

**AN AFRICAN JOURNEY TOWARDS GOOD
GOVERNANCE:**

**THE HISTORY OF THE AFRICAN OMBUDSMAN AND
MEDIATORS ASSOCIATION**

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Acronyms and Abbreviations (used in body of text)

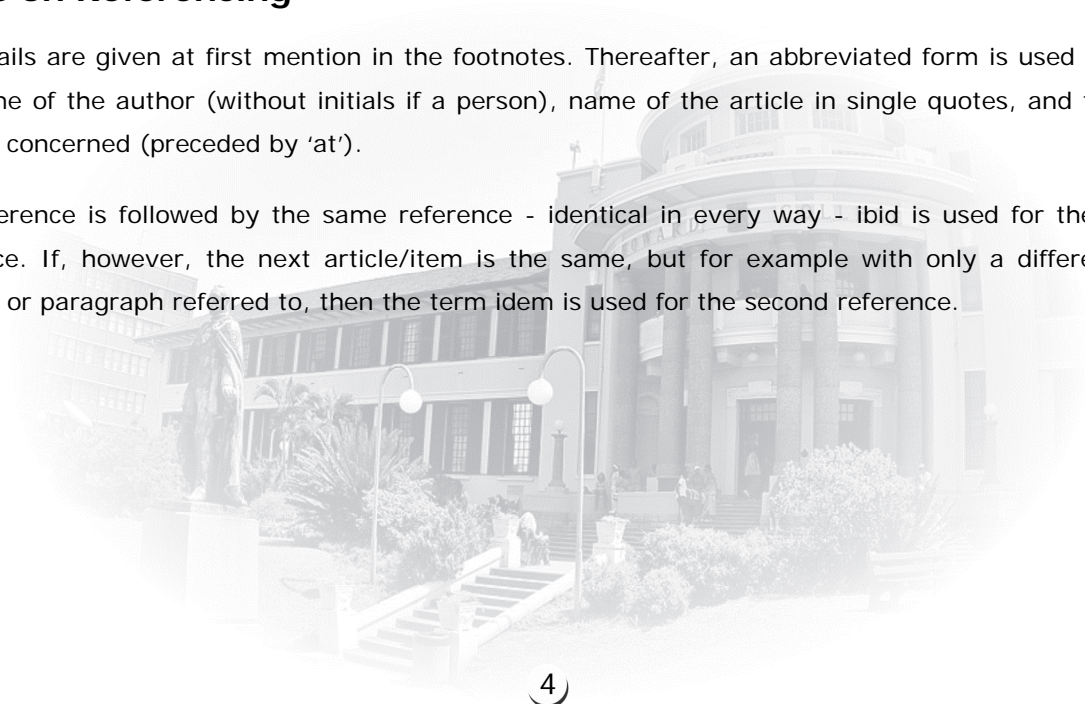
AOA	African Ombudsman Association
AOC	African Ombudsman Centre
AOMA	African Ombudsman and Mediators Association
AOMF	Association des Ombudsmans et Médiateurs de la Francophonie
AORC	African Ombudsman Research Centre
APRM	African Peer Review Mechanism
AU	African Union
AUC	African Union Commission
CFI	Commission for Investigations
CHRAJ	Commission for Human Rights and Administrative Justice
CPLP	Comunidade dos Países da Língua Portuguesa
DIRCO	Department of International Relations and Co-operation [South Africa]
EAC	East African Community
ECOWAS	Economic Community of West African States
EISA	Electoral Institute for the Sustainability of Democracy in Africa
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit [German International Cooperation]
GMSI	Governance and Management Services International
GTZ	German Technical Cooperation Agency
IBA	International Bar Association
ICTAR	Information, Co-ordination, Training, Advocacy and Research
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDEA	International Institute for Democracy and Electoral Assistance
IOA	International Ombudsman Association
IOI	International Ombudsman Institute
NADEL	National Association of Democratic Lawyers

NATO	North Atlantic Treaty Organisation
NDIIA	National Democratic Institute for International Affairs
NEPAD	New Partnership for Africa's Development
OIF	International Organisation of the Francophonie
OPP	Office of the Public Protector
PCC	Public Complaints Commissions
PCE	Permanent Commission of Inquiry
RAQABA	Libyan General People's Committee for Administrative Inspection and Control
SADC	Southern African Development Community
SAOMA	Southern African Ombudsman and Mediators Association
SAWLA	South African Women Lawyers Association
UKZN	University of KwaZulu-Natal
UMA	Arab Maghreb Union
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
USAID	United States Agency for International Development

Notes on Referencing

Full details are given at first mention in the footnotes. Thereafter, an abbreviated form is used - usually the name of the author (without initials if a person), name of the article in single quotes, and the page number concerned (preceded by 'at').

If a reference is followed by the same reference - identical in every way - *ibid* is used for the second reference. If, however, the next article/item is the same, but for example with only a different page number or paragraph referred to, then the term *idem* is used for the second reference.



CHAPTER ONE

1. The Ombudsman Institution and Africa

The word 'Ombudsman'¹ derives from the old Swedish word *umbudsmann*, essentially meaning 'representative', with the first observed use being in Swedish.² The modern concept of the Ombudsman dates back to Sweden in 1809, when the Swedish Parliamentary Ombudsman was established in order to safeguard the rights of citizens, by setting up a supervisory agency which was to be independent of the executive branch of government.³ The technique of making government departments and institutions accountable to the people has since been variously developed, and is in place in many countries around the world. Today there are also Ombudsman for a wide array of private and representative bodies, but these institutions are not considered here. Member states can have national or federal Ombudsman institutions which have a watchdog function relating to the proper exercise of public power (an administrative role), with this typically (in recent years) expanded to the protection of human rights. However, the terminology for concepts relating to these functions differs from country to country.

The Ombudsman institution took root in the mid 1950s when Denmark successfully adopted the system, and by the late 1960s there was widespread acceptance of the system in both developed and developing countries.⁴ It was also at this time that Tanzania became the first African country - and one of the first countries from the developing world - to adopt an Ombudsman institution, under the name Permanent Commission of Enquiry.⁵ According to the International Ombudsman Institute (IOI), which is the only international organisation to promote the cooperation of Ombudsman institutions around the world, there are now Ombudsman in about 140 countries. However, some of these are local or regional, or may even represent groups of countries (the European Union, for example, created the post of European Ombudsman in 1995).⁶ The IOI, established in 1978, in addition to its periodic conferences, fosters regional and international information exchange, and has regional chapters in Africa, Asia, Australasia and the Pacific, Europe, the Caribbean and Latin America, and North America. The General Secretariat is located in Austria, Vienna and is run by the Austrian Ombudsman Board.⁷

There are several formal, modern definitions of what an Ombudsman institution is, and what functions it performs. Perhaps the best traditional definition is found in the 1974 Resolution of the International Bar Association (IBA). The Ombudsman is defined here as:

- * ... an office provided for by the Constitution or by action of the Legislature or Parliament and headed by an independent high-level public official who is responsible to the Legislature or Parliament, who receives complaints from aggrieved persons (alleging maladministration)

¹ The spelling of the word 'Ombudsman' is treated in this text as a generic term - with no gender or singular/plural variations. It is upper-cased, except in adjectival form.

² Dictionary definition: Origins and etymology - 'Ombudsman' (noun) (available at: <http://ombudsman.askdefine.com/#wn>) (accessed 10 October 2012).

³ K.G. Ruppel-Schlichting (2008) 'The Independence of the Ombudsman in Namibia' In: Horn, N. & Bösl, A. (eds) *The Independence of the judiciary in Namibia* Windhoek: Macmillan.

⁴ H.-Y. Cheng (1968) 'The emergence and spread of the Ombudsman institution' 377 (1) *The Annals of the American Academy of Political and Social Science*.

⁵ J. Hatchard (1986) 'The Institution of the Ombudsman in Africa with special reference to Zimbabwe' 35 *International and Comparative Law Quarterly* 255.

⁶ The Parliamentary Ombudsman of Finland 'The Ombudsman institution in other countries' (available at: <http://www.oikeusasiamies.fi/Resource.php/epa/english/ombudsman/othercountries/index.htm>) (accessed 10 October 2012).

⁷ International Ombudsman Institute 'The IOI Structure' (available at: <http://www.theioi.org/the-i-o-i/about-the-i-o-i/>) (accessed 20 September 2012).

against government agencies, officials and employees or who acts on his/her own motion, and who has the power to investigate, recommend corrective action and issue reports.⁸

According to the African Ombudsman and Mediators Association (AOMA), the Ombudsman is an independent, impartial, public official with authority and responsibility to receive, investigate or address the complaints of ordinary citizens about the actions or maladministration of certain public bodies, and, when appropriate, the Ombudsman can make findings and recommendations and publish reports.⁹ Furthermore, AOMA refers to 'Public Sector Ombudsman', who are defined as official institutions established through official enabling Acts, and who have joined the Association as representing their countries. These institutions cover a wide variety of denominations and their common character is that they are empowered to investigate citizens' complaints about bureaucratic and administrative abuse within the public sector.

1.1. The Ombudsman Institution in Africa: Concept and Context

As the Ombudsman institution has transformed into various guises over the years, it is necessary to consider these in order to understand the role of the Ombudsman relative to other bodies which have mandates protecting human rights. The office of the Ombudsman has been identified by EISA (the Electoral Institute for the Sustainability of Democracy in Africa), for example, as being one of three democracy-protection institutions that are central to the achievement of democratic governance in the SADC (Southern African Development Community) region - the other two being national human rights institutions and electoral management bodies.¹⁰ It is important to stress that the office of the Ombudsman differs from national human rights commissions. Although human rights commissions have evolved from the Ombudsman model, structurally the two institutions differ in several key respects.¹¹ The main difference is that an Ombudsman's primary role is to monitor human rights abuses perpetrated by government entities, while a human rights commission generally addresses the actions of private entities and individuals, as well as governmental conduct.¹²

Some African countries use names other than 'Ombudsman' to describe the same function. As the Ombudsman model has been established by governments around the world, the name used to represent the office has also, in fact, changed.¹³ Africa is no exception to this trend. Francophone countries in Africa, including the Ivory Coast, Mali, Gabon, Mauritania and Senegal- use the term *Médiateur de la République*. The term Public Protector is used in South Africa, while Nigeria uses the term Public Complaints Commission; Zambia has an Investigator-General, and Sudan the Public Grievances and Corrections

⁸ August 1974 Resolution at Vancouver meeting of official delegates of member organisations: Ombudsman and other complaint-handling systems X (1980-1) 1.

⁹ African Ombudsman (and Mediators) Association (AOMA) 'What an Ombudsman is and does' (available at: http://www.aoma.org.za/component/option,com_frontpage/Itemid,1/) (accessed 5 October 2012).

¹⁰ D. Mpabanga (2009) 'Promoting the effectiveness of democracy protection institutions in Southern Africa: Office of the Ombudsman in Botswana' EISA Research Report No 44. Johannesburg: EISA at viii.

¹¹ J. Hatchard, M. Ndulo & P. Slinn (2004) *Comparative constitutionalism and good governance in the Commonwealth: An Eastern and Southern African perspective* Cambridge University Press at 210.

¹² M.E. Tsekos (2002) *Human rights institutions in Africa* 9 (2) Human Rights Brief at 22.

¹³ L.C. Reif (2004) *The Ombudsman, good governance, and the international human rights system* Leiden: Martinus Nijhoff Publishers.

Board.¹⁴Uganda has an Inspector-General of Government.¹⁵Most African states do, however, use the term 'Ombudsman'.¹⁶

Regardless of the different names for the Ombudsman institution used in Africa, good moral conduct and respect for the core values of public services need to be valued by each ombudsman-like office. Indeed, moral character and integrity are important requirements for all types of Ombudsman.¹⁷In addition, regardless of the formal title, "the core functions of the Ombudsman office remain similar, in as far as pursuing the conventional task of scrutinising the administrative operations of governmental agencies".¹⁸

Africa's regional body with a direct interest in the affairs of Ombudsman institutions on the continent is the African Ombudsman and Mediators Association (AOMA), and is discussed in greater detail in subsequent chapters. It was initially formed (albeit under a different name) in the mid 1990s by regional members of the IOI. Its aim was to enhance the support of African Ombudsman offices in their role of ensuring good governance and administrative justice in the countries in which they operate. AOMA began as an offshoot of the IOI; currently, some 14 of its members are also listed as members of the IOI.¹⁹

1.2. Types of African Ombudsman Institutions

The Ombudsman can be established by either the legislative branch of government or the executive, and must work to improve the performance of the public administration and to enhance government accountability to the public.²⁰In addition to the so-called 'classical' Ombudsman (the function and role of which has already been referred to), Ayeni identified a further three categories of Ombudsman.²¹Only the first category is relevant here, and these are the so-called 'hybrid' Ombudsman which are mostly found in newly emerging democracies. These offices have modified the traditional focus on maladministration, with an extensive, multiple mandate in terms of human rights and anti-corruption. For example, Namibia and Lesotho's Ombudsman are responsible for human rights protection, anti-corruption and environmental protection.²²Ayeni considers the apparent separation of the 'classical' from the 'hybrid' no longer tenable, as this largely misses the intensifying fusion of the Ombudsman's traditional and human rights roles. In Africa, the Ombudsman role is entrusted to a wide variety of institutions, each corresponding to specific denominations, and sometimes different ways of nomination and exercise of their mandate.

¹⁴ Nation Reporter 'Kenya gets Ombudsman' (24 June 2007) (available at: <http://www.bizcommunity.com/Article/111/15/15682.html> 'Kenya gets Ombudsman' (accessed 6 September 2012).

¹⁵ J.C. Mubangizi (in press) 'The South African Public Protector, the Ugandan Inspector-General of Government and the Namibian Ombudsman: A comparative review of their roles in good governance and human rights protection' *Comparative and International Law Journal of South Africa* (CILSA).

¹⁶ South African Government Information, Press Release: Office of the National Public Protector of South Africa: 'Ombudsmen (Public Protectors) assembling in Pretoria' (22 August 1996) (available at: http://www.info.gov.za/speeches/1996/960823_0w95596.htm) (accessed 6 September 2012).

¹⁷ CAFRAD workshop (available at: http://www.cafrad.org/Workshops/Tanger10-12_05_10/Concept_paper.html) (accessed 31 August 2012).

¹⁸ J.O. Kuye & U. Kakumba (2008) 'The Ombudsman Institutions in the procurement of legal responsibilities in the Commonwealth: An overview of Canada, South Africa And Uganda' 43 (3.1) *Journal of Public Administration* at 158.

¹⁹ International Ombudsman Institute 'Directory Institutional and Associate Members: Africa' (available at: <http://www.theioi.org/pdf/1689>) (accessed 10 October 2012).

²⁰ Reif 'The Ombudsman, good governance, and the international human rights system' at 2.

²¹ V.O. Ayeni (2009) 'Ombudsmen as human rights institutions: The new face of a global expansion' *Ninth World Conference, International Ombudsman Institute* (10 June) at 6.

²² Reif 'The Ombudsman, good governance, and the international human rights system' at 9.

While the norm is that every Ombudsman should have a sufficient degree of independence from any form of interference, this condition is best appreciated on a fluid continuum where some of the institutions have attained a high level of independence, while others are yet to affirm their existence by securing their independence from political interference.²³ This is relevant in Africa, where one of the objectives of AOMA is to promote the creation of the Ombudsman institution where it does not exist, and furthermore to promote its independence where it does in fact exist.²⁴ It is therefore important to bear in mind that AOMA members do not necessarily comply with one single universal criterion of independence, as this depends on internal considerations which are specific to each country. For practical reasons, AOMA adopted the terms 'Ombudsman' and 'Mediators' as encompassing all the denominations discussed above.

One of the simplest ways to elucidate the scope of the Ombudsman concepts in Africa - at least as far as AOMA is concerned - is by referring to 'Public Sector or Parliamentary Ombudsman'.²⁵ This becomes particularly relevant in some countries, like South Africa, where private sector Ombudsman also exist, and the consideration of which can confound the understanding of the role of AOMA. Provisions were made from the very beginning (in the text of AOMA's Constitution), for such private sector Ombudsman to be co-opted as potential members of the body. However, the modalities and limitations of their membership have still not been defined.²⁶

From the 1960s when the Ombudsman office first started to appear in Africa, the classical Ombudsman model was prominent. However, examples of hybrid Ombudsman - operating under wider mandates - also started to appear across the continent. Extended mandates (as in Namibia and Lesotho, for example) include mandates to cover human rights protection, anti-corruption, leadership code enforcement and/or environmental protection.²⁷ One reason for the development of these hybrid models could be that until the 1990s:

- * most post-independence States in Africa were military regimes or one-party States...a number of African States continue to suffer from recurrent civil conflict...as a result... African Ombudsmen did not duplicate the classical Ombudsman model, and adapted the concept to fit the political, legal, economic and social peculiarities of Africa.²⁸

Furthermore, some African countries have reformed their classical Ombudsman institutions. For example, Ghana and Tanzania shut down such institutions and replaced them with hybrid Ombudsman institutions. While the earlier classical Ombudsman were usually more restricted in their powers, some of the new Ombudsman institutions were given a broader jurisdiction and stronger powers.²⁹ However, the Chairperson of Ghana's Commission on Human Rights and Administrative Justice, Justice Emile Short, argues that "the majority of African Ombudsman Institutions still retain the essential characteristics of the classical model". In addition "only about 50% of Ombudsmen in Africa are protected in the State's

²³ Reif 'The Ombudsman, good governance, and the international human rights system'.

²⁴ Ibid.

²⁵ In: P.B. Ndagirwa (2011) 'The AOMA and the AORC: History and developments' Unpublished manuscript at 37.

²⁶ Article 5 (1) (b) of AOMA's Constitution defines the Associate Member as "Any individual, institution, corporate body, or organization that commits itself to promoting and encouraging the activities of the Association. "The first application for membership under this category was approved in July 2012, when Adv. Clive Pillay, Ombudsman for Banking Services South Africa, was granted Associate Membership (See African Ombudsman Today, Issue 4, September 2012 at 11).

²⁷ J. Hatchard (1991) 'The Ombudsman in Africa revisited' 40 (4) International and Comparative Law Quarterly at 940-944.

²⁸ Reif 'The Ombudsman, good governance, and the international human rights system' at 218-19.

²⁹ Idem at 219.

Constitution in addition to legislation, with the remainder created only by statute or executive decree...the latter are more vulnerable to abolition or weakening of the institution".³⁰

There is in fact an extraordinary array of African Ombudsman institutions. For example, given the influence of France, francophone countries have adopted the *médiateur* version of the Ombudsman model. Some classical and hybrid Ombudsman are multi-member bodies, some countries have opted for separate Ombudsman and human rights commissions, some have human rights commissions and no Ombudsman (like Liberia and Togo), while others have no national human rights institutions at all -such as Angola, Comoros, the Democratic Republic of Congo, Eritrea, Guinea, Guinea Bissau, Libya, Mozambique, Sao Tome et Principe, Somalia and Swaziland.³¹ African countries currently still without an Ombudsman are Algeria, Cameroon, Liberia, Swaziland, and Somalia.³² AOMA currently has a membership distributed across six regions in Africa.³³

1.3. Current and Future Challenges

There is little doubt that the Ombudsman institution has the potential to enhance constitutional democracy and good governance. There is evidence that the challenges facing African Ombudsman are perhaps due more to a lack of funding and resources rather than the will and commitment of the various stakeholders required to support the institution's success.³⁴ Nevertheless, there are numerous challenges facing African Ombudsman.

A Needs Assessment Report formulated at a workshop held at the University of KwaZulu-Natal (South Africa),³⁵ has aptly recognised some of these challenges (some of which are discussed below):

- * In many of the emerging democracies of Africa...the Ombudsman faces peculiar challenges. The checks and balances expected to exist between the various organs of State are weak, the realisation of good governance is still a huge challenge and human rights abuses are rampant. In many African countries, the rule of law is not regularly observed and the arbitrary exercise of State power is rather pervasive.³⁶

The most important challenge facing African Ombudsman is the independence of the Ombudsman institution itself. For an Ombudsman scheme to be credible to its users, it must be able to operate independently, and be free of opposition in the environment in which it operates.³⁷ When Ombudsman are

³⁰ *Idem* at 218-19.

³¹ *Idem* at 224-5.

