

# REPORT

## African Ombudsman Research Centre (AORC) Launch and Needs Assessment Workshop

15th -17th March 2011

University of KwaZulu Natal, Durban, Kwazulu Natal, Republic of South Africa

PRESENTED BY ADV THULI MADONSELA, AOMA EXECUTIVE SECRETARY,  
TO THE EXECUTIVE COMMITTEE OF AOMA MEETING, 15-16 SEPTEMBER 2011, ADDIS ABABA, ETHIOPIA



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مركز بحوث الرقابيين الأفارقة  
African Ombudsman Research Centre  
Centre de Recherche des Ombudsman Africains  
Centro de Investigação da Provedoria de Justiça Africana





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## Acknowledgements

**THE EXECUTIVE COMMITTEE** (EXCO) of African Ombudsman and Mediators Association (AOMA) expresses its heartfelt appreciation to the partners who generously contributed financially and otherwise to make the launch of African Ombudsman and Mediators Association a resounding success. AOMA will continue to count on your support to make AORC the best Ombudsman research centre in the world.

EXCO would also like to thank the staff of the Public Protector South Africa, UKZN, GIZ, Office of the Premier of KZN, eThekweni Municipality, Departments of Justice & Constitutional Development, International Relations, Police and Presidency for their hard work and dedication. A word of thanks also goes to the Tourism Kwazulu-Natal for the memorabilia provided to AOMA members and Professor Mandla Mchunu is also saluted for the sterling job he did in steering the proceedings of the launch.



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## Foreword

**AT ITS FIRST** General Assembly in April 2005, the African Ombudsman and Mediators Association (AOMA) took a resolution to relocate its centre from Tanzania and to establish the African Ombudsman Resource Centre (AORC) at a South African university.

Since then, efforts have been made to implement this resolution. Eventually funding was provided by the Department of International Relations (DIRCO) South Africa. AOMA members at the General Assembly held in Luanda, Angola reaffirmed the initial resolution and went further to set a target, November 2010, as a date for the AORC to be launched. This decision provided the much-needed impetus to efforts for the establishment and operation of the Centre.

A memorandum of Understanding (MOU) was entered into between AOMA and the University of Kwazulu-Natal (UKZN), paving the way for locating the Centre at the University. A board was established to manage the centre after a resolution taken at the AOMA EXCO meeting in Kampala, April 2010. Membership of the board includes the Executive Secretary, the President, the Ombudsman/Mediator of Burkina Faso, Sierra Leone, two UKZN Law Faculty Members, the CEO PPSA and Director AORC. This will be followed by the registration of AORC as a Section 21 company with a functional Board of Directors.

**ADV THULI MADONSELA**  
**EXECUTIVE SECRETARY**  
**AFRICAN OMBUDSMAN AND MEDIATORS ASSOCIATION**





# Background

**THE EXECUTIVE COMMITTEE** (EXCO) of the African Ombudsman and Mediators Association (AOMA) launched the AORC at the University of Kwa-Zulu Natal (UKZN) in South Africa on the 15 March 2011.

The goal and objectives of the project were to launch and establish the AORC and ensure that the Centre's staff was appointed to ensure that it commences operations.

## *What is AOMA*

The AOMA is an organisation of Ombudsman and Mediators across the African continent.

Established in 2003, AOMA currently boasts 36 members straddling the six regions (Northern, Eastern, Central, West, Southern and Indian Ocean) of Africa and efforts are ongoing to encourage those countries who are not yet members of AOMA to swell the ranks of the growing movement for good governance and the rule of law across our continent.

### **AOMA's objectives are to:**

- Encourage the establishment, development and promotion of African Ombudsman institutions.
- Further mutual support, co-operation and joint activity through information sharing, training and development of Ombudsman and staff.
- Promote good governance - including the observance of human rights, transparency and administrative justice.
- Support and promote the autonomy and independence of Ombudsman offices.
- Foster affiliation and maintain liaison with other Ombudsman offices, Institutes and Associations, international bodies and organisations interested in the progress of Ombudsman activities and human rights.
- Identify and carry out any other relevant activities

that members deem appropriate.

## *What is AORC*

The African Ombudsman Research Centre (AORC) is the resource and archive centre of the African Ombudsman and Mediators Association (AOMA) situated at the University of Kwazulu-Natal, Howard College Campus.

## *Aim of AORC*

The aim of the African Ombudsman Association Research Centre serves as a focal point for ombudsman offices in Africa, by coordinating their activities and supporting them with the provision of information and training, and acting as a point of liaison with all participants involved in enhancing corporate governance in Africa.

## *Role of AORC*

The role of AORC is to provide the following services to AOMA members and Ombudsman institutions:

### **Information and research**

- Creating public awareness and understanding of the existence, history and processes of the Ombudsman office.
- Providing background information on issues and topics affecting Ombudsmen.
- Providing information on human resources, career and personal development and ethics to ombudsman offices.
- Research into Ombudsman trends and practices.

### **Training**

- In-service training of Ombudsmen.
- Education for Ombudsmen and their staff - from paralegal level to masters level in Ombudsman



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practices.

- Continuous professional development, enhancement of skills and improvement of career prospects.
- Sharing of international best practice.
- Continuous professional development, enhancement of skills and improvement of career prospects.
- Sharing of international best practice.

#### **Coordination**

- Establishing lines of communication and collaboration with international organisations (such as the UN, European and World Banks) and other Ombudsman organisations.
- Liaising with governance institutions in Africa, such as the African Union (and all its structures) and NEPAD.
- Maintaining a membership and networking forum.
- Facilitating meetings and conferences.
- Developing and operating programmes to improve the exchange of information and experience between African Ombudsmen.

#### **Advocacy**

- Promoting the concept and institution of the Ombudsman, and encouraging its use and development throughout Africa.
- Promoting the use of Ombudsman as providers of alternative dispute resolution in appropriate circumstances.

- Lobbying governance

institutions in Africa such as the African Union (and all its structures) and NEPAD about governance issues.

- Advocating for the autonomy and independence of Ombudsmen.
- Encouraging mutual understanding and assistance by and between Ombudsmen.
- Lobbying governments and organisations to ensure Ombudsman offices are adequately and appropriately structured, empowered and resourced.
- Providing consultancy services in establishing Ombudsman offices.

AORC invites members of the University Community, Civil Society and the general public to participate in and contribute to our research agenda on good governance, the role and scope of Ombudsman offices, African jurisprudence, the political and institutional environment within which Ombudsman/Public Protector works in the mandate to further democracy, good governance and human rights, among others.

Programmes carrying out any studies related to this and having students interested in research in any/related areas to those listed above should contact AORC staff on: [www.aorc.ukzn.ac.za](http://www.aorc.ukzn.ac.za)



# Launch overview

**THE LAUNCH OF** the AORC was combined with the EXCO meeting, AOMA Strategic Planning Session and a needs assessment workshop as a four-day programme commencing from the 14 to 17 March 2011. In essence, AOMA held a series of events, namely: meeting of the Executive Committee of AOMA that lasted for 1½ days, official launch of the AORC and a needs assessment Workshop for 1½ days with a view to launching the AORC.

The venue for the launch and related activities was the University of Kwazulu-Natal.

## **The major stakeholders for the launch and establishment of the Centre were:**

- African Renaissance Fund. The Government of the Republic of South Africa, through the African Renaissance Fund (ARF) of the Department of International Relations and Cooperation (DIRCO) has committed to funding the AORC in the amount of R3 000 000.00 for a period of 3 Years.
- Public Protector SA coordinated all activities and funded some of the coordination expenses
- GIZ. Organised and facilitated the needs assessment workshop, compiled a list a materials for the Resource Centre of AORC, drafted an information booklet and pamphlet.
- UKZN. Memorandum of Understanding was signed between AOMA and UKZN for the purpose of facilitating the establishment and running of AORC on the UKZN premises.
- The Kwazulu-Natal Provincial Government hosted a Gala Dinner whilst the eThekweni Municipality hosted a Civic Reception for AOMA members and guests.

Kwazulu-Natal Tourism provided memorabilia items for AOMA members.

## **Events**

The programme including the launch took place over a period of four working days. All three events/activities took place sequentially from the 14th to the 17th March 2011.

