

Repositioning the Ombudsman: Challenges and Prospects for African Ombudsman Institutions

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Kenya School of Monetary Studies

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Colloquium Objectives

The objectives of the Colloquium were as follows:

- To examine the past lessons to promote a common understanding of the concept of Ombudsman, basic principles and strategies for redressing administrative injustice and provide a concrete framework for action and change strategies for Africa;
- Re-examine the role and relevance of Ombudsman in the African context and their contributions to justice, governance and public services;
- Enhance the protection of the independence and development of African Ombudsman Institutions by creating a platform for information exchanges and best practices for the advancement of good governance and administrative justice policies, standards and actions in Africa; and
- Act as launch-pad for an annual knowledge and skills exchange programme tailor-made for African Ombudsman institutions.

Session 1: Official Opening of the Colloquium

1.1 Opening Remarks by Hon. Cmmr, Otiende Amollo, The Ombudsman of Kenya

Commissioner Otiende Amollo lauded the delegates for attending the Colloquium which aimed at drawing and sharing ideas on how to make the Ombudsman more relevant and effective. He stated that the Colloquium was an auspicious moment, taking place at a time when African countries seemed keen to purge impunity and entrench proper administrative procedures and good governance.

He noted that the evolution of the Ombudsman had led to its global up take and broadening of its jurisdiction to include issues of human rights, anti-corruption and ethics. However, the broadened mandate has generated controversy on the placement of the Ombudsman in the larger institutional framework of good governance. Commissioner Amollo envisaged the Ombudsman's work purview as vital to developing good governance, making civil processes effective and accountable, encouraging public institutions to adhere to the law and procedures. He observed that the increasing confidence in the Ombudsman worldwide had led to its establishment in at least 150 countries, including Africa where at least two thirds of the countries have established the institution.

Three factors, Commissioner Amollo noted, would explain the varied performance of the Ombudsman in Africa. These factors included the mode of establishment, scope of jurisdiction and political culture. The challenges facing the Ombudsman included weak legal and institutional frameworks, resource gaps, and over centralised bureaucracies. He noted the complimentary mandates of the Ombudsman and the Judiciary which called for greater co-operation between the two institutions to achieve their respective mandates. He noted that the Colloquium provided an opportunity to re-examine the concept of the Ombudsman and its relevance to Africa. He urged the delegates to have an open and robust discourse on the issues relating to the Colloquium.

1.2 Remarks by the President of the African Ombudsman and Mediators Association (AOMA)

Hon. Paulo Tjipilica, Ombudsman of Angola

The President of AOMA noted the strategic importance of Kenya for the Africa and Angola in particular. He stated that Colloquium was important for the African continent, given the fact that the African Union had identified the 2013 as the year of re-organization of Pan Africanism. He noted that AOMA had a lot to do in this regard, of which the Colloquium formed an important part. He thanked the Ombudsman of Kenya for the organization of the Conference and noted the richness of the programme.

He gave a brief history of AOMA, which was established on 25th July 2002 in Ouagadougou Burkina Faso with the objective of promoting mutual support and co-operation, joint activities, information sharing and capacity building for respective offices, good governance and support of human rights and above all the rights and respect of the African man.

As members of AOMA, he stated that they were honoured to be invited to the Colloquium. He noted that AOMA valued such kind of fora which are critical for information sharing to enrich each other on the best practices on Ombudsmanship.

He stated that many African countries had taken the initiative of establishing the Ombudsman. He further stated that AOMA was at the forefront in promoting the creation of Ombudsmen in countries where they did not exist. He noted that the Colloquium provided an opportunity to promote the creation of Ombudsman institutions in countries where they did not exist and also encourage those who have them to protect the Office and give it all the means necessary to be well placed to serve citizens.

He noted the tribulations facing the Ombudsman of Malawi in her work. He stated that AOMA had engaged with the Malawian authorities, including the President of Malawi on the need to protect the Ombudsman and enable her to do her work. Her presence at the Colloquium, he noted, was therefore important and gave hope and reason to protect and encourage members of AOMA.

He wished the delegates fruitful discussions and thanked them for supporting AOMA in its various activities.

1.3 Remarks by Development Partners Representative

By: Ms. Maria Therese Keating, UNDP Country Director

Ms. Maria Therese Keating, the UNDP Country Director for Kenya, began by thanking the Commission on Administrative Justice (Ombudsman of Kenya) for organizing the Colloquium which had brought together the African Ombudsmen, oversight institutions and governance practitioners from across the world to discuss and reflect on the role of the Ombudsman in the African context.

She noted the place and role of the Ombudsman in the Africa's governance system given the changes in the constitutional and legal structures in the last two decades. The pace of development of the Ombudsman in Africa, she noted, was unprecedented; from an early beginning of the first Ombudsman in Tanzania in 1968 to the current membership of over 34 countries.

She thanked the delegates for their participation in the Colloquium, noting that UNDP considered the South to South exchange of knowledge and best experiences within Africa to be extremely valuable. She further noted that globally, UNDP worked with Ombudsman institutions and National Human Rights Institutions in several countries to promote and strengthen democratic governance.

The Ombudsman and National Human Rights Institutions, she noted, play an important role in furthering accountability through their functions which protect and promote democracy, good governance and constitutionalism. The Ombudsmen serve as facilitators and guardians of good governance through promoting and protecting human rights, transparency and administrative justice. To this end, the Ombudsman matters to UNDP given their work which forms an integral part of UNDP's development mandate.

She called for the need to ensure that the decisions and determinations of the Ombudsman are respect, upheld and acted upon by relevant stakeholders. She also called for the need to support the Ombudsman to enable it deliver on its mandate.

She applauded AOMA for their co-ordination and support for regional activities in fostering exchange of knowledge on best practices and building regional capacity. She also thanked the Governments of Finland and Sweden for their support to the Ombudsman through the Commission.

She concluded with the words of UNDP's Administrator Helen Clark that "UNDP and other UN system partners salute and affirm the work done by the world's Ombudsmen to promote more responsive governments and accountability and to provide redress to citizens."

1.4 Remarks on Behalf of the Chief Justice

By: Prof. Christine Mango, Vice Chairperson, Judicial Service Commission

The Vice-Chairperson of the Judicial Service Commission began by thanking the Commission for organizing the Colloquium and inviting the Chief Justice as one of the speakers. She noted the aptness of the theme of the Colloquium, which she stated spoke to the contemporary issues affecting the Ombudsman in Africa.

She noted the novelty of the concept of Ombudsman in Africa and its role in the development of the continent. She identified that changing roles of the Ombudsman in public administration and noted that it is one of the ways of ensuring institutional effectiveness and productivity. She noted the various forms of the in different contexts raging from complaints handling, provider of justice and custodian of fairness and good practices.

In Kenya, she noted, the Ombudsman idea was mooted in 1971 by the Commission of Inquiry into the Public Service Structure Remuneration Commission commonly known as the Ndegwa Commission that recommended that an office be established to deal with maladministration in the public service. The proposal was, however, not implemented leading to deterioration of service delivery in the Public Sector. It was not until 2007 that an office, the Public Complaints Standing Committee, was established through a Gazette Notice No. 5826 of June 2007 as a semi autonomous government agency of the Ministry of Justice, National Cohesion and Constitutional Affairs to deal with maladministration in the public sector. However, the Committee was limited in scope and legal framework to effectively play the role of Ombudsman. The quest for an independent office of the Ombudsman was eventually achieved in September 2011 through the enactment of the Commission of Administrative Justice Act of 2011 as part of the restructuring of the Kenya National Human Rights and Equality Commission established under Article 59 of the Constitution.

She stated that the Colloquium was timely and relevant noting that it would provide an opportunity to share experiences to promote a common understanding of the Ombudsman and re-examine the role and relevance of Ombudsman in the African context and their contribution to justice and fairness in governance and public service

She concluded by stating that the Judiciary had established an office of the Ombudsperson to deal with complaints against the Judiciary staff or the establishment of the Judiciary. She noted that the Office had made remarkable achievements leading to increased confidence in the Judiciary.

1.5 Remarks on Behalf of the Speaker of the Senate

By: Hon. Sen. Amos Wako, Former Attorney General & Chairman of the Senate Legal Affairs & Human Rights Committee

Hon. Senator Wako began by thanking the Commission for the invitation to the Conference. He noted that the history of the Ombudsman could be traced to 2016 BC in China and in Korea when the monarch would send someone to go round the country incognito to establish what the complaints of the citizenry were against his officials in the various areas. It has since grown to where it is now to the extent whereby the office is dealing with so much more than just maladministration to other areas.

He stated that the idea of the Ombudsmanship in Kenya had been recommended in 1971 and nothing happened well until 1996 when the President through an Executive Order established a Standing Committee on Human Rights with some responsibilities of the Ombudsman. In 2003, the Kenya National Commission on Human Rights was established with the mandate of dealing with maladministration. He stated that combining human rights and administrative injustice had the effect on dealing with maladministration since the focus was mainly on human rights violations, owing to their headline-catching issues. This realization finally led to the Commission on Administrative Justice in September 2011 as a separate institution to deal with maladministration.

He noted that it took long for this Office to be established in Kenya because it was felt that the Ombudsman will be an opposition to the Government. This, however, changed and an independent Office was established to perform the work of the Ombudsman. He stated that the Ombudsman needs to be firmly set in the hearts and minds of the populace and governors to make it effective.

Hon. Wako noted that need for African Governments to appreciate the role of the Ombudsman since public service delivery is a shared interest. This can only be realized in an environment of mutual co-operation between the government and other stakeholders including the Ombudsman, and should extend to functional independence and autonomy and adequate resource allocation.

While noting the devolved Government in Kenya, Hon Wako called upon the Ombudsman to decentralize to each of the 47 Counties to effectively serve the public at the grassroots. He also called for support to the Ombudsman, including respect for its decisions and creation of an enabling environment to deliver on its mandate.

He concluded by urging AOMA to prioritize their assistance to countries that had not established the Ombudsman to do so. He wished the delegates well and hoped that the deliberations of the Colloquium would head ground to a new beginning for the African Ombudsman an era in which the Ombudsman repositions itself as a necessary institution in the governance process.

1.6 Key Note Address by the Attorney General

By: Hon. Prof. Githu Muigai, Attorney General, Republic of Kenya

Professor Githu Muigai, the Attorney General of the Republic of Kenya began by welcoming the delegates to Kenya and the Colloquium. While thanking the Ombudsman of Kenya and acknowledging the representation of the various countries at the Colloquium, Hon. Muigai stated that Kenya was delighted to hold such a distinguished gathering whose discourse he hoped would be stimulating and informative.

He stated that Kenya believed that administrative justice was one of the pillars of the national transformation of which the Ombudsman plays an important role. He hoped that the Colloquium would be a platform for improving governance and administrative justice in Africa.

He stated that Kenya believed that Africa's problems can only be solved by Africans in Africa, with African institutions and African solutions. Kenya, he noted, was proud of her membership with the United Nations and other bodies, the participation she has had therein and the influence she had been able to exert on these bodies.

He further stated that Kenya believed that Africa had a special place, special problems, special historical tradition and that Kenya should work with other Africans to strengthen her democracy, economy and linkages to make Africa a continent that could speak with one voice on critical matters and a continent that looked in to assist itself to strengthen the electoral, democratic, judicial and good governance processes.

He gave an example of the vetting of Judges and Magistrates in Kenya where Kenya looked to Africa for support. Judges from Ghana, Zambia, Malawi and Tanzania were called in to help in the vetting, because, contrary to popular belief, Africa has had good standards and that there was a good peer education that Kenya could benefit from by working together.

Prof. Muigai noted that the enormous task for the delegates and wished them well in the deliberations of the Colloquium, and proceeded to declare the Colloquium officially opened.

Session 2: The Ombudsman: Current or Future Reality? Re-Examining the concept of the Ombudsman

Chair: *Hon. Adv. Festinah Bakwena, Office of the Ombudsman, Botswana*

2.1 Origin and Evolution of the Ombudsman Concept

By: Prof. Victor O. Ayeni, Director, Governance and Management Services International, London

Focus of Presentation

- Where did it all start?
- Know what happened before and how we got to this
- Understand why we should be part of it and that it is the right thing to do
- How we can better do what we are doing?
- Learn lessons for our future direction
- So, what really is an Ombudsman?

Introduction

- On an annual average until about the year 2000, five new countries established an Ombudsman, and an average of 60 new institutions would be created every year.
- Over 70 percent of countries in the world representing 142 countries globally have established the Ombudsman at governmental level; Over two-third of African countries have an Ombudsman.
- Over 1000 individual offices established in domestic jurisdictions, including national offices with broad or specialized mandate, national or sub-national focus, and non-state offices
- It is popular with businesses and the corporate sector
- International Institutions have an Ombudsman, e.g. EU, WTO, World Bank, United Nations, ADB, etc

The Ombudsman institutions have been created in every continent of the world. The countries that have established the institution can be broken down as follows: 35 in Africa; 14 in Asia; 9 in the Pacific; 29 in the Caribbean and Latin America; 53 in Europe; and 2 in North America.

The Ombudsman has become a critical pillar and brand in governance. The Ombudsman is, therefore, a formidable institution and can or should not be

taken for granted. The importance of the Ombudsman was aptly captured by a commentator thus:

"... undoubtedly the most valuable institution from the viewpoint of both the citizen and bureaucrat that has evolved during this century....there has been broad public demand for the establishment of an Ombudsman to resolve problems in a very large number of countries and institutions. This astonishing growth of an institution is not and has not been emulated by any other body. Contrast the many centuries that it took Parliament and the Courts to establish their roles..."