³² Ayeni (pers. comm.) (Interview: 8 October 2012, Pretoria, South Africa). Professor Victor Ayeni is a former Director of Governance and Institutional Development of the Commonwealth Secretariat.

³³ African Ombudsman Research Centre (AORC) records (2012). Northern Africa: Libya, Mauritania, Tunisia; Southern Africa: Angola, Botswana, Lesotho, Malawi, Namibia, South Africa, Zambia, Zimbabwe; West Africa: Benin, Burkina Faso, Côte d'Ivoire, Gambia, Ghana, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo; East Africa: Burundi, Djibouti, Ethiopia, Kenya, Sudan, Tanzania, Uganda; Central Africa: Congo Brazzaville, Gabon, République Centrafricaine, Rwanda, Tchad; Indian Ocean: Mauritius, Seychelles, Madagascar.

³⁴ J.O. Kuye & U. Kakumba (2008) 'The Ombudsman institutions in the procurement of legal responsibilities in the Commonwealth: An overview of Canada, South Africa and Uganda' 43 *Journal of Public Administration: SAAPAM Conference Proceedings: Special Issue 3* at 167.

³⁵ Cited in: African Ombudsman Research Centre (AORC) (June 2011) 'Information, coordination, training, advocacy and research needs of the African Ombudsmen and Mediators Association (AOMA): Report' at 17. The workshop was funded by GIZ and held at the School of Law.

³⁶ Reif 'The Ombudsman, good governance, and the international human rights system' at 219.

³⁷ N. Melville (2010) 'Has Ombudsmania reached South Africa? The burgeoning role of Ombudsmen in commercial dispute resolution' 22 *South African Mercantile Law Journal* at 54.

appointed by the very executive they are meant to police and investigate, the independence of the institution may be a source of concern.

African Ombudsman also suffer from a serious lack of resources. Challenges in terms of financial, human and material resources can limit the capacity and autonomy of Ombudsman to carry out their mandate effectively.³⁸ Financial resources are vital to the functioning of an Office of the Ombudsman, and financial constraints prevent Ombudsman from acquiring equipment needed to function more efficiently.³⁹ Human resources are also imperative. In this regard, some African offices have insufficient numbers of investigators to follow up on alleged abuses.⁴⁰

A very important challenge to African Ombudsman can be the environment in which they are expected to operate - that is, the level of democracy and good governance in the State where the oversight is meant to function. A human rights institution's success depends largely upon the existence and strength of particular legal, financial, political, and social factors, including whether democratic governance exists,⁴¹ and this is certainly pertinent in Africa. Thus, a weak constitutional and legal framework establishing the Office of the Ombudsman, will not adequately support and empower the office to successfully fulfil its mandate.

Finally, Ombudsman also face challenges relating to bureaucratisation, absence of commitment on the part of government and policy makers, as well as ineffective record management systems (when an office does not have an effective record management system, this leads to difficulties in the handling of cases).⁴²

All considered and in conclusion, it is clear there are numerous challenges facing those seeking to promote good governance and limit corruption in African states, and the cooperation of all stakeholders is needed to systematically tackle these challenges.⁴³ Under these circumstances, the Ombudsman offices in African countries need to regularly exchange experiences and build capacities required to support their own offices, and their countries' good governance at large. These offices need to share experiences and the problems responsible for the failure to tackle corruption. Fulfilling these important needs was an important factor leading to the establishment of AOMA and the African Ombudsman Research Centre (AORC).

³⁸ AORC 'Information, coordination, training, advocacy and research needs of the African Ombudsmen and Mediators Association (AOMA): Report' at 21.

³⁹ L.A. Darga (2009) 'Promoting the effectiveness of democracy protection institutions in Southern Africa: The Ombudsman and the National Human Rights Commission of Mauritius' EISA Research Report No 45 at 20.

⁴⁰ M.A. Kapa (2009) 'Promoting the effectiveness of democracy protection institutions in Southern Africa: The office of the Ombudsman in Lesotho' EISA Research Report No 39 at 15.

⁴¹ Tsekos 'Human rights institutions in Africa' at 21.

⁴² Kapa 'Promoting the effectiveness of democracy protection institutions in Southern Africa: Office of the Ombudsman in Lesotho' at 15.

⁴³ AORC 'Information, coordination, training, advocacy and research needs of the African Ombudsmen and Mediators Association (AOMA): Report' at 21.

CHAPTER TWO

1. The Early Years: Founding of the Ombudsman Institution in Africa (1965-1993)

Between 1966 and 1985, nine African states established the office of the Ombudsman. After gaining independence from colonial rule during the 1980s and early 1990s, several more Ombudsman offices started springing up as a consequence of constitutional reform into democratic regimes in many African anglophone countries.⁴⁴ While the African Ombudsman concept has developed somewhat differently from the original Swedish model, each Ombudsman institution has had the familiar task of investigating complaints from citizens concerning alleged acts of maladministration and the abuse of office by government officials. The original concept of the institution was that the Ombudsman should be linked to the legislature, and indeed in Scandinavian countries the Ombudsman is elected by parliament. In all African countries, except Sudan, the Ombudsman is appointed by the executive (in Sudan, the Ombudsman is appointed by the People's Assembly).⁴⁵ For example, in Tanzania, Zambia and Nigeria, the appointment is the sole responsibility of the head of state. In other countries such as Ghana, the appointment is made by the head of state, after informed consultation.

1.1. Tanzania Takes the Lead

In 1966, Tanzania became the first African country to establish an Ombudsman office, under the name of the Permanent Commission of Enquiry (PCE). The reasons given by the Tanzanian Presidential Commission for the establishment of the PCE are, in fact, relevant to many developing countries:

- * In a rapidly developing country it is inevitable that many officials, both of Government and of the ruling party, should be authorised to exercise wide discretionary powers. Decisions taken by such officials can, however, have the most serious consequences for the individual, and the Commission is aware that there is already a good deal of public concern about the danger of abuse of power. We have, therefore, given careful thought to the possibility of providing some safeguards for the ordinary citizen which will not have the effect of limiting the actions of Government or Party in a way which could hinder the task of nation building.⁴⁶

During the next two decades, Tanzania played an important role in the development of the African Ombudsman Association (AOA). This culminated in the establishment, in 1997, of the African Ombudsman Centre (AOC) - as a trust registered under Tanzanian Law. The Centre was hosted by the University of Dar es Salaam, and the Ombudsman office in Tanzania acted as the Interim Secretariat for the Centre. In 1998, the first meeting of the Board of Trustees of the AOC was also held in Dar es Salaam.

⁴⁴ M.C. Diaw (2008) 'Ombudsman, people's defenders and mediators: Independence and administrative justice in state transformation'. Verifor, Comparative Case Study 7 at 4.

⁴⁵ Hatchard 'The Institution of the Ombudsman in Africa with special reference to Zimbabwe' at 257.

⁴⁶ 'Report of the Presidential Commission on the establishment of a one-party state' (1965) Government Printer: Dar es Salaam at 32.

1.2. Other Countries Follow Suit

The lead set by Tanzania was followed by a number of other African countries. Thus in 1966, in Ghana, the Expediting Committee of the National Liberation Council assumed powers similar to those of an Ombudsman, and later other commissions were periodically appointed to investigate specific sectors of public administration.⁴⁷ The Ghanaian constitution specifically created the office of Ombudsman, with the legislature being required to enact detailed provisions relating to the Ombudsman's jurisdiction and operations. The Ombudsman had, unfortunately, not commenced operations when the government of the day was overthrown in 1972. Thus it was not until the Ombudsman Act was passed in 1980, that the institution became fully established.⁴⁸ After Ghana, in Mauritius the Constitutions of 1967 and 1968 provided for the establishment of an Ombudsman office, and the first Ombudsman was appointed in 1970.⁴⁹

The next African country to establish an Ombudsman's office was Zambia. The 1973 Constitution made provision for a Commission for Investigations (CFI), which began operating in 1974.⁵⁰ Today, the Zambia Office acts as the Southern Regional Office of AOMA. In neighbouring Zimbabwe, provision for the establishment of an Ombudsman was originally made in the short-lived 1979 Constitution of Zimbabwe-Rhodesia.⁵¹ This scheme was never implemented, but the 1979 Constitution of Zimbabwe made general provision for the office, and the Ombudsman Act of 1982 laid down a detailed scheme of operation.⁵² On 1 September 1982, the first Ombudsman, Mr Justice Moodley, took up his appointment.

In Nigeria, a national network of Public Complaints Commissions (PCC) was established in 1975. The national headquarters is in the federal capital, Abuja, with the capital of each of the 19 states serving as the PCC headquarters at state level. At present, Nigeria is the only African country with this type of federal organisational structure.⁵³ It was also in Nigeria that a scholarly ombudsman culture developed in the 1980s,⁵⁴ with academics like Professor Victor Ayeni taking the lead in terms of active research into the Ombudsman concept and institution.

In the 1980s, the earliest interest in the Ombudsman institution in Southern Africa came from the traditional regional Ombudsman (the old 'umlandi' in many of the former 'homelands' or Bantustans that were established under the apartheid system in South Africa).⁵⁵ These were not true Ombudsman in the classical sense, and because they were established as part of the apartheid system they were not recognised as such - but they were, indeed, doing the job of Ombudsman.⁵⁶

The 1990s saw a dramatic growth in the number of Ombudsman institutions in Africa - dwarfing by far the numbers established between 1966 and 1990. Diaw lists more than 15 states establishing

⁴⁷ Hatchard *'The Institution of the Ombudsman in Africa with special reference to Zimbabwe'* at 256
⁴⁸ *Ibid.*
⁴⁹ *Ibid.*
⁵⁰ *Ibid.*
⁵¹ Hatchard *'The Institution of the Ombudsman in Africa with special reference to Zimbabwe'* at 260
⁵² *Ibid.*
⁵³ Hatchard *'The Institution of the Ombudsman in Africa with special reference to Zimbabwe'* at 257.
⁵⁴ Ayeni (pers.comm.) (8 October 2012).
⁵⁵ *Ibid.*
⁵⁶ *Ibid.*

Ombudsman institutions during this period, including large countries such as South Africa, Madagascar and Ethiopia.⁵⁷

The number of Ombudsman and other national human rights institutions in Africa is certainly increasing, although a number of countries have not yet established such bodies. In mitigation, some of these states are subject to civil strife and/or their governments are not democratic - thus they do not have strong prospects for a viable Ombudsman or other national human rights institutions.⁵⁸

1.3. Some Ombudsman Offices Succumb

As discussed above, by 1990 the Ombudsman institution in Africa had met with only limited success. There was a general view that - in light of the increasing importance and effectiveness of the Ombudsman concept in other parts of the world - the track record of the Ombudsman in Africa was disappointing.

In Swaziland, for example, the Office of the Ombudsman operated only between 1984 and 1987. Following the coronation of King Mswati III in 1986, the office was abolished by King's Decree, and there is still no intention to re-establish it.⁵⁹ Similarly, in Sudan, the People's Assembly Committee for Administrative Control was established under the 1973 Constitution, and operated until 1985. The first order of the General Command of the Sudanese Army following the April 1985 coup, was the repeal of the 1973 Constitution and the dissolution of the People's Assembly.⁶⁰ As a result, the Committee was also dissolved and was not provided for in the 1985 Constitution. Fortunately, it was re-established in 1998,⁶¹ and furthermore, Sudan has regularly been attending African Ombudsman Regional Conferences since their inception in 1990. Today, Sudan is a prominent member of AOMA, with its Ombudsman, Judge Mohammed Ahmed Abuzeid, having been elected ambassador to the African Union Commission (AUC).

Considering this background, the establishment in both Uganda and Namibia of a hybrid-type Ombudsman institution with increased powers during the same period, warrants special mention.

1.4. Innovations in Uganda and Namibia

In Uganda the Office of the Inspector-General of Government was established by statute in July 1986, while the Namibian Ombudsman was established by the Constitution, which became effective with the independence of Namibia in 1990. In Uganda and Namibia:

- * ... the first-generation Ombudsman model in Africa, [was replaced by] a more effective second-generation model. [In] Namibia ... the office forms an integral part of ... a constitutional framework for effective government accountability. The [premise of the new] model [as] adopted in Uganda, [was] that the Ombudsman concept can help to ensure that

⁵⁷ Diaw 'Ombudsman, people's defenders and mediators: Independence and administrative justice in state transformation' at 3.

⁵⁸ Reif 'The Ombudsman, good governance, and the international human rights system' at 252.

⁵⁹ Hatchard 'The Ombudsman in Africa revisited' at 938.

⁶⁰ Ibid.

⁶¹ Diaw 'Ombudsman, people's defenders and mediators: Independence and administrative justice in state transformation' at 3.

the citizen receives just treatment from Government by guaranteeing democracy, the rule of law and [by] fostering human rights.⁶²

The new hybrid models of both Uganda and Namibia related to an enhanced jurisdiction, with protection offered on a wider range of issues. Uganda and Namibia were both active members of the African Ombudsman community during the early years. Uganda hosted the first gathering of Ombudsman in Kampala in 1990, under the leadership of the Inspector-General of Government, Mr Jotham Tumwesigye, and later, in 2003, took responsibility for publishing the first newsletter of AOMA.⁶³ During the mid 1990s, the Namibian Ombudsman, Adv. Bience Gawanas, was instrumental in drawing up a constitution for the African Ombudsman Association.⁶⁴ Her successor, Adv. John Walters, is currently the AOMA representative on the Board of the IOI.⁶⁵

1.5. African Ombudsman Join Hands

During the 1980s, informal gatherings of regional Ombudsman (the old 'umlandi') started taking place in Southern Africa, including in the South African homelands - as previously mentioned. These meetings were coordinated by Mr Christopher Milton⁶⁶ (Ombudsman for the Bophutatswana homeland), and thus started the Southern African Ombudsman and Mediators Association (SAOMA) movement.⁶⁷ Even though they were not democratically elected, it was recognised that these ombudsman-like institutions were performing similar functions, and they felt the need to interact. During this period, there was also increased discussion amongst established Ombudsman about the need to strengthen their position. Existing Ombudsman had already started joining the IOI as members in order to facilitate mentorship and coordination - because it was the only association in existence that fulfilled this role.⁶⁸ The first African countries to join the IOI were Tanzania, Mauritius and Nigeria - as early as 1981 - and later on also Botswana. At the time, the IOI recognised Botswana as having the only true Ombudsman in Africa. The institutions in Nigeria, Mauritius and Tanzania were not accepted as true Ombudsman. The regular attendance at IOI conferences of these African countries, however, led the IOI to recognise them as regional representatives, and that laid the foundation of what later became the African Ombudsman Association.⁶⁹

It follows, therefore, that the Association, however informal, really began when the Africans started joining the IOI in 1981. As such, Botswana, Nigeria, Tanzania and Mauritius could be regarded as the real foundation members of the African Ombudsman Association.⁷⁰ Professor Ayeni remarks on the collegiality, trust and friendships that developed during these early years in the African Ombudsman community: "Many of us were of similar age, and we became good friends, and that is what strengthened

⁶² Hatchard 'The Ombudsman in Africa revisited' at 939.

⁶³ Report of the meeting of the Executive Committee of the African Ombudsman Association, Maseru, Lesotho, 29-30 April 2004, at 12.

⁶⁴ African Ombudsman Association (AOMA) 'Strategic Plan 2003-2006' at 1.

⁶⁵ IOI Africa, Namibia Ombudsman (available at: <http://www.theioi.org/africa/namibia/ombudsman>) (accessed 14 October 2012).

⁶⁶ Mr Milton was elected the first President of the little-reported Ombudsman Institute of Southern Africa, in June 1992. See: 'Ombudsmaninstituut gestig' [Ombudsman Institute established] (available at: <http://152.111.1.88/argief/berigte/beeld/1992/06/26/13/3.html>) (accessed 20 November 2012).

⁶⁷ Ayeni (pers.comm.) (8 October 2012).

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

the Association.⁷¹ These sentiments are echoed by Judge Abuzeid of Sudan, who confesses that they were all ‘friends and brothers, no one looking for positions’ and unanimous decisions were made at elections.⁷² However, the African Ombudsman community soon felt the need to also come together as a region, in order to share experiences and good practices pertaining to Africa, while at the same time promoting ombudsmanship in Africa. Thus, beginning in 1990, already established African Ombudsman institutions in Africa started organising meetings, which were called the African Ombudsman Regional Conferences.⁷³

Eight conferences were held in total, spanning a period of 13 years from 1990 to 2003, when the African Ombudsman Association (AOA) was finally constituted. In the early 1990s the African Ombudsman community was mostly from English speaking countries, but this soon changed to include several francophone countries. The Regional Conferences were all held under the auspices of the IOI. The first three were held in Kampala (Uganda) in 1990, Lusaka (Zambia) in 1991, and Abuja (Nigeria) in 1993.⁷⁴

1.5.1. Kampala, Uganda (1990)

The first of the Regional Conferences was held in Kampala, from 2-4 April 1990. Eight countries attended, including Uganda, Tanzania, Zambia, Sudan and Ethiopia. Egypt, Rwanda and Burundi were represented by their embassies in Kampala.⁷⁵

1.5.2. Lusaka, Zambia (1991)

The second conference followed a year later, and was held from 22-25 July 1991 in Lusaka, Zambia - with 11 countries in attendance. Countries represented included five of the countries that attended the Kampala Conference - that is Uganda, Tanzania, Zambia, Sudan and Burundi.⁷⁶ In addition, six more countries attended for the first time: Angola, Ghana, Malawi, Mauritius, Namibia and Nigeria.⁷⁷

1.5.3. Abuja, Nigeria (1993)

Two years later, a third Regional Conference was held in Abuja, Nigeria, from 24-27 October 1993. Some nine countries attended this Conference, among them being Uganda, Tanzania, Zambia, Sudan, Nigeria, Angola, Malawi, South Africa and the Canary Islands.⁷⁸

⁷¹ Ibid.

⁷² Abuzeid (pers. comm.) (Interview: 26 November 2012, Pretoria, South Africa). Judge Mohammed Abuzeid Ahmed, President of the Public Grievances and Corrections Board, Sudan, since 1998, is an honorary member of the AOMA EXCO, and the Association's Permanent Ambassador to the African Union.

⁷³ AOMA 'Strategic Plan 2003-2006' at 4.

⁷⁴ Idem at 1.

⁷⁵ Minutes of the first meeting of the Board of Trustees of the African Ombudsman Centre, Dar es Salaam, 20-22 July 1998.

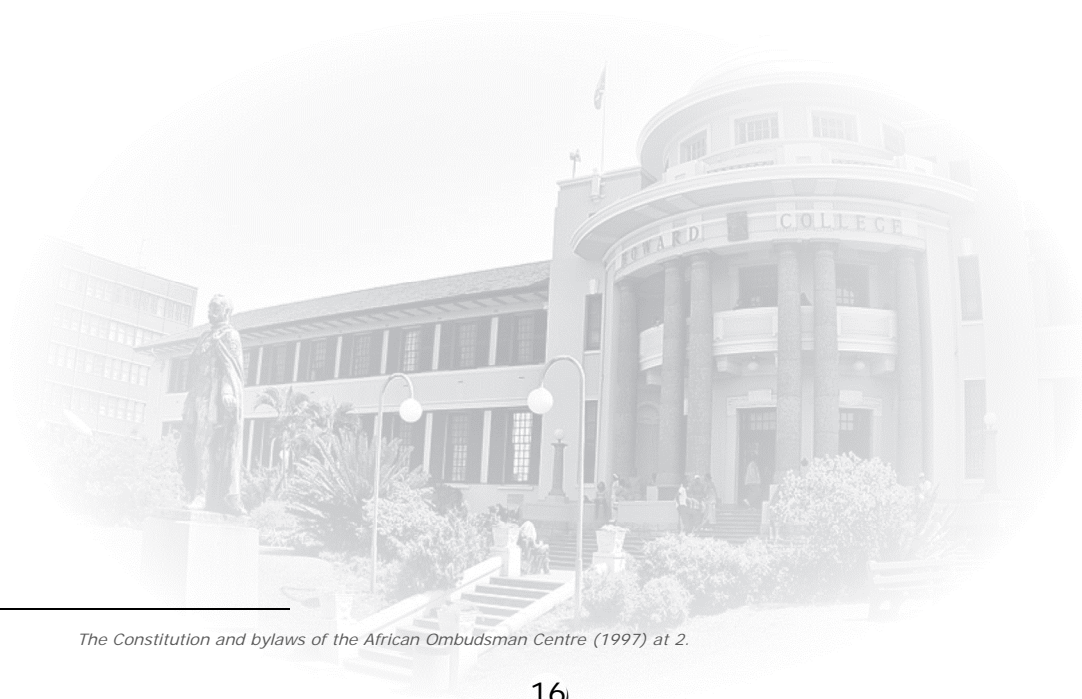
⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

1.6. Milestones

- a) Botswana, Nigeria, Tanzania and Mauritius are considered to be the foundation members of the African Ombudsman Association.
- b) Uganda, Zambia and Sudan were also pioneers in the African Ombudsman community, as they attended all of the first three Regional Conferences.
- c) The Constitution of the AOC emanated from recommendations and resolutions of the first three Regional Conferences.
- d) At these conferences, the need for the establishment, development and promotion of the Ombudsman institution on the African continent was recognised.
- e) The importance of cooperation between African states and the rest of the world in the field of ombudsmanship, was also repeatedly stressed during this period.⁷⁹



⁷⁹

The Constitution and bylaws of the African Ombudsman Centre (1997) at 2.