## **Launch event**

This high-profile event that was held under the theme: "When People complain – Entrenching good governance and the rule of law in Africa" was attended by, among others, 23 AOMA members, academics, non-academic staff and students of the University of Kwazulu-Natal, representatives of South African institutions that support democracy (Chapter Nine institutions as referred to in South Africa) and members of the public.

The launch was also graced by the presence of his Excellency South African President Dr. Zuma, Minister of Justice and Constitutional Development, Mr Jeff Radebe, Premier of Kwazulu-Natal, Dr Zweli Mkhize, Mayor of eThekweni Municipality, Councillor Obed Mlaba, Vice Chancellor of UKZN, Prof Malegapuru Makgoba, Ambassador of the Federal Republic of Germany, Mr W. Haller, the President of AOMA, Dr Tjipilika, amongst other dignitaries. The proceedings were directed by a distinguished law expert, Professor Mandla Mchunu. The Chief Justice of SA opened the needs assessment part of the launch activities.

President Zuma delivered a keynote address and unveiled the plaque before Minister Radebe proceeded to officially open the AORC premises.



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## Mayor of eThekweni Municipality

*Speech by Mayor Obed Mlaba on the occasion of the launch of the Ombudsman Research Centre Programme at UKZN*

*Programme Director  
Honourable JG Zuma, President of the Republic of South Africa  
Minister Jeff Radebe and other Ministers present  
Premier Zweli Mkhize  
Members of the Provincial Executive present  
AOMA President, Dr P. Tjipilica  
Adv Thuli Madonsela, South Africa's Public Protector and AOMA Secretary  
Professor Malegapuru Makgoba, Vice Chancellor of UKZN  
Members of the diplomatic corps  
Honoured guests  
Ladies and gentlemen*

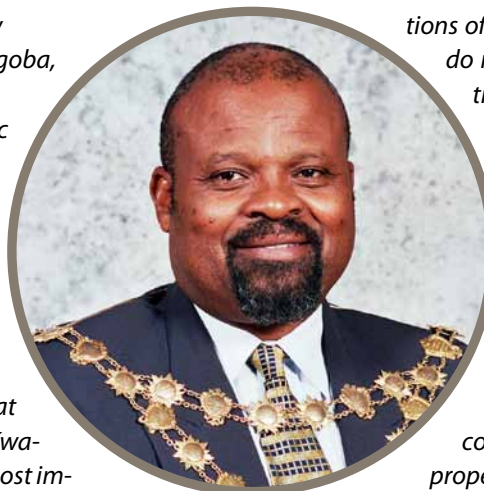
*It gives me great pleasure to welcome you to our city for the launch of the African Ombudsman Research Centre at the prestigious University of Kwa-zulu-Natal. This is one of the most important projects for the sustainability of our democracy.*

*Durban is once again proud to host such a critical event and more so we are mostly enthusiastic and glad that this project will be based at the UKZN, which is one of our flagship institutions of higher learning.*

*This project will not only put our city on the world map as the centre of research and knowledge but also fits in well with our vision as the city to become Africa's most livable and caring city. I want to congratulate the University of Kwazulu-Natal for being*

*chosen to host this research centre. I believe this ties in well with your motto of being the Premier University of African scholarship.*

*The offices of the ombudsman serve a very important role in securing our democratic principles on the continent. Their role as independent guardians ensures that those who have been put in positions of authority are kept in check and do not in any way abuse their positions. Abuse of power does not necessarily occur as a result of corruption but when something becomes a daily routine it's likely that certain systems may be overlooked. That is why it is important to have an independent body that will always serve as a reminder or a watchdog who ensures that correct decisions are taken and proper procedures are followed.*



*Mr President, ladies and gentlemen, one can never over emphasise the importance of research in anything we do in life. But research should not be done for the sake of it. In order for research to have an impact it must be based on the real experiences of our people. It must seek to determine the way forward and help those in authority to improve systems and to improve service delivery.*

*I wish you all the best for the future.*

*I thank you.*



### Speech by Vice Chancellor of UKZN: Professor Malegapuru Makgoba

*In President Jacob Zuma's state of the nation address on the 10th of February this year he said and I quote: "The African agenda remains our key policy focus.....We have well-established institutions that support democracy and protect the rights of our citizens, such as the Office of the Public Protector, the South African Human Rights Commission, the Office of the Auditor General, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Gender Commission.....We have taken up our non-government seat in the United Nations Security Council, which we will use to promote the African agenda as well as peace and security in Africa and the world."*

*The depth of this commitment, to uphold the rule of law, human rights and good governance, is evident in the establishment of the African Ombudsman Research Centre at the University of KwaZulu-Natal. At this juncture in our 17year democracy this decision by the Presidency is a bold one. It is indeed, a historic one.....one that would leave a legacy of accountability, integrity, and statesmanship, not only for South Africa but for the people of the African continent. We applaud your vision, President Zuma.*

*The value and significance of the African Ombudsman Research Centre should not be underestimated. At the heart of the Centre is research. Research of trends and practices related to ombudsman institutions. The centre will, amongst others, establish communication channels with the African Union and the United Nations as well as provide in-service training, capacity building and exchange programmes. Mr President, I am pleased that these goals are precisely in line with the strategic goals of the University of KwaZulu-Natal.*

*I ask your indulgence to recount the vision and mission of the University which intersects with the vision to establish the African Ombudsman Research Centre. The year 2004 was indeed a historic one in the higher education sector. The University of KwaZulu-Natal was established through the merger of the former universities of Natal and Durban-Westville. As you all know the mergers ushered in a radical reconstruction of the national Higher Education system and the University of KwaZulu-Natal is the flagship of this new system. It brings to this landscape the opportunity to build a university that is truly South African and truly global. It is an opportunity to shape an institution that represents both the richness of our heritage and the imagination of a free, democratic, egalitarian society.*

*The Vision of the University of KwaZulu-Natal is clear: To be the Premier University of African Scholarship. We are often asked, what does this mean? Professor Ronnie Miller a former Deputy Vice-Chancellor of Planning at UKZN who worked alongside myself captured the interpretation as follows, and I quote: "The concept of African scholarship, and in particular the idea of 'Africa', not only provides a common ground of unity for the members of the merging universities but in so doing also captures the very essence of what we were denied – our "African-ness"..... To be 'African' is not to be separate from outside the 'world'*





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*but to play an integral and constitutive part without which the world and especially the world of scholarship, remains incomplete and impoverished."*

*The University is widely respected as a global player and indeed as one of the top three research-led institutions in the country. As a molecular scientist and as Vice-Chancellor I am passionate about two things: quality and research. I believe that quality research is the measure of an institution's success. In 2009 the University produced 12.2 percent of the national research publications, which was the third highest, compared to 13 percent from the top institution. The faith and respect in the wealth of our research expertise is admirable. Last week we hosted the Director of the National Institutes of Health in the United States and the US Ambassador at the Nelson R Mandela School of Medicine. The University receives substantial funding from the NIH approximately R50 million since 2007 to undertake research in HIV/AIDS.*

*His Excellency, a major project that deserves mention is K-RITH. K-RITH is an international centre for scientific research and is currently under construction on the campus at the Nelson R Mandela School of Medicine. On the 19th March 2009 the Howard Hughes Medical Institute in the United States and the University of KwaZulu-Natal announced the groundbreaking partnership in Washington DC. The HHMI committed approximately half a billion rands in infrastructure and research funding over a ten-year period to establish the KwaZulu-Natal Research Institute for tuberculosis and HIV/AIDS, known as K-RITH. The institute is earmarked for completion next year. At the time it was the culmination of nearly two years of discussions. The announcement received extensive local and international media coverage. The Mercury in South Africa reported in its editorial and I quote, "The facility aims to help the entire continent, and will also serve for the training of African scientists. We*

*hope this bold investment will yield positive results for millions of sufferers from the ailment." I said at the time, is it not great to know that the best research facilities anywhere on the planet for developing and training future scientists in this particular area are located here at UKZN within the continent of Africa? If I were young and choosing a career I would reflect profoundly on this.*

*Translating research to benefit communities is fundamental in the University's major research endeavours. Last year the Centre for the AIDS Programme of Research in South Africa at the University provided the first evidence that an antiretroviral drug in a gel form – a microbicide - can reduce sexually transmitted infections of HIV and herpes in women. The scientific finding has been hailed as one of the top 10 scientific breakthroughs of 2010 by the journal Science.*