(D Pearce, "The Ombudsman: Review and Preview - The Importance of Being Different" The Ombudsman Journal, (Canada) Number 11, 1993, pp 45;13)

The Ombudsman is no longer just a concept, neither is it an organization; it is an institution and has become increasingly looking like a club because everybody wants to be part of it and call themselves Ombudsmen. It has also grown a lot of professional networks in all regions of the world. The Ombudsman has also increasingly become a brand.

The Ombudsman cannot reverse administrative actions, but can influence change. A lot of Ombudsmen are engaged in systemic issues.

Public Sector Ombudsman

Granted, there are many others like it, but the Ombudsman is unique in its essential features and fundamental approach to solving issues in contemporary society. It is, however, worth noting that the Ombudsman is not a miracle worker, it is not set to solve all issues or problems.

Essential Attributes of an Ombudsman

The Ombudsman is an independent and non-partisan officer (or committee of officers) often provided for in the Constitution, who supervises the administration. Traditionally he deals with complaints from the public on administrative injustice and maladministration, but increasingly too with human rights and corruption related matters. In response to complaints submitted by others or on his own initiative, the Ombudsman has the power to investigate, report upon and make recommendations about individual cases, administrative procedures and relevant system-wide changes.

The Ombudsman, as an individual, is a person of prestige and influence who operates with objectivity, competence, efficiency and fairness. He is readily accessible to the public and does not ideally charge for the use of the service. He uses fast, inexpensive and informal procedures. He is not a judge or tribunal, and (ideally) has no power to make binding orders or reverse administrative actions. He seeks solutions to problems by the process of investigation and conciliation. The authority and influence of the Ombudsman derive from the fact that he is

appointed by and reports to one of the principal organs of state, usually either by Parliament. He can also publicise administrative actions.

Underlying Principles of an Ombudsman

All institutions should be founded on the following key principles:

- Democracy means the rule of law and all are subject to it
- Citizens have a right to good and quality governance; the Government has an obligation to provide quality governance
- Humans are intrinsically good and want to do things as best as they can, but are also prone to failure and abuse
- Public agencies must be accountable to an independent body
- The individual is entitled to impartial, independent and easy to use grievance redress mechanism
- Redress must be to restore the aggrieved to the position before the wrong was done
- Governance essentially relies on a multiplicity of institutions
- The three institutional arrangements of the modern state, namely the legislature, executive and judiciary, are foundational to positioning the public sector Ombudsman

How did all this start?

The Ombudsman was formed as a result of certain “push factors” with regards to better governance.

The push factors are as outlined below:

- Eliminating despotic and totalitarian rule – the case of Sweden
- Constitutionalism and rule of law
- Growth of the welfare state, bureaucracy and concomitant governmental influence
- Increasing public expectations, even with declining role of the state – post 1990
- Widespread demand for democracy and performance
- The need for people-centred rule and mutual accommodation
- Vulnerability of the strong; fear of slipping behind
- Poverty, development and good governance
- Global pressures, international norms and standards
- Flexibility and non-threatening nature of the Ombudsman

Other factors that necessitated the creation of the institution included:

- Citizens’ determination
- Demonstration effect of incumbents
- Historical links between countries
- Individual champions and policy advisers
- Inter-governmental bodies
- Professional associations

- International development assistance
- Human rights treaties and conventions
- Adaptability of the concept

The Evolution of the Ombudsman

Made up of five phases:

- The Ombudsman must have existed in different forms before 1809. The modern Ombudsman begun from 1809 in Sweden. Finland then adopted it in 1919, recreating what Finland did. Denmark adopted it in 1955 and created a model for the world (the Danish model)¹. Norway and New Zealand took it up in 1962.
- Early Scandinavian Movement: 1809 – 1962
- Universalization of Movement: 1962 – 1990
- Era of Regime Transformation: 1990 – 2000 – This is the period when regimes begun changing around the world
- Early 21st Consolidation: 2000 till date.

A lot of the Ombudsman adaptations have used the pre 1809 setup of the Ombudsman and made adaptations to their own environment.

Country breakdown of the adoption of the Ombudsman:

- New Zealand, 1962 – The Anglo-Saxon
- Guyana – first in the developing world
- Tanzania, 1966 – Ahead of its colonial masters in a one-party environment?
- 1971 – Israel – Ombudsman works side by side with the Auditor General
- 1972 – Asia and Pacific
- 1973 – France
- 1975 – Nigeria – Strange feat for big and military? It became the only country in the world that had the Ombudsman at all levels in the federal system
- 1975 – Papua New Guinea – Multi-purpose model – Ombudsman with anti-corruption functions
- 1978 – Portugal with human rights mandate
- Reaches every continent of the world.

There has been an emergence of women power in Ombudsmanship with women increasingly influencing the operations of the Ombudsman. About 60 percent of the Ombudsman institutions support the hybrid system. The fusion reduces confusion and scarcity of resources.

The Ombudsman should focus on the circumstances in every country.

¹ Most Ombudsman institutions are now modeled around the Danish model, which is adapted to the realities of the present day.

2.2 Name, Style and Categories of the Ombudsman Institutions

By: Hon. Arlene S. Brock, Ombudsman, Bermuda

Differences between the classical models of the Ombudsman and the hybrid relate to multi-functions for every Ombudsman – maladministration, human rights and anti-corruption. Approximately 60 percent of all Ombudsmen are hybrid in nature. Sometimes it is advantageous to have these multi-functions because it is less confusing for the population, it is less of a strain on resources and is practical and prudent.

What is the context within which an Ombudsman operates?

The focus of the Ombudsman should be based on their specific country contexts – the context approach is therefore where the Ombudsman meets the immediate needs of the operational environment.

In 2009/2010, the United Nations General Assembly passed a Resolution recognized the human rights work of Ombudsman and encouraged the Ombudsman to be accredited as National Human Rights Institutions, as is the case in Namibia. As a result, a number of Ombudsmen have been designated as national preventative mechanisms - which are meant to make proactive investigations in places of detention such as prisons. In Europe, it was discovered that while there were a lot of good human rights institutions, many of them were highly academic. It was the Ombudsman who had the investigation capacity to actually take on these kinds of tasks. Based on the foregoing, it is important to note that it is not what an Ombudsman says he is or what his purpose is, but whether he has the capacity to perform on particular functions that are needed in society.

What is similar?

This employs four key principles:

- *Principle of Resolution:* Each office seeks to get a resolution to the particular complaint and also look for ways to improve procedure and being practical and approachable to the citizenry.
- *Principle of Fairness:* The Ombudsman has to be fair, not only to the complainant, but also to the Government. This is one way of obtaining Government compliance and co-operation. As was stated by the Ombudsman of Northern Ireland, 'the Ombudsman is neither an advocate for the complainant nor for the authority, he is a critical friend to both.'
- *Principle of Justice:* The Ombudsman's office tries to restore people to the place that they would have been if there had not been maladministration in the first instance. Most offices do not have enforcement powers and hence the need to convince people on the merits of a case.

- *Principle of Dignity*: The office of the Ombudsman needs to show, through its work, that it treats people as if they matter. The work of the office of the Ombudsman centres on three critical questions:
 - √ What are the facts?
 - √ What is the right thing to do?
 - √ Are people treated as if they matter?

Conclusion

As human rights, so is the urge for justice. These are not confined to any culture or tradition. As a modern mechanism to ensure justice, the Ombudsman is part of this journey and should be adaptable to any legal or political permutation. The office of the Ombudsman should be in the business of promoting trust, accountability, transparency and integrity. Its work must not only be informed by, but also predicated on the essential and shared human dignity with all the fundamental rights whether substantive or procedural.

2.3 The Early Beginnings of the African Ombudsman: The Case of Tanzania

By: Hon. Justice Manento, Chairperson, Commission for Human Rights and Good Governance, Tanzania

The Honourable Justice Manento narrated the history and development of the Ombudsman in Tanzania. The Permanent Commission of Enquiry (PCE) was established in 1965 under the Constitution (Chapter VI: 67-69) and Statute (Act 25) as an independent institution. The PCE was created to deal with complaints from the public relating to abuse and misuse of power by state officials and to ensure citizens enjoyed their rights, administrative injustice and maladministration. Before 1984, the fundamental rights of the people were not recognized in law and the bureaucracy was immensely powerful and the Judiciary lethargic and inaccessible. Even worse, the National Assembly was subordinate to the ruling party; as such, it was ill prepared to address the grievances of the people. PCE was the first Ombudsman in Africa and second in the Commonwealth countries.

Reasons for the Commission

- The Commission provided an opportunity for checks on abuse of enormous powers entrusted to public officers. It therefore became a system of protection of individuals against the Executive and administrative misuse and abuse of power, particularly, for the rural poor.
- It was necessary to establish fairness and balance in relation to administrative decisions that affected the public. In other words, PCE ensured that public officers discharged their duties according to the law.
- The need to preserve and respect positive traditional values to guarantee the individual rights.
- Weak, lethargic and inaccessible Judiciary that could not adequately ensure administrative justice.
- There was need to have a different administrative justice mechanism from the Courts. In addition, the court procedures were not known by many people, the majority of whom could not afford to hire lawyers to represent them.
- Inadequate protection from the National Assembly. The National Assembly was subordinate to the ruling party, had few sittings and was ill-suited to deal with individual complaints, a position that PCE fitted in well..
- The practice of holding two positions at a time, in Government and the ruling party, created the possibility of abuse of power.
- Inherited laws were not compatible with the Government policies which provided the need for an institution to highlight and lead the reform process.

Membership of PCE

In terms of the composition, PCE consisted of a Chairman, assisted by two deputies appointed by the President. The term of office for the officers was for two years, which was renewable once. The law provided for the Commission to have a Secretary and staff.

Functions and Powers of PCE

The functions of the Commission were not clearly defined in the interim Constitution of 1965 or that of 1967. However, PCE made Regulations to assist in its operations. It is, however, instructive to note that PCE had the mandate to conduct civic education which it used advance human rights protection in Tanzania.

The Commission had has broad powers of investigation and could investigate any public servant including those in the ruling party (Sec 67:4). But the PCE could institute any inquiry against the President of the Union or the President of Zanzibar, judicial officers, private companies, or People's Defense Force. The scope of the investigations included arbitrary decisions or arrests, omissions, improper use of discretionary powers, decisions made with bad or malicious motive or decisions influenced by irrelevant considerations, unnecessary or unexpected delays, obvious wrong decisions, misapplication and misinterpretation of laws, by-laws or regulations. However, the Union President could bar PCE from gathering evidence in some offices to preserve national security.

Achievements of PCE

Notable achievements of the PCE included aggressive outreach efforts in rural areas to create awareness about its work, highlighted laws that needed reforms, protection of human rights, satisfactory resolution of public complaints, deterrence of abuse of power and compliance with recommendations.

Challenges Faced by PCE

Some of the challenges encountered by PCE included the following:

- Could not institute inquiries against the Union President, the President of Zanzibar, East African Community, private companies, missions, churches and the People's Defence Force.
- Could not inquire into or review any decision of any judicial officer where such decision related to judicial functions.
- The President could stop it from entering any premises to conduct an inquiry.
- The President could stop the production of evidence to PCE if he considered that it would be prejudicial to the security, defence or international relations of Tanzania or secrecy of Cabinet business.

- Was purely an advisory organ – Only made recommendations to the President.
- Depended on the President for its operations
- Could not provide adequate oversight since it was part of the Executive.
- The Report to the President was confidential unless the President directed otherwise.
- Understaffing

Conclusion

In 2000, the PCE transformed into the Commission of Human Rights and Good governance (CHRAGG, following a constitutional amendment. Further legislative changes broadened the mandate of CHRAGG to provide it with the dual mandate of human rights and maladministration.

2.4 Plenary Discussion

Question: On the issue of the distinction between the office of the Ombudsman, anti-corruption and human rights, Ethiopia has separate institutions. When can an issue be of human rights nature and not administrative injustice? How best can this distinction be made clearer?

Response: This distinction is unnecessarily problematic, is wasteful and does not do the citizenry any good. One of the things pushing the creation of separate institutions is vested interests. It is possible that in the next 15 years, the separation will eventually go away. Indeed, enough work has been done to show that the distinction is just artificial and creates duplication. What is important is to determine how best do we manage the process where there are separate institutions on human rights and administrative justice?

Comment: Bermuda has a separate Anti-Discrimination Commission. It is vital for these two institutions to come together so that they do not confuse the public. This issue deserves more discussion.

Comment: The whole aspect of the office of the Ombudsman is quickly spreading; however, availability of scholarships to study Ombudsmanship is dying. This in itself is a major concern.

Comment: The office of the Ombudsman needs to be efficient and exercise fairness. Does this include the Ombudsman or other institutions engaged in such services setting up standards benchmarked in international best processes?

Question: Some critics have always questioned the reasons for establishment of the Ombudsman in Africa, stating that it is donor driven. How true is the statement?

Response: Although donors have played a role in the establishment of the oversight institutions in Africa, their role has been overplayed.

Question: Is there any truth in the preposition by some scholars that the Ombudsman started in Qatar in the 17th Century; between 1634 – 1644, to redress the abuse of power and disaffection of the people with the rulers.

Response: The Ombudsman has always existed in different forms in all societies, including the African communities. However, the Ombudsman, as known today, can be traced to Sweden.

Question: The Ombudsman has been accepted as one of the oversight institutions worldwide. However, there been debate on the name to an extent that some call it Ombudsman, Ombuds, Ombudsperson among others. Has the debate settled on the name?