CHAPTER THREE

1. The African Ombudsman Centre is Born (1995-2001)

During the early years, Regional Conferences became a regular event on the African Ombudsman calendar. These biennial meetings of Ombudsman involved the sharing of experiences and good practices among Ombudsman. However, the need for development and change was increasingly expressed - the Regional Conferences were considered inadequate in terms of the need to strengthen the Ombudsman institution in Africa, with its peculiar needs, problems and shortcomings. At each conference, an increasing number of participants called for the formal establishment of a Centre that could promote the study, activities, obligations and status of the Ombudsman institution on the African continent.⁸⁰

This chapter reviews the discussions, meetings and processes which followed through from the establishment of the African Ombudsman Centre (AOC) at the Fourth African Ombudsman Regional Conference in Khartoum (Sudan) in 1995, to the adoption of a proposal to establish the African Ombudsman Association at the Seventh Regional Conference in Victoria (Seychelles) in 2001.

1.1. Khartoum (Sudan) and the Founding of the AOC

At the Fourth Regional Conference, held in Khartoum from 18-21 September 1995, a resolution was taken to found the African Ombudsman Centre (AOC).⁸¹ At the time, 26 African countries were recorded as having an official Ombudsman office. Although membership of the AOC was open to all 26 countries, only nine countries attended the Conference - Tanzania, Lesotho, Malawi, Nigeria, South Africa, Zambia, Ghana, Sudan and Libya. Tanzania and Zambia were the only countries that had attended all four conferences.

The Constitution for the Centre, drafted from a concept document developed by Professor Victor Ayeni,⁸² was officially adopted at the Khartoum Conference. A further resolution of the Conference was to locate the headquarters of the Centre at the University of Dar es Salaam, in Tanzania.⁸³ The AOC was to be registered as a trust under Tanzanian law, with the official name, as it appeared on its corporate seal: 'The African Ombudsman Centre - Registered Trustees'. The Centre was to be administered by elected and non-elected trustees. The aims and objectives of the AOC were to:

- Encourage the establishment, development and promotion of Ombudsman institutions in Africa;
- Promote the study of the activities, obligations and problems of Ombudsman offices in Africa;
- Mobilise funds - both locally and internationally - for the achievement of the objectives of the Centre;
- Promote respect for and the observance of human rights;
- Be the secretariat of the African Ombudsman for the Regional and Sub-regional Conferences;

⁸⁰ Constitution of the African Ombudsman Centre (1998), Preamble at 1.

⁸¹ Establishment of the African Ombudsman Centre (1997) 41 (1) *Journal of African Law* at 149.

⁸² Ayeni (pers. comm.) (8 October 2012).

⁸³ According to Abuzeid (pers. comm.) (26 November 2012), the Centre was to be established in Khartoum.

- Foster affiliation and maintain liaison with other Ombudsman offices and institutes, international bodies and organisations interested in the progress of Ombudsman activities and human rights; and
- Identify and carry out any other relevant activities which the members may deem appropriate.⁸⁴

The members of the Board were not immediately elected. The creation of the Centre was in fact adopted as a resolution of the Conference. It was only implemented at the next Regional Conference held in Accra (Ghana) two years later, when the election of the first Board of Trustees also took place.⁸⁵

1.2. Accra, Ghana (1997) and the First Board of Trustees

It was at the Fifth Regional Conference in Accra (Ghana), in 1997, that it was decided to establish the AOC in Tanzania and the first Board of Trustees of the AOC was formally elected.⁸⁶ In accordance with Article 11(b) in the Constitution, elected Board members should include one member from each of five sub-regions, one member from the Ombudsman office in the host country Tanzania, the Vice-Chancellor of the University of Dar es Salaam or his nominee, and one member nominated by the Department of Political Science and Public Administration at the University of Dar es Salaam.⁸⁷

Trustees from the sub-regions elected at the Accra Conference, included Justice Emile Short from Ghana (West Africa), Adv. Selby Baqwa from South Africa (Southern Africa), Mr Jotham Tumwesigye from Uganda (East Africa), Dr Barakati Mussa Elhawati from Sudan (North Africa), and Justice James Chirwa from Malawi (Central Africa).⁸⁸ Non-elected trustees co-opted on the Board of Trustees included Professor Joseph Mbwiliza, representing the host country Tanzania, Professor Matthew Luhanga from the Tanzanian Ombudsman Office, and Professor Andrew Kiondo from the University of Dar es Salaam. The Constitution also stipulated that the three African Regional Directors serving on the Board of the IOI should be ex officio members of the AOC Board of Trustees. Thus Chief Jackson Edokpa from Nigeria and Professor Seydou Madani Sy from Senegal became part of the Board of Trustees in their capacity as IOI Board members.⁸⁹ The third African IOI Board member was Mr Jotham Tumwesigye from Uganda, who was already elected to the Board as the representative of the East African region.⁹⁰ At the time, Chief Jackson Edokpa of Nigeria was the IOI's Regional Vice-President for Africa.

1.3. AOC Governance and the Role of Tanzania

The historic first meeting of the AOC Board took place in Dar es Salaam from 20 to 22 July 1998, and for the next five years there were regular annual Board meetings. At this inaugural meeting, Justice Short

⁸⁴ Constitution of the African Ombudsman Centre (1998), Article 3 at 2.

⁸⁵ African Ombudsman Association 'Strategic Plan 2003-2006' at 5. Also see the 'Statement on the Progress of the African Ombudsman Centre' at the Sixth Regional African Ombudsman Conference (Namibia, 1999), by Justice Short, the then President of the AOC, at 2.

⁸⁶ See 'Statement on the Progress of the African Ombudsman Centre' at 2.

⁸⁷ Constitution of the African Ombudsman Centre (1998) at 5.

⁸⁸ See 'Statement on the Progress of the African Ombudsman Centre' at 2.

⁸⁹ Ndagirwa 'The AOMA and the AORC: History and developments' at 37.

⁹⁰ Ibid.

from Ghana was elected the first President of the AOC, and Justice Chirwa from Malawi the first Vice-President.⁹¹

Faced with a lack of financial resources - which would remain a major concern during the following years - the Board of Trustees opted for an arrangement whereby the Tanzanian office was to serve as the Interim Secretariat of the AOC, pending the nomination of an Executive Secretary.⁹² At this stage, and for the next three years, it was not clear whether the AOC was to appoint a remunerated Executive Secretary, whether he/she would also be based in Tanzania, or whether the Secretary would be an employee on contract or simply be nominated from the Ombudsman community. The IOI provided initial financial assistance to the Centre,⁹³ while Public Administration International of London likewise indicated that they would be willing to provide a measure of financial support. The Board meeting ratified the appointment of Greenland Bank (Pty) Ltd in Dar es Salaam as the bankers of the AOC, and approved Professor Mbwiliza and three other staff members of the Tanzania Ombudsman Office as signatories.⁹⁴ Other governance issues reported on at the meeting concerned rules relating to the internal structure of the AOC, and amendments to the Constitution and Bylaws.

At the Dar es Salaam meeting, Mr Tumwesigye from Uganda reported that a Regional Ombudsman Workshop had been organised to take place in Kampala from 24-26 August 1998.⁹⁵ The University of Reading (United Kingdom) had offered to assist the Centre in training Ombudsman staff,⁹⁶ while the University of Dar es Salaam agreed that the AOC could use their facilities for training courses between July and October, when students would be on long vacation. Justice Short from Ghana informed the meeting of the progress with the preparations for the Sixth African Ombudsman Conference to be held in Windhoek, Namibia, the following year. He had also visited Ethiopia and Liberia to advise them on the inclusion of Ombudsman functions in their proposed human rights commissions.⁹⁷

At the meeting, the Board of Trustees endorsed the Agreement between the University of Dar es Salaam and the AOC.⁹⁸ The University agreed to host the Centre and to provide office space. The Centre would be an autonomous institution, with the University represented on the Board by the Vice-Chancellor and the Head of the Department of Political Science and Public Administration. It was further agreed that the Centre would be open to the public and academic staff and students, in order to facilitate research work.⁹⁹

1.4. AOC Further Board Meetings and Activities

The Sixth African Ombudsman Regional Conference, held in Windhoek from 18-22 October 1999, was officially opened by the President of Namibia, Mr Sam Nujoma. The main theme of the Conference was

⁹¹ Constitution of the African Ombudsman Centre (1998) at 13.

⁹² Minutes of the first meeting of the Board of Trustees of the African Ombudsman Centre, Dar es Salaam, 20-22 July 1998 at 10.

⁹³ Idem at 5.

⁹⁴ Idem at 9.

⁹⁵ Idem at 11.

⁹⁶ Idem at 8.

⁹⁷ Idem at 5.

⁹⁸ Idem at 8.

⁹⁹ 'Agreement made between the University of Dar es Salaam, Tanzania and the African Ombudsman Centre (Registered Trustees)', Appendix V to the minutes of the first meeting of the Board of Trustees of the African Ombudsman Centre, Dar es Salaam, 20-22 July 1998.

'Ombudsman in Africa: Practice in the new Millennium'. Professor Victor Ayeni presented an overview of 35 years of the Ombudsman institution in Africa, while other speakers - including Judge Abuzeid, Adv. Gawanas, Mr Chibwana, Adv. Baqwa, Adv. Maine and Chief Edokpa - addressed practical issues which were of concern to Ombudsman offices.¹⁰⁰

The second AOC Board meeting was scheduled to take place in 1999, in Malawi. However, because the Ombudsman of Malawi and Vice-President of the AOC had been relieved of his post, the meeting was eventually rescheduled to take place in Durban, South Africa, in October 2000. At the Durban meeting, Adv. Selby Baqwa, the Public Protector of South Africa, was unanimously elected the new Vice-President of the AOC.¹⁰¹ The Ombudsman offices of Namibia, South Africa, Zimbabwe, Lesotho, Botswana and Mauritius, were also formally accepted at this meeting, as members of the AOC.¹⁰²

In the progress report tabled at the Durban meeting, it was acknowledged that Adv. Baqwa had secured funding from Public Administration International, with which he purchased four books on constitutional and administrative law for the library of the Centre. He also submitted more funding proposals to the Nuffield Foundation and the Commonwealth Secretariat.¹⁰³

The Centre had produced some publications -including the African Ombudsman Centre Yearbooks for 1998, 1999 and 2000, a Directory of Ombudsman Offices in Africa (2000 Edition), and case studies for the training of Ombudsman staff on case management systems.¹⁰⁴ The Centre had also published the AOC Constitution and Bylaws in both English and French.¹⁰⁵

The Board agreed to Professor Ayeni's proposal that the Centre commit to at least three major viable activities, with which the Commonwealth Secretariat would be prepared to assist, and which would strengthen the Centre's viability.¹⁰⁶ Tanzania and Uganda were identified as potential hosts for such projects. Training activities were to be decentralised to member offices/countries, and coordinators appointed to facilitate coordination of training activities.¹⁰⁷

The IOI World Conference that was to be held in Hong Kong in 2000, was moved to Durban, South Africa. It would be the first IOI Conference held in Africa.¹⁰⁸ Adv. Baqwa was called upon to organise the Conference at very short notice. He was complemented by all concerned on the exemplary way in which this was done.¹⁰⁹ At the Conference, he was also elected Vice-President of the IOI. In his keynote address to the Conference, former South African President, Nelson Mandela reminded the audience that "good governance is not an abstract procedural matter, but part of the substantive quality of life issues of the

¹⁰⁰ Sixth African Ombudsman Regional Conference, Conference Programme, 18-22 October 1999, Windhoek, Namibia.

¹⁰¹ Agenda of the second meeting of the Board of Trustees of the African Ombudsman Centre, Durban, South Africa, 29 October 2000 at 5.

¹⁰² Minutes of the second meeting of the Board of Trustees of the African Ombudsman Centre, Durban, South Africa, 29 October 2000 at 2.

¹⁰³ 'Progress Report on the African Ombudsman Centre', Appendix II to the Minutes of the second meeting of the Board of Trustees of the African Ombudsman Centre, Durban, South Africa, 29 October 2000.

¹⁰⁴ Agenda of the second meeting of the Board of Trustees of the African Ombudsman Centre, Durban, South Africa, 29 October 2000 at 6.

¹⁰⁵ 'Progress Report on the African Ombudsman Centre', Appendix II to the minutes of the second meeting of the Board of Trustees of the African Ombudsman Centre.

¹⁰⁶ Agenda of the second meeting of the Board of Trustees of the African Ombudsman Centre at 6.

¹⁰⁷ Ibid.

¹⁰⁸ Address by Thabo Mbeki, President of South Africa, at the Seventh International Ombudsman Institute Conference, Durban, 30 October 2000 (available at: <http://www.gov.za/search97cgi/s97.cgi?action=View&Collection=speech01&Collection=speech00&Collection=speech99&Collection=speech98&QueryZip=title<contains>Mbeki&SortSpec=Score+Desc&SortOrder=Descending&SortField=Score&>) (accessed 24 October 2012).

¹⁰⁹ Minutes of the third meeting of the Board of Trustees of the African Ombudsman Centre, Victoria, Seychelles, 23 July 2001 at 7.

people. The promotion, consolidation and long term protection of ... developing democracies can only be enhanced by the institutionalization of ... supportive organs of institutional democracy.”¹¹⁰

1.5. Victoria, Seychelles (2001) and Winds of Change

The next two Board meetings were held in July 2001 at the Seventh African Ombudsman Regional Conference, held at Victoria in the Seychelles from 23 to 26 July 2001. As the first Board of Trustees’ tenure of office had expired, they convened for a final meeting, while the new Board met for the first time. New trustees for the sub-regions were elected by the general meeting. Justice Short from Ghana (West Africa) and Mr Jotham Tumwesigye from Uganda (East Africa) were re-elected, while Mr Lethebe Maine from Botswana (Southern Africa), Mr Enock Chibwana from Malawi (Central Africa), and Judge Ahmed Mohammed Abuzeid from Sudan (North Africa), were the newly elected members. The Ombudsman of Botswana and Uganda were respectively voted President and Vice-president of the AOC by the concomitant meeting of the new Board.¹¹¹ Professor Seydou Madani Sy (Senegal), Dr Alifa Farouk (Tunisia)¹¹², and Adv. Lawrence Mushwana (South Africa) were also co-opted as Regional Directors of the IOI for Africa.

Professor Ayeni had been invited to present his assessment of the activities/projects which had been carried out between the Commonwealth Secretariat, the AOC, and Ombudsman offices in the Region.¹¹³ Professor Ayeni, then the Governor’s Advisor at the Commonwealth Secretariat, was instrumental in establishing many Ombudsman offices in the anglophone countries of Africa,¹¹⁴ and was actively involved in building the capacity of Ombudsman staff. He was also closely involved with the establishment of the AOC and writing the concept document for the Centre.¹¹⁵ His influence secured ongoing funding for AOC workshops and other projects, and - because of his tireless efforts- trusting relationships developed between countries.

In his address to the meeting, Professor Ayeni expressed the opinion that the decentralisation of activities had been successful. A number of activities, in the form of workshops and conferences, had been undertaken in member countries at sub-regional level.¹¹⁶ The Commonwealth Secretariat had assisted the Centre with the organisation and funding of the National Workshop on Developing the Role of the Ombudsman Office, in Banjul, in the Gambia, in January 2001. A second workshop on Enhancing the Public Profile of the Ombudsman’s Office, held in Midrand, South Africa, in June of the same year, issued certificates to participants in the name of the AOC. A third workshop on Conducting Effective Investigation in Ombudsman Offices in the SADC Region, was held in Windhoek, Namibia, from 16-18 July 2001. Professor Ayeni raised his concern that these activities were conducted in anglophone countries only, and urged that similar workshops be held in francophone countries on the continent.¹¹⁷

¹¹⁰ ‘Address at the International Ombudsman Institute Conference, Durban, 1 November 2000’ at 2.

¹¹¹ *Idem* at 3.

¹¹² Dr Farouk has held a PhD since 1976, and this title is used throughout, although it is typically not used in official documents sourced.

¹¹³ *Idem* at 5.

¹¹⁴ Ayeni (pers. comm.) (8 October 2012).

¹¹⁵ *Ibid.*

¹¹⁶ Minutes of the third meeting of the Board of Trustees of the African Ombudsman Centre, Victoria, Seychelles, 23-26 July 2001 at 5.

¹¹⁷ *Ibid.*

Mr Daniel Jacoby, former Ombudsman of Canada, President of the Association of Mediateurs of Francophone countries, and Secretary of the IOI, also attended the meeting as an invited guest. He addressed the Board on how best the Centre could achieve its goals¹¹⁸ - pointing out the importance of an efficient communication system and of lobbying international agencies such as UNESCO for the funding of projects.

Professor Ayeni echoed the suggestion by Mr Jacoby that there should be an Executive Secretary outside the Centre, in order to solve problems of capacity and logistics facing the Centre. He confirmed that according to AOC Bylaws, it was not mandatory that the Executive Secretary be physically located in Dar es Salaam.¹¹⁹ Considering the abolition of the Permanent Commission of Enquiry of Tanzania, which hitherto served as the Interim Secretariat to the AOC, he proposed that an Executive Secretary be appointed and that the Secretariat be relocated to be with the Executive Secretary.¹²⁰ In his view, the Centre should remain as a Resource Centre, and assured Tanzania of the Commonwealth Secretariat's continued support. Support for Professor Ayeni's proposal came from Professor Seydou Madani Sy from Senegal, and Mr Jotham Tumwesigye from Uganda. A motion by Adv. Selby Baqwa from South Africa, to appoint an Executive Secretary, was carried.¹²¹

The meeting further resolved that - subject to her availability - Adv. Bience Gawanas, then Ombudsman of Namibia, be nominated Executive Secretary.¹²² This meant that the AOC Secretariat would move from Dar es Salaam to Windhoek, Namibia. In the General meeting, Adv. Gawanas - newly nominated first Executive Secretary of the AOC - proposed that the Conference reconstitute itself as the African Ombudsman Association. Adv. Baqwa from South Africa seconded the proposal, and the motion was carried by the rest of the membership. Adv. Gawanas was thereafter given the task of preparing a draft Constitution for the Association, which was to be tabled at the following General meeting that would take place in 2003.¹²³

It was also at the 2001 Conference in Seychelles, that the French-speaking countries started their growing involvement in the Association. Countries such as Djibouti (Regional Representative for East Africa, 2003-2010), Senegal (Regional Representative for West Africa, 2003-2010), and Gabon (Regional Representative for Central Africa, 2003-2010) were admitted to the Association during the Conference.¹²⁴

1.6. Milestones

- Establishment of the AOC in 1995, in Khartoum.
- Election of the first Board of Trustees of the AOC in 1997, in Accra.
- First Board meeting of the AOC is held in 1998 in Dar es Salaam, where the Constitution was accepted.
- The prominent role of Tanzania in the AOC.

¹¹⁸ *Idem* at 4.

¹¹⁹ *Idem* at 5.

¹²⁰ *Idem* at 6.

¹²¹ *Idem* at 6.

¹²² *Idem* at 7.

¹²³ Ndagirwa 'The AOMA and the AORC: History and developments' at 36.