*I believe that the strength of the research endeavour at UKZN is a measure of its success as an institution. The Faculty of Law has a rich history of academic excellence that spans over one hundred years. The academics in the Faculty serve on the South African Human Rights Commission, the Commission for Conciliation, Mediation and Arbitration, the South African Law Reform Commission, the Presidency of the Commonwealth Legal Education association and the United Nations Human Rights Council. As Vice-Chancellor I am deeply humbled and honoured by the show of immense faith and confidence in the University of KwaZulu-Natal – thank you, your Excellency. The African Ombudsman Research Centre has my unequivocal support and the support of the University's executive. I know that the work undertaken by the Centre will provide tomorrow's knowledge. It is tomorrow's knowledge that will determine the quality of life for generations to come. And it is tomorrow's knowledge on which the people of the African continent can base their opportunities and hope for the future. I thank you.*

### Public Protector South Africa and Executive Secretary of AOMA

*Address by the Executive Secretary of the African Ombudsman and Mediators' Association (AOMA) Adv Thuli Madonsela during the launch of the African Ombudsman Research Centre at the University of KwaZulu-Natal in Durban on Tuesday, March 15, 2011*

*Programme Director, Prof Mandla Mchunu  
President of the Republic of South Africa, His Excellency, Mr JG Zuma  
Minister of Justice and Constitutional Development, Mr Jeff Radebe  
Ambassador of the Federal Republic of Germany, His Excellency, Mr Dieter W. Haller  
Premier of KwaZulu-Natal and Chancellor of the University of KwaZulu Natal, Dr Zweli Mkhize  
Executive Mayor of the City of eThekweni, Councillor Obed Mlaba  
President of the AOMA, His Excellence, Mr Paulo Tjipilica  
First Vice President of AOMA, Mr Raphael Baku  
Vice Chancellor of the University of KwaZulu Natal, Professor William Makgoba  
Deputy Public Protector Adv Mamiki Shai  
Members of the AOMA  
Ladies and gentlemen*

*It is an honour to be part of this event where we finally open the doors of the African Ombudsman Research Centre (AORC). This is a significant milestone in the history and development of the African Ombudsman and Mediators Association (AOMA).*

*AOMA is deeply honoured that the president of the Republic of South Africa, His Excellency President JG Zuma has graced this occasion with his presence. Mr President, we appreciate that you've taken time off from your extremely busy schedule to join us. We are also heartened by the presence of the Minister of Justice, Minister Radebe and that of the Premier of KwaZulu Natal Dr Zweli Mkhize and the Executive*

*Mayor of eThekweni, Councillor Obed Mlaba. Your presence demonstrates how seriously the South African government takes the institution of the ombudsman and the pursuit of good governance.*



*To the national government of South Africa, AOMA is deeply grateful for the funding donated by the Department of International Cooperation and Relations (DIRCO), which has made the establishment of the AORC possible.*

*I've been requested to tell you briefly about the origins of the AORC.*

*AOMA originally had a small centre in Dar es Salaam in Tanzania, which had been established in 1997 as part of early efforts that led to the formal establishment of AOMA.*

*In 2005 the General Assembly of AOMA decided to re-cast and establish the centre at a University in South Africa. My predecessor, Advocate Lawrence Mushwana, was given the responsibility to source funding and enter into negotiations with the University of KwaZulu-Natal with a view to establishing of the AORC.*



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*It was envisaged that the AORC would serve as a focal point and brain trust, supporting the work of AOMA and individual member institutions.*

*On behalf of AOMA, I would also like to express sincere gratitude to the University of KwaZulu-Natal for honouring the agreement they had with my predecessor to host this centre and for supporting this launch and accompanying activities.*

*I further wish to thank AOMA's secretariat at the Public Protector South Africa, particularly the CEO Mr Themba Mthethwa and the Project Manager Mrs Deliwe Jele. The Communications and Supply Chain Management teams also worked hard work to make this launch and supporting activities happen.*

## **Programme Director and Your Excellency;**

*Perhaps before I proceed to provide a brief background on the AROC, I should briefly talk about the mother body that gave birth to the AORC.*

*AOMA is made up of members from 36 countries across the African continent. AOMA seeks to ensure good governance, adherence to the rule of law and the promotion of human rights in the African continent by supporting, developing and protecting the independence of ombudsman institutions across the continent.*

*AOMA's vision is a continent where all states have independent, fully functional and effective Ombudsman offices to support democracy by acting as a buffer between citizens and the state. AOMA's immediate wish is to see all the other countries that have not yet established ombudsman institutions establish such bodies. It is also AOMA's wish that Ombudsman institutions that are not yet members of AOMA join association.*

*AOMA's aim is to help develop the ombudsman institution in Africa to play a central role in ensuring good governance, which includes protecting human rights and rule of law. The people of Africa should not find themselves having to resort to revolt in countries where the ombudsman institution exists. People need to know that the Ombudsman exists as a buffer between the people and those that have been entrusted with public power. Furthermore, an effective Ombudsman should reconcile citizens with the state by serving as the voice of the people and the conscience of the state. The ultimate idea is to ensure that those who hold public power (the state) are accountable to the givers of such power (the people).*

*Strom (2000<sup>1</sup>) presents the relationship between the people and those who hold public power in modern democracies as a series of "principal-agent relations", in terms of which:*

- *Citizens, the primary principals in a democracy;*
- *transfer their sovereignty to political representatives;*
- *who, confide their trust in a cabinet;*
- *Cabinet ministers delegate or mandate most of their powers to the thousands of civil servants;*
- *Who in its turn, transfer many powers to more or less independent agencies and public bodies;*
- *The agencies and civil servants at the end of the line spend billions of taxpayers' money, use their discretionary powers to grant permits and benefits, they execute public policies, impose fines, and use far reaching powers to deprive people of liberty and possessions.*

*When people's complaints fall on deaf ears and when accountability and the rule of law fail, the people lose faith in democratic avenues. If there's an Ombudsman and yet such institution fails to reconcile citizens with the state, this is the point at which options such*



as public demonstrations, and in extreme circumstances open revolt, are considered.

### **Programme Director**

*The AORC is a central pillar for the realization of AOMA's vision for the ombudsman institution in Africa. As indicated earlier AORC was conceived as a brain trust that would propel AOMA and the ombudsman institution in Africa through research, including the dissemination of jurisprudence emerging from various Ombudsman in Africa. As Ombudsman in Africa we tend to struggle with findings and remedial action on matters where our colleagues in the continent and elsewhere have already pronounced. In 2001 years the institution has evolved considerably and has changed its ways in reconciling the state with citizens.*

*I have personally experienced this limitation in my first few months of office when my team and I were searching for answers on what is expected of my office when the Constitution states that I must take appropriate remedial action. After agreeing that among other things, as an Ombudsman I must place the complainant as close as possible to where they would have been had government acted appropriately in the first instance.*

*The AORC's research will also cover jurisprudence from courts about the powers of the Ombudsman and responsibilities of government after an Ombudsman has made a pronouncement. In Europe and other continents there's a growing body of jurisprudence in this regard.*

*The centre will also be responsible for creating awareness about the existence of ombudsman institution. It will generate, preserve and disseminate information on issues related to the ombudsman institution; and research trends and practices that have*

*to do with this institution in Africa. It will also provide training, research support and advocacy services to the Association.*

*The centre will further seek to promote the ideals and independence of ombudsman institutions and engage with relevant international bodies such as the African Union and the United Nations on issues of good governance and the role of the ombudsman institution.*

*As South Africa, we are humbled by the fact that the leadership of the Association has entrusted us with the responsibility of setting the centre up. We hope that it will grow from strength to strength and contribute immensely to Africa's development.*

*But for the institution of the ombudsman to fully contribute to the development of Africa, governments need to support such institutions and help them maintain their independence. The ombudsman need not be seen as an adversary by governments. Governments need to understand that ombudsman institutions exist to reconcile states and their citizens.*

*In South Africa the Presidents of this country have demonstrated an understanding and support for this vision of the place of an Ombudsman in a democracy. They have demonstrated a similar understanding and support for the constitutional responsibility of the local version of the Ombudsman, the Public Protector.*

*This is illustrated in the current president, President Zuma's remarks during his recent state of the nation address where he stated:*

*"We have well-established institutions that support democracy and protect the rights of citizens, such as the Office of the Public Protector, the South African Human Rights Commission, the Office of the Audi-*



