



مركز بحوث الرقابيين الأفارقة

African Ombudsman Research Centre

Centre de Recherche des Ombudsmen Africains

Centro de Investigação da Provedoria de Justiça Africana

MINUTES OF 12th AORC BOARD MEETING
29 July 2015
Pullman Hotel, Abidjan
Cote d'Ivoire

PRESENT:

CHAIRPERSON: Adv. Thulisile Madonsela, (Public Protector - South Africa)

MEMBERS: Mme Fozia Amin (Ombudsman, Ethiopia)
Mme Alima Traore (Mediateur du Faso)
Judge Edmond Cowan (Ombudsman, Sierra Leone)

OBSERVERS: Mr Momelezi Kula (Public Protector - South Africa)
Mr Franky Lwelela (AORC)
Ouédraogo Sylvie (Mediateur du Faso)
Leul Seyoum (Ombudsman, Ethiopia)
Eskinder Kebede (Ombudsman, Ethiopia)
Animan Abera (Ombudsman, Ethiopia)
Isimat-Mirin Patricia Myriam (Mediature – Mediature Cote d'Ivoire)

APOLOGIES: Prof John Mubangizi (DVC, Head, School of Law and Management - UKZN)
Prof Managay Reddi (Dean, School of Law - UKZN)
Dr Paulo Tjipilica (Provedor de Justicia – Angola)
Dr Maria Du Toit (Public Protector – South Africa)

1. Opening and Welcome

The Chairperson, Adv. Thuli Madonsela, welcomed all Board Members and thanked them for making the time to be part of the 12th AORC Board meeting in Abidjan, Cote d'Ivoire, after the strenuous 2 days of AOMA EXCO meeting. She thanked and welcomed in particular Judge Cowan, the Ombudsman of Sierra Leone, who specially travelled afar just for the Board meeting. She then apologised for starting the meeting 30 minutes late, waiting for the Mediator of Cote d'Ivoire who wanted to participate to the meeting, while expressed her hopes for a fruitful meeting.

In her opening remarks, the Chairperson thanked the Public Protector South Africa team for assisting her in keeping AORC going, the University of KwaZulu-Natal for its part in ensuring the building of the necessary foundation for AORC to spring forward so that it reached its potential, and expressed her greatest gratitude to Mr Lwelela for taking responsibilities when needed by doing the best he could to keep some activities of AORC going. She then invited all board members to be purpose driven in their deliberations and in the way that they will manage and revive AORC going forward, while highlighting the following facts:

- AORC is an asset with great potential to build capacity in AOMA, to provide credible research, to build the institution of the Ombudsman or mediators in Africa and to help AOMA itself to grow into a globally respected and Known Ombudsman association.
- As leaders of AORC, the choice is either to mourn the darkness, meaning to criticise the fact that this asset has not lived to its potential due to some management challenges, or to step up and empower AORC, meaning steadfastly play part to make sure that AORC became a centre of excellence on Ombudsman research, capacity building, Information, and Advocacy and to make sure that AOMA is properly serviced by AORC.

She then explained that the main objective of the meeting is to put heads together with a unique purpose, to revive and energize AORC and to make sure that it serves its purpose of becoming a germ in the hands of AOMA, that will be able to provide capacity building to members, provide information to members, and to produce credible outputs that will influence people to understand the African Ombudsman Institution, and assist decision makers to review their own offices and ensure that they empower the ombudsman Institutions in their offices to serve the purpose it is supposed to serve which is to strengthen and support constitutional democracy by ensuring good governance.

The Chairperson concluded her remark by inviting all Board Members to exercise faith of a mustard seed in believing the fact that, AORC is a tiny organisation at this stage but it is a slipping giant that they have the responsibility to nurse and nurture and get it to deliver according to the vision that the funders of AOMA had in mind when they created AORC and put it in their hand to pursue.

2. Apologies, Additions to and Adoption of the Agenda

Apologies were been noted from Dr. Tjipilica of Angola, and the representatives of the University of KwaZulu-Natal, Prof Mubangizi, and Prof Reddi.

