

should be required to report to the legislature, but not actually be accountable to it, as an oversight authority may attempt to halt or suppress knowledge of investigations reported on by the Ombudsman, or try to divert the focus thereof. The possibility of the Ombudsman making public their reports – especially when there is non-compliance with regard to recommendations made – should be useful for enforcing compliance.

- **Funding: Sourcing of budget directly from treasury to ensure independence**

Regulating and defining all financial processes should be incorporated in enabling legislation in order to secure the Office of the Ombudsman and give it independence. Ideally, the budget should be sourced directly from treasury, and not from a budget vote or allocation from a specific government ministry or department, which may have a specific agenda. Sourcing outside funding should not be embedded in statutory regulations, because this procedure could potentially compromise the independence of the Office, which might become beholden to certain benefactors.

- **The appointment and removal of subordinate staff free from all government interference**

Involvement by the legislature/parliament, executive and government bureaucracy in the appointment and removal of subordinate staff should be avoided. In terms of defined processes for appointment, the Office of The Gambia seems to be the most inclusive and transparent, and is an example of best practice.

- **Turnaround time**

A best practice standard may be dictated by national circumstances. Turnaround times for different categories of investigations may be useful to work with and develop standards for; for example, in Ethiopia, provision is made for urgent cases to be completed within two days.

- **Ensuring appropriate measures to mitigate political interference**

Independence in this regard is key – as it creates confidence in the Office's mandate, reducing or minimising the likelihood of political interference. Limiting financial resources to the Ombudsman is indirect political interference, and thus the guaranteed financial independence of the Office is critical in terms of best practice.

- **Prioritising advocacy and national outreach as essential to the Ombudsman's work**

Advocacy and outreach, education and awareness-raising programmes are critical for Ombudsman Offices. The Gambia's successful active outreach programme, involving workshops (and the use of radio) across the country, and including a very wide range of participants from civil society and government bodies, shows what can be done by a small country with limited resources. An option for larger countries with more resources might be to create a separate unit for outreach and communication activities.

- **Maintaining professional standards**

The Office of the Ombudsman must maintain professional standards in its interactions; this includes treating all parties with fairness and respect. It also requires remaining independent, objective and impartial, and ensuring confidentiality and accountability for all actions and decisions taken.

- **Participating in regional networking to share experiences and learning resources**

This provides a valuable opportunity to learn from the experiences of others, to share available resources, and to offer general support to other Offices.

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BEST PRACTICE GUIDELINES FOR THE INSTITUTION OF THE OMBUDSMAN IN AFRICA

By Managay Reddi, David Barraclough, Arlene Brock, Franky Lwelela and Annie Devenish

INTRODUCTION

In 2013, the African Ombudsman and Mediators Association (AOMA) commissioned the African Ombudsman Research Centre (AORC) to conduct a Comparative Analysis of Legal Systems Governing Ombudsman Offices among AOMA members. The findings of this study revealed that Ombudsman institutions on the continent are making progress in promoting awareness among citizens and governments, and in terms of improved efficiency in dealing with complaints and the establishment of new offices, but that they continue to face a number of challenges, including lack of public accessibility, difficulties with decentralisation, inadequate financial resources, government resistance to findings, and inadequate office space, infrastructure and staffing.

As part of its recommendations, this study has developed a set of best practice guidelines for the Institution of the Ombudsman in Africa, which are presented in this policy brief. The aim is to provide information about building strong Ombudsman institutions; for scholars, researchers and policy analysts working in the areas of good governance and accountability; for citizens who want to hold their government to account; and for policy makers who develop public policy.

WHAT IS THE INSTITUTION OF THE OMBUDSMAN?

The Ombudsman is an independent, high level or senior public officer appointed to protect members of the public, gratuitously, against improper actions of government and the public service.

The office is provided for by the Constitution or by action of the Legislature or Parliament, and receives complaints from aggrieved persons claiming maladministration. Most Ombudsmen also investigate government actions and decisions without waiting for a complaint to be made to them. In addition, they have the power to mediate, conciliate and negotiate with a view to resolving grievances or disputes

against the state. When an ombudsman investigates a complaint, they can either find in favour or against the person who has complained, and can accordingly recommend redress or some form of compensation.

The word 'Ombudsman' derives from the Swedish word 'umbudsmann', meaning representative. The modern concept dates back to 1809 when the Swedish Parliamentary Ombudsman was established to protect the rights of citizens through setting up a supervisory agency, independent of the Executive branch of government. The Ombudsman was independent of the Monarch of Sweden and was tasked with making sure that the Monarch and his government complied with the rules of the land.

Over time, many other countries have created Ombudsman offices, which are known by a number of different names. Francophone countries tend to use the term Mediator rather than Ombudsman. In South Africa, the Ombudsman is called the Public Protector, while in Nigeria, the institution is known as the Public Complaints Commission.

Although there are a number of 'hybrid' Ombudsman models, especially in emerging democracies (which have the dual function of tackling maladministration as well as human rights abuses), it is important to note that the Office of the Ombudsman differs from national human rights commissions in that its primary role is to monitor human rights abuses perpetrated by government entities, while human rights commissions generally address the actions of private entities and individuals as well as government conduct.

WHY IS THE INSTITUTION IMPORTANT FOR GOOD GOVERNANCE ON THE AFRICAN CONTINENT?