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*tor General, the Commission on the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Gender Commission."*

*President Zuma's remarks were in line with former President Nelson Mandela's views on the role and responsibility of the Public Protector. When President Mandela addressed the International Ombudsman Conference in Durban 11 years ago, he said:*

*"It was, to me, never reason for irritation but rather a source of comfort when these bodies [Constitutional Institutions] were asked to adjudicate on actions of my Government .... One of the first judgments of our Constitutional Court, for example, found that I, as President, administratively acted in a manner they would not condone. From that judgment my government and I drew reassurance that the ordinary citizens of our country would be protected against abuse, no matter from which quarters it would emanate. Similarly, the Public Protector (Ombudsman) had on more than one occasion been required to adjudicate in such matters."*

*Such remarks are encouraging and reflect an exemplary attitude that we would like to see in the entire African continent.*

*The centre opens its doors today. Its success depends on the support it will get. From government we've received optimal support at national, provincial and local level. The University of KwaZulu-Natal is fully behind the centre. For this I express AOMA and the PPSA's deepest gratitude to Professors Reddy and Makgoba. I invite scholars, academic institutions, NGOs and ombudsman institutions to join to make the centre work.*

*To members of AOMA, my invitation to you is- please use and support the centre.*

*Let us continue to work together to see a progressive Africa, where good governance, respect for the rule of law and promotion of human rights reign supreme.*

*Thank you.*

## Dr Paulo Tjipilicac, President of Aoma

*Your Excellency, President of the Republic of South Africa, Honourable members of Parliament and Provincial Legislatures, Honourable Members of the Judiciary, Honourable members of the Cabinet and Provincial Executive, Your Excellency Ambassador of Germany in South Africa, The Honourable Premier of KwaZulu Natal, Honourable Members of the African Ombudsman and Mediators Association, AOMA Distinguished Academic from the University of KwaZulu Natal, Distinguished Consul of Angola, Distinguished Guests.*

*It is a tremendous honour for me as the president of*

*the African Ombudsman Association, to stand before this august Assembly and address this short message of appreciation to the President of South Africa, for his worthy contribution and support at this historical event, in our association's life.*

*March, Excellency Mr President, will indeed go on the record as one of the most important month in the history of AOMA. Not only have we witnessed the official inauguration of the first over Ombudsman Research Centre on the continent, but most importantly, we are establishing a Centre in this Beautiful city of Durban, in the worldwide renown province of KwaZulu*

*Natal, the homeland of the great King Shaka, the symbol of the African greatness and resistance to the European occupation. Durban was also the place where the great Mahatma Ghandi found his inspiration for his struggle for Human Rights and Justice, before going back to his homeland and fighting for the independence of India. Today, as African Ombudsman, we have also come to this powerful land of inspiration, in order to establish on a permanent basis our Research Centre.*

*Excellency Mr, President, allow me to confirm before this august Assembly that we shall not look for long, as we can already find inspiration in your Excellency. We will go home and testify that the man who fought so long for the liberation of his country, the man who went on and tirelessly fought for peace and conflict resolutions on the African continent when assisting in Burundi, in Cote d'Ivoire G etc, the man who is now leading his country, has today given his blessings and support to the entire African Ombudsman community in our struggle for good governance, human rights and rule of law.*

*Excellency Mr President, your presence at this event,*



*your support for our Association as well as your Government's contribution to making the Research Centre a reality will never be forgotten among the Members of AOMA. May I also seize this opportunity to commend and appreciate before this august Assembly, the generous contribution and involvement of Germany through the GIZ, the German International Cooperation Agency. Excellency Ambassador of Germany in South Africa, may you convey our*

*heartfelt appreciation to your Government and reaffirm our commitment to making good use of your contribution. The heart of a grateful man is like a river overflowing with words. I may spend the day thanking everyone who contributed to the realisation of this day, but even that will still not do justice to how we all feel as African Ombudsman and mediators.*

*May I take this opportunity and reassure everyone that comes rain or shine, this Centre will be the benchmark of Ombudsmanship and Human Rights in Africa.*

*You shall judge us on our performance, and your satisfaction will be our greatest price.*

*Thank you.*

### **Ambassador of the Federal Republic of Germany**

***Speech of the German Ambassador Dieter W. Haller on occasion of the Launch of the African Ombudsman Research Centre, University of KwaZulu Natal, Durban, 15th March 2011***

*Honourable President of the Republic,  
H.E. Jacob Zuma,*

*Honourable Minister of Justice and Constitutional*

*Development Jeff Radebe,  
The Executive Secretary of the African Ombudsman  
and Mediators Association and Public Protector of  
South Africa, Adv Thuli Madonsela,*



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*Honourable President of the African Ombudsmen and Mediators' Association, Dr Tjipilica, Premier of KwaZulu-Natal, Hon. Dr. Mkhize, Your Worship Mayor Mlaba of the eThekweni Municipality, Vice-Chancellor of the University of KZN, Prof. Makgoba, Ombudsmen from various African countries,  
Ladies and Gentlemen,*

*It gives me great pleasure to be here today and to represent the Federal Republic of Germany at the launch of the African Ombudsman Research Centre. I thank you for the kind invitation.*

*At the outset, let me convey our most sincere congratulations to the President, Executive Secretary and in fact all members of the African Ombudsman and Mediators Association - AOMA - for having the foresight and commitment to establish the African Ombudsman Research Centre, the AORC. This is indeed an important milestone in the development of the overall governance architecture of Africa.*

*I would equally like to commend the leaders of the African Ombudsman and Mediators Association for their choice of Durban. Durban will be host of two important conferences this year: The Congress of the International Olympic Committee in July and the 17th Conference of the Parties of the Climate Framework Convention /Cop 17.*

*Durban is a very important economic hub with the largest harbour of Africa, an inspiring conference venue with excellent infrastructure, a wonderful tourist destination, this University an impressive Centre of*

*Excellence. In short: Durban is a beehive of political, economic and academic activities. Your choice for Durban is a really good one.*

*Mr. President, Ladies and Gentlemen,*

*The recent developments in North Africa and in parts of the Arab World have shown us again how important the rule of law, good governance, the freedom of association, the freedom of speech are – all basic human rights' concepts enshrined in the Charta of the United Nations and subsequent International Covenants.*

*When Germany supports the cause of good governance and human rights we do it on the basis of our own history and our conviction that Democratic Rule is the best of all possible forms of Government. The challenges our countries – irrespective of their being developing, emerging or developed – are facing are of enormous magnitude. No country, no society can afford to waste resources – be they human or financial.*

*For me one of the interesting observations of the recent developments in North Africa is the fact that there is considerably less turmoil in those countries whose people enjoy the right and the freedom to participate, where the debate in a dynamic Civil Society is as open and controversial as here in South Africa.*

*It is so important that within the constitutional dispensation of our countries we continue our efforts to engage for social cohesion, to work for inclusive approaches and to fine-tune our democratic and administrative structures in order to narrow the gap between those who govern and those who are governed.*

*This is by the way a challenge which is also not for-*



eign to us in Europe.