Response: The debate is unnecessary. The use of the word Ombudsman has been universally accepted in all situations.

Question: The Ombudsman is an evolving institution. There are some institutions that have binding or enforceable mandates. Does this take them out of the jurisdiction of the Ombudsman? If so, where can they be placed?

Response: A lot depends on the powers bestowed upon every Ombudsman in any country. The binding nature of decisions of other institutions should not exempt them from oversight by other bodies such as the Ombudsman. What is important is to indigenize the concept in every country.

DRAFT

2.5 The African Ombudsman: Framework, Jurisdiction and Operations

By: Prof. Victor Ayeni, Director Governance and Management Services International, London

The Ombudsmanship has developed to the point where one can essentially say that there are certain things that logically go with it. These broad issues are as below:

The central question to be asked is, '*how do African offices organize and deliver their Ombudsman roles?*'

This can be built along the following lines

- The institutional infrastructure that African offices have put in place.
- The essential design that these offices have adopted
- The criteria for effectiveness – Ombudsman literature has now effectively articulated certain basic criteria that are essential to the success of any institution.
- Outline of Africa's approach
- Operations and challenges

In Africa, there is no common model or approach of Ombudsmanship. There are, however, different strands, which are embellished by different local adaptability factors. For example, Ghana has adapted a fused system based on their political and constitutional history.

Every office has adopted an approach where they have tried to indigenize the office. All four main language groups in Africa are represented in Ombudsmanship. There is, however, more internal consistency in Francophone and Lusophone Africa while the Arab and Anglophone are more diverse.

The Anglophone and Lusophone countries tend to be mainly single member, no-deputy offices – French style Mediateur without 'filter'.

The Arab and Anglophone countries are more varied, comprising:

- Single member, no deputy, e.g. Lesotho
- Single member plus 1 deputy, e.g. Botswana and South Africa
- Dispersed collegial-style, e.g. Nigeria that has several Ombudsmen who are dispersed geographically
- Specialty offices more common than elsewhere in Anglophone countries, e.g. South Africa. Specialty areas include private sector, businesses and private sector among others.
- Fused collegial-type single or multi-purpose offices – e.g. Ghana, Gambia, Tanzania and Zambia. This where the Ombudsman are all in one point

and at the same time they are either having discrete functions – multipurpose

- Africa's contribution to Ombudsmanship is under-appreciated. Africa has, however, proved more than any other continent that the Ombudsman is a very flexible and adaptable institution, that is, proof of flexibility and pliability to diverse regime types (Tanzania – one-party and socialist experience, Nigeria-military regime at the time, Apartheid South Africa); all these have adapted Ombudsmanship

Criteria for effectiveness – essentials that go into the design of Ombudsmanship:

- Legal foundation – It is better to be entrenched in the Constitution
- Name of the office - All Ombudsman offices need to take this seriously – to indigenize and locally adopt it – administratively
- Structure and organization of the office – who is in charge?
- Stature and immunity
- Employee and staffing – The Ombudsman should be an independent institution and have its own staff
- Qualification for Office – most legislations do not specify what qualities and qualifications one needs to have to be an Ombudsman
- Appointment, tenure and removal – This is key to the independence of the Ombudsman office. There are different patterns in Africa, some being appointed by the legislature, while others are appointed by open application, as is the case in Malawi
- Impartiality and independence is key
- Visibility and access – how much needs to be put into legislation to make the Ombudsman look visible and accessible?
- Jurisdiction is critical, that is, the scope and extent of the Ombudsman's powers and limitations
- Powers of investigation – the idea is that the Ombudsman must have extensive powers
- Have own motion powers – be able to raise complaints on its own
- Competence to make decisions – the basis it takes on what to say
- Recommendations, remedy and compliance -
- Periodic reporting
- Ability to do special reports
- Penalties of breach of authority or non co-operation
- Having a Board of External Advisers – not present in Africa. This body acts as an advisor to the Ombudsman
- The success of any Ombudsman is ultimately determined by the personality (should not be timid) of the Ombudsman and the way he handles the non-statutory practices.

2.6 Plenary Discussion

Comment: Some of the classical Ombudsman deal also with human rights. In Bermuda, for instance, the Ombudsman deals with human rights issues except discrimination that is being dealt with by a separate human rights body. It is important to have one body dealing with human rights and administrative justice as opposed to creating separate bodies.

Comment: In 2005, Jamaica changed the name of the Ombudsman to Public Defender to make it more effective. Granting the Ombudsman powers to make binding decisions and enforce its own decisions should only be considered where the recommendations are within the four corners of the law.

Question: There are some institutions, such as the Retirement Benefits Authority in Kenya, that carry out work that is similar to the Ombudsman in some respects despite the existence of the national Ombudsman. Are there standards or best practices to be followed by the Ombudsman and similar institutions?

Response: It is important for the Ombudsman to set standards to guide them. For example, the Lesotho Ombudsman has developed a mechanism of complaining against the Ombudsman. In addition, some regulatory bodies in the pension sector call themselves Ombudsman and have set standards for their operations. There is no harm in this approach.

2.7 Case Presentations in Panel Format

Chair: Hon. Dr. Reginal Mwatha, Vice Chairperson, Commission on Administrative Justice, Kenya

2.7.1 Ombudsman in Anglophone Africa

*By: Ms. Epiphania Mfundo, Documentation and Research
Director, Commission for Human Rights and Good Governance,
Tanzania*

Anglophone Africa is rich with characteristics inherited from the British. The following are some examples:

- The Public Service – The Ombudsman has to deal with maladministration and in particular traditionally with the Public Service. This usually stands between the citizenry and bureaucracy.

Example: In Tanzania, MPs have been debating on whether contracts with big time investors are confidential or not. Currently these contracts still remain confidential which creates a distance between the citizens and the citizens. In the Public Service, a lot of the information (public records) remains confidential with the assumption that the citizenry cannot master them. This has created a symbolic distance between the government officials and the citizenry.

- The Common Law - Application of judicial laws and judicial due processes in the supervision of administrative decision making is minimal within the common law. Many of the countries Anglophone countries do not have separate administrative courts.
- Parliament is also limited in adequately supervising the administration as the majority in Parliament supports the Government of the day. Issues of maladministration may not come up because of this solidarity in Parliament.

In Anglophone Africa, the Ombudsman stands tall in the governance structure in that, he can provide a high caliber justice to a bureaucratic state where simplified procedures are applicable.

Two Anglophone countries have Ombudsmen with the dual mandate- good governance and the human rights.

The Role of the Ombudsman in Africa

The role of the Ombudsman in Anglophone Africa is changing towards the multifunctional role of institutions. The key question remains on whether the original Ombudsman functions still work well, are there still gaps? Where can the Ombudsman stand when ethical standards in the public sector go down?

The effectiveness of the Ombudsman is associated with the power to make binding decisions. It is also about fluctuation in relation to influence, that is, how much influence does the Ombudsman have?

Challenges of the African Ombudsman

- Inherent problems affecting the African Ombudsman have not been properly tackled.
- The Ombudsman in Africa anchors itself in investigations and seeking redress. However, it is still not clear whether administrative justice is considered a pillar for development and the democratic process.
- Over centralization of government – bureaucracy. Africa is not quite there yet.
- There are different ways of solving problems and receiving complaints from the citizenry. However, the issue remains the perception of the state and whether it is hostile to its own citizens or not and whether the country's leadership respects the rule of law.
- Complaint handling mechanisms – there is need to have in place meaningful mechanisms to seek redress against maladministration and whether the citizenry are really free to complain about poor governance and service delivery.
- Declining academic interest and scholarships in the Ombudsman.
- In his decisions or recommendations there is the risk of being seen as supporting the opposition or the ruling side of the government
- Maintaining the office's independence and its integrity at all times.
- Investigations taking too long because of lack of compliance by the government and other public institutions leading to the loss of public confidence by the citizenry on the Ombudsman
- Lack of recourse by the Ombudsman

What needs to be done?

- The Office should maintain continuous dialogue with government officials and balance between winning their confidence and that of the public for effectiveness of their recommendations
- Investigations should be carried out thoroughly to make the public and government more conscious on criticism for lack of co-operation
- Carry out dialogue on the positive obligations and making them known to all
- Putting emphasis on the principles of good governance
- Associating the effectiveness of the Ombudsman on discipline, tolerance, patience and compromise in building a solid political system.

- Linking with regional and international mechanisms of assessing good governance, such as the APRM, NEPAD, MDGs and the treaty bodies of the UN.

2.7.2 Ombudsman in Francophone Africa

By: Hon. Souleiman Miyir Ali, Mediatuer de la Republic, Djibouti

In this presentation, the Honourable Souleiman Miyir traced the historical origin of the Ombudsman to the 'Office of Grievances' in Arabia in the 7th century, an event that was seminal to shaping the thinking about the Ombudsman in the western world. Differentiated were the main genres of the Ombudsman—parliamentary and administrative. In the former, parliament hires the Ombudsman to assist it in its oversight role and in the latter the executive would appoint the Ombudsman to improve citizen-state links by striving to improve service delivery and deepen accountability of state agencies. Differentiated too were legislative and regulatory frameworks for the office. Most of the countries have their Ombudsmen brought into being by ordinary legislation and executive decrees. Only in Cote D'Ivoire, Djibouti and Senegal are the Ombudsmen creatures of national constitutions.

In Djibouti, the Ombudsman is an independent body that handles grievances of citizens relating to injustices and poor administration by state organs. He has operational autonomy and stable tenure. The office is meant to fortify the link between the administration and citizens and tone up good governance. The mediator cannot be directly seized by an individual, except through the intermediary of a Member of Parliament.

In Francophone countries, the Ombudsmen would handle malpractice and seek to promote the institutional health and performance of public agencies. The Mediator in Cote D'Ivoire has the power to enforce his decisions by sanctions. The Mediator in Senegal has a broad mandate that includes improving the institutional environment to enable commerce. The one in Burkina Faso is appointed through a consultative process that involves the concurrence of Executive and Legislature, including the Opposition Chief. The officer has robust powers of investigation and can access classified information and mete out sanctions for non-compliance. It is important to note that a number of Ombudsmen in Francophone countries have powers to make proposals for improvement of public administration especially for impugned public bodies. They are also required to submit their Annual Reports of their activities to the President and the National Assembly.

2.7.3 Ombudsman in the Lusophone Africa

By: Hon. Custodio Duma, Chairperson of the Mozambique Human Rights Commission

There are five Lusophone countries in Africa namely, Mozambique, Angola, Guinea Bissau, Sao Tome and Cape Verde.

The Lusophone countries have two Ombudsmen, one in Angola and the other in Mozambique². These countries have inherited a lot from Portugal, which was the first country to have an Ombudsman in the Portuguese speaking countries. In Mozambique, the office of the Ombudsman is separate from the office of the National Human Rights Commission.

The office of the Ombudsman in Portugal was established in 1975, followed by Angola. The office in Mozambique was established in 2012.

Office of the Ombudsman - Angola

- Established by the Constitution and regulated by two laws from 2006 (Law No. 4 and 5)
- The Office is elected by two-thirds majority of Members of Parliament for a term of four years
- The Office is required to deal with maladministration and human rights violations.
- There also is the Office of the Deputy Ombudsman and an Ombudsman Council
- Its decisions come as recommendations to Parliament and to the sovereign institutions
- It provides an annual report on the cases handled including the recommendations made.
- The Office has the power to investigate related violations

Office of the Ombudsman – Mozambique

- The Office was established by the Constitution in 2004 and regulated by the law from 2006, but operationalized in 2012
- The Office is elected by two-thirds majority of Members of Parliament for a term of five years
- According to the law, there is no deputy Ombudsman and no Ombudsman Council
- The Office make recommendations to Parliament, the Courts, the Attorney General and the Chief Justice
- The Office has the power to investigate related violations.

² The time is now ripe for the establishment of the Ombudsman in the remaining three countries.

Other Countries

Other Lusophone countries in Africa are yet to have an Ombudsman. In Cape Verde, for instance, the Ombudsman is established by the Constitution, but is yet to be operationalized.

Challenges of the Office of the Ombudsman (Mozambique & Angola)

- Strengthening the office of the Ombudsman.
- The offices of Human Rights and Ombudsman are both new to the population. They need to be educated on the objectives of these offices and their functions
- Clarity of mandate where there is a separate body on human rights. In Mozambique, there is the office of the Ombudsman and the Human Rights Commission. This has brought about confusion in the understanding their functions. There is need for the populace to be educated on their specific functions and which cases each of the Commissions are supposed to handle.
- Legitimacy of these two offices to enable them obtain credibility.
- Language barrier between the Lusophone, Anglophone, Anglo-Saxophone and Francophone countries in Africa.
- Legitimacy since the ruling parties in Mozambique and Angola can command two-thirds majority in Parliament in the appointment of the Ombudsman.
- Independence
- Poor governance

There is need to lobby for the remaining three countries in Lusophone Africa to have the office of the Ombudsman, interpretation of Human Rights in these countries and promotion of good governance - especially in Guinea Bissau and Sao Tome

2.7.4 Ombudsman in the Arab Africa

By: Hon. Dr. Farah Mustafa, Ombudsman, Sudan

The presentation is currently being translated

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2.7.5 The South African Ombudsman: Jurisdiction and Accountability – An Overview of Legal and Legislative Framework and Operational Environment

By: Ms. Ponatshego Mogaladi, Office of the Public Prosecutor, South Africa

When the Ombudsman was conceived and eventually established in South Africa under the name Public Protector, the vision was aimed at:

- providing a mechanism for swift justice for ordinary people that would assist them to exact accountability for administrative wrongs in state affairs;
- there was also a conscious understanding that the office would play a central role in promoting ethical behaviour and principles.