¹²⁴ Minutes of the third meeting of the Board of Trustees of the African Ombudsman Centre, Victoria, Seychelles, 23-26 July 2001 at 8.

- The role of the Commonwealth (funding, workshops, and mentoring).
- Election of the second AOC Board in 2001, in Seychelles.
- Election of the first Executive Secretary, and the move of the Secretariat to Namibia.
- Adoption of a resolution to create the AOA, in the Seychelles.



CHAPTER FOUR

1. Constitution of the African Ombudsman Association (2001-2003)

By the time the Seventh African Ombudsman Regional Conference was held in 2001 in Victoria, Seychelles, it was clear that the AOC had still not succeeded in establishing an operational administrative structure. This was mainly due to a lack of funding,¹²⁵ which was further compounded by the abolition of the Permanent Commission of Enquiry of Tanzania - which had, until then, served as the Interim Secretariat.¹²⁶ The intervention proposed by Professor Ayeni to appoint an Executive Secretary outside the Centre, was favourably received by the General meeting of the Conference, and Adv. Bience Gawanas from Namibia was nominated for the position.¹²⁷

1.1. AOC under Executive Secretary Gawanas, and the Move to Namibia

One of the first tasks of the new Executive Secretary was to make arrangements - in collaboration with the successor of the Permanent Commission of Enquiry of Tanzania - for the handover of the assets and property of the AOC to the new Secretariat, and also to facilitate the move from Dar es Salaam to Windhoek. This would prove to be a lengthy process, in particular to have the funds transferred from the new Human Rights Commission of Tanzania, to the Office of the Ombudsman in Namibia.¹²⁸ Justice Kisanga, Chairperson of the new Human Rights Commission, assisted in good spirit.

The most arduous task that Adv. Gawanas faced, however, was the decision by the Seychelles Conference that all proper steps be taken towards the creation of an African Ombudsman Association. In fact, it was Adv. Gawanas herself who had tabled the proposal at the Conference, and when the motion was carried, it fell upon her to prepare a draft Constitution for the new Association - to be tabled at the next General meeting.¹²⁹ The President, Vice-President and the Executive Secretary of the AOC, in addition to two other members of the Board of Trustees, were to serve as the Interim Executive Committee of the Association, until the time of the next Regional Conference, which was scheduled to take place in July 2003, in Ouagadougou, the capital of Burkina Faso.

Sixteen months after her nomination, Adv. Gawanas had put together a draft Constitution for the new African Ombudsman Association (AOA). The document was tabled before the Board of Trustees in an extraordinary Board meeting in Windhoek, in November 2002. It was provisionally adopted, pending ratification by the AOC's Members at the Regional Conference, which was due to be held in Burkina Faso the following year.¹³⁰

¹²⁵ Minutes of the third meeting of the Board of Trustees of the African Ombudsman Centre, Victoria, Seychelles, 23-26 July 2001 at 6.

¹²⁶ Ibid.

¹²⁷ Idem at 7.

¹²⁸ Verbatim Report of the meeting of the Executive Committee of the African Ombudsman Association, held in Maseru, Lesotho, 29-30 April 2004 at 19.

¹²⁹ Ndagirwa 'The AOMA and the AORC: History and developments' at 38.

¹³⁰ Idem at 39.

The November 2002 meeting of the AOC's Board of Trustees was a milestone, both for the history of the African Ombudsman Centre, and the soon to be established African Ombudsman Association (AOA). Further to the draft Constitution for the new Association, the Board of Trustees also held a strategic planning session at the Windhoek meeting, leading to what would later be adopted as the Association's Strategic Plan 2003-2006. Together with the National Democratic Institute for International Affairs (NDI), the Executive Secretary had called the AOC Board of Trustees to Windhoek for a strategic planning workshop, in order to map the way forward in terms of the establishment of the AOA.¹³¹ The goal of the workshop was to develop a three-year strategic plan to strengthen the ability of the AOA to act as a cohesive body, and with a clearly-defined vision, mission and objectives. It was agreed that the vision of the new organisation would be:

- * To be a respected and professional association for the promotion of open, accountable and democratic governance.¹³²

In a similar fashion, the following mission statement was adopted:

- * The AOA works to protect and support the independence and development of African Ombudsman Institutions by promoting information exchanges and best practices for the advancement of good governance and human rights in Africa.¹³³

Using situational analysis, the Board members identified the Constitution, structure, management, languages and financial capacity of the AOA as critical issues. Discussion of these matters provided a foundation for a review of the draft Constitution ahead of the General Assembly in Burkina Faso, and for the adoption of an interim management structure.¹³⁴

The year 2002 also saw decentralised activities - as previously recommended by Professor Ayeni - continuing throughout the year. On 5 June 2002, the fifth Board meeting of the AOC took place in Dakar, Senegal, under the leadership of Adv. Maine from Botswana. With sustained support from the Commonwealth Secretariat¹³⁵ and the unfailing commitment of Professor Ayeni, further workshops were organised in Dakar (Senegal) and Sierra Leone, and later in the year a parliamentary workshop was held in Windhoek.¹³⁶ The Dakar Workshop - held from 17-18 June 2000 - was attended by 11 anglophone and 8 francophone countries. The main theme concentrated on 'The major challenges facing the African Ombudsman', with sub-topics addressing operational autonomy, the social role, building the technical capacity of African Ombudsman, and promoting a working relationship between the various African Ombudsman offices.¹³⁷

The AOC's era - a period spanning the years 1995 to 2003 - will be remembered for the sustained efforts to raise funds for the Centre. Nobody could deny that financial resources have been and still are a major concern for the African Ombudsman community. This situation is pervasive both locally (with national

¹³¹ African Ombudsman Association 'Strategic Plan: 2003-2006' at 1.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Idem at 2.

¹³⁵ A. Mukoro (2007) 'The Ombudsman phenomenon in African states public services' at 4 (available at: <http://unpan1.un.org/intradoc/groups/public/documents/AAPAM/UNPAN029881.pdf>) (accessed 25 October 2012).

¹³⁶ Ndagirwa 'The AOMA and the AORC: History and developments' at 39.

¹³⁷ Seminar/Workshop held under the auspices of the African Ombudsman Centre, on 'The major challenges facing the African Ombudsman/Mediateur', Dakar, Senegal, 17-18 June 2002.

offices having insufficient resources compared to the needs on the ground) and regionally, with a paucity of funds being one of the impediments to the efforts of the African Ombudsman community itself.¹³⁸

1.2. Ouagadougou, Burkina Faso and the Eighth Regional Conference (2003)

It was in Ouagadougou that two pivotal events in the history of the Ombudsman institution in Africa took place. In November 1999, the city had hosted the first statutory congress of the French-speaking world's Ombudsmen and Mediators Association.¹³⁹ Four years later, the city saw the birth of the new African Ombudsman Association, when the Eighth African Ombudsman Regional Conference (later the Constituent General Assembly of the AOA), took place from 22 to 25 July 2003.¹⁴⁰ Eighteen of the 26 potential members attended the meeting (see Table 1, below) - providing the required quorum - and it adopted one of the most important resolutions ever taken by the African Ombudsman community: confirming the Constitution of the African Ombudsman Association.¹⁴¹ Professor Victor Ayeni from the Commonwealth Secretariat and Mr Michel Xavier from the OIF (French-speaking World Agency), were both in attendance as observers.¹⁴²

Table 4.1: Countries Present at Ratification of Final Constitution of African Ombudsman Association (AOA)

Country	Name of Representative
Botswana	Adv. Lethebe Maine
Burkina Faso	Mr Jean Baptiste Kafando
Chad	Mr Koibla Djimasta
Côte d'Ivoire	Mr Henri Goba
Djibouti	Mr Hassan Farah Miguil
Gabon	Mrs Jeanne Manomba Kombila
Ghana	Adv. Anna Bossman
Lesotho	Mr Sekara Samuel Mafisa
Malawi	Mr Enoch D.A. Chibwana
Mali	Mrs Diakité Fatoumata Ndiaye
Mauritius	Adv. Soleman M. Hatteea
Namibia	Adv. Bience P. Gawanas
Senegal	Adv. Doudou Ndir
South Africa	Adv. Mabedle Lawrence Mushwana
Sudan	Judge Ahmed Mohammed Abuzeid
Tanzania	Mr Robert Habesh Kisanga
Tunisia	Dr Alifa Chaabane Farouk
Uganda	Mr Jotham Tumwesigye

¹³⁸ 'Constitution of the African Ombudsman Centre' Article 3(vi) at 2.

¹³⁹ 'Speech by His Excellency, Mr Blaise Compaore, President of Burkina Faso, at the Official Opening of the 8th Regional Conference of African Ombudsmen and Mediators', in *Eighth Regional Conference of African Ombudsmen and Mediators (CROMA): General Assembly Proceedings, Final Communiqué, Resolution, Recommendation, Final Constitution and Speeches, Ouagadougou, Burkina Faso, 22-25 July 2003* at 28.

¹⁴⁰ *Eighth Regional Conference of African Ombudsmen and Mediators: Proceedings* at 4.

¹⁴¹ Ndagirwa 'The AOMA and the AORC: History and developments' at 11.

¹⁴² *Eighth Regional Conference of African Ombudsmen and Mediators: Proceedings* at 11.

The Conference was officially opened by the President of Burkina Faso, Blaise Compaoré, who used the opportunity to emphasise the need for the creation of a fully-fledged African organisation of Ombudsman, in the face of the endless armed conflicts that plagued the continent:

- * Mediation has the merit of being accessible [to everybody], because it uses simple language...it is not expensive [and] parties in conflict are not sent away without pronouncing in favour of either. On the contrary, they reconcile and take back their place in society.¹⁴³

The President joined his counterparts from Namibia and Senegal, in pledging his full support for the recognition and promotion of Ombudsman activities throughout Africa.¹⁴⁴

1.3. Establishment of the AOA and its Draft Constitution

With the resolution by the Constituent General Assembly to adopt the draft Constitution, the new African Ombudsman Association was born. The document, as prepared by Executive Secretary Gawanas, and reviewed by the Interim Executive Committee in November of the previous year in Windhoek, defined the new Association's objectives thus:¹⁴⁵

- * To encourage the establishment, development and promotion of African Ombudsman institutions;
- * To further mutual support, cooperation and joint activity through information sharing, training and development of Ombudsman and their staff;
- * To promote good governance, including the observance of human rights, transparency and administrative justice;
- * To support and promote the autonomy and independence of Ombudsman offices;
- * To foster affiliation and maintain liaison with other Ombudsman offices, Institutes and Associations, international bodies and organisations interested in the progress of Ombudsman activities and human rights; and
- * To identify and carry out any other relevant activities which the members may deem appropriate.

As mentioned previously, at about the time of the 2001 Conference in Seychelles, the French-speaking countries started their growing involvement in the Association. Countries such as Djibouti, Senegal and Gabon were all admitted to the Association during the Seychelles Conference.¹⁴⁶ More French-speaking countries joined and attended the Ouagadougou Conference - including Chad, Burkina Faso, Côte d'Ivoire, Mali, Mauritius and Tunisia.¹⁴⁷ This led to the adoption of French as one of the official languages of the Association, in line with the recognition at the Windhoek meeting of the previous year - that French be one of the Association's official languages. It was in this spirit that the draft Constitution for the new

¹⁴³ 'Speech by His Excellency, Mr Blaise Compaore, President of Burkina Faso' at 28.

¹⁴⁴ In his vote of thanks to the President of South Africa at the opening of the first General Assembly meeting, Judge Abuzeid emphasised the role that other African Heads of State had already played in supporting the initiative towards establishing the Association – and mentioned the roles of the presidents of Namibia, Senegal and Burkina Faso.

¹⁴⁵ African Ombudsman Association, Constitution, Article 4, July 2003.

¹⁴⁶ Minutes of the third meeting of the Board of Trustees of the African Ombudsman Centre, Victoria, Seychelles, 23-26 July 2001 at 8.

¹⁴⁷ Ndagirwa 'The AOMA and the AORC: History and developments' at 14.

Association was adopted by the Association's General Assembly in both English and French.¹⁴⁸ Professor Ayeni acknowledged the invaluable role of Adv. Anna Bossman of Ghana in this respect, who, because of her fluency in both languages, acted as a translator when needed.¹⁴⁹ Furthermore, earlier in the year in March 2003, Judge Abuzeid of Sudan had completed an Arabic translation of the draft Constitution, which he sent off to Executive Secretary Bience Gawanas.¹⁵⁰

1.4. First AOA Elections and Future Planning

While the Chairperson of the AOA was unanimously elected by acclamation, based on the proposal put forward by the Session Chairperson (Mr Lethebe Amos Maine, Ombudsman of Botswana), the other members of the first Executive Committee were elected by a vote. The composition of the Executive Committee was as follows:¹⁵¹

- * President: Mr Jean Baptiste Kafando, Mediator of the Republic of Burkina Faso.
- * First Vice-President: Mr Enoch Chibwana, Ombudsman of Malawi.
- * Second Vice-President: Judge Ahmed Mohammed Abuzeid, Chairman of the Public Grievances and Corrections Board (Ombudsman) of Sudan.
- * Executive Secretary: Adv. Mabedle Lawrence Mushwana, Public Protector of the Republic of South Africa.
- * Six Regional Representatives:
 - * Northern Africa: Dr Alifa Chaabane Farouk, Administrative Mediator of Tunisia.
 - * Southern Africa: Mr Sekara Samuel Mafisa, Ombudsman of Lesotho.
 - * Western Africa: Mr Doudou Ndir, Mediator of the Republic of Senegal.
 - * Eastern Africa: Mr Hassan Farah Miguil, Mediator of the Republic of Djibouti.
 - * Central Africa: Mrs Jeanne Manomba Kombila, Mediator of the Republic of Gabon.

The only member of the Indian Ocean Region present at the Conference, was Adv. Soleman Hattea from Mauritius - who refused his nomination. He insisted rather on consultation with other members of the region, before accepting it.¹⁵²

The election of three African Regional Representatives to the IOI took place after this. The following Ombudsmen were elected:¹⁵³

- * First IOI Representative for Africa: Dr Alifa Chaabane Farouk, Administrative Mediator of Tunisia.
- * Second IOI Representative for Africa: Mr Jean-Baptiste Kafando, Mediator of Burkina Faso.
- * Third IOI Representative for Africa: Mr Lethebe Amos Maine, Ombudsman of Botswana.

¹⁴⁸ *Eighth Regional Conference of African Ombudsman and Mediators: Proceedings, Article 18 at 7.*

¹⁴⁹ Ayeni (pers. comm.) (8 October 2012).

¹⁵⁰ Abuzeid (pers. comm.) (26 November 2012).

¹⁵¹ *Eighth Regional Conference of African Ombudsman and Mediators: Proceedings, Article 18 at 7.*

¹⁵² *Eighth Regional Conference of African Ombudsman and Mediators: Proceedings, Article 18 at 8.*

¹⁵³ *Ibid.*

In terms of the relationship with the IOI, the practice thereafter would be that African Ombudsman who were individual members of the IOI, would hold separate consultations and meetings when the AOA held its Executive Committee or General Assembly meetings.¹⁵⁴

The General Assembly further resolved to relocate the AOA headquarters with the new Executive Secretary. This meant that the headquarters - with all its assets and liabilities - would move from Windhoek to the Office of the Public Protector of South Africa, in Pretoria, following Adv. Mushwana's election as the new Executive Secretary.¹⁵⁵

The Strategic Plan 2003-2006, prepared by the Interim Secretariat the previous year during the Windhoek Workshop, was adopted without discussion and referred to the new Secretariat for further consideration, before a decision could be made on its full or partial implementation.¹⁵⁶

Mr Jotham Tumwesigye, Inspector-General of Uganda, was commended for the inaugural newsletter presented at the Conference. It was at the Windhoek meeting in 2002 that it had been decided to compile a bi-annual newsletter for the AOA, and Mr Tumwesigye was tasked to produce the newsletter on an interim basis, with the first one to coincide with the Conference in July 2003.¹⁵⁷

The Conference issued the following significant recommendations to African Heads of State and their governments:

- All member Heads of State belonging to the African Union shall be informed of the existence of the new Association;
- Heads of State should take the necessary steps to ensure that Ombudsman who did not attend this meeting creating the Association, are fully involved in its activities;
- Heads of State should also lead countries which have not yet established an Ombudsman institution to realise the importance of this institution as the defender of citizens' rights, and take steps to establish one; and
- Heads of State should take necessary steps to ensure that every Ombudsman Office is established as an independent and autonomous institution, enshrined in the Constitution or an organic law.¹⁵⁸

1.5. The Demise of the AOC and Departure of Adv. Gawanas

In another historical resolution at the Ouagadougou Conference, the African Ombudsman Centre based in Dar es Salaam, was officially dissolved - with all its assets and liabilities becoming assets and liabilities of the newly-created African Ombudsman Association. As stated in the final communiqué of the Conference, a new centre of training and documentation on the African Ombudsman concept was to be established in

¹⁵⁴ This is illustrated by the 2006 and 2010 elections of the African Representatives at the IOI Board - corresponding with the 2006 Executive Committee meeting in Tunisia and the 2010 General Assembly meeting in Angola.

¹⁵⁵ Ndagirwa 'The AOMA and the AORC: History and developments' at 12.

¹⁵⁶ Eighth Regional Conference of African Ombudsman and Mediators: Proceedings, Article 18 at 7.

¹⁵⁷ 'Verbatim Report of the meeting of the Executive Committee of the African Ombudsman Association', Maseru, Lesotho, 29-30 April 2004 at 12.

¹⁵⁸ Eighth Regional Conference of African Ombudsman and Mediators: Proceedings at 16.

South Africa in due course.¹⁵⁹ The Executive Secretary was given the task to undertake all proper steps towards the establishment of the Centre in South Africa.

The members who were present at the Conference renewed their call to all African countries that an Ombudsman institution be established where it did not exist, or that it be reinforced in terms of independence and autonomy where it did exist.¹⁶⁰ The newly-created Association also stressed the need for a formal relationship with the African Union, and recommended that an Ombudsman be appointed at the level of the African Union Commission - in line with the practice of similar international and regional bodies. The President of the Association was given the responsibility to present this recommendation to all the relevant forums.¹⁶¹

The immediate challenge of the AOA was to increase its membership and to raise funds - both through the subscription fees paid by members, and through any other proper means in compliance with the Association's Constitution. Increases in both financial capacity and the membership of the Association were to remain the yardsticks for measuring its progress - at least in the short term. As part of the short-term goals of the Association, fostering affiliation¹⁶² and mobilising funds were certainly a priority.¹⁶³

In conclusion, the Conference expressed its appreciation of the outstanding work of the Interim Executive Committee under the leadership of Adv. Lethebe Maine, Ombudsman of Botswana, during the period of transition and eventual inauguration of the new Association. It was also at this occasion that the Association bid farewell to Adv. Gawanas, who was moving from Namibia to Ethiopia, where she was to become the Commissioner for Social Affairs at the African Union Commission. In particular, it noted her invaluable contribution to putting the new Association on a firm footing and with a sound Constitution, and extended congratulations and best wishes for success in the new challenges that awaited her.

1.6. Milestones

- Interim Secretariat of AOC moves to Windhoek, Namibia.
- Draft Constitution for the AOA is tabled at an extraordinary Board meeting in Windhoek, in November 2002.
- The Strategic Plan 2003-2006 is drafted at the Windhoek Board meeting in November 2002.
- Decentralised workshops take place throughout 2002.
- The Constituent General Assembly ratifies the draft Constitution to establish the AOA in Ouadougou, Burkina Faso, on 23 July 2003.
- The first Board of Trustees and IOI representatives are elected.
- The Secretariat moves to Pretoria, South Africa, following the appointment of the new Executive Secretary.
- The AOC is dissolved, with a decision to create a Research Centre at a South African University, in due course.

¹⁵⁹ *Eighth Regional Conference of African Ombudsman and Mediators: Final Communiqué at 13.*

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² 'Strategic Plan 2003-2006', Par 5.1 at 8.

¹⁶³ *Idem*, par 5.5 at 11.