**Ladies and Gentlemen,**

*In June of 2011, it will be 9 years since – at this very place, in Durban – the African Union was founded. In October, it will be 10 years since the New Partnership for Africa's Development (NEPAD) was adopted by Africa's leaders. The African Union and NEPAD enshrine the responsibility of African countries to promote and protect democracy and human rights by developing clear standards of accountability, transparency and participatory governance. The African Union's founding documents as well as NEPAD urge African states to strengthen their political and administrative frameworks in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of the rule of law.*

*Jacob Zuma, in his capacity as Deputy President of the Republic of South Africa, said in July 2002, after the birth of the African Union in Durban that "... the AU has in NEPAD an achievable plan for Africa's economic and social revival in partnership with the developed world. It is also important that Heads of State have emphasized their commitment to good governance and democracy."*

*To me, the work of African Ombudsman and Mediators Association and by extension the work of the AORC, is exactly in the spirit of what was envisaged almost a decade ago! The ombudsman is indeed a key institution to uphold and protect the values I have just spoken about. Your theme of "entrenching good governance and the rule of law in Africa" is in thus very appropriate.*

*Germany has a proud record of supporting the pursuit of governance in Africa and we have a long history of working at the level of the African Union and with individual states. Germany will continue to*

*make its contribution and exercise its responsibilities in a manner that improves global governance.*

*Over the last decades many changes have taken place in Africa and the pursuit of the objectives of NEPAD and other continental programmes is ongoing. And so has the role changed that individual African countries are playing. Countries now have a much richer experience from which to draw and the cooperation between African countries on many aspects has increased greatly. In this regard we must for example recognise the expertise and other resources that now emanate from South Africa. And this new expertise and resources have also opened up new avenues of support to African development.*

*The German support to AORC is channelled through the Trilateral Cooperation Fund jointly established by the Governments of Germany and South Africa.*

*This Trilateral Cooperation is a mechanism to draw on the expertise, experiences and other resources of these two countries to jointly support another African country or regional initiative. It is like saying "together we can do more". The Fund for Trilateral Cooperation is being used for support in the areas of good governance, skills development, protection of the environment and climate change as well as post-conflict management.*

*Trilateral cooperation projects have become an integral part of our development cooperation programme with the Government of South Africa. It is an outstanding programme indeed.*

*It includes economic development, governance and democracy, security and peace building, health and fighting HIV/Aids, supporting skills development and employment promotion – in line with the key priorities of the South African Government.*

*I should also like to refer to the Deutsche Gesellschaft*



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*fuer Internationale Zusammenarbeit, locally known as German International Cooperation (GIZ), which implements our development programmes. The GIZ under the able leadership of Mr. Peter Conze will continue to interact with you.*

*In conclusion I wish the AORC well, in particular with the workshop tomorrow and on Thursday as this workshop will deliberate on the information, coordination, training, advocacy and research needs of AOMA member states and how best these needs can be serviced. I trust that the establishment of the AORC here today will have a positive impact on the way citizens interact with their governments and how their*

*rights are protected by the key institution of the ombudsman in Africa.*

*And I am sure: you will be successful in achieving the aims and objectives you set yourselves. And if you should encounter once a difficulty – do not forget: “There is no gain without pain”.*

*Thank you so much!*

*Premier of Kwazulu-Natal*

*Thank you Programme Director. His Excellency, President Zuma – President of the Republic of South Africa, Minister Jeff Radebe, Minister of Justice and Constitutional Development, Public Protector, Advocate Madonsela, Deputy Vice Chancellor, Professor*

### Minister of Justice and Constitutional Development

*Introduction of the President of the Republic of South Africa, Mr Jacob Zuma, by the Minister of Justice and Constitutional Development, Mr Jeff Radebe, MP*

*I have been requested to introduce the guest speaker tonight on this very important occasion. He was born in the Province of Kwazulu-Natal at Inkandla on the 12th April 1942 at the height of the Second World War.*

*After having lost his father during the course of the same Second World War, he was compelled to start working at an early age to supplement his mother's income who worked as a Domestic Worker in the suburbs of Durban. What is well known about him, is that he was by and large self taught. Despite not getting the opportunity to enrol in formal educational institutions as a child, his passion for knowledge saw him glean information from those who attended schools. His rise within the ANC was not meteoric but a steady reflection of his tireless dedication to the course of our struggle for freedom.*



*Like many other fellow South Africans' whose brushes with the system of apartheid led to their political activism and coupled with the role model played by his activist uncle in the trade union movement, together inspired him to join the African National Congress in 1959 and became an MK combatant by 1962. Due to his activist roles, he was arrested and sentenced to 10 years imprisonment and therefore served his sentence together with other esteemed luminaries of the liberation struggle such as Ahmed Kathrada, Nelson Mandela, Walter Sisulu, Govan Mbeki and many others. But such intimidation by the apartheid regime did not dampen his relentless fighting spirit as he went on to help establish underground structures of the ANC in the province of KwaZulu-Natal until he left for exile in 1975.*

*From 1975, he spent 12 years in Swaziland and Mozambique and was instrumental in the reception and training of cadres who flooded neighbouring South Africa's countries following the epic confrontations between the youth and the security forces during course of the 1976 Students' Uprisings. His dedication to the liberation struggle saw him rise into membership of the ANC National Executive Committee in 1977, also serving as the Deputy Chief Representative of the ANC in Mozambique and later, after the 1984 Komati Accord, became the Chief Representative of the ANC.*

*Following much pressures on the neighbouring countries including Mozambique, he was forced to leave that country and settled at the ANC Head Office in Lusaka in Zambia. It is there that he was appointed Head of Underground Structures and thereafter the Chief of the Intelligence Department.*

*He also served in the ANC's political and military council after its formation in the 1980's. He returned to South Africa following the 1990 political unban-*

*ning and played a key role towards the signing of the Groote Schuur Minutes that laid down some of the fundamental conditions for what was to become a protracted negotiations process. On his return from exile, he was elected the Chairperson of the ANC in Southern KwaZulu-Natal and became a key proponent for the peaceful resolution of the many political conflicts that engulfed the region and the province.*

*At the first ANC National Conference to be held in South Africa after the political unbanning, he was elected the ANC Deputy Secretary General in 1991. While he was the ANC's candidate for the Premiership of KwaZulu-Natal during the historic 1994 elections, he settled for the portfolio of MEC for Economic Affairs and Tourism since the ANC had lost the elections to the IFP. His passion for education saw him establish the KZN RDP Bursary Fund which currently is supporting in excess of 1000 pupils at primary level and 10 students at institutions of higher education.*

*In 1997, he was elected the ANC Deputy President in Mafikeng and later appointed the Deputy President of the Republic of South Africa in 1999. During the watershed 2007 ANC National Conference in Polokwane, he was elected the President of the African National Congress, leading to his election as President of the Republic of South Africa in 6 May 2009 by the National Assembly as required by our Constitution. This was following the ANC victory during the National General Elections of the same year. He was accordingly inaugurated at the Union Buildings on 9 May 2009.*

*Ladies and gentlemen;*

*It is with great honour and privilege that I invite his Excellency the President of the Republic of South Africa, Jacob Gedleyihlekisa Zuma to give us his keynote address!*



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**President of South Africa, Mr J. G. Zuma**

*Address by President Jacob Zuma during the launch of the African Ombudsman Research Centre in Durban, KwaZulu-Natal*

*The Premier of KwaZulu-Natal, and Chancellor of the University of KwaZulu-Natal, Dr Zweli Mkhize, Minister of Justice and Constitutional Development, Mr Jeff Radebe, the President of the African Ombudsman and Mediators Association, Honourable Paulo Tjipilica, Vice Chancellor of the University of KwaZulu-Natal, Professor Malegapuru William Makgoba, the Public Protector of South Africa Advocate Thuli Madonsela, the Executive Committee of AOMA*

*Distinguished guests,  
Ladies and gentlemen,  
I take pleasure in welcoming the heads of African ombudsperson institutions to our country.  
We feel highly honoured to host you given your important responsibilities of protecting the rights of the people, especially the poor.*

*We value this responsibility highly in South Africa as our society is based on a strong human rights ethos, which we had to develop to transform our society which had emerged from a history of colonial and racist oppression.*

*Our country has developed into a thriving and vibrant constitutional democracy in the past 17 years. Our democracy is based on values that have been perfected over a century of struggle for freedom, human rights and a better life for all.*

*There have been various critical milestones during this century of struggle which have helped to shape the kind of society we live in.*

*One of these milestones was the adoption of the Free-*



*dom Charter in 1955 at a large gathering of people from all walks of life, united by the quest for freedom, justice and a better South Africa for all.*

*The Freedom Charter is one of the key foundations of all our progressive policies, legislation and programmes. Some of its provisions have found expression in the Constitution of the Republic.*

*Like the Charter, the Constitution stipulates that we will build a democratic and open society in which government is based on the will of the people and in which every citizen is equally protected by law.*

*Likewise, the Freedom Charter states that no government shall justly claim authority unless it was based on the will of the people.*



*The Constitution also enjoins the people of South Africa to establish a society based on democratic values, social justice and fundamental human rights, which are also expressed in the Freedom Charter. Our history of struggle led us to ensure that our Constitution contains a unique Bill of Rights which entrenches and promotes socio-economic rights. South Africans are entitled to basic services such as water, social security, housing and others in addition to political and human rights.*

*We are proud of this human rights based society and the constitutional democracy that we have built on very strong foundations forged in struggle. It is costly for government, it is time consuming due to long consultative processes that must take place before decisions are made, but it ensures stability, progress and social cohesion.*