African countries face a number of formidable challenges in the 21st century, including human rights violations, conflict and war. There are positive developments taking place on the continent too, with a movement towards a rights-based culture, but the need for strong institutions underpinned by a constitutional framework, to bring about development and

This Policy brief has been produced by The African Ombudsman Research Centre (AORC), which is an institution of the African Ombudsman and Mediators Association (AOMA). The aim of the Centre is to serve as a focal point for Ombudsman offices in Africa, by coordinating their activities and supporting them with the provision of information, research and training to enhance good governance in Africa. The Centre is located at Howard College Campus (University of Kwazulu-Natal) and welcomes all students and scholars interested in our work to get in touch. AOMA is a body that brings together Ombudsman and Mediators from across the continent to pursue issues of common interest in the area of the rule of law, good governance and integrity in state affairs.



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Centre de Recherche des Ombudsmen Africains
Centro de Investigação da Provedoria de Justiça Africana



جمعية المدققين والمؤلفين
African Ombudsman and Mediators Association
Association des Ombudsmen et Médiateurs Africains
Associação dos Ombudsmen e Mediadores

the strengthening of democracy, remains clearly evident. This is where the Institution of the Ombudsman has an important role to play. Furthermore, as a number of African countries move from political and social upheaval to transitional governments, the role of Ombudsman becomes especially important in helping to create the systems of transparency, accountability and redress required to enable countries to rebuild their governments.

The Institution of the Ombudsman facilitates good governance by:

- a) Holding government to account through their mandate to address any form of governmental corruption, maladministration, abuse of power or unfair treatment;
- b) Acting impartially without interference or coercion from other authorities;
- c) Providing a vital channel for the public to seek redress when they feel they have been victims of maladministration, corruption or human rights abuses;
- d) Providing services free of charge, thereby ensuring access to justice for the voiceless – those who otherwise would not be able to afford a lawyer, or who would not have the capacity to negotiate government bureaucracy;
- e) Fostering the practice of democracy as a form of people-centred-development, through giving citizens the opportunity and the means to participate in monitoring their government; and
- f) Monitoring and holding to account the operations of government, thereby providing a valuable opportunity for the government to learn from its mistakes, and improve its administration through the Ombudsman's recommendations.

THE CURRENT STATUS OF OMBUDSMAN OFFICES ACROSS AFRICA

According to available information, there are currently 44 national Ombudsman offices in Africa. Tanzania was the first African nation to establish an Ombudsman in 1966. Cape Verde is the most recent.

Traditional academic analysis used to draw a sharp distinction between complaint-driven Ombudsman offices that focused narrowly on administrative and good governance issues (termed 'classical') and Ombudsman offices that explicitly had other remits such as human rights or corruption (termed 'hybrid'). That distinction was never clear-cut in practice. Today, with many Ombudsmen around the world being designated as National Human Rights Institutions and National Preventive Mechanisms (to proactively monitor places of detention), that distinction is no longer even theoretically viable.

Despite the various permeations of the institution, there are a number of common characteristics or



best practices that enable the institution to operate most effectively in fulfilling its mandate, which are outlined below.

Best Practice Guidelines for the Institution of the Ombudsman in Africa

- *A strong Constitutional and legal framework is vital to empower the office to execute its mandate optimally.* As best practice, the Office should be enshrined in the country's constitution, in addition to its legislation. This provides additional protection to the institution, as it is harder to modify constitutional provisions, while embedding the institution in organic laws can help to guarantee maximum stability. The provisions in the

Namibian Constitution are an example of 'good practice'.

- *There must be a clearly defined mandate and focus for the Office of the Ombudsman.* There should be a clearly defined mandate and focus for the Office of the Ombudsman, and if anti-corruption or human rights bodies exist, the mandate to investigate such issues should be transferred to them to avoid duplication of function, confusion and inefficiency.
- *The inclusion of the executive in the remit of the Ombudsman is important.* In the interests of equality and fairness, the executive should not be excluded from the remit of the Ombudsman. In

addition, in the interests of the independence of the Office, the executive should not have the power to initiate or halt the investigations of the Ombudsman.

- *Ensuring compliance with recommendations and remediation is essential.* One of the potential weaknesses of the Ombudsman model is the non-binding nature of the decisions, which come in the form of recommendations. There are various ways of ensuring compliance, including various administrative injunctions like letters of demand, media exposure, ad hoc monitoring, and recourse to the courts. To ensure the independence and impartiality of the Ombudsman Office, recourse should not be made to the executive, government ministers or parliament.
- *Ensuring transparent, fair and inclusive tenure appointment procedures* Appointment of the Ombudsman for one term, without renewal, is preferable and should be prescribed in the constitution and enabling legislation. An appointment for at least five years, and for at least one year longer than the term of the relevant legislative body is sensible, as it removes the Ombudsman from the 'political winds of the moment'. A good example is South Africa's Public Protector, who is appointed for one seven-year term – two years longer than a five-year parliamentary term.

The appointment process should be entrenched in the relevant legislation and constitutional framework, and involve the executive, legislature or other elected body, and a body from which wise, informed and unbiased counsel can be sought. A good example of such a body would be a Judicial Service Commission (JSC), as is used in Namibia in the appointment of its Ombudsman. An impeccable procedure for the selection of Commissioners exists in Tanzania too, and may well be another example of best practice.

In the interests of impartiality and the independence of the Office, an Ombudsman should not be a member of any political party, which would open up the office to the risk of political influence on, or partisanship in, the exercise of the Office.

The processes for removal should all have a firm legal basis in the constitution or enabling legislation and should adhere to a meticulous procedure. The legislature or elected body should be involved in the removal process, preferably with input and support from all major political parties. For example, as in Ethiopia and Burundi, where at least a two-thirds majority vote in parliament is required.

- *Annual reporting to Parliament and the legislature to ensure oversight and accountability* The Ombudsman should report to parliament (annually at least), but with an option to also report to the executive as a matter of courtesy. The Ombudsman