With the absence of representatives from UKZN, the issue of quorum became critical. According the Article 12 in the constitution of AOMA which is foundational provision of AORC, one of the requirement for the quorum to be reached is the presence of one representative from the University of KwaZulu-Natal and one representative from the Public Protector South Africa.

After a lengthy discussion, and in order to deal with the quorum issue, the following observation were been made by the Chairperson:

- This Board meeting follows another Board meeting that was held on the 2nd of July 2015, which was quorate according to the constitution of AOMA but not according to the Company Act,
- AORC is registered as a company from June 2014, and that company has a Board of Directors who are: Dr Tjipilica from Angola, Adv. Madonsela from South Africa, Judge Cowan from Sierra Leone, Mme Traoré from Burkina Faso, Mr Themba Mthethwa from South Africa, and Professor Reddi and Professor Mubangizi from the University of Kwazulu-Natal,
- The New Constitution of AOMA as adopted by the GA in Addis Ababa in November 2014, creates a new Board which only has Five (5) members: Two (2) Representatives from the University of KwaZulu-Natal, Two (2) Representatives from the Public Protector South Africa, and the President of AOMA from which basis the meeting of the 2nd July 2015 is declared to be quorate.
- Today's meeting does not quorate with regards to both to Company Act and the constitution because we don't have 50% of members according to the Company Act, and we don't have any representative from UKZN according to the Constitution of AOMA.

Referring to a letter received from Professor Mubangizi questioning the organisation of this meeting while there was another one earlier the same month, the Chairperson suggested that she still believes that this meeting is not a waste of money because in the first meeting that was held in Durban they were South African only, there were decisions that were supposed to be ratified in this meeting for the legitimacy of consensus to be beyond the borders. She then explained that she requested an earlier Board meeting on the 2nd, before coming to Abidjan because she wanted members to meet first and properly prepare a report on the realisations of AORC before going to AOMA EXCO in Abidjan. Her understanding was that the meeting today would still be held as planned initially.

She then requested members to suggest a way forward since the quorum is not reached, while notifying them that one of the decision that was been taken in the previous meeting that will help in dealing with the issue of inconsistency of quorum was the co-option of all board members who are in the company registration as Directors but they are not in the

constitution of AOMA, excepts for Mr Mthethwa whose matter was deferred until proper communication is received.

Judge Cowan was the first to react, suggesting that the constitution of AOMA is the supreme organ of the entire Ombudsman Association and from which the AORC was been Created, therefore, whatever is stipulation in the constitution is binding on all the other factions of AOMA including the AORC. He suggested that any change should start from the constitution, including giving the co-opted members the power to vote, and this should not be the other way round, and that this Board cannot create a new membership without referring to AOMA or receiving a mandate by AOMA. Then he requested to be clarified whether Dr Tjiplica was part of the Board in his capacity as a representative from Angola or as the president of AOMA, because he is no more the President of AOMA.

The Chairperson, in a brief response to Judge Cowan, clarified that the proposal of co-option is made in the context of the AOMA Constitution as the basic document, referring him to the article Twelve (12) of the Constitution that create Five (5) Board members and give them the power to co-opt other members, although those co-opted will not have voting right. Consequently, they Board is deciding to co-opt those old members who are ceasing to be ordinary member to become co-opted Board members, and this include Dr Tjiplica as long as he is still the Ombudsman of Angola.

The President of AOMA, Mme Fozia Amin then took the floor concurred with the Chairperson that the binding law is the constitution and that the constitution gives the Five (5) members of the Board the power to co-opt other members, and that should solve the issue of the quorum until the constitution is amended accordingly to give those co-opted members the power to vote, but for now they should be co-opted because AORC need their contribution in order to move forward. She also underlined that there is a need for clarity on the issue of membership of the Board in the constitution, it is one of the gapes that exist, and that the need to revise the constitution was been addressed in the EXCO meetings and appropriate measures were been taken.

As outcomes to the above debate, the following agreement were been reach:

Resolution 1: This meeting is held according to the constitution as a supreme document, the meeting will continue although it does not quorate. However, all decisions taken will be subjected ratification by other Board Members on a round robin basis.