*To ensure that our people enjoy these rights, our Constitution establishes institutions in Chapter 9, designed to protect and strengthen our Constitutional democracy.*

*These institutions are the Office of the Public Protector, the South African Human Rights Commission, the Office of the Auditor General, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Electoral Commission and the Gender Commission.*

*The institutions are independent and must be impartial. They are subject only to the Constitution and the law. In terms of the Constitution, they exercise their powers and perform their functions without fear, favour or prejudice.*

*The Constitution also states that other organs of state, through legislative and other measures, must assist and protect these institutions to ensure their*

*independence, impartiality, dignity and effectiveness.*

*No person or organ of state may interfere with the functioning of these institutions.*

*The Chapter 9 institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.*

*The Office of the Public Protector, which is our focus today, has to ensure that citizens are protected from violations of their rights, the abuse of power, negligence, unfair discrimination and maladministration. People will have faith in the office if they know that the Public Protector will act impartially to protect their rights.*

*Society needs to believe that the Office of the Public Protector will not be influenced by either the complainants or those institutions or individuals that are being investigated.*

*We in government respect the constitutionally guaranteed independence of our Chapter 9 institutions. We respect the work of the Public Protector even when we disagree with the findings or censure from that office. We respect our Chapter 9 institutions, as well as the judiciary and Parliament the other two independent arms of the State.*

*We value these institutions of our democracy because we are proud of the Constitution of our country which we worked so hard to develop.*

*I am sharing the South African experience with the colleagues of our Public Protector from the African continent because ombudspersons have an important role to play in entrenching a culture of account-*



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*able governance and in strengthening democratic institutions in our continent.*

*I am pleased that more African countries have established offices of ombudspersons since Tanzania established the first office in the African continent 42 years ago.*

*We need to encourage countries that have not established these important institutions to do so.*

*Part of the source of this encouragement, it seems to me, is the manner in which the offices of ombudspersons conduct themselves.*

*The role of these institutions is to serve as an avenue through which citizens exercise their rights and hold their governments accountable.*

*It is also to forge close relations between those entrusted with power and the governed.*

*This is an enormous responsibility. It should be undertaken with prudence, diligence and care.*

*Most importantly, the ombudspersons are a powerful relief mechanism for the poor which is why they should be accessible to all.*

*In this regard I was pleased to read the Service Pledge by Advocate Thulisile Madonsela, our Public Protector, in the Annual Report of the Public Protector for the financial year 2009 to 2010.*

*She pledged to be accessible to and be trusted by all persons and communities, take prompt remedial action, and promote good governance in the conduct of all state affairs.*

*I would encourage that this important pledge by our Public Protector be emulated by our government de-*

*partments.*

*Another critical step the offices of ombudspersons can take to promote legitimacy and support from ordinary citizens is not only through holding powerful people in our society accountable.*

*While taking on the powerful is of utmost importance, the Offices of Ombudspersons must also prioritise taking up cases that directly affect ordinary citizens.*

*An exemplary case in this regard concerned the construction of the Nandoni Dam near Thohoyandou where people from ten villages in the area complained that the construction of the dam negatively affected their livelihoods and they were not compensated for their losses.*

*Upon conducting an investigation the Public Protector found that the complaints by communities were legitimate. A similar case involves a widow who was not assisted in claiming the pension benefits of her husband. Also in this case, the Public Protector intervened to protect the right of a powerless citizen.*

*It may sound unimportant to those who have access to resources, but to the beneficiary it was a powerful intervention that contributed a great deal to improving her living conditions.*

*I also have personal experience of seeking relief from the Public Protector, having complained about abuse of power a few years ago.*

*I am now on the other side of the fence as Head of State and I am constantly in trouble with the Public Protector!*

*It is through holding the powerful accountable, and assisting the powerless that offices of ombudspersons*

sons will gain support from ordinary citizens.

Ladies and gentlemen,

We welcome the fact that plans are underway to formalise relations between the African Union Commission and this Association of African Ombudspersons. A closer working relationship between the two organisations will ensure that their work and influence reach every corner of the continent.

We hope that these relations will extend to other progressive and important African bodies such as the Pan African Parliament and the African Human Rights Commission.

Ladies and gentlemen,

It is with our great appreciation of the role of ombudspersons that we today congratulate you on the launch of the African Ombudsperson Research Centre.

This gives effect to the resolution of the first General Assembly of the African Ombudsperson and Mediators Association, held in Johannesburg in 2005, to establish the centre at a South African university.

Serving as a focal point for ombudsperson institutions across the African continent, the Centre we are launching today will be a source of important information.

Most importantly, the role of the Centre will be crucial in providing training and capacity building for ombudsperson institutions and advocating for the promotion of ombudsperson ideals.

For years, officials from ombudsperson institutions had to dig deep into their pockets in order to build their capacity by going abroad for training opportunities.

We hope that this facility will bridge that gap and that we will begin to see officials from all over the continent coming to Durban for their training needs. We should also note that the opening of the Centre takes place during what is undoubtedly a critical moment and potentially a turning point in the African continent.

We are witnessing massive protests in North Africa and some parts of the Arab world which are simply unprecedented in that region.

These protests are led by the young and the old and by men and women who are drawn from rural and urban areas.

Their rallying call is simple. The people want to participate in the affairs of their own countries. They want government that represents their aspirations and which is responsive to their needs.

The history of our own country, South Africa, has taught us that there is no force, however mighty, that can defeat a people who demand participation in the running of their country.

Exile, torture, jail, or even killing did not succeed to stop the masses of South Africa from demanding their freedom and cannot succeed anywhere else. Nothing can stop a people hungry for freedom, especially when they can see that their liberation is in sight and is achievable.

The simple truth of the matter is that the future of the African continent lies in building strong institutions which are democratic, accountable and responsive to the aspirations of their citizens.

There can be no turning back for the African conti-



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*nent. The Constitutive Act of the African Union states clearly what type of Africa we all want to live in.*

*All African peoples want freedom, peace, stability, good governance, respect for their human rights, access to basic services, jobs and prosperity like all people in the world.*

*This year is also critical for the African continent for another reason. Several countries across the continent are holding elections this year.*

*The critical test we all face is to ensure that these elections are conducted in an environment that is peace-*

*ful and stable so that the will of the citizens can be freely expressed.*

*These elections should help to entrench and promote democracy in the continent, as democracy is the only real guarantee for peace and stability.*

*Once again, I wish to extend my congratulations to your Association for the establishment of this Centre we are opening today.*

*And I thank your colleague, our Public Protector, for inviting me to be part of this important occasion.*

*I thank you.*

# Strategic Planning



**PROFESSOR VICTOR AYENI**, Director of Governance and Management Service International (GMSI), led and facilitated the discussions at the Strategic Planning Session during the week of the AORC Launch. Prof. Ayeni was contracted to draft a Strategic Plan for AOMA based on the outcomes of these discussions. The draft plan has the following Strategic Objectives and Priorities (2011 – 2014):

## 1. Consolidate presence of the Association

- Optimal use of AOMA observer status in the AU;
- Disseminate Association brochures and promotional materials to reinforce presence and relevance;
- Conduct of a pre-selected number of promotional and advocacy visits annually;
- Complete and publish Membership Directory;
- Harmonize relationship / rules with the International Ombudsman Institute (IOI);
- Organise and hold Biennial Conference as well as other statutory meetings of Association.

## 2. Increase membership

- Conduct and publish baseline research on status of ombudsman and ombudsman-like institutions in the continent;
- Set up programme to monitor and up-date baseline research;



- Design appropriate forms and instruments for adopting new members;
- Set target of growth of membership, implement and monitor programme to attract new members;
- Implement promotional programmes in countries proposing to set up ombudsman offices.

### **3. Improve communication and information dissemination**

- Complete development of AOMA website as an interactive medium;
- Complete translation of AOMA materials and documents into all the official languages of the Association;
- Secure access of members to electronic copies of all AOMA materials and documents;
- Publish Newsletter periodically;
- Develop and disseminate promotional materials through pre-identified channels;
- Create electronic links between all national ombudsman and mediateur offices in Africa to facilitate easy exchange of information.