The Public Protector is established under Section 181 of the Constitution of the Republic of South Africa (the Constitution), with powers defined under Section 182 of the Constitution. Section 182 provides the following:

- “The Public Protector has the power, as regulated by national legislation-*
- 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;*
 - to report on that conduct; and*
 - to take appropriate remedial action³.”*

In a provision that has been interpreted as entrenching the right to access to the services of the Public Protector, Section 182(4) of the Constitution provides for the Office to be accessible to all persons and communities.

These words inform the Office’s pursuit of its constitutional mandate of strengthening constitutional democracy by investigating and redressing improper conduct in state affairs and public administration. The essence of these words is a commitment not only to accountability but also to the rule of law.

The Constitution anticipates expansion of the mandate of the Public Protector through legislation, with Section 182(5) providing for possibility of additional powers. There are sixteen statutes that have since been passed to give effect to this provision. The statutes either recognise the inherent constitutional jurisdiction of the Public Protector or expressly accord it additional powers.

³ “to take remedial action”, this is one of the key features that distinguishes the Ombudsman office. In most instances it does refer to recommendation. However, as an organization it is currently focusing on repositioning operations to ensure appropriate remedial action is taken and not only recommendations.

Key Mandate Areas

These are summarised into the following 6 key mandate areas:

1. *Maladministration mandate conferred by the Public Protector Act of 1994*

- The Public Protector Act primarily casts the Public Protector's role as being that of *investigating and redressing maladministration*, incorporating *abuse of power, abuse of state resources and corruption*.
- The Act expands the oversight powers to include resolving administrative disputes through *Appropriate Dispute Resolution (ADR)* measures such as conciliation, mediation, negotiation and any other means deemed appropriate by the Public Protector⁴.

2. *Executive Ethics Enforcement conferred by the Executive Members Ethics Act of 1994*

- The Executive Members Ethics Act on the other hand gives the Public Protector the powers to look into the conduct of the *executive, including the cabinet members at both national and provincial levels*.⁵
- *Enforcement of the Promotion and Combating of corrupt activities conferred by the Prevention and Combating of Corrupt Activities Act of 2004*
- The Prevention and Combating of Corrupt Activities Act recognises the inherent jurisdiction of the Public Protector as incorporating investigating allegations of *corrupt activities*.

4. *Enforcement of Promotion of Access to Information as conferred by the Promotion of Access to Information Act of 2000*

- The Promotion of Access to Information Act recognises the Public Protector as one of current information regulators responsible for resolving disputes regarding access to information within organs of state.

5. *Protection of Whistle blowers as conferred by the Protected Disclosures Act*

- The Protected Disclosures Act assigns the Public Protector and the Auditor General as safe harbours for whistle-blowers wishing to report suspected wrongdoing

6. *The power to review the decisions of the Home Builders Registration Council as conferred by the Housing Consumers Protection Measures Act of 1998*

- The Housing Consumers Protection Measures Act specifically authorises the Public Protector to review decisions of the Home Builders Registration Council, a statutory body established to regulate the building

⁴ Due to the number of cases the Office is receiving, it is focusing on resolving most of the cases through mediation and conciliation whereby the parties are brought together and settlement agreements signed.

⁵ In this case, a member of a provincial legislature or national legislature can only lodge a complaint. Members of the public cannot lodge a complaint in terms of this particular Act

- industry, including the resolution of construction disputes.
- The work of the Public Protector is further informed by various laws including the Promotion of Administrative Justice Act 3 of 2000

The most distinctive feature of the Office is the fact that the *mandate is not restricted to recommendations*, as the Constitution specifically mandates the *taking of appropriate remedial action*. For this reason, the remedial action often involves tangible remedies such as money and reversal of decisions such as dismissals.

Like judges, the Public Protector may hold someone liable for contempt of the Public Protector. Section 9 of the Public Protector Act provides that

“No person shall insult the Public Protector or the Deputy Public Protector in connection with an investigation or do anything which, if the said investigation had been proceedings in a court of law, would have constituted contempt of court.”

Key Mandate areas conferred by additional Legislation

The mandate covers the entire public service and is not restricted to public servants; it includes also the President and Speaker of Parliament. It also includes private sector actors such as state contractors or former public servants if such actions occurred in state affairs

Independence

S.181 of the Constitution, which has the same wording as Section 165(4) spelling out the independence of the courts, requires the Public Protector to be *independent, subject only to the Constitution* and the law and *impartial* and exercise his powers and perform his *functions without fear, favour or prejudice*.

S.181(3) of the Constitution goes further to compel other organs of state to *assist and protect* the Public Protector and other institutions supporting democracy, to ensure the independence, impartiality, dignity and effectiveness of these institutions. S.181(4) of the Constitution further prohibits any person or organ of state *from interfering with the functioning* of the Public Protector and other institutions supporting democracy

Accountability

Section 181(5) of the Constitution provides that the Public Protector is accountable to the *National Assembly*. The Public Protector must report to Parliament on all activities annually and a strategic plan which covers the operational activities is also submitted annually.⁶

The Public Protector produces investigative reports which are submitted to the National Assembly and may contain findings and remedial action aimed at correcting specific administrative wrongs or improper conduct of the state.

The reports may be submitted to the National Assembly on the finding of a particular investigation if:

- Public Protector deems it necessary or in the public interest;
- It requires the attention of or intervention by the National Assembly;
- The Public Protector is requested to do so by the Speaker of the National Assembly; or Chairperson of the National Council of Provinces

Operational Environment: Systemic Problems

- The Public Protector is currently experiencing a high level of confidence and trust from members of the public. Over the past 2 years the complaints investigated by the Public Protector has increased by over 30 percent.
- The success of the Public Protector, to a very large degree, depends on her ability to gain and retain the confidence of the complainants, which is clearly a part of the whole idea of an Ombudsman office.
- On the other hand, great success might lead to more cases being lodged and the risk of a loss of confidence that threatens the Public Protector's operations if it turns out that the institution is not able to process and complete the incoming cases swiftly and effectively
- The Public Protector *has adopted the approach of* countries such as Denmark in an attempt to deal with the increasing complaints;
- Instead of taking up individual cases for investigation on his own initiative, the Public Protector has from time to time decided to take up a whole sector for investigation (on own initiative). The current systemic interventions on own initiative include:
 - √ Investigation into systemic deficiencies in the Government's Subsidised Housing Programme.
 - √ Investigation into systemic deficiencies on the provision of Health services
- Whilst these investigations are much more resource intensive than individual complaints, the outcome of an investigation **can resolve the problems** affecting an agency and also **address systemic challenges** and consequently save agencies financial resources that can be better used to deliver government programmes.

⁶ It is accountable to the National Assembly by issuing a report in the form of its Annual Report. The Office is also required to table a Strategic Plan annually and to report on its performance.

- Furthermore by addressing the systemic deficiencies, the the number of individual complaints can be reduced
- The levels of awareness of the role and functions of the Public Protector and the profile of the Public Protector amongst government institutions and public bodies has increased significantly over the last years,
- Some of the challenges that the Public Protector experience relate to the fact that State Institutions –
 - √ Do not show willingness to take responsibility for findings of maladministration and to reverse the consequences as indicated in the remedial action;
 - √ Try their best to provide justification and use experts and legal advisors, to avoid compliance with the findings and remedial action of the Public Protector.
 - √ Confuse lawfulness and fairness. Fairness involves considering both legal and non-legal issues
 - √ Do not live up to the principles and values contained in Constitution and the ethical principles for public sector agencies (*Batho Pele principles*)

The Public Protector's Directive for Remedial Action

One of the distinct features of the Public Protector is that its mandate *is not restricted to recommendations*, but the Constitution specifically mandates the *taking of appropriate remedial action*. For this reason, the remedial action often involves tangible remedies such as money and reversal of decisions such as dismissals

"Appropriate remedial action" has been further defined by the provisions of the Public Protector Act that provides in that:

"Public Protector shall be competent, at a time prior to, during or after an investigation, if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting there from or to make any other appropriate recommendation he or she deems expedient to the affected body or authority.

Compliance with remedial action is supported through:

- The issuing and discussion of provisional reports before a final report is issued;
- Specifying timelines for each compliance action in each report and requiring action plans for compliance action;
- Public release of virtually all reports using a media conference;
- Follow up communication with "red carded" institutions, including summoning those that are not co-operative to offer explanations;
- Taking advantage of media dialogue on compliance deadlines and other compliance requirements following the public release of a report;

- Requesting a Parliamentary debate, for example, the *recent investigation against the Independent Electoral Commission*;
- On-going stakeholder dialogues on a bilateral basis and an omnibus process that takes place annually and includes focussed dialogue with:
 - √ Cabinet,
 - √ Members of the various Provincial Legislatures, and
 - √ Senior Government officials

Accessibility

Section 182(4) of the Constitution specifically requires that the Public Protector **must** be accessible to all persons and communities. The Public Protector serves over 50 million members of the public and the size, function and location of the organs of state and public institutions falling within the oversight of the Public Protector makes it impossible for the Public Protector to provide the service required in terms of her Constitutional mandate remotely at limited centralised locations

The Office has 20 offices mainly located at the main cities and about 400 staff members. The Public Protector has been innovative in fulfilling her constitutional mandate to be accessible to all communities.

Some of the key programmes include the following:

- Visiting points that are serviced monthly to obtain complaints and give feedback on existing complaints;
- Mobile Office of the Public Protector;
- Collaboration with other state agencies such as the Post Office and utilising them as a drop-off point for new complaints;
- Using both print and electronic media to raise awareness about the Public Protector;

Recently the Public Protector commissioned a study with a view to ascertaining the levels of awareness, access, trust, confidence and faith in the Public Protector among members of the public and stakeholders. With a sample of nearly a thousand people coming from different Public Protector stakeholder groupings and detailed demographics as spread across the country, the survey was conducted by the University of Pretoria's Business Enterprise and it's Department of Psychology.

Among other things, the survey revealed the following:

- Across the board, levels of awareness of the Public Protector stand at 77%;
- 80% were aware that the Office exists to promote good governance
- 79% were aware that the Office fights corruption and misconduct in state affairs;
- 78% were aware that the Office helps protect people's rights against the state;
- 78% said that the Public Protector existed to promote accountability in Government;

- 79% said the Office has integrity,
- 79% said the Office is professional,
- 77% said Office is accountable, 75% said it is fair, 74% said it is transparent and a further 76 percent said it is trustworthy;
- 76% percent have confidence in the Public Protector;
- 76% said the Office lives up to its vision and mission statements while 73% said it lives up to its service promise
- 63% of the sampled persons were satisfied with the manner in which their complaints were handled;

2.7.6 Plenary Discussion

Question: Relative to observations made on the subject of the need to give the Ombudsman more powers beyond the traditional, *“the wider the jurisdiction of the Ombudsman, the better...”* for the non binding decisions of the office. The presentation from Tanzania also brought out the example of a Government that is hostile to the Office. This is indicative of the over centralization of power in the public administrative institutions and what they can do – becoming so powerful to the point where they do not take recommendations seriously. Should the office of the Ombudsman therefore be given the powers to enable it evolve and be more effective and have firmer enforcement mechanisms?

Response: Binding Authority - this is a very fundamental concept. The moment this is ingrained into an institution, it completely changes the character of the institution – it now becomes more like a tribunal, or a court. This kills off the institution of the Ombudsman. The Institution of the Ombudsman would never have spread if it had these powers.

Comment: Consideration should be given to the office of the Ombudsman to have the power to act – as a commissioner to access of information, so that the Ombudsman can then facilitate the access of the citizenry to information held by the state.

Comment: The African Ombudsman Research Centre is currently conducting a research to do a comparative analysis of the frameworks of Ombudsman be it legislative or any other regulatory aspect governing the Ombudsman offices within Africa. The objective of this study is to, (i) try and develop normative standards, to examine the differences and challenges amongst the various bodies within Africa, and (ii) to try and come up with the quintessential African Ombudsman institution. Related information to strengthen this research from the Ombudsman institutions in Africa will be highly appreciated.

Comment: Swaziland did have the office of the Ombudsman and in the late 1980s it was abolished. It was re-established in 2005, upon the adoption of a new Constitution.

Question: In the African context, to what extent has there been political will to allow the Ombudsmen to operate independently to enable them enhance a more beneficial experience to the citizenry.

Response: The bulk of the problems faced by Ombudsmen is by the institution of the Ombudsmen themselves, and not with government or other institutions. We need to self analyze, understand what needs to be done, evaluate our personal attributes and ensure all are in the right place.

Comment: The Ombudsman of Burundi was created after the agreement of Arusha. It was elected by 2/3 majority of the country's Parliament. It therefore has great legitimacy.

Question: The presentation on the Public Protector of South Africa stated, "taking appropriate action in terms of the recommendation of the Ombudsman". In what form is this action carried out?

Response: It is a requirement in South Africa for the Public Protector to take appropriate remedial action. The manner in which this is dealt with is that in its investigative reports the Office does not go to court, instead it takes remedial action in its investigation reports where steps to be taken are drawn out to correct or address the maladministration.

Question: In Uganda, the oath of secrecy is taken before the Ombudsman assumes office, including all the staff members. How far does this oath of secrecy go in terms of interfering with making public certain information, including reports. This oath of secrecy limits the freedom to make public certain information.

