treaties. The other is to establish mechanisms, which involves setting up the institutions in charge of human rights implementation or monitoring. Since 2009, through enactment of enforcement acts, the ROC (Taiwan) has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). This helps to align our human right norms with international standards.

As you know, in 1993 the United Nations adopted “the Paris Principles” to encourage, promote and assist countries to establish national human rights institutions. Those national human rights institutions should meet 6 criteria: (1) independence guaranteed by statute or constitution; (2) pluralism of members; (3) autonomy; (4) adequate powers of investigation; (5) sufficient resources; and (6) a broad mandate based on universal human rights. For more than a decade, some people in my country has been arguing that we should establish a national human rights commission so as to comply with the Paris Principles. Whenever they considered this issue, the functions of my Office, the Control Yuan, were discussed, because at present the Control Yuan plays a very important role in protecting human rights in Taiwan.

The Traditional Role and Functions of the Control Yuan

In as early as the Chin (246-206 B.C.) and Han (206 B.C.-220 A.D.) dynasties of ancient China, the Emperor assigned officials to exercise a systematic and permanent control of the imperial administration and its civilian employees. They also received petitions from the public for administrative injustices. This is the earliest Ombudsman model in ancient China that we follow to set up the Control Yuan.

Today the Republic of China (Taiwan) adopts a unique system of "checks and balances" between five powers at central government. Besides the executive, legislative, and judicial branches, two other branches, namely the examination and the control branches, are also established. These five branches are called the Yuans. In mandarin, Yuan refers to a "big house" or an "organization." The Examination Yuan is

set up to ensure the quality of civil servants and various certified professionals, as well as the fairness of job opportunity. The Control Yuan, on the other hand, is originally set up to prevent corruption, and to promote good governance as well as the rule of law. It is of equal constitutional status with the other four branches.

The Constitution stipulates that the Control Yuan shall have 29 Members, including a President and a Vice President, and all of them shall serve a term of six years. They are nominated by the President of the Republic with the consent of the legislature. These Members can exercise their powers and duties independently, with some 450 staff providing administrative and investigative assistance.

As with most Ombudsman offices in the world, the Control Yuan deals with complaints filed by the general public against government's decisions, actions or omissions. Our role is to protect the people against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration, and to improve public administration as well as to make the government's actions more open and its administration more accountable to the public.

The statutory functions and powers of the Control Yuan provided for by the Constitution and other laws are as follows :

1. Investigation into maladministration;
2. Impeachment against civil servants who severely violate laws;
3. Censure against incompetent or negligent chief government officials;
4. Proposing corrective measures to rectify maladministration;
5. Making recommendations to government agencies for improving their defects or deficiency;
6. Keeping records of assets reported by civil servants;
7. Dealing with matters related to conflict of interest;
8. Dealing with matters related to political donations;
9. Invigilation; and
10. Audit of government expenditure.

The Multiple Functions of the Control Yuan to Effectively Protect Human Rights

Today Taiwan is committed to proactively fulfilling international human rights law obligation. Since 2000, the Control Yuan has set up a "Human Rights Protection Committee". The main functions of this Committee are to uncover and investigate cases involving human rights violations; to recommend appropriate acts concerning human rights; to monitor the implementation of international human rights norms by governments of different levels; to coordinate with human rights group domestically and internationally; to hold workshops on human rights matters; and to publish thematic human rights investigation reports.

As with most classical Ombudsman offices around the world, the Control Yuan exercises its power to investigate any wrong doings of government at all levels. Each year the Control Yuan receives about 15,000 cases of complaints lodged by the general public. Some of them can be investigated by Members on rotation after careful assessment and analysis by staff. The Control Yuan Members also can undertake own-motion investigation into government misconduct and systemic problems based on media coverage of events or other resources.