Resolution 2: As a follow up of the decision of the Board meeting in Durban on the 2nd July 2015 which was declared quorate according to the constitution, and that co-opted all Board Members who are in the AORC Company Registration. All Board members present who were concern agreed to be co-opted. Dr Tjiplica, as the ombudsman of Angola, should be informed and respond in writing of his willingness to be a co-opted member of the AORC

Board. The secretariat will obtain required details from the new president of AOMA, Madam Fozia Amin to be added in the AORC Company registration.

Resolution 3: The issue of giving the power to vote to co-opt Board Members will be added to proposal of amendments to the constitution that will be submitted to the General assemble of AOMA in 2016.

It was at this stage, while debating on the composition of the Board that members discovered that the interpretation of Article 12 of the constitution between French and English speaking members was different. This was due to the existence of a discrepancy between the English and the French version of the constitution in Article Twelve, Section B (12.b), about the composition of the Board. The English version suggests a total of Five (5) Board Members (consisting of the Public Protector of South Africa, the President of AOMA, two (2) representative from UKZN, and the CEO of the Public Protector South Africa), while the French version suggests the total of Nine (9) Board Members (consisting of the Public Protector South Africa, the President of AOMA, Four (4) Ombudsmen nominated by AOMA, and the CEO of the Public Protector South Africa. Referring to Article two (2), Section E of the same constitution, it was been agreed that when there is a conflict among the different language versions in the constitution, the English version will prevail. However, a resolution was been taken that:

Resolution 4: The discrepancy will be brought to the attention of the Executive Committee for noting, as well as a request that all versions of the constitution be checked and corrected, to make sure there is synergy in all four version, under the sponsorship of the AORC.

3. Adoption of Minutes of 10th AORC Board Meeting held Nairobi, Kenya, 18 February 2015

The Chairperson asked the Board if they would like to make any changes to the minutes of the 10th AORC Board meeting of the 18 February 2015 in Kenya on a page by page basis. No change was been suggested. The minutes of the 10th AORC Board Meeting held in Nairobi, Kenya, on the 18th February 2015 was been adopted without any modification.

4. Ratification/adoption of Minutes of the 11th Board Meeting held in Durban, South Africa, 02 July 2015

The Chairperson started this item of the Agenda by apologising to the fact that the full minutes of the 11th Board Meeting is not including in the Board pack. Nevertheless, a documents that captures all the resolutions taken is included, that is as annex C in the Board pack. Considering the fact that this meeting does not quorate, the Chairperson requested to the secretariat that a full minutes to be sent to all board members for ratification on a round robin basis.

Chairperson went on to give a feedback on some of the key decisions that were been taken, among others, the co-options of all board members from the CIPC and the Constitution to form one combined AORC Board, the amendment to the articles of incorporation to make sure that they clearly indicate the link between AOMA and AORC and other necessary changes to clarify very clearly that AORC is an organ of AOMA.

With regards to the recommendation that the AORC be deregister under section 21 company and re-registered as International Organisation, the Chairperson explained that the reason behind this registration was to get diplomatic and other indemnities, but they are a lot of responsibilities associated to a company that is incorporated. i.e. submissions of audit financial statements, applying for tax exemption, advise the company registration entity every time we make changes to the Board. She then informed Board members that this resolution was presented to AOMA Executive Committee but unfortunately they have made a decision that the AORC cannot be deregistered because the constitution (Article 12) clearly states that AORC must be registered under the South African Companies Act 71 of 2008. However, the chairperson articulated that the process initiated by the Public Protector South Africa to register the AORC as an international Organisation so that it can have diplomatic immunities will carry on.

In respects to the handover to UKZN, Mr Kula informed Board members that the red tape with regards to the compliance in the process is now been cleared up, and that the PPSA was only waiting for the University of Kwazulu Natal to send back a signed agreement of the transfer in order to finalised the physical transfer of funds to UKZN account. The Chairperson the guaranteed the Board that she will follow up and make sure that by the 15th of August the latest, the process is concluded from the side of the Public Protector South Africa.