Response: This has been a problem in many offices. The oath is in some cases, implied. The general approach is that the Ombudsman can be creative about it as there are overriding provisions in legislation that allow the Ombudsman to deal with it. On one hand it talks about secrecy and on the other it talks about having total freedom to determine the best way to conduct the work of the office and interact on it. The general approach is that the office of the Ombudsman is not at its best when keeping things secret, hence the need for the Office to have a creative approach to make public what needs to be seen.

Question: Has anybody complained to the Tanzanian Commission about the confidential contracts with foreigners? If so, what action has been taken by the Commission? Does the Commission have the mandate and powers to access such information?

Response: Nobody has complained to the Commission. The draft Constitution of Tanzania has incorporated all these aspects.

Comment: The Ombudsman of Angola submits Annual and Bi-Annual Reports to Parliament.

DAY 2

Session 3: In Public Interest: Re-Examining the Role and Relevance of Ombudsman Institutions and their contribution to Justice, Governance and Public Service

Chair: Hon. Cmmr. Sabelo Masuku, Acting Chairperson, National Human Rights Commission, Swaziland

3.1 Ombudsman, Courts and the Common Law

By: Hon. Cmmr. Otiende Amollo, Ombudsman, Kenya

In his presentation, Cmmr. Otiende sought to persuade the delegates on the following:

- It is preferable to adopt the Danish model of the Ombudsman in Africa as opposed to the Swedish model. The Swedish model describes the Ombudsman as the supreme overseer of legality, who even oversees the courts. This model is not ideal for the African context, especially the common law context.⁷ In considering the models to be used, it is better to consider the Danish model. It was re-evaluated in the 1950's.
- While the Ombudsman must have the jurisdiction to make decisions and recommendations on matters of maladministration, administrative injustices and related matters, in the context of the common law, the Ombudsman still remains amenable to judicial review – even when determinations are made, those who are aggrieved have the opportunity to challenge the decision in a court of law. If it is challenged in court, the court will have a restrictive view on how to look at it within the confines of the judicial review. In this context, the court could return the decision to the Ombudsman to reconsider and not change the decision.
- The traditional Ombudsman, whatever the model, still proceeds on the basis that:

√ The Ombudsman makes recommendations

⁷ Common Law in this case is that body of law that applies largely to those who are equated with an Anglophone experience.

- ✓ Does not make binding determinations
- ✓ Investigations and recommendations are respected on the basis of moral suasion – the moral authority of the recommendations.

From the perspective of a practitioner, Cmmr. Otiende, stated that there is need to give the Ombudsman authority, more than merely to make recommendations. He further clarified that in some situations or countries where there is a culture of lack of respect for the courts' decision, then making mere recommendations takes one nowhere. In the unique circumstances then the Ombudsman should have Jurisdiction to do more than merely make recommendations. The Ombudsman's office should have the capacity to 'bite'.

The model that expects that the Ombudsman to make recommendations only, and if those recommendations are not adopted then Parliament will pick them up, is a model that will not always work in Africa, because of: (i) the nature of the formation of Parliament, (ii) the nature of work of the Ombudsman, especially where it also incorporates anti-corruption agencies. In this case the Parliamentarians will work towards making the office ineffective to their benefit. Reports will be received by the Parliament and never be discussed or contents revealed, (iii) the politicization of the Ombudsman decisions as the office checks public offices and the Government. Recommendations are, therefore, swept to the back burner.

Recommendations

The Ombudsmen in Africa have not adopted the Swedish model that gives them power over the courts. Many Ombudsman institutions in Africa are Parliamentary Ombudsmen. They report to Parliament on their operations at specific intervals. The new Ombudsman ideally should be established constitutionally and not by an Executive decree. The ideal situation is, therefore, for the Office to be entrenched in the Constitution.

The Ombudsman in Europe, North America, Australia and other parts of the western world tends to focus more on social and economic rights, since most of the other areas are clearly defined and well accepted. However, the Ombudsman in Africa still has to deal with a large chunk of civil as well as political rights issues. The scope of maladministration in this case includes political issues that can as well be defined to the extent of questioning the president's personal financial dealings (Case of South Africa).

The definition of the Ombudsman will, therefore, be different, based on the local context. In Kenya, the debate to maintain a fused or disaggregated Office was so intense that there was no time to finalize the debate at the making of the Constitution. Therefore in Article 59 of the Kenyan Constitution, the Kenya National Human Rights and Equality Commission which constituted all three competencies was established. In Article 59(4), Parliament was given the opportunity to have the debate further whereby they eventually created three other separate agencies: (i) the Kenya National Commission on Human Rights (ii) the Commission on Administrative Justice - Office of the Ombudsman, and (iii)

the National Gender and Equality Commission. This separation cannot now be undone according to the Constitution.

Right of Access to Information

A number of country's Constitutions, have the right for their citizenry to access information held by the state, including the Constitution of Kenya. One important question in relation to access to information is who is to facilitate such access? The Ombudsman is increasingly being given the mandate to do so. For instance, in Rwanda, the Ombudsman has been empowered to facilitate access to information to the citizenry. In Kenya, it is on the way – a Bill has been drafted towards this end and which has identified the office of the Ombudsman as the agency to facilitate this – with plenty of opposition. The office of the Ombudsman is the right entity to facilitate this because the Executive cannot facilitate itself; it must be an entity outside the Executive to carry out this facilitation.

Courts and the Ombudsman

These two are not in competition; they are complementary to each other with regards to administering justice. They must work in a relationship of mutual respect. If a matter is actively in court, the Ombudsman ought not to assume jurisdiction over the matter and vice versa if before the Ombudsman. There is need for clear jurisprudence on this. The Ombudsman cannot deal with substantive matters before the court, but only deals with malfeasance such as delays and inefficiency in handling files among others.

Using the office of the Ombudsman has a number of advantages compared to using the courts, examples of which include cheaper costs, expeditious, adoption of an inquisitorial approach, wide range of remedies and systemic investigations that addresses the underlying problem among others.

The Future of the Ombudsman

The challenge that often arises where the office of the Ombudsman has the mandate to adjudicate is the danger of the Office being the complainant, investigator, prosecutor and the judge all at the same time. Creating the so called 'Chinese Wall' in the adjudicatory mandate of the Ombudsman remains a challenge in the common law experience. The Courts have, however, stated that a body can very well carry out these functions as long as the Chinese Wall is kept in all the processes.

All these processes can however be made to work in unison, without necessarily offending the rules of law, provided each stage is handled by different agencies or personnel, even if it is within the same office.

Advisories in the Kenyan context have been found to be useful. They enable the Ombudsman to carry out what it thinks is right even if they do not involve an investigation. It is strictly less than a recommendation. In Kenya, the experience is that what is contained in the advisory that is given by the office of the

Ombudsman is followed without anybody saying that they have followed it, or taken up the recommendations.

Judicial Review and the Ombudsman

In common law, it was thought that there would be tension between judicial review and the work of the Ombudsman, because judicial review is what gave the courts the ability to look at administrative action by public officers, primarily, and to essentially apply the same principles applied by the Ombudsman. Judicial review by the courts is not consistent with the work of the office of the Ombudsman. The two can work together. However, the office of the Ombudsman must be insulated from liability.

Enforcing the Ombudsman Determination

Unless there is a clear mechanism for enforcing the Ombudsman decisions and recommendations, no headway will be made in ensuring administrative justice in Africa. Unless the Office is in an environment where respect for the law and the culture allows the recommendations to be adopted, no headway will be made.

While it is important to note the conventional work of the Ombudsman of making recommendations, it is critical to note that where the office is in an environment where the convention does not facilitate this then it is critical for the office of the Ombudsman to be able to make determinations that are binding.

Conclusion

The office of the Ombudsman and the courts are necessary and complement each other. In some countries, the jurisdiction of the Ombudsman is yet to be appreciated. It is up to each country to determine whether to have a fused (with human rights, anti corruption commissions) or un-fused Ombudsman office.

Based on the Kenyan experience, it is better to have a stand-alone Ombudsman office that deals with maladministration, a stand-alone human rights commission that deals with myriad issues of human rights and a stand-alone anti-corruption commission that focuses on prosecuting corruption.

All Ombudsman offices should, however, continue educating the public, government and to stand tall despite the challenges being experienced.

3.2 Administrative Law and Governance in East Africa

Prof. Migai Akech, School of Law, University of Nairobi

Prof. Akech's presentation was on a project he is currently working on Administration Law and Governance in East Africa. The Project is taking place in Kenya, Malawi and Uganda. The Project is about showing that even the poor, marginalized and helpless have rights.

From a democracy viewpoint, administrative law introduced democratization initiatives, which then led to a number of achievements such as political liberalization and constitutional reforms in many African countries. These initiatives helped re-introduce, (i) multi-party politics, (ii) presidential term limits, (iii) institution of regular and competitive elections for legislative and presidential offices, (iv) restored legislative and oversight functions to legislatures, (v) guaranteed judicial independence, (vi) saw the emergence and growth of an assertive private media and civil society.

A key drawback has, however, been the fact that African democracy has tended to be attached to the ballot box. In reality, democracy must be a day to day practice and not a periodic event as it is about the right of citizens to be consulted when political decisions or choices are being made, hence the need to have in place mechanisms that will enable citizens to meaningfully participate in the day to day practices of governance.

Prof. Akech questioned the sufficiency of periodic elections because it does not offer citizens, particularly those that are marginalized an adequate degree of control over government. Hence the need of auxiliary political or legal mechanisms that will ensure that there is, (i) day-to-day participation of citizens in governance and, (ii) accountability of the governance institutions. This is critical as bureaucrats carry much of the work of government – typically in the Executive, Legislature and Judiciary.

These desirable auxiliary mechanisms of accountability are, however, absent in many African countries. Because of their absence, the interactions the citizenry have with public administrators are often delayed, having broken promises, extortion and abuses of power.

How then can these problems be addressed? Administrative law comes in at this point.

The arguments that this Project or Study makes is that the rampant abuse of power in the context of the various bureaucracies can be prevented or at any rate considerably reduced if there is a credible regime of administrative law.

What then is the promise of Administrative Law?

Administrative law regulates the exercise of power by requiring that administrative action should meet certain requirements of legality, reasonableness and procedural fairness. It performs this function by establishing

general principles and procedures that all administrators and the various bureaucrats ought to follow. It also provides remedies when these principles and procedures are not followed.

What are these principles and procedures?

Principles:

- Requirements that decisions should be reasonable or justifiable
- Administrators must consult those that are likely to be affected by their decisions prior to making them
- Decision making processes should be free from any real or apparent bias
- Administrators must give satisfactory and written explanations for their decisions

Procedures:

- Requirements that administrators must give adequate notice or proposed actions to those most likely to be affected by their decisions
- Give the affected and likely affected communities reasonable opportunities to make representations, for example, through public inquiries, notice and commence procedures in which the affected people are given enough time prior to the taking of the decision.

In this regard, administrative law contributes to (i) good administration, (ii) the rule of law, (iii) democracy, (iv) fairness and impartiality in decision-making, and (v) promotes public trust in government and its officials.

How then are the principles of administrative law realized? What systems or mechanisms could facilitate the attainment of good administration from the perspective of administrative law?

This can be realized using two approaches:

- Getting it right from the onset which entails:
 - √ Ensuring that the administrators get it right the first time by making decisions that adhere to the principles of good administration. This can be achieved by, for instance, enacting laws and training administrators on these laws to ensure procedural compliance.
- Looking at correcting the wrongs through:
 - √ Judicial reviews and the Ombudsmen to review compliance with the principles.

What then is the link between administrative law and governance?

Administrative law can contribute to the attainment of rule based governance and public accountability. This belief stems from the fact that governance is about public participation and accountability of the exercise of power. Administrative law also contributes to rule based governance like mandating public participation and accountability in public decision making processes.

Why this Project?

It arose for the following reasons:

- There has been little if any empirical research around this subject area
- How can public administrators make decisions and whether they adhere to the principles of administrative law

The Project takes off on the premise that administrative law can address regulatory gaps by providing practical legal standards and procedures that citizens can deploy to confront the abuse of power. Despite the potential of administrative law to enhance the quality of governance, it has unfortunately not been given serious attention in East Africa, and Africa in general.

The Project seeks to achieve the following objectives:

- To compare the rule making, rule application and adjudication practices of administrative agencies with a view to contributing to the development of uniform procedures and practices that then adhere to the principles of administrative law
- To understand and document the day to day interactions that ordinary citizens have with public administration with a view to contributing to public policy and legislative initiatives that seek to empower citizens to participate more effectively in public decision making processes and hold the government and its agencies to account.
- To evaluate the adjudication processes of administrative agencies.
- To assess the impact of judicial reviews on public administration. There is need for a discourse between the Judiciary and public administrators.
- To produce a book on the Principles of Good Administration which can be embraced by the students of law or in public administration.

Why then is this Project important to the Ombudsman Institutions?

- It demonstrates to policy makers, administrators and public actors to participate in the proceedings of administrative agencies and how the principles and procedures of administrative law can contribute towards good administration
- It will develop an appropriate set of procedures that concerned agencies can use to enhance fairness and accountability of their decision-making processes. These sets of procedures can serve as a basis for developing modules for relevant policy makers, administrators and public actors so that they can be effectively used.
- It will also engage the institutions of accountability such as the Ombudsman and legislative committees with a view to contributing to the establishment of codes of good administration and establishing practicing guidelines to facilitate the mainstreaming of the principles of administrative law
- At the regional level, the Project seeks to engage policy makers with a view to contributing to the adoption of uniform sets of procedures to facilitate fairness and accountability in the exercise of power by administrative agencies.