### **4. Mobilize financial resources**

- Establish a membership fees and subscriptions accounts payable system that is realistic and responsive;
- Secure up-to-date payment of subscriptions and fees by all institutional

members within two years;

- Organise an International Donour Conference to raise awareness about AOMA and secure real financial commitment for the implementation of its Strategic Plan;
- Review and establish an efficient financial management system for AOMA and its operations.

### **5. Institutionalise AORC**

- Constitute, define roles and secure operation of Governing and Advisory Boards for Centre;
- Develop and publish Background Operational Policy on the role and functioning of AORC relative to AOMA Executive Council members and host organisation;
- Complete hiring of core staffing of Centre, including secure competent specialist skills;
- Design and set up operational systems and procedures for the management of human and financial resources;
- Determine and equip Centre offices with appropriate infrastructure and facilities;
- Develop, adopt and implement Corporate Plan of Centre based on AOMA overarching framework.
- Develop, adopt and implement Capacity-building programme based on Needs Assessment Report (GIZ Consultancy).



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## Dinner



*The Gala Dinner that was generously sponsored by the Premier of Kwa Zulu-Natal Dr Zweli Mkhize crowned what will go down in AOMA's annals as a memorable day.*

## Needs Assessment Workshop

The needs assessment workshop that was attended by 23 AOMA members took place on the 16th to 17th March 2011. This was fully coordinated and sponsored by the GIZ and aimed at validating and consolidating the inputs of AOMA members regarding the services and operation of AORC. The outcomes of the workshop will be taken into cognisance in the operation and plans of the Centre.

The needs assessment workshop was opened by the Chief Justice of South Africa, Honourable Justice Sandile Ngcobo.

# Speech

## Needs Assessment Conference Of The African Ombudsman And Mediators Association



**The role of the ombudsman in strengthening constitutional democracy**  
**Sandile Ngcobo, Chief justice of south africa**

**Introduction**  
**How does an ombudsman contribute to the strengthening of constitutional democracy?**

The Ombudsman plays a unique role in the strengthening of constitutional democracy. In South Africa, we call our Ombudsman the Public Protector. It is a lofty, yet fitting, title, for protection of the public, in particular the public interest in good governance, lies at the very core of the role of the Ombudsman.

The Public Protector is what we in South Africa call a "Chapter 9" institution. Chapter 9 of our Constitution deals with "State Institutions Supporting Constitutional Democracy", and lists the Public Protector, along with the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General and the Electoral Commission, as a state institution that strengthens democracy in the Republic.

The functions of the Public Protector are set out in section 182 of the South African Constitution, and if you can briefly indulge a Constitutional Court Justice in sharing with you his professional bible, I would like to read to you part of that section. I think it nicely illustrates why our Ombudsman is called a Public Protector and how the Public Protector works to strengthen constitutional democracy. Section 182 empowers the Public Protector to "investigate ANY conduct in state affairs, or in the public administration in ANY sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice".

The value of a constitutionally-defined Public Protector, or Ombudsman, is that the independent investigation of government action is an essential component of a strong constitutional democracy. The importance of the Ombudsman's role is especially clear in many countries throughout Africa, where there is often a desperate need for basic human necessities, from access to food and clean drinking water, to healthcare, housing, education and social security. As many of us in this room know all too well, our countries simply cannot bear the improper allocation of government resources. Having a Public Protector, or Ombudsman, with a mandate to investigate and publicly report on government administration is essential to ensure that the government works for its people in fulfilment of its constitutional obligations.

As with the work of the courts, the work of the Ombudsman is crucial to people's realisation and enjoyment of their fundamental human rights. The Ombudsman is





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particularly critical in countries, like many of ours in this room, which are emerging from periods of deep division, oppression and colonialism, all of which supported the allocation of the vast majority of our countries' resources to very small portions of our populations, resulting in huge inequalities between the very few rich and the many, many poor. Good governance and the equitable distribution of resources is the only way for our people to one day enjoy the promise of equality and human dignity we make in our constitutions. The Ombudsman, as a protector of the public interest and independent check on government action, plays a critical role in promoting good governance.

It is against this background that the value and benefits of the Ombudsman in strengthening constitutional democracy must be understood. The next question is what pre-conditions must be met in order for the Ombudsman to effectively perform its duties?

#### **What conditions must be met in order for an ombudsman to effectively perform its duties?**

In order for the Ombudsman to effectively execute its special role, there are certain pre-conditions that must be met. I would like to focus on just two of these pre-conditions. The first is the independence of the Ombudsman institution, and the second is its accessibility and accountability to the public which it serves.

#### **Independence of the ombudsman**

The independence of the Ombudsman, like the independence of the judiciary, is fundamental to its effectiveness. Indeed, the requirement of independence of the Public Protector is emphasised in the South African Constitution, which provides that the Public Protector must be "independent, and subject only to the Constitution and the law".<sup>1</sup> The Constitution further requires that the Public Protector "be impartial" and exercise its constitutional duties "without fear, favour or prejudice".<sup>2</sup>

It commands that "[n]o person or organ of state may interfere with the functioning of [the Public Protector]."<sup>3</sup> By way of comparison, the Constitution uses these same

words to ensure the independence of South Africa's courts.<sup>4</sup>

That the independence of the Public Protector is critical to the strength of South Africa's constitutional democracy is reflected in the fact that the Constitution actually obliges "[o]ther organs of state, through legislative and other measures," to "assist and protect" the institution of the Public Protector and ensure its "independence, impartiality, dignity and effectiveness".<sup>5</sup>

Our Constitution recognises that the Ombudsman can accomplish its particular role objectively and effectively only if it is independent of investigated entities and protected from outside influence. Independence has a variety of dimensions. Allow me to highlight just two: institutional independence and fiscal independence.

<sup>1</sup> Section 181(2) read with section 181(1)(a).

<sup>2</sup> *Id.*

<sup>3</sup> Section 181(4) read with section 181(1)(a).

<sup>4</sup> See section 165.

<sup>5</sup> Section 181(3) read with section 181(1)(a).

First, the Ombudsman must enjoy institutional independence. This, of course, does not mean that absolute independence is required – Ombudsman created either by a state's constitution or legislation, such as the Public Protector here in South Africa, are part of the state as a whole. But what independence means in this context is that the Ombudsman must have the functional and organisational independence which is necessary for it to accomplish its investigations. In other words, the Ombudsman must not be a subordinate or subsidiary body to another institution of state. Otherwise, the Ombudsman will lack the credibility to carry-out its function.

A second, related dimension of independence is fiscal independence – the Ombudsman and the Ombudsman's office must be financially independent from the institutions of state it investigates. Without sufficient access to and control over funds, an Ombudsman, in performing its investigatory duties, will be dependent upon an external body and will thus be at the risk of external influence.

*An Ombudsman must therefore be adequately funded to carry out its functions without fear, favour or prejudice.*

*Of course, institutional and fiscal independence, while necessary to the effective functioning of the Ombudsman, are not, alone, sufficient to ensure such functioning. Also crucial is genuine political commitment. Political commitment to the independence of these institutions must be reflected in, among other things, their institutional independence; their structural and operational autonomy; and, the appointment and removal procedures of the Ombudsman.*

*This conference and the existence of the African Ombudsman Research Centre, which will serve as a focal point for Ombudsman offices throughout Africa, coordinating their activities and supporting them, is, I hope, an indication that such political commitment is present across Africa. Indeed, the opening of the Centre by the President of the Republic is, I think, a powerful statement of South Africa's commitment in this regard.*

### **Accessibility and accountability**

*I have suggested that an effective Ombudsman is one that operates free from fear, favour or prejudice. This must not be misunderstood to imply that the Ombudsman must operate without concern for and sensitivity to the public which it serves. Indeed, the opposite is true.*

*In addition to being independent, to effectively work to strengthen constitutional democracy an Ombudsman must also be accessible and accountable to the public. It goes without saying that the role of the Ombudsman as a public protector is meaningless unless the public is aware of its existence and confident in the integrity of its work.*

*In South Africa, the Constitution stipulates that the Public Protector "must be accessible to all persons and communities."<sup>6</sup> If the Ombudsman is not accessible to the public, then it cannot be held properly accountable by the public for upholding its duties under the law. Just as courts must publish their written judgments, a key aspect of the Ombudsman's accountability is that its findings and recommendations that result from the investigations it under-*

*takes must be made available to the public.*

<sup>6</sup> Section 182(4).