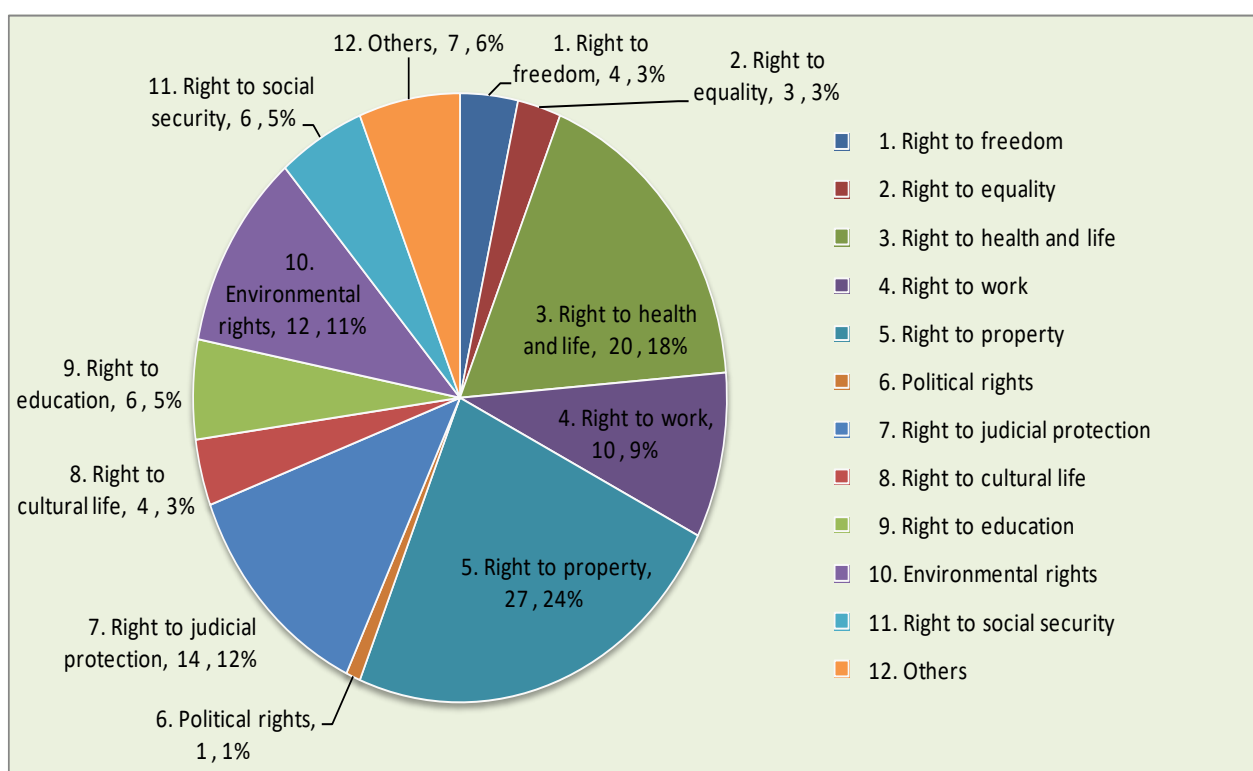
In 2015, the Control Yuan completed 210 investigative reports. Among them, 114 cases were related to human rights issues, accounting for 54.3%. The following table and pie chart show the distribution of human rights issues of those cases.

Human Rights Investigations Completed by the Control Yuan in 2015

Nature of Case	Investigations Completed	
	2015 (January-December)	
	No. of Cases	Percentage (%)
Total	210	100.0%
Non-human-rights investigations	96	45.7%
Human rights investigations	114	54.3%
1. Right to freedom	4	1.9%
2. Right to equality	3	1.4%
3. Right to health and life	20	9.5%
4. Right to work	10	4.8%
5. Right to property	27	12.9%
6. Political rights	1	0.5%
7. Right to judicial protection	14	6.6%
8. Right to cultural life	4	1.9%
9. Right to education	6	2.9%
10. Environmental rights	12	5.7%
11. Right to social security	6	2.9%
12. Others	7	3.3%

Source: The Control Yuan

The Category Distribution of Human Rights Investigations



A de facto Protector of Human Rights with a Unique Function

Most of human rights violations are government-related, and many of the Ombudsman offices investigate complaints of human rights arising from maladministration or misconduct of government departments. When government agencies do not exercise their powers properly, it is possible to violate human rights. Sometimes the government agencies might infringe the human rights directly, and very often the government agencies are inactive to human rights abuse. The so-called the “third generation of human rights” or “collective rights” involve economic, social, cultural, as well as development rights, and the realization of those rights requires government’s proactive and positive conduct or intervention. Therefore by supervising the government’s conduct, the Control Yuan can help protect basic individual human rights and promote collective rights.

As the Control Yuan is derived from a traditional system that has been implemented since ancient China, it is entitled to fulfill a special duty -- to initiate impeachment against any civil servants who severely violate laws, despite the fact that it does not very often undertake alternative dispute resolution through mediation, conciliation or negotiation, as many other Ombudsman offices do.

The initiation of this procedure requires at least two Control Yuan Members acting together. All impeachment cases shall be kept confidential until they are

referred to the Public Functionary Disciplinary Sanction Commission under the Judicial Yuan for decisions. The most severe punishment by the Disciplinary Commission is dismissal or removal from offices.

In 2015, 14 cases of impeachment were brought for deliberation by panel. 13 of them were justified and referred for disciplinary actions, while one was being rejected. Of these 13 cases, a total of 31 public officers were impeached: 28 being civil and 3 military personnel, with more than half of them being high ranking senior officers.

Case Studies

The following are two recent cases that illustrate how the Control Yuan exercise the unique power of impeachment to effectively enhance human rights protection.