In relation to the progress beyond the transfer of funds to UKZN and the day to day running of the Centre, the chairperson highlighted the following agreed provisions:

- Once the University receive the funds, they will immediately start and fast-track the process of the recruitment of the AORC director, advertising and set date for Interviews.
- At least one board member should be present at the interviews, it doesn't have to be the Chairperson of the Board. The important thing for board is just to contribute towards the understanding as to what is a calibre of the person wanted to take care of the Centre.
- Once the director is appointed, he or she will prepare the funding request to the Department of International Relation and Cooperation for a three years to five years cycle.
- Auditors should be appointed to audit the 2012 to beyond 2014 financials, including the last date on which the transfer of fund to UKZN will be completed so that the University could only accounts for money that is spent under their watch.

- Mr Kula will assist with the organizing of the 5th general assembly in Tanzania and the 50th Anniversary of celebration of the Tanzanian Ombudsman, Professor Reddi as an alternate will check whether she is available.
- The strategic plan as approved is in the Board pack, under section H. Board members are requested to have a look and suggest any additional change or objection on a round robin basis. The endeavour is to sign it so that it become the bases for operating with the University, at the same time a basis on which the Public Protector is transferring money to the University, and also a basis on which the new Director will be appointed.
- The website was being updated regularly, members are urged to send information about their country that they would like Mr Lwelela to be aware of and to put in our newsletters, on the AOMA/AORC Website and Social media. Also follow the centre on twitter and Facebook.

Referring to the Arabic Training, the Chairperson informed the Boar that it was been approved but the date and place was not been discussed yet. She then proposed that the Board should consider this to happen an Arabic Country. This suggestion was been supported by the President of AOMA with an addition that Sudan has already requested to be trained. It was thus been agreed that the President of AOMA, Mme Fozia Amin will found out the security implications of holding the Training in Sudan. The alternative will be Tunisia. While the secretariat is in the process of sourcing a qualified trainer, the Chairperson requested Board members to assist by sending names and contacts of Arabic speaking trainers with experience in the Ombudsman field to Mr Lwelela, then the assessment of competencies and selection will be done.

It was at this stage, while discussing about training, the Chairperson reminded the Board about a proposition from the Executive Committee of AOMA that AORC should have ongoing different skills trainings that move beyond the basic Ombudsman introductions that were being done at this stage. In this regards, there was a proposition to appoint a technical advisory board that, according to article 12C of the Constitution will be refers as a "Standing committee for research and documentation". The process is being initiated, suggested names were been received and this need to be approved by all Board members in the next board meeting. This standing committee will assist the centre to work professionally in looking at research and capacity building regularly, and assist with content and a permanent curriculum and agenda of training and research needed.

The last item in this section was the Comparative Analysis study extension project, referring to the above idea of the centre having a standing committee or advisory board, The Chairperson accentuated the role that it is going to play in recommending a way forward to move and improve this study that was been dormant since February last year.

The Chairperson concluded this report by appealing to all board members to have faith, although the Centre has not really achieved what it sort out to achieve, moving forward in

faith and putting purpose above everything that was hindered the progress of the centre, and focusing of the goals, achievement will be certain in future.

Mme Fozia Amin proceeded to thank the Acting Director for her feedback and expressed her support for implementation of all the resolutions taken in the meeting of the 2nd July 2015 for the revival of the centre. However, she expressed her concern that these resolutions should be ratified by a fully quorate board, unfortunately both the meeting of the 2nd July 2015 and the current meeting of the 29 July 2015 are not fully quorate.

In response to Mme Fozia Amin, The Chairperson clarified that the meeting was quorate according to the constitution but not according to the company act. Therefore, due to discrepancy that existed between the company act and the constitution, Board Members were of the view that the meeting of the 2nd July 2015 did not quorate, the minutes were written on that basis and a resolution was passed that all resolution should be ratified in the next board meeting. Conversely, when the chairperson reported to the EXCO of AOMA on the 27 July 2015, the Executive committee meeting decided that the Durban meeting of the 2nd July 2015 was fully quorate because the Constitution of AOMA overrides any other documents.

In response to the concern of Judge Cowan about the normal procedure and structure in which Board meeting should be held to avoid confusions, the chairperson explained that the feeling that this particular Board meeting does not follow the normal structure and sequence of other board meeting may be explained by the fact that most of members are not present, some report are not included and the chair of the meeting is reporting at the same time on behalf of the AORC because there is no director at the centre yet.