*Under the South African Constitution, unless exceptional circumstances apply, "ANY report issued by the Public Protector MUST be open to the public."<sup>7</sup>*

*It would be antithetical to the concept of an Ombudsman as a public protector and defender of the rule of law for the Ombudsman's work on behalf of the public to be shrouded in secrecy.*

*Accessibility and accountability to the public are two pre-conditions that, in my view, will enable Ombudsmen to earn and retain public confidence. And just as public confidence in the judiciary is critical for its success, the confidence of the public is vital for the success of the Ombudsman because it is this confidence, more than anything else, which compels government to respond to the findings of these institutions.*

*Stepping back for a moment, it is useful to consider what the South African Constitution requires in the role of the Public Protector:*

- *First, the Public Protector must be independent and impartial, and exercise its duties "without fear, favour or prejudice."<sup>8</sup>*
- *Second, the Public Protector must be empowered to investigate "ANY conduct in state affairs, or in the public administration in ANY sphere of government."<sup>9</sup>*
- *Third, the Public Protector must be "accessible to all persons and communities."<sup>10</sup>*

<sup>7</sup> Section 182(5).

<sup>8</sup> Section 181(2) read with section 181(1)(a).

<sup>9</sup> Section 182(1)(a).

*The Public Protector is therefore conferred deep independence, broad powers and an obligation to be accessible to the public it protects. These are, in my view, the defining features which enable an Ombudsman to strengthen constitutional democracy.*





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### **Concluding thoughts to open this needs assessment conference**

You will soon be dividing into working groups in which you will tackle a variety of technical questions that have emerged from the Needs Assessment. Thankfully, pontificating on the differences between “classical” and “hybrid” Ombudsmen, or the subtleties of the “5 ICTAR principles” [Information, Coordination, Training, Advocacy and Research], would be far beyond the scope of my mandate in delivering these opening remarks.

By way of conclusion, and to provide what I hope will be the backdrop to the technical discussions you will have later, I would like to bring us back to where we started – to remember that the Ombudsman is, before anything else, a public protector seized with the task of strengthening constitutional democracy by investigating and reporting on the actions of the state in order to ensure good governance and accountability.

As you are here to discuss, specifically, African Ombudsmen, it is important to recognise the role Ombudsmen are playing, across the African Union, in battling corruption and inefficient use of government resources, and protecting the interests of people who might otherwise be voiceless.

10 Section 182(4).

*I have shared with you what I believe to be two of the necessary features of a system in which the Ombudsmen can effectively work to strengthen constitutional democracy: first, meaningful independence coupled with political commitment; and second, accessibility and accountability to the public.*

*You have indulged me by allowing me to share what I consider to be valuable features from the South African Public Protector model. I hope that this workshop will provide all of those present the opportunity to share the lessons learned from their own home systems. The promotion of good governance and effective government oversight is in the common interest of all of us throughout the African Union, and it is incumbent upon all of us to support the*

*institution of the Ombudsman throughout the Union.*

*I wish you well in your deliberations, and hope that those of you who have come from afar will have some time to explore the city of Durban – my home town. I highly recommend a visit to Shakaland, if you have any free time after hammering out the theoretical questions relating to the development of an African Ombudsmen Research Centre that can effectively serve the needs of African Ombudsmen and Mediators.*

*Thank you for lending me your ears.*

### **Exco Meeting**

The EXCO meeting was held at the University of Kwazulu-Natal on the 14 and 15 March 2011.

The meeting was attended by six members with apologies noted from those who could not make it. EXCO also extended an invitation to people who were viewed knowledgeable to the subject and would add value to the review process.

The first day of the meeting was dedicated to reviewing the AOMA Strategic Plan (2010 – 2015) and adopting a new Strategic Plan (2011 – 2016).

The strategic planning session was facilitated by Prof Ayeni, who has a wealth of experience in working in the Ombudsman institution field.

The session was an eye-opener for EXCO members and subsequent to the review of the existing Strategic Plan, a new one was drafted and a final version is still awaited from the facilitator.

On the 15 March 2011, EXCO held its meeting proper where members received report from the President, Executive Secretary and Regional Representatives from East, West, Central, Southern Africa and Indian Ocean. Unfortunately, the Northern region could not attend

the meeting due to political developments across that region.

Subsequent to the minutes of the last EXCO meeting held in Kampala, Uganda being adopted and deliberations held on the progress made in implementing the said resolutions including preparations for the launch of AORC, since its last meeting, a number of resolutions to respond to current developments and that relating to the strengthening of AOMA were adopted.

**The resolutions are:**

- 1.1.1 The Strategic Plan 2011 – 2016 shall be drafted in compliance with the Strategic Goals and Values which were isolated during the strategic planning meeting on Monday the 14th of March, 2011; the Strategic Plan shall be circulated by the Executive Secretary within a few weeks and shall be informed by, among others, the following principles:
  - a. The communication between the Executive Secretariat and the Association's Regions on the one hand, and the coordination within the regions on the other hand, shall be improved through specific actions which have to be clearly defined in the Strategic Plan 2011 – 2016.
  - b. The Membership of the Association has to be increased and widened, in accordance with a membership criteria document which will be drafted and circulated by the Constitutional Committee.
  - c. Payment of the Subscription Fees is increased from Five Hundred American Dollars on a sliding scale of One Thousand American Dollars to Five Thousands American Dollars for countries such as South Africa with effect from 1st January 2011. All Members should pay all the outstanding and current subscriptions by 31 May, 2011.
  - d. The Executive Secretary works with the facilitator of the strategic planning meeting of the 14th of March 2011, Prof. Ayeni in finalizing the Strategic Plan.

tegic Plan.

- 1.1.2 The Executive Committee adopts the reports presented by the President, the Executive Secretary and the Regional Representatives.
- 1.1.3 The Executive Committee also receives with satisfaction the successful conclusion of the process of accreditation within the African Union initiated by the President of AOMA and supports the status of an observer within the African Union Commission as well as the project of a Cooperation Agreement to be signed between AOMA and the African Union.
- 1.1.4 The Executive Committee expresses its heartfelt appreciation to the President of the Republic of South Africa, HE JG Zuma for addressing the launch of the AORC and providing his support, words of wisdom and commitment to the Association's endeavor to promoting Good Governance in Africa.
- 1.1.5 The Executive Committee also expresses its sincerest appreciation to the Public Protector – South Africa and all the members of her staff, South African Department of Justice and Constitutional Development, South African Department of International Relations and Cooperation, Premier of KwaZulu- Natal, German Cooperation Agency (GIZ), Executive Mayor of eThekweni and the University of KwaZulu-Natal, particularly the faculty of Law, for the successful launch of the African Ombudsman Research Centre.
- 1.1.6 The Executive Committee notes the progress made in the staffing process of AORC and urges the Executive Secretary to proceed with deliberate speed to complete the staffing process and the commencement of AORC operations.
- 1.1.7 The Executive Committee also notes the report on the needs assessment process and urges the Executive Secretary to ensure that the outcomes



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of the Needs Assessment Workshop of the 16th and 17th of March 2011 are taken into account in the operations and plans of the AORC.

- 1.1.8 The Executive Committee notes with sadness the untimely passing away of the Second Vice President Adv Mbam Diatigui Diarra and records its sympathy to the office of the Mediator of the Republic and the people of Mali. AOMA awaits the appointment of the new Mediator of the Republic and the filling of the vacancy of the position of the Second Vice President is deferred until the next Executive Committee Meeting.

- 1.1.9 The Executive Secretary is authorized to utilize any means possible to recover AOMA's monies in its bank account in Tripoli, Libya, including the use of diplomatic channels.

- 1.1.10 The next Executive Committee Meeting should take place before the end of August 2011 in Addis Ababa, Ethiopia.

- 1.1.11 The Executive Committee reaffirms its General Assembly Resolution to hold the next General Assembly Meeting in Mali, in March 2012.

## Conclusion

Whilst the launch was a resounding success that profiled both AOMA and AORC, much work still needs to be done in the quest to promote good governance and the respect for the rule of law across Africa.

AOMA needs to double its efforts to encourage those countries that do not have ombudsman offices to establish them and provide them with as much support as possible. The drive to acquire recognition by AOMA by governments across the continent needs also to be escalated and the association needs to do more to get recognition from continental bodies like the African Union and the African Human Rights Commission.





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