3.3 Fused or Un-fused? Examining the implication of the combined role of Human Rights, Corruption and Administrative Justice in One Body

By: Cmmr. Joseph Whittal, Deputy Commissioner, Commission on Human Rights and Administrative Justice , Ghana

The Presentation focused on the Commission on Human Rights and Administrative Justice (CHRAJ) of Ghana and covered the following areas:

- History of CHRAJ
- CHRAJ Performance
- Implications of a Fused Mandates

Historical Context

There is need to begin by re-examining the Ombudsman in the African context. It is important to note that administrative justice is a human rights issue. Indeed, there are a number of case laws in Ghana that have stated that citizen's rights to administrative justice is a fundamental right; not just rule based. For CHRAJ, administrative injustices are not just wrongs *per se*, they are also human rights violations.

The origin of an Ombudsman in Ghana can be traced to 1969 when the Second Constitution of Ghana was adopted. Article 112 of the Constitution provided for the establishment of a classical Ombudsman to, among others, receive and investigate public complaints about injustice and maladministration against government agencies and officials. The Office was, however, not operationalized despite an Act of Parliament being passed, due a *coup d'état* that overthrew the Government.

The Office was subsequent re-enacted in the 1979 Constitution and operationalized through an Ombudsman Act of 1980. However, the Office was weak and received a lot of criticisms for its performance and relevance. The establishment of CHRAJ was, therefore, a response to the weaknesses of the first Ombudsman Office.

CHRAJ was established in 1993 as an independent Constitutional Commission with three distinct functions: human rights, administrative justice and anti-corruption. The Constitution of Ghana elevates the concept of administrative justice to a constitutional right and makes it one of the fundamental human rights (A23). The fused system accords with reason and financial prudence since unfair administrative practices by public officials would invariably lead to violations of the fundamental rights and freedoms.

The anti-corruption mandate focuses more on integrity and less on the criminal aspects. The fused mandate has made the Commission to be very effective and provided the necessary latitude to undertake its work and deal with all situations that may arise in the course of their operations. This links well with

the fact that the future of the Ombudsman in Africa which will be based on the relevance or effective oversight over other public institutions.

Performance of CHRAJ

CHRAJ has a staff complement of about 800 people with national spread. CHRAJ has performed really well to an extent that a commentator once referred to it as 'the conscience of the nation' and 'the most trusted institution' – (Geoffrey Cameron, 2008). Some of the key achievements of CHRAJ include:

- undertaken investigations of key state officials including a sitting President undertaken systemic activities
- created awareness about human rights
- assisted public institutions to develop service charters
- developed the National Anti-Corruption and Human Rights Action Plans
- developed Conflict of Interest Guidelines and Code of Conduct for Public Officers
- contributed to jurisprudence through its decisions and arguments in court
- produced state of Human Rights Reports on 10th of December every year
- developed a draft Human Rights Baseline to measure the performance of the Government in human rights for the following five years.

The Commission has done well to an extent that researches have shown that the level of human rights knowledge in Ghana to be about 90 percent. The fused mandate has worked well in Ghana leading to the pre-eminence of CHRAJ in Ghana's development to an extent that some of Ghana's Development Partners through the Multi Donor Budget Support have conditioned the release of budgetary support on certain targets being met. The pre-eminence of CHRAJ has been achieved through firm leadership and bold stance on human rights, administrative justice and anti-corruption.

Implications of the Fused Mandate

- *Budgetary constraints:* Even though CHRAJ is three in one, the Government considers them as one institution. It has been recommended that a Democracy Fund be established for all independent constitutional bodies. In this system, the Fund is allocated directly to the Fund Administrator who would work closely with the constitutional bodies.
- *Binding nature of the decisions:* For now, CHRAJ enforces its decisions through the court. A proposal has been made to enforce the decisions by way of registration in court and enforced as decisions of the court.
- *Goodwill factor:* Maintenance of the goodwill is a challenge.
- *Mandate over private persons:* CHRAJ mandate covers situations which may involve private persons in the context of human rights and anti-corruption mandates.

3.4 The Challenge of Enforcing Ombudsman Decisions, Ethiopia

By: Mekdes Mezgebu Medhane, Programme Officer, Democratic Institutions Programme

Establishment of the Ethiopian Institution of the Ombudsman

The Ombudsman is increasingly becoming an indispensable institution for safeguarding the rights of citizens and holding the governments to account. This has become more evident when considering the expanded role of the State in contemporary world coupled with the corresponding demand for open, fair and accountable government. The situation in Ethiopia has not been different. The Ethiopian Institution of the Ombudsman (EIO) was established under Article 55 of the 1995 Constitution as part of the restructuring of the State brought about by the New Constitution. The other institution created under Article 55 is the Human Rights Commission. The Ethiopian Institution of the Ombudsman was operationalized in 2005 through the enactment of the enabling legislation and the subsequent appointment of the first Chief Ombudsman. It is primarily entrusted with the mandate to investigate and redress issues of maladministration, governance and public service delivery. The mandate was expanded in 2008 through the Freedom of Mass Media and Access to Information legislation which empowered the Office to oversee its national implementation. Currently, the Office has Six Offices in six regions with the main office being headquartered in Addis Ababa.

Mandate of EIO

The broad areas of EIO mandates are the following:

- Supervision of the constitutionality of administrative decisions and directives and providing recommendations for change.
- Complaints handling from the public. The Office can initiate investigations on its own motion on suspected cases of maladministration.
- Law and policy reform – recommendations for better governance
- Implementation of access to information legislation

Enforcement Mechanisms

Upon conducting investigations, the Ombudsman can take any of the following measures:

- Make recommendations based on the findings of the investigations. The Ombudsman usually makes follow-ups to the respondent administrative agency for compliance with its recommendations.
- Parliamentary reporting through the submission of Annual Report on its activities. The Ombudsman also issues a Special Report to Parliament on specific pressing issues of government administration.
- Official Reports made through the media or other means to expose the Executive and its wrong doing agencies (A.39)

Challenges of Enforcing Ombudsman Decisions

The challenges include:

- *Gaps in the legal regime:* These include absence of an administrative procedural law, legal ambiguities and lack of specificity of the enabling legislation which have affected investigations and enforcement of decisions. The absence of an administrative procedural law has resulted in arbitrary and inconsistent procedures of decision making. In addition, it has affected the work of the Ombudsman in setting uniform standards of administrative procedures for administrative bodies. A Study commissioned by the Ombudsman found that the absence of the procedural law was one of the main causes of administrative injustices in Ethiopia (Justice & Legal Systems Research Institute, Addis Ababa, June 2013).

Secondly, the Ombudsman does not have powers to take its decisions to court for enforcement. This has been restricted to recommendations and using soft powers of persuasion and mediation. Further, the law does not expressly impose a duty on public agencies to comply with the decisions of the Ombudsman. In addition, the weakness in the law has made public agencies to interpret their duty to co-operate with the Ombudsman to mean co-operation during investigations, but not in the enforcement of its decisions. This is made worse by the lack of clear strategy to enforce decisions of the Ombudsman, making it to only rely on informal arrangements for enforcement.

- *Issues of Federalism and Regional Autonomy:* The Ombudsman is a federally established Office whose mandate stretches to federal agencies. This has presented both theoretical and practical challenges as to whether the Ombudsman has jurisdiction over regional states.
- *Weak Capacity and Low Public Awareness:* This includes weak capacity of the Ombudsman and weak collaboration with stakeholders. While the capacity has improved over the years, it is still inadequate. The weak capacity has been evident in certain complex areas such as land administration that require specialized skills. Similarly, the collaboration between the Ombudsman, Anti-Corruption Commission and the Human Rights Commission has been weak thereby hampering their effectiveness.
- *Weak Parliamentary Oversight:* Parliamentary oversight has been weak since they are not able to adequately supervise the Executive – Parliamentary Committees are unable to adequately consider Special Reports of the Ombudsman.
- Weak capacity (Awareness) of the public agencies

Despite the challenges, the Ombudsman in Ethiopia has made strides and has a promising future. The political will of the Government and other opportunities the challenges addressed.

3.5 Personal Attacks on the Ombudsman (Testimonies)

Grenada

The following account was given by the Ombudsman of Bahamas, who was present at the Colloquium. The Ombudsman for the office of Grenada was in office for three and a half years, was summoned this year to the office of the Governor General and asked to resign. This appears to be politically motivated.

Malawi

The Ombudsman of Malawi present at the Colloquium gave the following account of the experience she has had to live with as a result of her position as the Ombudsman of her country.

The Ombudsman of Malawi, Hon. Justice Tujilane Chizumila (Rtd) was summoned to the office of the Chief Justice and accused of misappropriation of funds and asked to resign with immediate effect. Being a lawyer, she refused and asked to be shown the evidence, which was not forthcoming. As a result of not resigning, she has been subjected to numerous threats, lack of support from the Government, in terms of her personal security and even at one time attacked by armed thugs in her house where she was with her family. They threatened her and her family – they addressed her as Madam Ombudsman, meaning they knew who she was. Her pleas and discussion with the President of Malawi about her situation had not borne any fruits.

3.6 Plenary Discussion

Comment: The relation between the Ombudsman and the Courts. The Kenyan Ombudsman says that these two offices should be complementary. Practically speaking, this may present a problem, things may be more complicated – there is the principle of separation of workers and each institution is very jealous of its powers vis-à-vis the Executive. Therefore, the institution of the Ombudsman will come in and complicate the situation even though they are supposed to be complimentary. Why can't the Ombudsman be allowed to intervene in matters that are in court?

Response: The office of the Ombudsman can intervene in the enforcement of decisions. In Kenya, on matters of court where people sue the government and want to be paid, it was discovered that the quickest way to get paid when suing the government is through the Ombudsman. The Office has now developed mechanisms to determine what matters to can intervene for enforcement. It should be a matter that is within its jurisdiction.

Comment: As we develop the office of the Ombudsman, we must encourage courts to recognize the complimentary role of the Ombudsman, otherwise the

courts can kill the work of the Ombudsman. In this regard, the Courts and the Ombudsmen should engage constantly on their complementary mandates.

Comment: The advantages of having a fused institution on human rights, anti corruption and public administration. The action of the Ombudsman particularly in the Francophone countries follow the French model. France reviewed its Constitution some years back and this allowed for the modification of the institution of the Ombudsman – its is now called the “*defender of law*.” Limitation of resources is one of the factors for the establishment institutions with fused mandates.

Comment: The office of the Ombudsman in Ghana appears to have a lot of public and political goodwill. Lack of political goodwill is what kills independent oversight institutions like the office of the Ombudsman. How did CHRAJ manage to attain such a high degree of political goodwill to the extent that they can hold MPs and Ministers to account? What lessons can the rest of us learn?

Response: Public goodwill has existed due to the good work of the Commission in Ghana. This has stemmed from good leadership of the institution which engendered support from the civil society, the public and the media. The Commission has also worked closely with these stakeholders.

The Ghanaian Chief Justice and CHRAJ Commissioner begun working together – that has been the practice. The fusion has been practiced for the last 20 years and has worked well in Ghana. The enforcement of the decisions of the Commission has been done through an application to court for any available remedy. However, there is a proposal in the review of the Constitution to have the decisions registered directly in court for enforcement.

Question: How visible is the Ombudsman in Kenya? What steps are being taken to make it more visible?

Response: The office of the Ombudsman is two years old. The work of the Ombudsman is measured by how many people come to complain to you. In the last two years the office of the Ombudsman has managed to build a complaint base and rate of resolution of 60 percent. In 2012, the Office received over 4,100 complaints. In 2013, the complaints are estimated to top 8,000. The rate of resolution has also increased from 20percent to 60 percent.

Question: Should Kenya develop a policy and law on public participation as envisaged under the new Constitution? Is this an effective way in public administration?

Session 4: Emerging Frontiers

Chair: Hon. Adv. Matsoana N.A. Fanana, Ombudsman, Lesotho

4.1 Panel Discussion: The Evolving Ombudsman: Emerging Frontiers

4.1.1 The Case of Bermuda

By: Hon. Arlene S. Brock, Ombudsman of Bermuda

The Ombudsman's Office

- Established through a Constitutional amendment in 2001
- The Ombudsman Act was enacted in 2004 and the Office operationalized in 2005
- It has operational independence and reports annually to the Legislature
- The Office is audited independently by the Auditor general
- The Ombudsman has total control of its budget. Its budget is taken to the Cabinet for information purposes only.
- It reaches out directly to the public using various avenues such as Facebook.
- It prioritizes its activities by focusing on senior citizens, children and vulnerable persons
- To ensure credibility, the Office exercises ultimate due diligence, due process and practices empathy.
- It receives on average, 250 complaints annually with three frivolous complaints received since its doors opened
- The Office has the power to mediate

4.1.2 The Case of Kenya

By: Hon. Cmmr. Otiende Amollo, Ombudsman Kenya

- Article 59 of the Kenyan Constitution, the catch phrase being “investigate matters in any sphere of government.” This includes both the national and devolved governments.
- The Commission is required “to report on complaints investigated under paragraph 1 and 2 and take remedial action.” Section 8 of the Commission on Administrative Justice Act, 2011, requires the Ombudsman office to report to Parliament.
- The process of appointment to the Ombudsman office is through a public advertisement for the positions, with a minimum experience requirement of 15 years in Law, Public Administration and other requirements listed

out in the Act. The Commissioners have tenure in office of a fixed term of six years.

- There has been debate in Kenya on the constitutional placement of offices such as that of the Ombudsman. The office cannot be part of the Executive as it cannot be part of that over which it provides oversight. Offices such as that of the Ombudsman should be independent offices of state – independent of the traditional arms of government, but remain part of the State.