5. Matters Arising from the Minutes

5.1. Nairobi Board Meeting of 18 February 2015

- a) Letter to Mr T. Mthethwa about AORC Board co-option and AOMA Membership: Mr Kula confirmed that the Chairperson wrote a letter to Mr Mthethwa as resolved. The contents of the letter was firstly for him to agree whether or not he want to be co-opted as a Board Member, and secondly, whether his organisation is willing to become a member of AOMA. He replied stating that he will request permission from his board in order to avail himself and he also requested for AOMA membership forms to join AOMA.

The Chairperson then informed the Board that the Executive Committee of AOMA has made a decision to defer the acceptance of new members. She then requested the Board to waive the requirement that Mr Mthethwa's Organisation should be a member of AOMA for him to be co-opted as a member of the AORC Board with reference to the Article 12 of the Constitution that the AORC Board was been given the right to co-opt as they deem fit.

Judge Cowan had a different view and a different understanding of the article 12 of the constitution that any co-opted member of the AORC Board must be first a member of AOMA or be confirmed by the constitution like in the case of the 2 representatives from UKZN.

Considering the differences in opinions by Board members that preference should be given to AOMA members, and Due to the lack of a clear interpretation clause for this matter in the constitution; since this matter was been discussed in previous Board meeting with a resolution that Mr Mthetwa should request for membership to AOMA and confirm his willingness to be co-opted as AORC Board Member; and bearing in mind that AOMA has deferred the issue of membership until further decision, it was been agreed that:

Resolution 5: Public Protector South Africa to demand in a written letter for a clear legal opinion and assistance on the matter of granting the co-option of Mr Mthethwa to the AORC Board even though his organisation is not a member of AOMA, and request a clear interpretation on who is and who can be co-opted as AORC Board member.

Resolution 6: The Issue of deregistered Mr Mthethwa from the CIPC as a Director was been postponed to the next three months or the next Board meeting. Mr Mthethwa remains a defect co-opted person pending a clear record of the decision of the Board in Kenya to be obtained from Mr Lwefela.

- b) The co-option of AOMA office bearers or the General Secretary of AOMA in AORC Board: Board members had different opinion to this suggestion, among others :
- The Chairperson report on actions and activities of AORC to AOMA office bearers in the Executive meeting, where they have the opportunity to advise the Board in everything that they are doing. Therefore there is no need to co-opt AOMA office bearers in AORC Board
 - On a financial point of view, the cost involve in having a big number of Board Members rather than spending on actual activities of the AORC
 - Having the General Secretary of AOMA as a Board members might conflict the reporting line between AOMA and AORC

The Chairperson suggested that the General Secretary doesn't have to be a board member but he can get a standing invitation to any AORC meeting if he is willing to attend. Mme Traoré requested the Mme Fozia Amin as the President of AOMA to suggest if this matter can be taken to the GA for guidance. Mme Fozia Amin suggested that the Board reassess the reason behind wanting to co-opt office bearers, is the report from the chairperson not enough? She also supported the idea of sending an invitation to the general secretary and let him decide if he wants to participate to Board meeting. Nevertheless, the suggestion of Judge Cowan became the agreement by all board members that:

Resolution 6: The matter of the co-option of office bearer will be held up until the next complete Board meeting to make a final decision. That gives an opportunity to all Board members time to deliberate.

c) Proposal for AORC to provide financial and technical support to the 50th anniversary of the first African Ombudsman association in Tanzania: The chairperson reminded Board members that this is not only about the Ombudsman in Tanzania but also about Africa celebrating the first appointment of an Ombudsman in the continent. Judge Cowan suggested that this proposal be accepted with the principle subject to approval by all Board members at the next meeting.

Resolution 7: The proposal of the AORC providing financial and technical support to the 50th Anniversary of the Ombudsman of Tanzania and the 4th General Assembly is approved but subjected to ratification by all Board members in the next Board meeting.

6. Addressing the Discrepancy between the CIPC Registration of AORC and the New AOMA Constitution

On the issue of discrepancy between the CIPC and the Constitution: It was been maintained that:

Resolution 8: AORC will proceed with amending the article of incorporation to better reflect the relationship between AOMA and AORC.