CHAPTER FIVE

2. The Way Forward: Consolidation, Planning and Implementation (2004-2007)

The period from 2004 to 2007 saw the new African Ombudsman Association consolidating, reviewing and implementing the strategic plan that had been tabled at the Constituent General Assembly held the previous year in Ouagadougou. At the Ouagadougou Conference in Burkina Faso, held in July 2003, it was decided to hold the first EXCO meeting of the fledgling organisation no later than April 2004 - and Lesotho offered to host the meeting in Maseru.

2.1. First Ordinary EXCO Meeting, Maseru, Lesotho (2004)

The Maseru EXCO meeting - held from 29 to 30 April 2004 - was the first EXCO meeting of the newly-created African Ombudsman Association. Eight of the ten members attended, with only the first Vice-President (Mr Chibwana from Malawi) and the representative of the North Africa Region (Dr Farouk from Tunisia), absent. Mr Lethebe Maine from Botswana joined the meeting in an ex officio capacity as the IOI representative, and Mr Jotham Tumwesigye from Uganda was invited as an observer.¹⁶⁴ The main aim of the meeting was to address the outstanding issues inherited from the AOC, and to devise implementation plans for the resolutions and recommendations from the Ouagadougou Conference. To afford all members full participation in the meeting, simultaneous translation of the proceedings into both English and French was provided.¹⁶⁵

Executive Secretary Adv. Mushwana presented a draft logo of the Association. Mr Kafando from Burkina Faso and Mrs Kombila from Gabon raised concerns about the absence of French components in the logo that would represent the slightly different focus of the francophone countries - namely on the concept of mediation.¹⁶⁶ The meeting resolved to adopt the logo conditionally, subject to the inclusion of these changes, before submission to the General Assembly. Similarly, it was pointed out that Dr Farouk had been charged with putting together an information brochure in English and French at the 2002 Windhoek meeting - to be ready in July 2003 for distribution at the Burkina Faso Conference - but this had not happened. It was proposed that she be given a new deadline to submit a draft at the next General Assembly, which was planned for October 2004.¹⁶⁷

Mr Jotham Tumwesigye, Ombudsman of Uganda, had been invited as an observer to report on his publication of the first African Ombudsman Newsletter at the Conference in Ouagadougou. As his term as the Ugandan Inspector-General of Government was drawing to a close, EXCO wished to map the way forward with respect to the future publication of the newsletter.¹⁶⁸ Mr Tumwesigye raised concerns about

¹⁶⁴ 'Verbatim Report of the meeting of the Executive Committee of the African Ombudsman Association', Maseru, Lesotho, 29-30 April 2004 at 1.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Idem* at 11.

¹⁶⁷ *Idem* at 63.

¹⁶⁸ Ndagirwa 'The AOMA and the AORC: History and developments' at 15.

poor cooperation amongst members regarding contributions from the sub-regions, and appealed to all members to make a concerted effort to share local experiences and information, which would serve to forge the unity needed for strengthening the new Association. According to a decision taken at the Burkina Faso Conference, the newsletter should be published in both French and English. It was agreed that future newsletters be published by the Executive Secretary, in collaboration with the Ugandan office. Adv. Mushwana suggested the next newsletter should report on resolutions from the Maseru EXCO meeting, together with regional contributions. Due to lack of funding and other logistical constraints, this never happened, and the next newsletter would only be published in 2010, in electronic format - by the current Executive Secretary, Adv. Thulisile Madonsela, from South Africa.¹⁶⁹

On the issue of the location of the Secretariat, it was pointed out that the meeting in Burkina Faso had decided that the interim headquarters of the Association would reside with the Executive Secretary. The Ombudsman from Senegal moved for a Permanent Secretariat, and the meeting agreed to defer the matter due to the financial constraints that would prohibit the establishment of an independent administrative office.¹⁷⁰

During the Executive Committee meeting in Maseru, the issue of the lack of institutional memory was stressed again. It had been requested that anyone with comprehensive knowledge of the Association's history come forward and provide such information.¹⁷¹

At the meeting, the first discussions around the establishment of a Research Centre at a university took place. Adv. Mushwana explained that in order to best comply with the main objectives of the centre - developing and promoting the Ombudsman institution through study and training - the centre should be located at a university.¹⁷² Negotiations with the University of KwaZulu-Natal in Durban - through the then Dean of the Law Faculty, Professor Cowling - were underway, to draw up a concept document that would spell out the relationship between AOMA and the university.¹⁷³

Executive Secretary Mushwana proposed that the committee devise a schedule of responsibilities for regional coordinators, in order to provide budget allocations for performing the expected functions in their regions.¹⁷⁴ He suggested that such coordinators should be able to visit the countries in their regions and establish whether there are Ombudsman offices or if assistance was required to establish such offices. In the case of established offices, visits could assist with problem resolution and enhancing interest in the Ombudsman institution. He cited the case of Morocco, where it had come to his attention that the country has an Ombudsman office, but that he had no inkling of whether they would be interested to affiliate with AOA.¹⁷⁵ Similarly, nobody could shed any light on the situation in Swaziland¹⁷⁶ or Mozambique. Regional representatives were expected to report to the Executive on the status and activities of Ombudsman in the countries within their regions, in order for the AOA to do justice to its

¹⁶⁹ African Ombudsman Today, Issue 1, Third Quarter, December 2010.

¹⁷⁰ 'Verbatim Report of the meeting of the Executive Committee of the African Ombudsman Association', Maseru, Lesotho, 29-30 April 2004 at 16.

¹⁷¹ Idem at 7.

¹⁷² Idem at 18.

¹⁷³ Ibid.

¹⁷⁴ Idem at 21.

¹⁷⁵ Idem at 22.

¹⁷⁶ Swaziland is currently establishing an Ombudsman-like institution called the Commission on Human Rights and Public Administration. See: 'SD has Public Protector in Human Rights Commission (available at: <http://www.times.co.sz/News/82035.html>) (accessed 26 November 2012).

leadership role.¹⁷⁷ Although regional reports were presented at the meeting, there was no consensus about which regions some of the countries belonged to. In the end, it was decided to follow the African Union divisions.¹⁷⁸

2.2. Strategic Plan 2003-2006

In the Strategic Plan 2003-2006, goals were developed based on the mission and vision statements adopted at the Burkina Faso Conference in 2003, when the African Ombudsman Association had been launched. Also feeding into the plan were the results of the situational analysis undertaken at the Windhoek workshop in 2002 - which identified critical issues and strategies.¹⁷⁹ The goals, linked to the AOA objectives stated in Article 4 of the Constitution,¹⁸⁰ were divided into programme goals and management goals:

Programme goals

Publication of a membership directory was still outstanding. The difficulty with the directory had been raised by the Executive Secretary at the EXCO meeting in Maseru. The records he had received from the Namibian Secretariat gave no clear indication of which countries were members. The problem was further compounded by the fact that some countries were up to three years in arrears with membership subscriptions, and therefore their membership had - technically - expired.¹⁸¹ It was agreed that the directory should be compiled with available information and verified at the next General Assembly meeting, supported by the submission of updated information from the regional representatives.¹⁸² Publication of the directory would eventually be deferred until 2008.¹⁸³

Formalisation of the IOI relationship had also not been finalised. The formalisation was to wait until 2006, when the then President of the Association, Dr Farouk, Mediator of the Republic of Tunisia, signed a memorandum of agreement with the International Ombudsman Institute - opening the door to formal cooperation between the AOA and IOI.¹⁸⁴

The pan-African perspective of Adv. Mushwana was reflected in his ongoing efforts to direct the Association to include all African countries¹⁸⁵ through increasing the Association's membership and the co-option of NGOs and individuals. Board members requested clarification on how this could be done in compliance with Article 5 (1) (b) of the Constitution.¹⁸⁶ Questions raised were: (i) how many such individuals and NGOs must or can be admitted into the Association; (ii) what rules must be promulgated

¹⁷⁷ Ibid.

¹⁷⁸ Idem at 39-58.

¹⁷⁹ 'AOA Strategic Plan 2004-2005' at 10.

¹⁸⁰ Eighth Regional Conference of African Ombudsman and Mediators: Proceedings, Article 4 at 19.

¹⁸¹ 'Verbatim Report of the meeting of the Executive Committee of the African Ombudsman Association', Maseru, Lesotho, 29-30 April 2004 at 64.

¹⁸² Idem at 65.

¹⁸³ The first membership registry was only published in Adv. Mushwana's 2008 Secretarial Report, and presented at the Second General Assembly meeting in Tripoli, Libya.

¹⁸⁴ Ndagirwa 'The AOMA and the AORC: History and developments' at 16.

¹⁸⁵ Aveni (pers. comm.) (8 October 2012).

¹⁸⁶ 'Verbatim Report of the meeting of the Executive Committee of the African Ombudsman Association', Maseru, Lesotho, 29-30 April 2004 at 66.

to regulate affiliation procedures and participation in meetings of the Association; and (iii) how would the issues of a quorum, voting rights, duration and termination of membership be approached.¹⁸⁷

For improved communication and information dissemination, the setting up a website was a task assigned to the Executive Secretary.¹⁸⁸ Further plans to improve communication included an electronic newsletter and brochure, resource and case law database, and a membership list with contact details. All important documents were to be made available in English, French, Arabic and Portuguese.¹⁸⁹

Management goals

In order to start raising funds for the running of the Association's Secretariat, joining fees were fixed at US\$100 for new members and annual subscription fees at US\$500. These amounts would soon prove to be insufficient and would lead to an increase in both joining and annual subscription fees.¹⁹⁰

Any other goals which were outstanding - inherited from the AOC or emanating from Ouagadougou or Maseru - were re-entered in the strategic plan. Thus, at the end of the First Executive Committee meeting, the Association had a well-defined plan of action and roles of responsibility.¹⁹¹

2.3. First General Assembly Meeting, Muldersdrift, South Africa (2005): Plans for the AORC

For technical and logistical reasons, the first General Assembly meeting was only held in April 2005, instead of the initially-proposed date of October 2004. The meeting took place in Muldersdrift, west of Johannesburg, in South Africa.¹⁹²

At the time of the meeting, the Association was to deal with its first vacancy in the Executive Committee following the sudden death of its President, Jean Baptiste Kafando, Mediator of Burkina Faso – who died on 12 March 2005, shortly after evacuation to Paris, France.¹⁹³

The meeting was officially opened by the South African Head of State, Thabo Mbeki.¹⁹⁴ The presence and/or contribution of African Heads of State in the Association's events would become a norm - having started at the Ouagadougou Conference in 2003. This was part of the Association's strategy of lobbying African authorities at the highest level, in order to bring about what the members defined as the AOA's vision for 2006, when they adopted the 2003-2006 Strategic Plan:

¹⁸⁷ Ndagirwa 'The AOMA and the AORC: History and developments' at 16.

¹⁸⁸ 'Verbatim Report of the meeting of the Executive Committee of the African Ombudsman Association', Maseru, Lesotho, 29-30 April 2004 at 70.

¹⁸⁹ 'African Ombudsman Association, Strategic Plan 2004-2005' at 13.

¹⁹⁰ Ndagirwa 'The AOMA and the AORC: History and developments' at 16.

¹⁹¹ *Idem* at 10-14.

¹⁹² *Idem* at 17.

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

- * To be a respected and professional association for the promotion of open, accountable and democratic governance [in Africa] by the end of 2006.¹⁹⁵

The Muldersdrift Conference saw the adoption of three historical resolutions:¹⁹⁶

- Dr A.C. Farouk, Mediator of the Republic of Tunisia, was elected as President of the Association, to fill the vacancy resulting from the death of the Mediator of Burkina Faso.
- The General Assembly endorsed the decision by the Executive Committee to establish the AOA's administrative capital in Pretoria.
- The General Assembly adopted the Executive Secretary's proposal to establish the Association's Research Centre at the University of KwaZulu-Natal, in Durban, South Africa.

President Thabo Mbeki pledged the South African government's support to the AOA for the establishment of the Research Centre and for the development of relationships between the AOA and the AU, and the New Partnership for Africa's Development (NEPAD).¹⁹⁷ In his vote of thanks, Judge Abuzeid of Sudan lauded President Mbeki for his demonstration of commitment and political will towards the entrenchment of democracy, respect for the rule of law, and enjoyment of human rights on the African continent.¹⁹⁸

The discussions brought about much interest in the potential relationship between the AOA and the AU, and at this time also an extension of such interest to other organisations such as the United Nations, NEPAD, the African Peer Review Mechanism (APRM), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the East African Community (EAC), the Arab Maghreb Union (UMA: 'Union du Maghreb Arabe'), and the Arab League.¹⁹⁹

In this regard, the President of the Association was mandated:

- * To take all measures to finalize the formal establishment of an effective collaboration between the African Union and the African Ombudsman Association, as well as other African Sub-regional Organizations like ECOWAS, SADC, North Africa Community, East African Community etc.
- * To approach the concerned states to sensitize them about the relevance of the role of the Ombudsman with regards to the objectives envisaged by NEPAD, namely peace, democracy and human rights.²⁰⁰

At the meeting, the members of the Association officially called upon the South African Government - in particular the President of the country – to take ownership of the relevant resolutions of the meeting, and to submit them to the AU Commission. The AOA thus emphasised the crucial role to be played by the AU and the African Heads of State in promoting the Ombudsman institution, and the need to collaborate with the AU's organs involved in promoting and protecting human rights in Africa.²⁰¹

¹⁹⁵ 'African Ombudsman Association, Strategic Plan 2003-2006' at 5.

¹⁹⁶ Ndagirwa 'The AOMA and the AORC: History and developments' at 17.

¹⁹⁷ *Idem* at 18.

¹⁹⁸ 'African Ombudsman Association, Vote of Thanks to His Excellency Thabo Mbeki, President of the Republic of South Africa' at 1.

¹⁹⁹ Ndagirwa 'The AOMA and the AORC: History and developments' at 18.

²⁰⁰ Recommendations adopted at the First General Assembly meeting, April 2005. In: Ndagirwa 'The AOMA and the AORC: History and developments' at 18.

²⁰¹ *Ibid.*

Table 5.1: African Delegations Present at First General Assembly Meeting of the African Ombudsman Association (AOA)

Country	Name of Representative
Botswana	Mr Lethebe Maine
Burkina Faso	Mrs Amina Moussou Ouedraogo
Chad	Mr Djimasta Koibla
Côte d'Ivoire	Mr François N'goli Kokora
Djibouti	Mr Hassan Farah Miguil
Gabon	Mrs Jeanne Manomba Kombila
Gambia	Mr Samuel J.O. Sarr
Ghana	Adv. Anna Bossman
Lesotho	Mr Sekara Samuel Mafisa
Malawi	Mr Enoch Chibwana
Mali	Mrs Diakité Fatoumata Ndiaye
Mauritius	Adv. Soleman Mamode Hatteea
Mozambique	Mr Joaquim Madeira
Namibia	Adv. John Walters
Nigeria	Mr Vincent Yaro
Rwanda	Mr Tito Rutaremara
Senegal	Mr Doudou Ndir
Seychelles	Judge Gustave Dodin
Sierra Leone	Mr Francis Gabidon
South Africa	Adv. Mabedle Lawrence Mushwana
Sudan	Judge Ahmed Mohammed Abuzeid
Tanzania	Justice Robert Kisanga
Tunisia	Dr Alifa Chabane Farouk
Uganda	Justice Faith Mwondha
Zambia	Mrs Caroline Sokoni
Zimbabwe	Ms B. Chanetsa

In January 2006, the Association engaged in its first public relations exercise whilst attending a Commonwealth Conference on the relationship between Ombudsman and the media in Abuja, Nigeria. During the meeting, organised by Professor Ayeni, there was a media briefing on the concept and institutions of the Ombudsman. The election of three members of the Executive to represent AOA on the Board of IOI – at the meeting - was later nullified, due to a lack of quorum.²⁰²

²⁰²

Ndagirwa 'The AOMA and the AORC: History and developments' at 20.

2.4. Second Ordinary EXCO Meeting, Hammamet, Tunisia (2006): AOMA and the Admission of Libya

The Second Executive Committee meeting took place in Yasmine Hammamet, Tunisia, from 23 to 25 November 2006. At this meeting, the nomination of three Africa representatives on the IOI Board of Directors was considered and ratified.²⁰³ These were Mr Mafisa from Lesotho, Dr Farouk from Tunisia, and Judge Abuzeid from Sudan - as had been decided at an extraordinary meeting in Lagos, Nigeria, ten months before.²⁰⁴

At the Hammamet meeting several historical resolutions were passed. In the first of these, EXCO endorsed the Memorandum of Agreement signed between the Presidents of the IOI and the AOA on 6th October 2006, in Barcelona, Spain.²⁰⁵ This was the first formal relationship forged by the Association with an international organisation, in compliance with Article 4 of the Constitution:

- * To foster affiliation and maintain liaison with other Ombudsman offices, Institutes and Associations, international bodies and organizations interested in the progress of Ombudsman activities and human rights.²⁰⁶

The 2006 EXCO meeting saw the adoption of a Plan of Action presented by the Association's President, Dr Farouk, according to which she had to ensure - as a matter of urgency - the formalisation of the Association's relationship with the African Union. This remained a pending issue, however, to be inherited by the next President of the Association.²⁰⁷ Furthermore, it was also indicated that the President was to consult with the International Organisation of the Francophonie (OIF), in order to source more funding, in light of what had already been done by the Commonwealth.²⁰⁸ This would also become a pending issue.

Another historical resolution passed was to change the Association's name from the African Ombudsman Association (AOA), to the African Ombudsman and Mediateurs Association (AOMA).²⁰⁹ The aim was first, to accommodate the French concept (Mediator of the Republic: *Médiateur de la République*) and second, to avoid confusion with the Asian Ombudsman Association (also AOA) which had been created before the African Association, and therefore had name priority. From then on, the Association's documents would use the combined acronyms AOA/AOMA, until the new acronym was finally ratified at the Second General Assembly in Tripoli, Libya, in April 2008.²¹⁰

As Mr Hassan Farah Miguil's term as the Mediator of the Republic of Djibouti was coming to an end, his successor, Mr Abdoukader Doualeh Wais, would replace him as the new representative of the East African Region on EXCO.²¹¹

203

Ibid.

204

Executive Committee members had held an extraordinary side meeting at the time of a Commonwealth Conference on the Relationship between the Ombudsman and the Media, and the three candidates were selected at this time. The decision was later nullified, given the lack of a quorum (required by the Constitution of the Association).

205

Ndagirwa 'The AOMA and the AORC: History and developments' at 21.

206

African Ombudsman Association, Constitution, Article 4 (e).

207

Ndagirwa 'The AOMA and the AORC: History and developments' at 21.

208

Ayeni (pers. comm.) (8 October 2012).

209

Ndagirwa 'The AOMA and the AORC: History and developments' at 20.

210

Ibid.

211

Idem at 21.

The Yasmine Hammamet Conference also dealt with the Association's first intervention at an international level. In the matter of a dispute between Professor Victor Ayeni and the Commonwealth Secretariat, which resulted in his dismissal from the Secretariat, AOMA took a stand and wrote several letters to the Commonwealth Secretariat objecting to what the Association considered to be 'victimisation'. The Association went as far as writing to the President of South Africa and the Speaker of the South African Parliament, requesting their intervention - in order to secure a fair resolution.²¹² Although no direct consequences could officially be credited to these communications and AOMA's intervention, the matter was finally concluded when a British Court nullified Professor Ayeni's dismissal, and "ordered that he be reinstated and paid all money due to him with cost".²¹³ Sadly, Professor Ayeni declined the re-instatement and left the Commonwealth Secretariat. Later on it was acknowledged that they had lost one of the most resourceful people they had ever had.²¹⁴

It was at the Hammamet EXCO meeting in Tunisia that the Libyan General People's Committee for Administrative Inspection and Control (RAQABA) officially applied for AOMA membership.²¹⁵ They were introduced by the President of the Association, Dr Farouk, and thereafter Libya was accepted as a member - leading to the country's historical role in developments within the Association over the next few years.

The meeting ended with the adoption of a proposal that the Second General Assembly meeting be held in Libya towards the end of 2007.