The Ombudsman's Execution of Mandate

- In order to increase the performance of public institutions in Kenya, the Government established performance contracting system for all public institutions – whereby each government institution (over 500) is ranked according to their performance every year, including how they deal with public complaints. The Ombudsman office has embedded itself into this process and has used it to hold public institutions into account
- The Office also trains Government officials on the whole aspect of maladministration
- The Office also promotes alternative dispute resolution, that is, mediation, conciliation and negotiation to enhance public administration.
- Persons held in custody. The enabling Act empowers the Commission to receive complaints confidentially from anybody held in prison or custody. The Office has the power to act on these complaints.
- Section 26 of the Act gives the Office the power to adjudicate on matters of administrative injustice – the Office has a quasi-judicial mandate to deal with maladministration and administrative injustice.
- The Office also has some complimentary mandates such as:
 - √ Enhancing cohesion within the country
 - √ Participating in the process of vetting of all Judges and Magistrates by providing any existing complaints against them to the Judges and Magistrates Vetting Board
- Some of the emerging mandates include the implementation of decisions of international tribunals – **(Endorios Case)** and overseeing the implementation of the Freedom of Information and Data Protection law (once passed).
- The Office also litigates or acts as Amicus Curiae. The Office has found this approach very useful.

Challenges

- Acceptance – public offices and officials will always resist oversight
- Lack of awareness especially when the Office is a new one – public education is used
- Lack of resources – the Office has overcome this partly by coming up with an integrated complaints handling mechanism involving other independent institutions with offices in other regions of the country. These complaints are then forwarded to the Ombudsman office for action.

4.1.3 The Case of Zambia

By: Cmmr. Alfred Kaweza, Commissioner, Commission for Investigations, Zambia

- The Commission for Investigations in Zambia constitutes the Ombudsman Institution
- The Ombudsman is the Investigator General – The Office is entrenched in the country's Constitution. The mandate and powers of the Office are enshrined in the appropriate legislation known as the Commission for Investigations Act.
- In the Office, the Investigator General is the Chairperson, while the other three Commissioners are members of the Commission. These four seats constitute the Commission.
- The Commission has the mandate to investigate complaints against every Government institution, all ministries including the Bank of Zambia, the Army
- If no response is received by the Commission when investigating a public body such as a Government Ministry, the Commission would summon the responsible Permanent Secretary to appear before the Commission failure to which the Commission has the power to have him arrested to appear before the Commission or may be arrested and arraigned in court.
- The Commission has the mandate to receive all the country's confidential or secret information
- One of the main challenges faced by the Commission is inadequate staffing (about 30 staff), logistics for movement between the various provinces,
- The country has separate Commissions that handle the human rights aspect and anti corruption. The Commission for Investigations works hand-in-hand with these two Commissions
- On average, the Commission receives at least 1,000 cases per year, with another 500 to 1,000 cases brought forward, giving a total of 1,500 to 2,000 cases per year. Inadequate staffing and long investigations results into these delays.
- The Commission is not a Parliamentary Ombudsman, but an Executive Ombudsman, meaning it reports directly to the President with its recommendations (It does not have the power to go beyond recommendations) for his determination.
- On appointment, the Chairperson who is the Investigator General must be a Lawyer of standing equal to a Judge of the Supreme or High Court. The members of the Commission must be vastly experienced in public administration – at least 20 years experience. The appointment process is rigorous, involving Parliament before being approved by the President.
- The Chairperson of the Commission retires at the age of 65 and can only be removed from the position on account of gross misconduct. The Commissioners stay in office for a period of 5 years, although a proposal of six years has been made.

4.1.4 The Case of Botswana

By: Hon. Adv. Festinah Bakwena, Ombudsman of Botswana

Despite its good rating, Botswana still faces some governance challenges. The Ombudsman was created as part of the redress mechanisms to improving good governance in Botswana.

The Ombudsman is a statutory body founded on the classical model of investigating maladministration in the public sector. It can also investigate human rights violations by administrative agencies. It has the power of *subpoena* and interview witnesses as the High Court.

The Ombudsman has had relative success. Most of the complaints have been resolved in the course of investigations or after investigations.

Challenges faced by the Ombudsman

The challenges faced by the Ombudsman include:

- Lack of constitutional entrenchment
- Security of tenure for the holder of office
- Unresponsiveness – Responses from Government Ministries are not timely
- Limited jurisdiction – Lacks jurisdiction on security matters
- Limited resources – Overreliance on the Executive
- Does not enforce own decisions – Relies on Parliament and administrative agencies to enforce decisions

There is need for Botswana to re-invent the governance institutions to improve governance.

4.1.5 Panel Discussion

Comment: The emerging frontiers require the Ombudsman to be more proactive. AOMA should begin the process of looking at all the issues that make the Ombudsman ineffective in Africa and put up their position, through their Ambassador who has access to the African Union so that these fundamental constraints can be presented to Africa Presidents so that solutions can be devised on how to overcome them.

Comment: The African Ombudsman Research Centre should come up with research that would identify the factors for an effective Ombudsman in Africa. This will ensure that Africa goes beyond tokenism for the collegial manner for an effective system. For example, the Ombudsman office in Zambia reports to the Executive. How can one report to the person or office they have investigated? How effective will this approach be?

Comment: We need to have concerted efforts in Africa by AOMA to begin talking directly (in a concerted effort) to the leadership of the continent especially in countries where the Ombudsman office or person is being abused and where there is outright administrative injustices. This is a suggestion worth being adopted by countries where internal Ombudsman can be used on a pilot basis before being spread out to other agencies.

Response by AOMA President: At the Third General Assembly in Rwanda, AOMA worked on ensuring all African Ombudsmen are accorded dignity. This is why AOMA was credited at the AU. The AOMA President also spoke at the African Union on the occasion of the Jubilee in Addis Ababa. The African Union and all African governments must be brought to the full understanding and accept the independence of the African Ombudsman in the same way the AU has given AOMA the observer status. Countries must be given the opportunity to harmonize their institutions so that the dignity of the Ombudsman can be defended and protected. Angola has ratified the recognition of AOMA in its Government.

Question: Is there co-operation between the institutions of Ombudsmen and other entities in the respective African countries to ensure piloting of peer evaluation?

Question: What is the role of the Ombudsmen in the various African countries vis-à-vis their proactive role in ensuring that public agencies have their own internal 'Ombudsmen.' The way to ensure that all public servants become accountable is by encouraging individual institutions to have very strong internal oversight bodies or internal Ombudsmen.

Question: Is there a success story in Africa where the office of the Ombudsman has been able to oversee and correct the offices of the security agents of an African country?

Comment on Malawi success story: On its engagement with the security forces in the country, the office of the Ombudsman has an oversight mandate over them. After a rocky start, they were given civic education on the roles and functions of the Ombudsman office and relations are now much better. There are now desk officers for the police, army and that of Ombudsman matters. On their approach to solving issues, alternative dispute resolution such as mediation is being used and general good will.

Comment: The Zambian Ombudsman can also investigate and summon all public officers, including the security personnel, judicial officers and regulatory bodies. Only the President cannot be investigated or summoned by the Ombudsman.

Question: Is there co-operation between the Ombudsman and other agencies in Kenya to ensure piloting of peer evaluation? What is the role of the Ombudsman in establishing and strengthening internal Ombudsman within administrative bodies?

Response: The Kenyan Ombudsman works closely with other agencies and has been assisting public institutions in Kenya to establish or strengthen their complaints handling capacity and processes. This is even part of the performance contracting system for public institutions in Kenya.

Comment: In Botswana, the Ombudsman has appointed a team to provide guidelines for the establishment of Ministerial Ombudsmen. This is still at the pilot stage.

Session 5: Thematic Issues

Chair: Hon. Justice Mrs. Tujilane Chizumila (Rtd), Ombudsman, Malawi

5.1 Complaints Handling: Lessons from Africa

By: Hon. Dr. Paulo Tjipilica, Ombudsman, Angola & President, the African Ombudsman & Mediators Association

The institution of the Ombudsman is known by different names in different countries. In South Africa they have used Public Protector, in France, the Mediator of the Republic. The international term is Ombudsman which has a variety of origins. There is a characteristic commonality in that all receive complaints from ordinary citizens.

Most of the complaints come from ordinary citizens, diverse organizations and political formations and public agencies, including prisoner agency. In Angola, many complaints originate from prisons.

The approach to handling complaints is through jurisdiction of the Ombudsman. The Ombudsman is confronted with matters which are not of his jurisdiction such as frustrations from the citizenry whereby they do not know where to direct their complaints. Complaints within jurisdiction are admitted, processed and referred to relevant agencies. The complainant can also be advised on the action taken on the complaint or what needs to be done.

The Ombudsman needs to come up with a communication strategy to educate and bring awareness of the public on its key role. The Ombudsman has a significant role to play with the traditional authorities as it handles communications with ordinary citizens.

A communication section needs to be setup in the Ombudsman office – this will help determine the success of cases (social communication). The Ombudsman has to use the communication means available in society – identify what needs to be done to provide appropriate recommendations.

Institutional capacity in the office of the Ombudsman is critical. Technical capacity is needed for qualified investigators, and enough data required. There is also need for training to be carried out on comparative law to enable people or its staff know what is happening in different countries. What has been done has brought out the challenges faced by the office of the Ombudsman:

On the financial aspect, proper funding is needed. Most of the time they need autonomy and technical capacity for success and account for its funding. Every 6 months, the Ombudsman prepares a financial report accounting for its budget.

The Ombudsman must be an expert in diplomacy. The Ombudsman must be recognized in society. In handling of complaints in Africa, the Ombudsman needs to find ways and means how to deal better with public complaints. The key areas needed to strengthen the Ombudsman include:

- The Ombudsman has to be entrenched in the Constitution for purposes of integrity
- Have the art of diplomacy in order to mediate the role of justice keepers
- Networking

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5.2 Complaints Handling: Lessons from Africa

By: Hon. Adv. Soleman M. Hatteea, Ombudsman, Mauritius & AOMA, Regional Coordinator, Indian Ocean (V38)

It is worse to have an Ombudsman that nobody knows about than to have none. It is, therefore, important to create awareness about the Ombudsman, what it stands for and what it does. In this regard, there is need to devise ways and means of making the Ombudsman known and relevant depending on the prevailing circumstances and peculiarities.

The Ombudsman of Mauritius is well known since it has been in existence since 1970 following its creation in 1968. The Ombudsman uses means such as the media, public service magazine and annual reporting for awareness creation and re-enforcement of public confidence. The Annual Reports are widely circulated to all stakeholders including public organizations.

One of the components of democracy is good governance whose corollary is good administration. Democracy goes beyond elections. It includes the day to day practices in the governance process. There can be no good governance when the administration does not respect people's rights. The right to good administration now forms part of citizens' rights.

The Ombudsman receives complaints from the public and determines their admissibility in relation to their mandate. Complaints within the mandate are investigated. The Ombudsman adopts a non adversarial approach based on discussion and persuasion as opposed to confrontation.

On the independence of the Ombudsman, it is not sufficient to say that an Ombudsman is independent; the incumbent must in fact be independent and be seen as independent. He must maintain high professional standards and integrity. The Ombudsman must not be in 'anybody's pockets' as this can undermine its independence and effectiveness. He must have 'his own pocket and that pocket must be in his own coat.' In Mauritius, attempts to influence a decision of the Ombudsman in relation to a complaint it is investigating is an offence punishable by a jail term of 5 years. The independence of the Ombudsman is assured through an inclusive and transparent process as well as a difficult and participatory removal process which involves hearing by a Special Tribunal appointed by the President.

It is important to note that not every complaint lodged with the Ombudsman amounts to bad administration. An investigation ought to be conducted to ascertain whether there is bad administration or not. Indeed, in some cases the Ombudsman has found no maladministration and has had to explain to the complainant the reason for so finding.

The Ombudsman should be able to act in equity and make public administration more sensitive to public opinion and more responsive to demands of fairness

and justice. In other words, the Ombudsman must strive, with the co-operation of public officers, to bring an administration with a human face.

As in other jurisdictions, it is an offence for any person to willfully fail to furnish any information or document requested by the Ombudsman, and also to willfully give false or misleading information. The administrative expenses of the Ombudsman's office are charged on the Consolidated Fund with the approval of Parliament.

It is important for the Ombudsman to understand that they hold no magic wand to make things happen. The Ombudsman's goal should be a continuous quest for justice. The Ombudsman must adapt in the changing environment to become more relevant and respond to the challenges and provide appropriate services to the people. In addition, the Ombudsman should jealously guard his independence since it determines its credibility and survival.

5.3 The Future of the African Ombudsman

By: Prof. Victor Ayeni, Director, Governance and Management Services International, London

Approach and Scope

- At the global level, the Ombudsmanship is here to stay in Africa
- The time range projection is in the next 30 to 40 years - thus 2050
- It is critical to have strategies that can leverage into the future

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- Governance and service delivery issues will remain serious concerns regardless of how good things get (good for us!). The issues of our institutions will not go away soon.
- Politicians will remain politicians – the challenges in dealing with them will remain
- The Ombudsman cannot be loved by every one, some will want them out of the way – no matter how well one performs
- Competition from elsewhere will remain, after all the world was not created for Ombudsmen alone. We need to learn how to deal with it going forward
- Resources constraints will remain a challenge
- Our job will remain challenging, that is the name of the game. If not prepared for the challenges of Ombudsmanship, move on if you are not up to it!
- Unco-operative, difficult, skeptical, cynical, conservative, unfriendly, anti-change people will always remain – ever imagined how boring the world will be without them?
- The office of the Ombudsman will remain *highly* dependent on the personality of the incumbent
- The Office will not always be the centre of attention – this is not what should make the office of the Ombudsman

How, then, will the African Ombudsman respond to these issues?