Selected Case 1:

Abuse in Juvenile Reform Schools (Case No. 1040830925)

In February 2013, a teenage boy died of Sepsis caused by suppurated organs in the chest and abdomen during his enrollment for correctional education at Taoyuan Reform School of the Ministry of Justice (hereinafter as “the School”). There were signs of torture and excessive discipline. Large areas of bruising, skin tears and blisters were found on the boy’s right chest and under his armpit. The School denied allegations of torture, telling the boy’s family that he died of sudden death as a result of over scratching. The Taoyuan District Prosecutors Office conducted an investigation that went on over a year but could not determine the cause of death. The prosecutor closed the administrative case file. After widespread media attention, the case sparked a wave of public outcry, drawing attention to the human rights of delinquent juveniles. Later on, Changhua Reform School, another juvenile correctional facility, was reported to have abused its students by forcing them wear handcuffs and leg irons. There were also reports of students being handcuffed to outdoor laundry racks and in the corridors for as long as thirteen hours. In another incident, the Changhua Reform School put a student in solitary confinement for one year and five months and claimed it was for assessment purposes.

The Control Yuan launched an investigation and found that the boy was subject to harsh treatment by his superintendent and instructors during his enrollment at the Taoyuan Reform School. He was sent to live alone in an independent unit even when his physical condition had deteriorated to the point that he was unable to care for himself. He went into a shock in the final hour before his death. The staff member of the School failed to transport the boy to the hospital for timely treatment. He died en route to the hospital. Meanwhile, there were reports of abuse at the Changhua Reform School reflect long-term human rights abuse by the juvenile correctional facilities in Taiwan, in violation of Article 10 of the International Covenant on Civil and Political Rights and Article 19 of the Convention on Children’s Rights.

The Control Yuan issued an impeachment against former headmaster of the Taoyuan Reform School, Chiu-Lan Lin, former director of discipline, Li-Chong Chen, director of hygiene, Hui-Mei Ho, and headmaster of the Changhua Reform School, Yi-Pong Chan. The Control Yuan also issued a corrective measure to the Executive Yuan, the Agency of Corrections of the Ministry of Justice, Taoyuan Reform School, and Changhua Reform School for rectification. The investigation also points to systemic flaws in juvenile correction and calls for the Ministry of Justice, the Agency of Corrections, Ministry of Health and Welfare, and the Department of Juvenile and Family at the Judicial Yuan to make improvements. It is hoped that the Control Yuan's investigation report will compel the government to improve upon existing correctional education and facilitate children's return to the community as soon as possible. The Public Functionary Disciplinary Sanction Commission has demoted the headmasters of the two schools in pay rate by one tier of rate each and the director of discipline of Taoyuan Reform School by two tiers of rate, and issued a demerit to the director of hygiene of Taoyuan Reform School.

Selected Case 2:

Death of Army Corporal Exposes Human Rights Abuse in the Military (Case Number: 1030830891)

Chung-chiu Hung was serving in the 542nd Brigade in Hsinchu and had been set to be discharged on 6 July 2013. He was caught bringing a smart phone with built-in camera and an mp3 player onto his military base and was sent to solitary confinement for detention from 28 June to 4 July. On 3 July, Hung was rushed to the hospital for emergency treatment after allegedly being ordered to perform strenuous exercise drills. He died on July 4th. Questions surrounding Hung's torture and abuse prior to his death have sparked nationwide debate and concern over human rights issues in Taiwan's military. The incident has led to two mass protests (known as the "White Shirt Movement") launched by a civil group called "Citizen 1985". In a mere three days, the "Code of Court Martial Procedure" was amended, transferring jurisdiction of some military criminal cases to the civilian judiciary during peacetime.

The Control Yuan launched an investigation and found the following wrongful acts by the military units:

1. Lack of legal understanding and human rights awareness, negligence of law and order, and failure to follow due process when placing Hung in detention as punishment
2. Poorly setup interior of the detention room, the under qualified supervisor, and lack of discipline and on-the-job training for military personnel.

The Control Yuan recommended that the Ministry of National Defense and the Army Command Headquarters take corrective measures and consider possible punishment against those related officers implicated with negligence. The Control Yuan also impeached the 542nd Brigade Major General Wei-chih Shen, Commander

Colonel Chiang-chung Ho, and the 269th Brigade Major Fan-Han Yang.

In response, the Ministry of National Defense reviewed their existing facilities and made the following improvements to safeguard human rights and uphold discipline:

1. Completed the renovation of fourteen solitary confinement rooms and improved on the old facilities;
2. Launched a project to ensure staff sufficiency at the solitary confinement unit;
3. Mandated record keeping for every single use of solitary confinement as punishment; and
4. Adopted the “Daily Schedule and Plans at the Solitary Confinement,” which specifies routines and schedules during time in solitary confinement.

Conclusion

Human rights protection is a developing theme that has engaged strongly with governments worldwide as there is always a higher expectation for the public sector that they will respect, promote and protect human rights. It will take a concerted effort across different public agencies to properly address this theme and its issues. Despite the differences among nations in history, political and legal systems, and priorities in human rights protection that result in NHRIs under different names and models, the Ombudsman office is one that helps to make it happen by playing a very important and effective role. In doing what it does best: dealing independently and impartially with the public's complaints against government, it can effectively protect human rights without altering the fundamental nature of the Ombudsman's role.