2.5. Launch of the AOMA Website (2007)

In the Strategic Plan 2004-2005, the fourth programme goal addresses effective communication and the dissemination of information. The Plan states clearly that an interactive website with capability to serve as an information transfer point, could enhance unity and "assist AOMA members and educate the populace".²¹⁶ The website should be in French and English and include a downloadable newsletter and brochure, as well as downloadable shared documents and calendars. It was also to include databases of consultants, resource materials and case law, and a membership list with contact details.²¹⁷ The setting up of a website was discussed at the 2004 Maseru meeting²¹⁸ and the task was given to the Executive Secretary, who explained that it would be deferred until the necessary funding became available.²¹⁹

The website would eventually be launched in 2007.²²⁰ However, while the website is functional, it still does not feature all the components proposed in the Strategic Plan, and has yet to be translated into French, Arabic and Portuguese. At present, the website is not being updated regularly and remains an area of concern for the Association and the Secretariat alike.

²¹² AOMA's intervention is better understood when the long-standing history between Professor Ayeni and AOMA - since the Association's creation - is considered. See also Adv. Mushwana's Executive Secretarial Report of April 2008, in Tripoli, Libya.

²¹³ Executive Secretarial Report, Tripoli, Libya, April 2008, par on Hammamet EXCO meeting.

²¹⁴ Ndagirwa (pers. comm.) (9 November 2012).

²¹⁵ Ndagirwa 'The AOMA and the AORC: History and developments' at 21.

²¹⁶ 'AOA, Strategic Plan 2004-2005' at 12.

²¹⁷ Idem at 13.

²¹⁸ 'Verbatim Report of the meeting of the Executive Committee of the African Ombudsman Association', Maseru, Lesotho, 29-30 April 2004 at 70.

²¹⁹ Idem at 9.

²²⁰ The current website (www.aoma.org.za) still has to be translated into French, Portuguese and Arabic.

2.6. Milestones

- The first EXCO meeting of the AOA takes place in April 2004.
- Consolidation and amendments to the Strategic Plan 2003-2006 take place.
- The first General Assembly of the AOA takes place in April 2005.
- Dr Farouk from Tunisia is elected the second President of the AOA.
- The AOA's administrative capital is established in Pretoria, South Africa.
- The General Assembly adopts a proposal to establish the Research Centre at the University of KwaZulu-Natal, in Durban, South Africa.
- A Memorandum of Agreement between the AOA and the IOI is signed in Barcelona, Spain, in October 2006.
- The second EXCO meeting takes place in November 2006.
- The AOA changes its name to AOMA.
- Libya is officially accepted as a member of AOMA.
- The AOMA website is launched in 2007.



CHAPTER SIX

1. The Growing AOMA Family and an Unprecedented Dilemma (2008-2009)

Paradoxically, throughout Africa - notorious for post-liberation human rights violations and prolonged periods of political instability - the Ombudsman concept has steadily gained in popularity.²²¹ Increasingly countries were adopting the institution and establishing Ombudsman offices. Consequently, between 2005 and 2008, AOMA saw its membership swell from 26 countries to 36 - this also resulting, perhaps, from increased awareness of the Association which had become more active and prominent during the previous three years. Countries that joined the Association during these years included Angola, Benin, Central African Republic, Ethiopia, Kenya, Libya, Mauritania, Niger, Rwanda and Togo.²²²

1.1. Second General Assembly Meeting, Tripoli, Libya (2008) and an Unexpected Offer

The year 2008 was one of unprecedented developments in the Association. The General Assembly meeting in April 2008 in Libya saw the biggest attendance the Association had ever recorded. Judge Abuzeid of Sudan confesses that he had a hand in this - he had urged the Libyans to display their generosity as Muslims and Africans by turning the Conference into an international event and sponsoring all attendees.²²³ He did this in order to promote the growth and acceptance of the Ombudsman institution in Africa. Thus founding members of the Ombudsman institution, such as the United States, Scotland and Sweden attended, while many Commonwealth and francophone countries also sent delegations. All African countries - regardless of whether they were members of AOMA - were invited. The resultant generosity of the Libyan Government in terms of sponsoring all delegates, undoubtedly encouraged members to register,²²⁴ and 30 member states attended the meeting, while four countries - Algeria, Burundi, Egypt and Morocco - registered as observers.²²⁵ Although Botswana, Burundi, Sierra Leone and Zimbabwe had registered, they eventually had to cancel for various reasons. The list of member states that attended (see Table 6.1 below) included Angola and Kenya, as their membership was imminent at the time the Conference took place.²²⁶

In addition to the 30 African member countries who registered for the Conference, delegates from other organisations were also present at the event, including representatives from the IOI (Ombudsman of Iowa (USA) and Sweden), AOMF (French-speaking Ombudsman and Mediators Association), Arab League and the Arab League's Ombudsman Institute.²²⁷

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- ²²¹ V.O. Ayeni (1997) 'Evolution of and prospects for the ombudsman in Southern Africa' 63 *International Review of Administrative Sciences* at 549.
- ²²² From the attendance list of the General Assembly Meeting in Tripoli, Libya in 2008. See 6.1.
- ²²³ Abuzeid (pers. comm.) (26 November 2012).
- ²²⁴ Ndagirwa (pers. comm.) (2012). (Interview: 9 November 2012, Durban, South Africa). Pierre Ndagirwa is International Relations Officer in the Office of AOMA President, Dr Paulo Tjipilica.
- ²²⁵ Ndagirwa 'The AOMA and the AORC: History and developments' at 22.
- ²²⁶ *Idem* at 24.
- ²²⁷ *Idem* at 22.

Making good on his undertaking at the First EXCO meeting held in Maseru, in 2004, Executive Secretary Mushwana presented the first comprehensive AOMA membership registry. Despite Mozambique's attendance at the First General Assembly meeting in Muldersdrift in 2005, the country had still not managed to appoint an Ombudsman - despite the institution being provided for in the Constitution - and thus it was removed from the official members' list.²²⁸ Until April 2010, Mozambique had continuously registered for AOMA conferences as an observer. However, through high-level intervention by AOMA President Paulo Tjipilica of Angola, the first Provedor de Justiça for Mozambique was in fact appointed in May 2012.²²⁹

Growth of 30% was recorded in the Association's financial assets between 2005 and 2008, although the amount at the Association's disposal was still insufficient for the daily running of the Secretariat.²³⁰ The overall impression, however, was that AOMA was indeed growing and progressing.

Table 6.1: Member Attendance at AOMA Second General Assembly Meeting

Country	Name of Representative
Angola	Dr Paulo Tjipilica
Benin	Mr Albert Tevodjre
Burkina Faso	Mrs Amina Moussou Ouedraogo
Central African Republic	Mr Abel Goumba
Chad	Mr Toumar Nayo
Côte d'Ivoire	Mr François N'goli Kokora
Djibouti	Mr Abdoukader Douale Wais
Ethiopia	Mr Abai Teklé
Gabon	Mrs Jeanne Manomba Kombila
Gambia	Mr Alhaji Sowe
Ghana	Adv. Anna Bossman
Kenya	Mr Kenneth Mwige
Lesotho	Mr Sekara Samuel Mafisa
Libya	Ir. Ibrahim Ali Ibrahim
Malawi	Mr Enoch Chibwana
Mali	Mrs Diakité Fatoumata Ndiaye
Mauritania	Mr Sghair Ould M'bareck
Mauritius	Adv. Soleman Mamode Hatteea
Namibia	Adv. John Walters
Niger	Mr Lompo Garba
Nigeria	Mr Vincent Yaro
Senegal	Mr Doudou Ndir
Seychelles	Judge Gustave Dodin
SouthAfrica	Adv. Mabedle Lawrence Mushwana
Sudan	Judge Ahmed Mohammed Abuzeid

²²⁸ *Idem* at 24.

²²⁹ *African Ombudsman Today*, Issue 4, September 2012 at 10.

²³⁰ Ndagirwa 'The AOMA and the AORC: History and developments' at 22. Estimates are calculated from the financial statements presented in the secretarial reports of 2005 and 2008.

Country	Name of Representative
Tanzania	George Francis Mlawia
Togo	Mr Kounte Koffi
Tunisia	Dr Alifa Chaabane Farouk
Uganda	Adv. Baku Raphael Obudra
Zambia	Mr Boniface Mbuzi

During the Conference, Libyan leader Colonel Mouammar Ghaddafi arranged to meet with the African Ombudsman and Mediators present at the Conference, during a private session at his residence. In further surprise moves, the Libyan Ombudsman not only pledged unprecedented financial support to the organisation of the Tripoli meeting, but subsequently also offered to host - for the first time since AOMA's creation - a fully-fledged permanent seat of the Association.²³¹ The unexpected offer caught many AOMA members off guard, but it was in general positively received, although some members had misgivings about the wisdom of accepting such an offer. The impact and practical implementation of this move would still need much more deliberation, before reaching general consensus.

Also at the Tripoli General Assembly Meeting, the Association's logo was re-tabled for consideration, with the following explanatory notes:²³²

- * The colour green: symbolising the growth of the Association.
- * The shield: symbolising protection.
- * The sun: symbolising the dawn of Ombudsmanship in Africa.
- * The circle: symbolising continuity.

In the final communiqué, Dr Farouk announced the final adoption of the logo. The transitional acronym (AOA/AOMA) was also to make way for the single acronym AOMA - to be used in all future documents and communication.²³³

1.2. Controversy: Permanent Seat of AOMA in Libya

Delegates were dissatisfied with the way in which the meeting agenda was changed by the President - stalling deliberations until midnight on the last day of the Conference.²³⁴ While some members were unhappy as a result, and wanted to leave early, they were in the end convinced to stay on and exercise their voting rights in terms of appointing the new Executive. During the course of the day, however, it became clear that - were voting to take place - the Association would be irrevocably split. It was the wisdom of Mrs Kombila of Gabon that saved the day; she proposed extending the current EXCO's term to 2010 until the next General Assembly - when tensions would have subsided and elections could be held on neutral ground.²³⁵

²³¹ Ndagirwa 'The AOMA and the AORC: History and developments' at 23.

²³² *Idem* at 22.

²³³ Ndagirwa 'The AOMA and the AORC: History and developments' at 22.

²³⁴ Ndagirwa (pers. comm.) (9 November 2012).

²³⁵ *Ibid.*

Of all the resolutions that Dr Farouk read out that night, the decision to establish a permanent seat of the Association in Tripoli and to create a new position of General Treasurer, would remain a source of controversy among members until the matter was finally put to rest in 2010.²³⁶ The controversy derived from the fact that a permanent office was not provided for in the Association's Constitution, which meant that the establishment of such an office would be unconstitutional.

A permanent Secretariat in Libya would also seriously undermine the functions and role of the Executive Secretary.²³⁷ The decision to create the post of a General Treasurer simply meant that the Executive Secretary's position would become obsolete, since he or she would be stripped of both administrative and financial management functions - to the benefit of the new permanent seat and new position of General Treasurer. Worse still - according to the Constitution in force - both functions would still remain allocated to the Executive Secretary, which further rendered the resolution unconstitutional.

This dilemma reinforced the feeling amongst many members that extensive consultations about constitutional amendments should have preceded the decisions, and that the resolutions could be damaging to the Association. Despite an extraordinary meeting of the Executive Committee before the general Conference in order to reach agreement on what was to be tabled before the General Assembly, the issue was not placed on the agenda, and suddenly the spirit of consensus was at stake within the Association.²³⁸ Even though some members - notably Adv. Mafisa from Lesotho and Adv. Walters from Namibia - voiced their discontent at the way the meeting was handled, Dr Farouk proceeded in the same vein.²³⁹ The serious tension which arose within the Association threatened to destroy trusting relationships and mutual respect between members. Professor Ayeni, who attended the Conference as an observer, feared that the growing antagonism could lead to a deeper crisis - which would leave the organisation dysfunctional or even destroy it.²⁴⁰

Amid the growing concerns and the lack of consensus, members resolved that the Third General Assembly meeting should take place in Luanda, Angola, in 2010. This decision would lead to the acceleration of Angola's membership-approval process, which was concluded by an official visit of the Angolan Provedor de Justiça, Dr Paulo Tjipilica, to the Executive Secretariat in Pretoria - where the dates of the Third General Assembly meeting were fixed for April 2010.

Along with the decisions contained in the Conference's final communiqué, the General Assembly resolved to extend the term of the serving Executive Committee, temporarily until 2010 - the time of the Third General Assembly meeting. While this was done mainly to try and restore consensus within the Association before holding elections, it would also create another dilemma.²⁴¹

1.3. Third Ordinary EXCO Meeting, Tripoli, Libya (2008) and Plans for the Tripoli Office

²³⁶ This assertion is based on conversations that Mr Ndagirwa had with several AOMA members, who felt that establishing a permanent seat in Tripoli did not have sufficient consent from the general membership.

²³⁷ Ndagirwa 'The AOMA and the AORC: History and developments' at 23.

²³⁸ *Idem* at 24.

²³⁹ Ayeni (pers. comm.) (8 October 2012).

²⁴⁰ *Ibid.*

²⁴¹ Ndagirwa 'The AOMA and the AORC: History and developments' at 24.

Only one month after the General Assembly meeting, Dr Farouk called Association members to Tripoli in May 2008 - again with an offer to cover all expenses – and in a move to amend the Constitution. This would then be an extraordinary General Assembly meeting because of the unlimited participation. Executive Secretary Mushwana, however, in his quiet but firm manner, opposed it because it was unprocedural - and eventually it did not take place.²⁴²

The Third Ordinary EXCO meeting was again held in Tripoli, from 23 to 25 November 2008. The aim of the meeting was to consolidate and implement the resolutions of the Second General Assembly meeting. At the heart of the discussions was the implementation of the decision to open a permanent office for the Association in Tripoli. The Libyan Ombudsman presented a plan for the running of the office and the resources to be allocated to it.²⁴³ In order to preserve the integrity of the Association, the Executive members decided to go ahead with the plan and that the Constitution be amended later - in order to align it with the new developments within the Association.²⁴⁴

A draft Strategic Plan 2008-2012 had been compiled by the members from the North African Region. It was agreed that the draft should be revised, translated into French and Arabic (the other official languages recognised at the time), and then circulated to the general membership of the Association for adoption at the next Executive Committee meeting.²⁴⁵ The Tunisian office undertook to publish in the near future the Association's newsletter in the three languages of the Association. A Working Group would be created to facilitate the translation of the Constitution, prior to its amendment²⁴⁶

Most importantly, the Tripoli EXCO meeting resolved that the Regional Representatives submit their respective proposals for the amendments to the AOMA Constitution - to the Executive Secretary, no later than the end of January 2009. The Communiqué stated that these proposals should then:

- * be circulated by the Executive Secretary to all ... regions to serve as additional reference towards the preparations of the constitutional amendments ... [and] individual regions and individual members would also be free to submit proposals for the amendment of the Constitution within the prescribed time frames.²⁴⁷

The progress report on the new AORC, presented by the Executive Secretary Adv. Mushwana, was adopted. At this stage the sentiment was that Libya - now confirmed as the new Regional Representative of the North African Region - would focus on establishing a permanent Secretariat in Tripoli, while South Africa would see that the Research Centre was established in Durban.²⁴⁸

The dates for the next EXCO meeting were to be fixed between April and May 2009 by the proposed hosting country, Tunisia. These dates were also to correspond with the official inauguration of the Permanent Secretariat in Tripoli.

1.4. Inauguration of Permanent Secretariat in Tripoli

²⁴² Ndagirwa (pers. comm.) (9 November 2012).

²⁴³ Ndagirwa 'The AOMA and the AORC: History and developments' at 26.

²⁴⁴ Ibid.

²⁴⁵ AOMA Executive Committee meeting, Tripoli, Libya, 23-25 November 2008, Communiqué, Resolution 2 at 2.

²⁴⁶ Idem Resolution 4 at 2.

²⁴⁷ Idem Resolution 8 at 2.

²⁴⁸ Ndagirwa 'The AOMA and the AORC: History and developments' at 26.

May 2009 saw the official inauguration of the new Permanent Secretariat of AOMA in Tripoli, Libya. The fourth EXCO meeting, which was supposed to be held in Tunisia, also took place in Libya, in order to avoid members having to travel from Tunisia to Libya for the inauguration. At the occasion, the Executive members resolved to close AOMA's bank accounts in South Africa and open new bank accounts at the Libyan Foreign Bank in Tripoli. All monies in the South African accounts were to be transferred to Tripoli as soon as the required process was completed.²⁴⁹

It was also agreed that the new Permanent Secretariat was to recruit at least four senior officials, two of whom were to come from AOMA member states.²⁵⁰ The space and all office furniture and equipment were available at the time of the inauguration. Significantly, at this meeting, an agreement was signed between AOMA and the Libyan Government, on the international and diplomatic status of AOMA's office and its senior employees.²⁵¹ The next steps would be the drafting of all required amendments to the Constitution and the preparation of the final version of the Strategic Plan 2009-2012, to be tabled at the forthcoming General Assembly meeting in Angola.

The May 2009 meeting, however, was followed by further developments that caused several impediments to the preparations - for both the Conference in Angola and the launch of the Research Centre. Adv. Mushwana's term as the Public Protector of South Africa expired at the end of October 2009.²⁵² His departure left a critical vacancy in EXCO, with the effect that no official notices or invitations for the April 2010 General Assembly meeting were sent out until February 2010.²⁵³ Adv. Mushwana's efforts to call for an extraordinary EXCO meeting before his departure were unsuccessful.²⁵⁴ In order to ensure that the General Assembly meeting would go ahead in April 2010 in Angola as planned, the Provedor de Justiça of the Republic of Angola, Dr Paulo Tjipilica, was granted a temporary delegation of powers to allow him to organise the Conference on time.²⁵⁵ Thus, preparations for the Third General Assembly meeting commenced at the beginning of February 2010, leaving only two months to complete a process that would normally take up to eight months.

In June 2009, the three Executive members' election as Board members of IOI - which was nullified in 2006 due to a failure to comply with quorum regulations - was ratified during the centennial celebrations of the IOI in Stockholm, Sweden. The members were Mr Mafisa from Lesotho, Dr Farouk from Tunisia, and Judge Abuzeid from Sudan.²⁵⁶

1.5. Planning the New Research Centre

Together with the dissolution of the AOC in Tanzania, the Ouagadougou Conference in 2003 had announced the creation of "a new African Ombudsman Centre for training and documentation on the African Ombudsman concept" - to be established in South Africa "in due course".²⁵⁷ At this stage,

²⁴⁹ Ndagirwa 'The AOMA and the AORC: History and developments' at 27.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Ibid.*

²⁵³ Ndagirwa 'The AOMA and the AORC: History and developments' at 28.

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

²⁵⁶ Abuzeid (pers. comm.) (26 November 2012).

²⁵⁷ EXCO meeting, Maseru, Lesotho, 2004. *Executive Secretarial Report: Addendum.*

nothing indicated when this was to happen, nor where exactly the new Centre was to be established. However, it was clearly indicated that this was to be a new Centre for training and documentation - bringing a new dimension to and an emphasis on the research nature of the new entity.

Adv. Mushwana's mission as the new Executive Secretary was to ensure that all due steps be taken regarding the choice of venue for the new Centre, and the mobilisation of funds required for its launch and running.²⁵⁸ His approach was to first choose a venue to submit to EXCO for approval. When he announced at the Maseru EXCO meeting of 2004, that the University of KwaZulu-Natal had been chosen, and that negotiations with the Dean of Law at the time, Professor Cowling, were well underway - members, while commending the Public Protector for the initiative, voiced their uncertainty as to the role of the Association and the relationship with the University. Adv. Mushwana reassured the meeting that the concept document that was awaited from Professor Cowling, would spell out the relationship. He also explained the rationale of having the Centre at an academic institution - this being to further the study, training and research objectives of the Centre and to exploit possible funding opportunities through the University.²⁵⁹

Following the approval by EXCO, the choice regarding the Centre was tabled before the 2005 General Assembly meeting in Muldersdrift, and finally approved by the Association's general membership. Once the location had been confirmed, a consultant with extensive knowledge in the field²⁶⁰ was appointed to produce a concept document and structure for the Centre. By the time the Second General Assembly meeting took place in Tripoli in April 2008, Adv. Mushwana had put together a report on the planning of the AORC, and - although no specific resolution was adopted that related directly to the Centre - his report was approved in general by the General Assembly.²⁶¹

At the November 2008 EXCO meeting, Adv. Mushwana was given the opportunity to present the full report and explain the ICTAR (Information, Communication, Training, Advocacy and Research) concept on which the Centre would be based, and which the committee fully endorsed.²⁶² The meeting also resolved that the Executive Committee would be the authoritative body of AOMA's Research Centre.²⁶³ The President of the Association and the Executive Secretary were mandated to:

- * approach international bodies such as the African Development Bank, the Commonwealth, the OIF ('Organisation Internationale de la Francophonie'), the IOI, the AOMF and such other organizations in order to source funding for the running of AOMA's Research Centre.²⁶⁴

It was also at this time that the Centre was given its new name - the African Ombudsman Research Centre (AORC).²⁶⁵

From the end of 2008, the main focus of the Executive Secretary was to secure a reliable source of funds in order to finally establish the AORC. Consequently, the Office of the Public Protector (OPP) of South

²⁵⁸ Ndagirwa 'The AOMA and the AORC: History and developments' at 40.