Three perspectives can be employed:

- 1) Concept and institution, including global movement, institutional terrain and intellectual orientation
 - This involves looking at the Ombudsmanship from a global perspective, the interest to donors and development partners – with varying levels of emphasis, the growing importance of education and increasing awareness. Jurisprudence recognizes that Ombudsmanship plays an important part in a contemporary society. It will remain and continue to grow with more institutions being formed at the national level – including those institutions outside of the public sector. There will also be increased discussion on Ombudsmanship in law

2) The African region, including all four language groups are not independent of what happens in a globalized world

- The Ombudsman will continue to survive and remain important in the region
- More Ombudsman offices will emerge, perhaps in all of Africa by the end of next two decades.
- More specialty offices – they will become more prominent at the national level. As the continental umbrella body for Ombudsmen, AOMA should get ready for this.
- Increased professionalism, including the role of AOMA and networks. Ombudsman functionaries increasingly a significant interest group
- But growth could create internal threat or tension and competition if not better managed. Tension can also occur between the Ombudsman and specialty offices.
- Manage leadership succession. Poor management threatens sustainability
- Take more advantage of role of ‘women power’ in the movement. Women have significant perspectives on Ombudsmanship that the African continent needs to leverage on.
- Abolition of the office of the Ombudsman is not completely ruled out – this can happen
- The Ombudsman will be susceptible to what happens at the national level but, growth will dilute effect

3) Individual office and national context

- Better to focus on tools required for shaping the future as we would like. The Office needs to appreciate and use such tools and avoid just living for the moment.
- Considerable opportunities offered by global and Africa-wide development this can be leveraged upon
- Unfinished business in every country

Towards the future

The following can be proposed:

- The individual and national office must be the focus or centre of interest for the future, since what happens here determines what happens in the bigger picture.
- 5 key principles are, therefore, critical for the incumbent:
 - ✓ Adopt a motto: Whatever happens to the Ombudsman’s office ‘*all depend on me*’
 - ✓ Focus on maximizing ‘cliente value – many offices are not meeting the cliente value. They need to recognize the cliente value and maximize it. This is key to surviving into the future
 - ✓ Watch your personal ego, do not blow your own personal ego.

- √ You must not be indifferent to realities around you and think that you can or deserve to be excluded. Ombudsmen need to recognize the fact that their offices can be excluded from funding by the central government. They need, therefore, to plan and prepare for it.
 - √ The Ombudsman should not give up too easily in the face of opposition.
- Deliver: The office of the Ombudsman should focus on its core business and deliver it with objective proof of continuous improvement. Delivery – there is need for evidence and being able to demonstrate it.
 - We must maintain the uniqueness of the Ombudsman and institutional advantage to society. Becoming *like* everybody else makes credibility and survival more difficult. The following principles can, therefore, be adopted: accessibility, visibility, informality, speed, inexpensive, competence, adequacy of remedy, approach to providing value and wide clientele.
 - Be more strategic
 - Leverage on technology
 - Embrace and better manage of multi-functionality
 - The Office should continuously build credibility and public respect. Not the same as being a rabble rousers
 - Enhance capability to manage and leverage forces around you
 - Facilitate institutional adaptability
 - Focus on competent of self and staff = office
 - Keep up with the professional network

Big issues to watch

- There is a serious unfinished business at the national level, especially with visibility and performance of several Ombudsman offices
- Institutional competition
- Inherent contradiction in the emerging trend towards multi-functionality, for example, taking on human rights functions
- Reviving genuine academic scholarship, there is not another area for practitioners to take over.
- The future of the Ombudsman institution in Nigeria currently is problematic; this may have a negative effect on the rest of Africa. This is a major issue that should be dealt with going forward.

5.4 The Ombudsman World: Associations, Linkages and Networking

By: Adv. Ishara Bodasing, African Ombudsman Research Centre, (AORC)

Introduction to AOMA & African Ombudsman Research Centre

The African Ombudsman Research Centre (AORC) was launched at a high profile event on 15th March 2011 at the University of Kwa Zulu, Natal pursuant to an AOMA Resolution. Its key functions are as follows:

- Serve as a focal point for Ombudsmen offices in Africa, by coordinating their activities and supporting them with the provision of information and training.
- Act as a point of liaison with all participants who are involved in enhancing governance in Africa.

AORC's Vision is to provide timely and appropriate support to AOMA so as to achieve its vision of being the leading international association of Ombudsmen offices, practitioners and scholars, dedicated to the promotion of open, accountable and people centered democratic governance in Africa.

Forming Associations

A common need prompts people to work together, to pursue goals and interests for their mutual protection and for the advancement of their members. This is how AOMA came about. It was founded on the principles of democracy, good governance and administrative justice.

Sustaining a multi lateral association such as AOMA requires dedication, commitment and careful planning by not only its leaders, but also by its officials. African countries differ in many respects, including size, population, GDP, traditions and types of laws (common vs. civil laws) among others. However, matters such as corruption, violation of human rights, maladministration are all common features in all the political systems despite whatever differences may exist in the governing philosophies.

African nations are aware that these problems present a serious threat to their core principles and values, and hinder social and economic development. In this regard, there is a common acceptance of the need to address these problems in a co-ordinated and sustainable way. The decisions of various regional and international bodies to establish Ombudsman associations show that the international community is serious about developing workable solutions and implementing them at the multilateral level. In our global village, it is critical that countries have a point of reference when combining, for instance, the elements of an effective, good, governance management system that is in line with their own political, administrative and cultural circumstances. Therefore, globalization has brought with it a more common governance agenda as an

instrument of democracy and development. High standards of conduct in the public service have become a critical issue for governance in Africa.

Platforms for sharing of information on developments and initiatives taken by countries, international organisations and other governance bodies can be an effective tool towards developing normative standards for Ombudsman institutions.

Ouagadougou Resolutions

The following are some of the Resolutions of the Executive Committee Meeting of AOMA that was held on 18th and 19th June 2013 in Ouagadougou, Burkina Faso.

- Co-operation with other international organizations. An MOU between AOMA and the International Ombudsman Institute was adopted.
- The Executive Committee authorized the delegation to approach organizations such as the Commonwealth Secretariat, Francophone Association, the UN and the European Union to explore the possibilities of co-operation.
- Take appropriate measures to co-operate with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in Geneva and the Network of African National Human Rights Institutions.
- A co-operation framework between the AU and AOMA had been drafted for implementing the MOU.
- Collaboration between AOMA and the African Peer Review Mechanism would be developed in order to monitor AU Agreements pertaining to governance and for the realization of the Millennium Development Goals.

The Importance of Networking

Networking allows for the meeting and establishment of relationships. It is essential for strong development of an Ombudsman organizations or office. It also allows the Ombudsman to hone their networking skills. There is need to have other countries buy-in into the Ombudsman concept in order to progress in this field.

Towards this end, it is vital to have regular scheduled, regional and national meetings and also have reciprocal visits among member states. A key aspect of this is communication.

The Ombudsman office or Association needs to design and operate a communication system that provides proactive communication with the following objectives:

- A strategy needs to enhance and expand the current communication mechanisms to be able to reach all development stakeholders.
- It needs to demonstrate and support the work and progress of the office.
- Protect and enhance the office's image and that of its stakeholders.

Such a communication should also be a management tool that can be used to facilitate effective communication between the Ombudsman office and its stakeholders. Some of the key features of such communication strategy could be:

- An effective line of communication
- A schedule for engagements with other Ombudsmen
- Develop a communication action plan based on the office's set objectives
- Support the awareness and understanding of the Ombudsman concept, goals and ensure relevant and current information is constantly being exchanged.
- To increase the level of interaction and communication with comparable good governance and human rights bodies.

Conclusion

An Ombudsman institution's greatest challenge is its inability to grow, which is created by complacency on its part. It must, therefore, hold itself accountable at all times to its associate members and its citizenry.

Session 6: Closing Ceremony

6.1 Reflection and Important Action Points

By: Cmmr. Otiende Amollo, Chairperson of the Commission on Administrative Justice, Kenya

The following are the key discussion and action points (based around four broad areas) that arose from the Colloquium:

- The centrality of the Ombudsman institution as a tool in governance. It was resolved to encourage the few countries in Africa that had not yet established the Office to do so. A prediction by Prof. Victor Ayeni was that in the next one or two decades all countries in Africa would have established the office of the Ombudsman.
- Noted the variety in name, style and competencies of the Ombudsman institutions in various African countries.
- Appreciated the desirability of individual states to adopt formulations that best serve their circumstances. It was, however, noted that it is preferable to entrench the Ombudsman in the Constitution as an independent institution.
- Beyond establishment, the Ombudsman should individually and collectively sensitize the public, government officials and other stakeholders on its role in respect to governance, maladministration and administrative justice.
- With regards to the effectiveness of the office of the Ombudsman, there is need to continue designing and revising ways of ensuring the Ombudsman decisions are respected and implemented.
- It was agreed on the need to continue engaging with other stakeholders, including the courts, on the need to understand and respect the complementarity between the Courts and the Ombudsman institutions.
- Recognized, were new frontiers in the Ombudsman work, and it was agreed that where applicable, similar schemes would be devised.
- The ever dwindling resources was also noted and it was agreed that as the Ombudsman engages with the Government to understand its role and seek more funding, the Ombudsman we can at the same time be prepared to seek alternative funding beyond public resources.
- The role of the African Ombudsman and Mediators Association and the complimentary role of AORC was well noted and appreciated.

- Beyond this, the idea of having collaborative meetings or exchange programmes including Colloquia was well appreciated.
- The efforts for further collaboration beyond the continent were noted and encouragement was given to move in that direction much more.
- It was agreed that the Ombudsmen should individually and collectively encourage scholarships of Ombudsman work, particularly the unique aspects of the African Ombudsman.
- Discussion in the Colloquium also focused on threats faced by the Ombudsmen in their work. Specifically, the threats against the Ombudsman of Malawi were noted and condemned. To this end, the AOMA President stated that he would do the following:
 - √ Lead a further delegation to the AU General Assembly to meet the President of Malawi on that specific issue.
 - √ Lead a delegation to Malawi to follow up on the same issue
- It was agreed that there would be need to continue engaging and sharing experiences through similar Colloquia.
- The concerns raised around the working languages in such meetings and the need to ensure that all AU working languages are incorporated was also noted.

6.2 Closing Remarks

By: Hon. Justin Muturi, Speaker of the National Assembly of Kenya

Hon. Justin Muturi, the Speaker of the National Assembly of Kenya began by thanking the Commission on Administrative Justice for inviting to close the Colloquium. He noted the critical role played by the Ombudsman worldwide in ensuring accountability in public administration. This, he said, had led to enhanced governance and curbed maladministration and injustices to the citizenry

While quoting the inspirational statement by Prof. Neil Mellium of the University of Hawaii that *“an Ombudsman has an obligation when it sports trouble; when it sports patents basically they speak the truth,”* Hon. Muturi noted the centrality of administrative justice in public administration worldwide. Accordingly, administrative justice enables citizens to realize their rights, which may be enshrined in the national Constitution or other statutes. He noted the need for the Ombudsman to ensure good governance as a way of realizing accountability, national prosperity and responsiveness.

While noting the primary objective of the Colloquium of enhancing the capacity of oversight institutions to respond to administrative and political challenges, the Speaker stated that it was a milestone in the efforts to remedy administrative hiccups, particularly, in Kenya.

He noted the rich topics of the Colloquium and hoped that the delegates had learnt a lot and shared experiences, including best practices on the framework and operations of the Ombudsman. To this end, he stated that the topic *“Re-examining the concept of the Ombudsman, current and future reality,”* must have revealed that the roles of the Ombudsman had evolved from the traditional ones, expressed exclusively in terms of Administrative Justice to encompass its current role that expressively addresses the protection and promotion of human rights, including issue that touch on ethics and corruption.

He concluded by predicting that the future of the Ombudsman in Africa lies in their entrenchment in the national Constitutions and empowerment to undertake their work. He urged the Ombudsmen to work closely with other stakeholders and continuously keep benchmarking on best practices. The then proceeded to officially close the Colloquium.

6.3 Vote of Thanks

By: Hon. Cmmr. Saadia Mohamed, Member, Commission on Administrative Justice, Kenya

Commissioner Saadia Mohamed of the Commission on Administrative Justice gave the vote of thanks by appreciating the delegates for their commitment to the cause of administrative justice and attending the *Regional Colloquium of African Ombudsmen* under the theme *Repositioning the Ombudsman: Challenges & Prospects for African Ombudsman Institutions*.

While appreciating the lessons learnt from the exhilarating presentations and intellectual discourse, she noted that the Colloquium had provided a platform for sharing experiences, exchanging ideas, benchmarking and unity of purpose. In light of the discussion, she hoped that the Ombudsmen would move a notch higher to reposition themselves to better execute their mandates and tackle the challenges facing them.

Specifically, Commissioner Saadia thanked the following people for their invaluable contribution and support for the Colloquium:

- The Chief Guest Hon. Justin Muturi, Speaker of the National Assembly, Kenya
- The Chairperson and President of AOMA, Hon. Dr. Paulo Tjipilica, Ombudsman, Angola
- Development partners, specifically UNDP who were the co-funders of the Colloquium
- All presenters and guests
- The Management and Staff of the Kenya School of Monetary Studies

APPENDIX I – SPEECHES AND PRESENTATIONS

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APPENDIX II – LIST OF PARTICIPANTS

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