7. Co-optation of Member to the Board according to the New Constitution of AOMA

See item 2 and 4

8. UKZN handover and AORC Staffing

See item 4

9. AORC Financial Statement

Mr Kula gave a broad overview of the financial statement, which went as follows:

- The AORC was funded by the South African Department of International Relations and Cooperation for a period of three years with an amount of 21 Million and 200 thousand in Rand, in 2013, 7 Million and 100 thousand was transferred to us and was been spent. The second transfer was also an amount of 7 Million 100 thousand, and what is now outstanding is the third instalment from DIRCO which is an amount of 7 Million.
- In terms of the actual use of funds, the auditing record for the past 3 years 2011, 2012, and 2013 were been sent to Board Members
- The resolution of the Board of the 2nd July 2015 has approved the appointment of auditors to audit the financial year from 2014 and including 2015 up to the last transaction of the Public Protector before the transfer of the account to the University of Kwazulu Natal.
- What is left in the Bank of AORC is the amount of 5 Million 906 thousand Rand which we are still in the current financial year, once the Director is appointed AORC will still claim the final tranche of the money from DIRCO, and submit another 3 years funding request.
- All transaction made since 1st April 2013 are attached in the Board Packs

On the query of Mme Fozia Amin if the AORC has enough money to be able to sponsor the activities in Tanzania, namely the 5th General assembly and the 50th Anniversary of the Ombudsman in Africa, Chairperson responded that AORC is in a weak position because there is no new funding for next year because the proposal has not been made yet due to the absence of a Director at the centre. She then added that, however there is enough money available due to the fact that the AORC did not have an uninterrupted program and therefore did not use a lot of money. On her request the Board agreed that:

Resolution 9: The amount should be presented in US dollar figure in all AORC financials reports to make it easier for other Board members to follow through.

10. Any other Matters :

The following subjects were discussed under this item of the Agenda:

- The suggestion by Judge Cowan, and supported by Mme Traoré, that in future travels and stay arrangement should include some provision to give board members time to rest before the meeting and an extra day to stay and visit around when they are called out for meeting.
- A reminder to the secretariat that Invitation to the Board meeting should be sent at least a month before the meeting, and Board Packs should be sent at least a 2 weeks before the meeting to give Board members a reasonable time to be prepared.

- A request by Mme Traoré to grant that a Board member can be accompanied by at least one collaborator on Board meeting and that he or she also be sponsored by the AORC.
- A request by AOMA that the AORC consider sponsoring the periodic conferences in the regions of AOMA to be held by the 31 March 2016.

It was thus been resolved that:

Resolution 10: The request to give Board members an extra day after the meeting to visit around is accepted but subjected to the travel benefit guidelines from AORC funders which is the South African Government travel benefit policy guidelines.

The Chairperson added that in future AORC should create its own travel policies that will include all the travel arrangement in order to avoid auditing queries.

Resolution 11: The proposal that AORC should consider sponsoring one Board members and one collaborator will be include and discuss in the Agenda of the next board meeting.

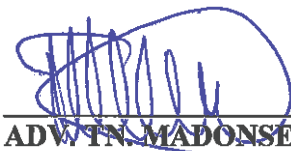
The Chairperson added that the Secretariat will prepare a proposal with the costing to see how much it be coasting us to have our meetings yearly if we increase the funding to include the travel and accommodation of collaborators on top of the travel and accommodation of Board members.

Resolution 12: The Secretariat should check and ensure that the requirement of holding of AOMA regional conference is covered in the strategic objectives of the AORC Strategic Plan which is to strengthen the regions of AOMA.

The Chairperson added that the before the signing off of the strategic plan, the secretariat should make sure its catered for its catered for things that were been discussed about AOMA conferences and trainings in the AOMA executive meeting.

11. Closing Remarks

The 12th AORC Board meeting was concluded by the Chairperson thanking the all members for moving with faith, wishing them a safe journey while appreciating their generosity, their vision and their inputs for the success of the meeting.



ADWIN MADONSELA
CHAIRPERSON: AORC BOARD
PUBLIC PROTECTOR, REPUBLIC OF SOUTH AFRICA

19/02/2016

DATE