²⁵⁹ EXCO meeting, Maseru, Lesotho, 2004. Verbatim Report at 19.

²⁶⁰ Adv. Neville Melville, a former Ombudsman of Banking Services in South Africa, was appointed as a consultant, and used the ICTAR concept as a basis for the structure of the Centre.

²⁶¹ Ndagirwa 'The AOMA and the AORC: History and developments' at 41.

²⁶² The ICTAR concept had been previously presented in the April 2008 Executive Secretarial Report to the General Assembly, but the length of discussions on other matters did not give members time to adopt any resolution on the Centre.

²⁶³ AOMA Executive Committee meeting, Tripoli, Libya, 23-25 November 2008, Communiqué, Resolution 9 at 2.

²⁶⁴ Idem Resolution 9(a) at 3.

²⁶⁵ Ndagirwa 'The AOMA and the AORC: History and developments' at 41.

Africa submitted, along with their 2009 budget, a request for separate funding for the launch and running of the AORC for an initial phase of three years.²⁶⁶ The South African Department of Justice and Constitutional Development (under which the budget for the OPP is accounted for) advised that the then Department of Foreign Affairs (DFA) should rather be approached for funding assistance, since it was of an international nature.

Accordingly, from April 2009, the Chief Executive Officer of the OPP, Mr Themba Mthethwa - on behalf of the Public Protector - held negotiations with the DFA.²⁶⁷ These negotiations started off with an audience with the Director General of the DFA, who immediately referred the matter to the Secretariat of the African Renaissance Fund, as he deemed the Research Centre a typical project that could potentially qualify for the Fund's assistance. While the project was being evaluated by the African Renaissance Fund, Mr Mthethwa also approached the then German Technical Cooperation Agency (GTZ) for additional support for the AORC's activities following its launch.²⁶⁸

By the end of October 2009, Adv. Mushwana's term as Public Protector came to an end. This effectively halted the AORC project until a new Secretary was elected at the General Assembly Meeting in Angola, in April 2010. It would remain for the new Executive Secretary to sign the final Memorandum of Understanding with the University of KwaZulu-Natal, and to secure operational funding for the Centre.²⁶⁹

1.6. Milestones

- AOMA membership grows to 36 member countries.
- A Membership Directory is published.
- Final adoption of the AOMA logo.
- A resolution is passed to create a Permanent Secretariat in Libya.
- The North African Region drafts a new Strategic Plan for the period 2009-2012.
- Constitutional amendments are drafted.
- The inauguration of a Permanent Secretariat in Tripoli.
- Planning for the AORC progresses.

²⁶⁶

Ibid.

²⁶⁷

Ibid.

²⁶⁸

Idem at 42.

²⁶⁹

Memorandum of Understanding between the Public Protector South Africa and the University of KwaZulu-Natal, signed by Thulisile Madonsela in 2011.

CHAPTER SEVEN

1. New Beginnings (2010-2012)

The tenure of Adv. Mushwana as Public Protector of South Africa came to an end in October 2009 and, with it, essentially his position as Executive Secretary of AOMA.²⁷⁰ His departure left a vacuum in the Secretariat, which in a sense stalled the Association ahead of the critical General Assembly meeting which was scheduled for April 2010. To ensure that the General Assembly meeting went ahead in April 2010 in Angola, as planned, the Provedor de Justiça of the Republic of Angola, Dr Paulo Tjipilica, was granted a temporary delegation of powers to allow him to organise the conference on time.²⁷¹

1.1. New Leaders at the Helm: Luanda, Angola (2010)

The Third General Assembly meeting took place in the city of Luanda, Angola, from 10 to 15 April 2010 - albeit under difficult circumstances. Feelings of discontent and even antagonism amongst members - stemming from the previous General Assembly meeting in Tripoli in 2008 and the controversy about the Permanent Secretariat in Libya - were further compounded by a string of vacancies in EXCO. However, by the end of the proceedings in Luanda, the meeting could be said to have represented a new beginning, and was followed by new dynamism and developments within the Association.²⁷² That said, with the positions of President and First Vice-President vacant, the Conference could not, initially, be constituted. Judge Mohammed Abuzeid, as Second Vice-President of the Association, took the burden of Acting President upon him, and presided over all the meetings.²⁷³ Because of the unhealthy atmosphere created by the Libyan controversy, this was a very stressful and arduous task for him – and this eventually led to the Judge being hospitalised. He fortunately made a full recovery, owing to the outstanding treatment he received, and because of the courtesy of the medical staff and generosity of the Portuguese government.

A new Executive Committee was elected and the issue of vacancies was resolved. In order to solve the impasse related to the creation of the permanent seat in Tripoli - away from the Executive Secretariat - Libya decided to run for the post of Executive Secretary.²⁷⁴ In a historical election, Libya and South Africa were nominated. Members were still divided, and South Africa won only by a single vote.²⁷⁵ Aggrieved with the defeat, Libya announced its decision to close the office in Tripoli - bringing to an end the unease and mistrust of the past two years.²⁷⁶ The African Ombudsman community was once more united, fully supporting the new Executive Committee.²⁷⁷ At the meeting, two members of the outgoing committee were elected as honorary members. Judge Abuzeid, President of the Public Grievances and Corrections Board of Sudan - as the oldest member in the Association - was honoured for his contribution since

²⁷⁰ Ndagirwa 'The AOMA and the AORC: History and developments' at 27.

²⁷¹ Ibid.

²⁷² Idem at 28.

²⁷³ Abuzeid (pers. comm.) (26 November 2012).

²⁷⁴ Ayeni (pers. comm.) (8 October 2012).

²⁷⁵ Ndagirwa (pers. comm.) (9 November 2012).

²⁷⁶ Ibid.

²⁷⁷ Madonsela (pers. comm.) (2012). (Interview: 8 November 2012, Durban, South Africa). Adv. Thulisile Madonsela is the Public Protector of South Africa.

1997.²⁷⁸ This honour was extended further the following year when he was nominated the AOMA Ambassador to the African Union. Mrs Jeanne Kombila, Mediator of Gabon, having served in the Executive since 2003, was recognised for her profound wisdom, exemplary integrity and enquiring mind. In the words of Adv. Madonsela-“Madame Kombila is a very strict disciplinarian, she’s one of those people who feels if there are rules, the rules should be followed. And she will ask questions all the way.”²⁷⁹

The office-bearers elected to the Executive included:²⁸⁰

- President of the Association: Dr Paulo Tjipilica, Provedor de Justiça of the Republic of Angola.
- First Vice-President: Adv. Raphael Baku Obudra, Inspector-General of Government, Uganda.
- Second Vice-President: Adv. Mbam Diatigui Diarra, Mediator of the Republic of Mali.
- Executive Secretary: Adv. Thulisile Madonsela, Public Protector of the Republic of South Africa.
- Regional Representatives:
 - North Africa: Vacant until further consultations within the region. This position is still vacant.
 - Southern Africa: Mrs Caroline Sokoni, General Commissioner of Government, Zambia.
 - East Africa: Mrs Foziah Amin, Chief Ombudsman of Ethiopia.
 - West Africa: Mr François Kokora, Delegated Mediator of the Republic of Côte d'Ivoire.
 - Central Africa: Bishop Paulin Pomodimo, Mediator of the Central African Republic.

Indian Ocean: Adv. Soleman M. Hatteea had been invited to be the interim Regional Representative, pending a decision by the Region to appoint their new regional representative. Adv. Hatteea was finally elected - making him the only person re-elected from the previous committee, and also the longest-serving active member of EXCO.²⁸¹

Further decisions of the meeting were that the Ombudsman of the country hosting the General Assembly meeting would become the President of the Association, while the Ombudsman of the country hosting the next General Assembly (in two years’ time), would become the first Vice-President.²⁸²

With the vacancies filled, the Conference could now focus on its main theme - The Ombudsman and Good Governance.²⁸³ The Association needed to reconsider its stance vis-à-vis the growing need for more transparent, accountable and democratic governance in Africa. Discussions were held about the role of the Ombudsman in promoting good governance. One of the key issues debated focused on the way in which AOMA should collaborate with the African Union in order to achieve its objectives.²⁸⁴ The newly-elected Executive Committee members were urged to take all possible steps towards formalising AOMA's relations with the AU and the UN, and to make sure that this five-year old issue was finally dealt with.

The fact that the new President was from a Portuguese-speaking country led to a burgeoning interest in AOMA from other Portuguese-speaking African countries - and hence the unprecedented participation at the Conference of the Portuguese language community (CPLP: Comunidade dos Países da Língua

²⁷⁸ Ndagirwa (pers. comm.) (9 November 2012).

²⁷⁹ Madonsela (pers. comm.) (8 November 2012).

²⁸⁰ Ndagirwa 'The AOMA and the AORC: History and developments' at 29.

²⁸¹ Ndagirwa (pers. comm.) (9 November 2012).

²⁸² Cowan (pers. comm.) (2012) (Interview: 9 November 2012, Durban, South Africa). Judge Edmon Cowan is the Ombudsman of Sierra Leone.

²⁸³ Ndagirwa 'The AOMA and the AORC: History and developments' at 29.

²⁸⁴ Ibid.

Portuguesa). For the first time in AOMA's history, practically every Portuguese-speaking country in the world sent a delegation to the Conference, and only Macau could not make it to Luanda.²⁸⁵

Following the norm set at previous conferences, the Angolan Head of State hosted a private session with the Ombudsman and Mediators present at the Conference. During the session, Mr José Eduardo dos Santos expressed his support for the Association and pledged his country's contribution to promoting AOMA's image and role at a continental level.²⁸⁶

The Third General Assembly meeting took place at the time when the South African Office of the Public Protector had just managed to secure funds for the launch and operations of the AORC. The Executive Secretary was mandated to chair the Board of the AORC, and to receive all the funds destined to the Centre on behalf of the Association, and furthermore to prepare the official launch of the Centre as soon as possible.²⁸⁷

In the final communiqué of the Conference (commonly termed 'The Declaration of Luanda'), the following recommendations were to inform and guide the work of the new Executive Committee:²⁸⁸

- Appropriate steps be undertaken towards establishing relationships with like-minded organisations for the promotion of human rights and the prevention of conflicts.
- Appropriate steps be taken for the recognition or accreditation of AOMA by the African Union Commission.
- AOMA to define ways of cooperation with the African Commission on Human and Peoples' Rights.
- An ad-hoc Commission be formed in order to amend and translate the Association's Constitution and to present a draft for ratification at the next General Assembly meeting.

Member countries that attended the Third General Assembly meeting are listed in Table 7.1, below:

Table 7.1: Attendance at Third General Assembly Meeting of AOMA

Country	Name of Representative
Angola	Dr Paulo Tjipilica
Benin	Mr Toungouh Zourkarnyéni
Burkina Faso	Mrs Amina Moussou Ouedraogo
Central African Republic	Bishop Paulin Pomodimo
Chad	Mr Toumar Nayo
Côte d'Ivoire	Mr François N'goli Kokora
Djibouti	Mr Abdoukader Douale Wais
Ethiopia	Mrs Foziah Amin
Gabon	Mrs Jeanne Manomba Kombila
Gambia	Mr Alhaji Sowe
Kenya	Mr Kenneth Mwege
Libya	Mr Gibril Mansour
Mali	Adv. Mbam Diatigui Diarra

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ *Idem at 30.*

²⁸⁸ *Ibid.*

Country	Name of Representative
Mauritius	Adv. Soleman Mamode Hatteea
Namibia	Adv. John Walters
Senegal	Mr Latyr Diouf
Sierra Leone	Justice Edmond Cowan
South Africa	Adv. Thulisile Madonsela
Sudan	Judge Ahmed Mohammed Abuzeid
Uganda	Adv. Baku Raphael Obudra
Zambia	Mrs Caroline Sokoni

In addition to the members of AOMA, observers came from organisations and countries such as Sweden, Cape Verde, Mozambique, Sao Tome e Principe, Equatorial Guinea, Portugal, Brazil, the Commonwealth Secretariat, and the local diplomatic missions.²⁸⁹

1.2. Strategic Opportunities: Kampala, Uganda (2010)

The Fifth Ordinary EXCO meeting in Kampala, Uganda, in July 2010, was the first meeting of the new EXCO, and was well organised by Ugandan Inspector-General of Government, Adv. Raphael Baku Obudra.²⁹⁰ At the meeting, President Tjipilica announced that a draft strategic plan 2010-2014 covering the current Executive Committee's term would be prepared and tabled at the next EXCO meeting for further input, final approval and adoption.²⁹¹ The strategic plan would be informed by the content of previous strategic plans and the objectives expressed during the last General Assembly meeting held in Luanda, Angola.

The EXCO meeting coincided with the African Union Heads of State Summit in Kampala. The presence of the African Union leadership was a golden opportunity for AOMA to engage in dialogue with the African Union. The historic first meeting between Dr Tjipilica and the Chairman of the African Union Commission, Dr H.E. Jean Ping,²⁹² was facilitated by the Ugandan Inspector-General of Government, Adv. Baku Raphael Obudra, and was supported by the Angolan Ministry of Foreign Relations.²⁹³ Agreement was reached that AOMA should pursue accreditation to Observer status at the African Union Commission, and that a Cooperation Agreement would be signed at a later stage. Significantly, it was agreed that AOMA should get more involved in the prevention and resolution of conflicts in Africa - in partnership with the African Union.²⁹⁴

The decisions reached between AOMA's President and the Chairman of the African Union Commission²⁹⁵, were endorsed by the Executive members, on condition that AOMA never be involved in activities that

²⁸⁹ Ndagirwa 'The AOMA and the AORC: History and developments' at 31.

²⁹⁰ Ndagirwa (pers. comm.) (9 November 2012).

²⁹¹ AOMA, Minutes of EXCO meeting, Kampala, Uganda, 29-30 July 2010 at 3.

²⁹² Ndagirwa 'The AOMA and the AORC: History and developments' at 32.

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ The African Union Commission is the Secretariat of the African Union, entrusted with executive functions.

were non-compliant with its Constitution - especially those of a political nature. The President and Executive Secretary were mandated to:

- * pursue the affiliation of AOMA with the African Union Commission and the United Nations Organisation but that [the] affiliation [should be] without integration into the African Union and United Nations Organisation in order to preserve the independence of AOMA.²⁹⁶

Executive Secretary Madonsela shared with her colleagues that she had already approached the UNDP Directorate for Democratic Governance in order to explore ways in which AOMA could collaborate with the UN towards achieving AOMA's goals. Likewise, President Tjipilica had already met with officials from the African Commission on Human and Peoples' Rights, although he later deemed it more appropriate that efforts be focused instead on the African Union Commission.²⁹⁷

In compliance with the Third General Assembly meeting's recommendations, the Kampala EXCO meeting elected an ad hoc committee to review the Association's Statutes. Adv. Diarra (Mediator of Mali) was tasked with leading the committee, and regions were to nominate a person to serve on it.²⁹⁸ Specific issues on the agenda included prescription of the official languages of AOMA, development of a code of conduct for AOMA members, creating the position of Treasurer, and the admission of non-parliamentary Ombudsman institutions.²⁹⁹

Another historical milestone was the official request by the Executive Secretary for the EXCO meeting to retract the resolution to place the AOMA Permanent Secretariat in Libya, and to reaffirm the position of South Africa.³⁰⁰ A formal request would be conveyed to Libya to transfer all financial assets held in Tripoli on behalf of AOMA - to the Secretariat in South Africa.

The Executive Secretary was further mandated to start publishing a newsletter - in electronic format - as a medium of communication among AOMA members; initially producing two publications a year. Each member would be required to appoint a person to be responsible for matters relating to the newsletter.³⁰¹ The first issue of this newsletter - aptly titled African Ombudsman Today - was published in December 2010, followed by Issue 2 in August 2011, Issue 3 in January 2012, and Issue 4 in September 2012.

The progress report on the AOMA Research Centre held good news. A grant of US\$1,010,000 had been secured from the South African Government Multilateral Fund and the GTZ Multilateral Fund.³⁰² A planning meeting held in Pretoria, South Africa, on 27 May 2010 - chaired by the Public Protector of South Africa, Executive Secretary Madonsela and attended by the AOMA President and representatives of GTZ, the University of KwaZulu-Natal and the South African Department of International Relations and Cooperation - achieved concrete agreements on the project scope, approach and execution.³⁰³ The University of KwaZulu-Natal affirmed its commitment and ability to provide infrastructure to the AORC.³⁰⁴

²⁹⁶ AOMA 'Minutes of EXCO meeting, 29-30 July 2010, Kampala, Uganda' at 10.

²⁹⁷ Ndagirwa 'The AOMA and the AORC: History and developments' at 32.

²⁹⁸ AOMA 'Minutes of EXCO meeting, 29-30 July 2010, Kampala, Uganda' at 5.

²⁹⁹ *Idem* at 9.

³⁰⁰ *Idem* at 5.

³⁰¹ AOMA 'Minutes of EXCO meeting, 29-30 July 2010, Kampala, Uganda' at 5 & 8.

³⁰² *Idem* at 6.

³⁰³ *Ibid.*

³⁰⁴ Memorandum of Understanding between Public Protector South Africa and University of KwaZulu-Natal, par 5.1.2.1 at 6.

It was decided to establish a Board to manage the AORC. Board members would include the President, Executive Secretary, Ombudsman/Mediators of Burkina Faso and Sierra Leone, two University of KwaZulu-Natal Law Faculty members, the CEO of the OPP (Office of the Public Protector of South Africa), and the Director of the AORC. The Centre would then be registered as a Section 21 company under South African law, with a functional Board of Directors.³⁰⁵

The CEO of the OPP would develop an implementation plan by the end of July 2010, including the AORC founding document/Constitution, which would result in the establishment of a Memorandum of Understanding with the University of KwaZulu-Natal.³⁰⁶ January 2011 saw the final planning meeting for the launch of the Centre, and on 16 February 2011, Executive Secretary Thulisile Madonsela signed the Memorandum of Understanding in Pretoria.³⁰⁷ Finally the stage was set for the launch of the long-awaited African Ombudsman Research Centre.

1.3. AORC Grand Opening: Durban, March 2011

The launch of the AORC at the University of KwaZulu-Natal was part of a threefold event, and was held from 14 to 17 March 2011. The event started with the Sixth Ordinary meeting of the Executive Committee of AOMA on 14-15 March, and this was followed by the official inauguration of the AORC by South African President Jacob Zuma. The week-long programme was concluded with a Needs Assessment Workshop, which was the first official activity carried out by the AORC.

The first day of the EXCO meeting was dedicated to reviewing the AOMA Strategic Plan (2010-2014) and adopting a new Strategic Plan (2011-2016).³⁰⁸ Professor Victor Ayeni, the Director of Governance and Management Service International (GMSI), facilitated the discussions at the strategic planning session. Professor Ayeni, who has a wealth of scholarly knowledge in public administration, and many years' experience in the Ombudsman field - particularly the African Ombudsman field - was contracted to draft a strategic plan for AOMA based on the outcomes of these discussions. This would articulate objectives and priorities for 2011 to 2016.³⁰⁹

Five main objectives crystallised from the discussions. These were:

- Consolidate the presence of AOMA.
- Increase membership.
- Improve communication and information dissemination.
- Mobilise financial resources.
- Institutionalise the AORC.

The draft plan that came out of the workshop would be circulated before the next Executive Committee meeting, which was scheduled to take place in Addis Ababa, Ethiopia, in August 2011. It was also

³⁰⁵ Report: African Ombudsman Research Centre (AORC) Launch and Needs Assessment Workshop (AORC Launch Report), 15-17 March 2011, University of KwaZulu-Natal, Durban.

³⁰⁶ AOMA 'Minutes of EXCO meeting, 29-30 July 2010, Kampala, Uganda' at 6.

³⁰⁷ 'Memorandum of Understanding Between Public Protector South Africa and University of KwaZulu-Natal', par 16 at 14.

³⁰⁸ 'AORC Launch Report' March 2011, at 28.

³⁰⁹ *Idem* at 22.

recorded that Dr Tjipilica had finally received confirmation of AOMA's accreditation as an Observer at the African Union Commission.³¹⁰

Despite these positive developments, there was growing concern that the North African Region seemed to be 'drifting away' from AOMA. Since the July 2010 EXCO meeting, President Tjipilica had repeatedly tried to engage in dialogue with the northern countries - in a bid to revitalise their participation in the Association's activities.³¹¹ Unfortunately, political crises that had ensued in the region worsened the already fragile situation in the countries concerned. The offices of the Ombudsman of Libya were, in fact, reportedly destroyed during NATO's attacks on Libya.³¹² However, after a meeting in April 2012 with the new Libyan Ombudsman, Dr Ibrahim Falkir, the Executive Secretary was hopeful that the Association would be able to welcome Libya and the North African Region back into the fold in the foreseeable future.³¹³

A special tribute was paid to Adv. Diarra, who died only two months earlier in a car accident whilst travelling back to Bamako, in Mali, after an official trip to the north of her country.³¹⁴

In spite of the assurance by Mali's Head of Cabinet, Mr Abraham Bengaly, that the Fourth General Assembly meeting could still be hosted by Mali in 2012, subsequent political unrest in his country forced the Association to recall the earlier resolution made at the Addis Ababa EXCO meeting - in order to consider a new host. Kenya offered to host the meeting³¹⁵, but no decision on the hosting has yet been taken.

1.4. Launching the African Ombudsman Research Centre: Durban, March 2011

The launch of the AORC on 15 March 2011, in Durban - held under the theme 'When people complain - entrenchment of good governance and the rule of law in Africa' - saw the participation of, inter alia, 23 member countries of AOMA, the diplomatic and academic community, and senior officials from national, provincial and local government in South Africa.³¹⁶ It was a memorable occasion for the AOMA community and was widely reported in the media. The launch was also a proud moment for AOMA members, to see the dream of an established Research Centre - dating back to before AOMA's creation - finally come to fruition.³¹⁷

Speakers at the occasion included the President of South Africa, Mr Jacob Zuma, the South African Minister of Justice and Constitutional Development, Mr Jeff Radebe, the Premier of KwaZulu-Natal Province, Dr Zweli Mkhize, the Mayor of eThekweni Municipality (Durban), Councillor Obed Mlaba, the Vice-Chancellor of the University of KwaZulu-Natal, Professor Malegapuru Makgoba, the Ambassador of

³¹⁰ *Idem* at 30.

³¹¹ Ndagirwa 'The AOMA and the AORC: History and developments' at 34.

³¹² *Ibid.*

³¹³ *African Ombudsman Today*, Issue 4, September 2012, at 11.

³¹⁴ *African Ombudsman Today*, Issue 2, August 2011, at 5.

³¹⁵ *African Ombudsman Today*, Issue 4, September 2012, at 12.

³¹⁶ 'AORC Launch Report' March 2011 at 5.

³¹⁷ *African Ombudsman Today*, Issue 4, September 2012 at 3.

the Federal Republic of Germany, Mr W. Haller, the President of AOMA, Dr Paulo Tjipilica, and the Executive Secretary of AOMA, Adv. Thulisile Madonsela.³¹⁸

President Zuma delivered the keynote address and unveiled a commemorative plaque, before Mr Jeff Radebe proceeded to officially open the AORC premises. In his speech, President Zuma acknowledged the important role of Ombudsman in entrenching a culture of accountable governance on the continent,³¹⁹ and expressed the hope that Ombudsman could be trained at the University of KwaZulu-Natal, rather than going abroad for that purpose.³²⁰ In keeping with the Constitutive Act of the African Union, he also stressed that the future of the African continent lay in building strong institutions which are democratic, accountable and responsive to the aspirations of their citizens.³²¹ The role and importance of AOMA, as well as the Ombudsman institution in Africa, were aptly summarised as follows:

- * We need to encourage countries that have not established these important institutions to do so. The role of these institutions is to serve as an avenue through which citizens exercise their rights and hold their governments accountable. It is also to forge close relations between those entrusted with power and the governed ... It is through holding the powerful accountable, and assisting the powerless that offices of ombudspersons will gain support from ordinary citizens.³²²

Six months after the launch, the strategic plan for the Research Centre was completed, and it outlined objectives for the next four years. In November 2011, the AORC Secretariat presented the strategic plan to the Executive Secretary of AOMA, Adv. Thulisile Madonsela, and representatives from USAID, GIZ, EU, the Swiss Embassy and support agencies.³²³ Adv. John Walters, Ombudsman of Namibia and IOI Vice-President for the Africa Region, also attended the meeting.

1.5. Needs Assessment Workshop: Durban, March 2011

The Needs Assessment workshop was the final stage of a process that had started some months previously, when the Executive Secretary commissioned a needs assessment for the establishment of the AORC. The assessment was sponsored by German Technical Cooperation South Africa (now German Association for International Cooperation (GIZ))³²⁴ and coordinated by Adv. Neville Melville, who had also assisted with the conceptualisation of the AORC project.³²⁵ The workshop took place immediately after the official launch of the AORC, from 16 to 17 March 2011, and was opened by the then Chief Justice of South Africa, Justice Sandile Ngcobo.³²⁶

³¹⁸ 'AORC Launch Report' March 2011 at 5.

³¹⁹ *Idem* at 20.

³²⁰ College of Law and Management Studies eNewsletter (University of KwaZulu-Natal), 'African Ombudsman Research Centre Established at UKZN', Vol. 4 (1), June 2011 at 6.

³²¹ 'AORC Launch Report' March 2011 at 5.

³²² South African Government News Agency 'South Africa: Zuma launches African Ombudsman Research Centre', 16 March 2011 (available at: <http://www.buanews.gov.za/rss/11/11031609151003> (accessed 8 November 2012)).

³²³ African Ombudsman Today, Issue 3, December 2011 at 18.

³²⁴ 'Information, coordination, training, advocacy and research needs of the African Ombudsman and Mediators Association (AOMA) Report', June 2011, Executive Summary at 1.

³²⁵ Ndagirwa 'The AOMA and the AORC: History and developments' at 42.

³²⁶ 'AORC Launch Report' March 2011 at 25.

The assessment process consisted of a study to evaluate the needs of AOMA members in terms of training and capacity building, and using the findings of the study as a guideline when planning for the training and research operations of the AORC.³²⁷ The assessment was done by circulating a questionnaire to the African Ombudsman offices and consolidating the responses into a report. From the consolidated replies to the questionnaire, the report concluded that the most pressing needs were threefold: the need for information, better communication, and operational training.³²⁸ It was recommended that the AORC should first focus on strengthening the operational capacity of Ombudsman institutions by providing them with information and training in the areas of internal practice, maladministration, good governance, administrative law, complaints and investigation.³²⁹ It was further recommended that this should be followed up with improving the communications between the respective organisations. The existing AOMA website and the compilation of a newsletter could be used to keep everyone updated on developments in the field.³³⁰

The report was presented at the Needs Assessment Workshop. Flowing from this, the following three aspects were identified as being the immediate priorities of the various Ombudsman offices: (a) information and coordination, (b) advocacy and research, and (c) training.³³¹ The information derived from the completed questionnaires represented a valuable body of knowledge for the AORC in terms of setting up its operations, developing a strategic plan, and as a basis for future research.

1.6. AOMA Expands its Footprint

Since July 2003, AOMA has grown into a widely-recognised entity, has managed to secure a continental stage through its accreditation by the African Union Commission, and has succeeded in conceptualising and launching its Research Centre. AOMA has become a stronger organisation - both politically and technically. With the support of the GIZ and the South African Government (through the African Renaissance Fund of the Department of International Relations and Cooperation), the AORC is well positioned to accelerate the recruitment of more members, and to build the capacity of established members.³³²

At the March 2011 EXCO meeting in Durban, the issue of Associate members was again raised, but no general consensus was reached. The Association had yet to define the types of organisations, institutions and individuals that could be granted Associate membership. Barely one year later, however, in July 2012, another milestone was reached when the Ombudsman for Banking Services South Africa, Adv. Clive Pillay, became the first Associate Member of AOMA in terms of Article 5 (1) (b) of its Constitution.³³³

At the September 2011 EXCO meeting in Addis Ababa, the Executive Committee accepted a proposal for the creation of a Permanent Secretariat in its Constitution and that the AORC - currently in South Africa -

³²⁷ 'Needs Assessment for the Provision of Support Services to Ombudsmen/Médiateurs by the African Ombudsman Research Centre (AORC)' (Needs Assessment Report) May 2011, Executive Summary at 4.

³²⁸ *Idem* at 1.

³²⁹ 'AORC Launch Report' March 2011 at 25.

³³⁰ *Ibid.*

³³¹ *Ibid.*

³³² Ndagirwa 'The AOMA and the AORC: History and developments' at 34.

³³³ *African Ombudsman Today*, Issue 4, September 2012, at 10.

should also serve as the Secretariat of AOMA.³³⁴ This proposal must still be tabled for adoption at the next General Assembly meeting, and must also reflect the administrative and financial arrangements.

Following the death of Adv. Mbam Diarra of Mali, the review of the Constitution was completed under the chairmanship of Mrs Foziah Amin of Ethiopia. Judge Abuzeid from Sudan - himself a constitutional lawyer - advised that in the light of the substantial changes proposed, the current Constitution should be repealed and a new Constitution drafted.³³⁵ Thus a new draft Constitution will be tabled at the next General Assembly meeting in 2013.

In April 2012, at the EXCO meeting in Windhoek, Namibia, AOMA's framework for the implementation of the Ombudsman office was adopted. The framework will be submitted to the next General Assembly meeting and concurrently to the African Union.³³⁶ Once it is passed at the General Assembly meeting, it is envisaged that the framework will become one of the AU instruments to recommend to African states without Ombudsman offices- that they establish such offices according to the guidelines, and that countries with established offices comply with the guidelines.³³⁷

Recently, both Burundi and Mozambique established Ombudsman offices as a result of AOMA intervention, and so have become part of the AOMA family.³³⁸ The newly-established office of the Ombudsman of Burundi was invited to undertake a study tour in Angola during 2011, which in turn led to Burundi's application for AOMA membership. A further milestone was achieved when - through negotiation with Dr Tjipilica - the government of Mozambique finally established an Ombudsman office. In May 2012, Dr José Ibraido Abudo, a former Minister of Justice, was appointed as the first Provedor de Justiça of the Republique de Mozambique.³³⁹

In July 2012, the AORC, with the assistance of GIZ, offered its first training course for investigators in Ombudsman offices.³⁴⁰ Training was done by the Queen Margaret University, Edinburgh - in partnership with Public Administration International (London). Two official search from the Ombudsman offices of 10 English-speaking countries were invited to participate - namely Botswana, Ghana, Lesotho, Malawi, Namibia, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe.³⁴¹ On request of the South African Office of the Public Protector, two participants from South Africa also joined the course, which ran from 9 to 13 July 2012 at the Howard College campus of the University of KwaZulu-Natal. The course was a resounding success, with 99% of the participants passing the assessment and receiving the Award in Ombudsman Practice.³⁴²

1.7. Milestones

- Election of a new AOMA Executive Committee.

³³⁴ Meeting of the Executive Committee of AOMA, Addis Ababa, 15 September 2011. 'Resolutions' 6(b) at 1.

³³⁵ Ndagirwa (pers. comm.) (9 November 2012).

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ African Ombudsman Today, Issue 3, December 2011, at 5.

³³⁹ Idem at 10.

³⁴⁰ Idem at 7.

³⁴¹ Ibid.

³⁴² Ibid.

- The AOMA President meets with the Chairman of the African Union Commission.
- The resolution to place the AOMA Permanent Secretariat in Libya is retracted.
- An electronic newsletter is published bi-annually.
- Funding is secured for establishing the AORC.
- A Memorandum of Understanding is signed with the University of KwaZulu-Natal.
- Strategic Plan 2011-2016 is drafted.
- AOMA accreditation to Observer status at the AU.
- The AORC is officially launched.
- A Needs Assessment Workshop is held as the first AORC activity.
- The First Associate member of AOMA is granted membership.
- The AORC strategic plan is developed.
- The AORC's first training course is presented.



CHAPTER EIGHT

1. Powerful Partners: Association with the African Union Commission

The need for collaboration between the African Ombudsman Association and the Organisation of African Unity (which later became the African Union (AU)), has been repeatedly expressed by interested parties over the years. This was from as early as 1998, when the need was stipulated as one of the AOC's goals in its Constitution, which was drafted at the first Board meeting of the AOC Trustees, held in Dar es Salaam.³⁴³ The issue was taken up with increasing urgency through subsequent years at various General Assembly meetings, and has also been mentioned regularly in EXCO agendas of the Association.

A chronological listing of the more important instances relating to the issue of collaboration between AOMA and the AU - culminating in the confirmation of Observer status for AOMA at the African Union Commission (AUC) - are listed below:

- a) In the AOA Constitution, Article 4(e) states that one of the objectives of the Association is "To foster affiliation and maintain liaison with other Ombudsman offices, Institutes and Associations, international bodies and organizations interested in the progress of Ombudsman activities and human rights."³⁴⁴
- b) The Association's Strategic Plan 2003-2006 states that one of the goals of the AOA was to have a "continental voice that it can use when liaising with global and African initiatives like the African Union and NEPAD".³⁴⁵
- c) At the Association's Muldersdrift May 2005 EXCO meeting, former President Thabo Mbeki (South Africa) pledged state support for developing a relationship between the AOA and AU. The then President of the AOA, Dr A. Farouk, was mandated "to finalize the formal establishment of an effective collaboration between the African Union and the African Ombudsman Association ...".³⁴⁶
- d) At the Second EXCO meeting held in Tunis, in November 2006, a further urgent call on the AOA President to formalise the Association's relationship with the AU, was made.³⁴⁷
- e) In the final communiqué issued at the end of the Association's Third General Assembly meeting in Luanda, in April 2010 (the 'Declaration of Luanda'), it was recommended that "appropriate steps be taken for the recognition or accreditation of AOMA by the African Union".³⁴⁸
- f) At the Association's Fifth EXCO meeting in Kampala, Uganda, in July 2010, a resolution was adopted that stated: "The President and Executive Secretary are mandated to pursue the affiliation of AOMA with the African Union Commission and the United Nations Organisation but that [the] affiliation [should be] without integration into the African Union and United Nations Organisation in order to preserve the independence of AOMA."³⁴⁹

³⁴³ Minutes of the first meeting of the Board of Trustees of the African Ombudsman Centre, Dar es Salaam, 20-22 July 1998' at 11.

³⁴⁴ African Ombudsman Association (AOA) 'Constitution' (2003) Article 4(e) - Objectives.

³⁴⁵ AOA 'Strategic Plan 2003-2006', par 6.1(a) - Program Goals.

³⁴⁶ AOA 'First General Assembly meeting, Muldersdrift, April 2005 Recommendations'. In: Ndagirwa 'The AOMA and the AORC: History and developments' at 18.

³⁴⁷ Ndagirwa 'The AOMA and the AORC: History and developments' at 21.

³⁴⁸ Idem at 30.

³⁴⁹ AOMA 'Minutes of the Executive Committee meeting, 29-30 July 2010, Kampala, Uganda' at 10.

- g) Finally, at the Association's Sixth EXCO meeting held in Durban, South Africa, in March 2011, AOMA received confirmation of its accreditation as an Observer at the African Union.³⁵⁰

1.1. Bilateral Deliberations between AOMA and the AUC (Luanda, 2012)

An important coordination meeting to discuss implementation of the Memorandum of Understanding between AOMA and the AUC, was held in Luanda in June 2012. A communiqué issued at the end of the meeting aptly summarised the importance of the relationship between the two organisations, and the final sequence of events that drove the need to formalise it:

- * In pursuance of the implementation of the Memorandum of Understanding signed between the African Union Commission (AUC) and the African Ombudsman and Mediators Association (AOMA), on the 21st day of October 2011, in Addis Ababa - Ethiopia; considering the April 2010 Luanda Declaration by the General Assembly of AOMA, calling for tangible cooperation between AOMA and the African Union; considering the January 2011 Declaration by the African Union Assembly of Heads of State on shared values; considering the objectives of the African Union and the African Ombudsman and Mediators Association as defined by the Constitutive Act of the African Union and the Constitution of the African Ombudsman and Mediators Association respectively; and further considering the high potential for cooperation and mutual assistance in achieving these objectives, the Provedor de Justiça of the Republic of Angola, in his capacity as the President of the African Ombudsman and Mediators Association, hosted a Bilateral Coordination Meeting between high level delegations from both the AUC and the AOMA on 20-25 June 2012 in Luanda, Angola.³⁵¹

Meeting Attendees

This historic meeting was attended by high-level delegations from both organisations.³⁵² The delegation of the AUC was led by the African Union Commissioner for Political Affairs, Mrs Julia Dolly Joiner, and included the African Union Legal Counsel, Dr Ben Kioko. The delegation of AOMA was led by the President of the Association, Dr Paulo Tjipilica, who is also Provedor de Justiça of the Republic of Angola. Other members of the AOMA delegation included the:

- a) Second Vice-President of AOMA, Dr Diango Cissoko, Mediator of the Republic of Mali.
- b) Executive Secretary of AOMA, Adv. Thulisile Madonsela, Public Protector of the Republic of South Africa.
- c) Permanent Representative of AOMA at the AUC, Judge Ahmed Mohammed Abuzeid, President of the Public Grievances and Corrections Board of Sudan.
- d) Regional Coordinator for AOMA's Southern African Region, Mrs Caroline Sokoni, Investigator General of Zambia.

³⁵⁰ Ndagirwa 'The AOMA and the AORC: History and developments' at 34.

³⁵¹ *Coordination meeting on the implementation of the Memorandum of Understanding between the African Union Commission (AUC) and the African Ombudsman and Mediators Association (AOMA), 20-25 June 2012, Luanda, Angola. 'Final communiqué' at 3.*

³⁵² *Ibid.*

- e) Regional Coordinator for AOMA's Eastern African Region, Mrs Foziah Amin, Chairperson of AOMA's Constitutional Sub-Committee and Chief Ombudsman of Ethiopia.
- f) Regional Coordinator for AOMA's Indian Ocean Region, Adv. Soleman Hatteea, Ombudsman of Mauritius.
- g) Newly-elected Provedor de Justiça of the Republic of Mozambique, Dr José Ibraimo Abudo, as a special guest - who was also invited to participate in the discussions.

1.1.1. Memorandum of Understanding³⁵³

In the Memorandum of Understanding discussed at the Luanda meeting, the following resolutions were adopted:

- a) A Joint Operational Implementation Framework was to set out strategic objectives to be pursued by both organisations.
- b) The two parties will meet at least twice a year in order to monitor the implementation of the seven strategic objectives.
- c) The two parties commit to organising regular bilateral conferences on issues of common interest.
- d) The AUC shall invite AOMA to participate in the AU Elections Observation Missions.
- e) AOMA will assist the AU in preventing and resolving conflicts, in collaboration with the African Union's Panel of the Wise.³⁵⁴
- f) The two parties shall jointly hold a conference with their respective development partners, in order to efficiently use their resources, raise funds for their joint activities, and to avoid duplication of efforts and resources.

1.1.2. Joint Operational Implementation Framework³⁵⁵

A Joint Operational Implementation Framework was adopted by AOMA and the AUC. The Framework consists of seven (7) strategic objectives. These are:

- a) The establishment and strengthening of Ombudsman institutions in all member states of the AU.
- b) The popularisation of the African Union Shared Values Legal Instruments within the African Union Member States and the Public.³⁵⁶
- c) The ratification of the African Union Shared Values Legal Instruments.

³⁵³ Ibid.

³⁵⁴ The AU Panel of the Wise is one of the pillars of the African Peace and Security Architecture, as provided for by the Peace and Security Council Protocol. It was constituted in 2007 to support the efforts of the Council and of the Chairperson of the Commission, particularly in the area of conflict prevention. The Panel advises the Council and the Chairperson of the Commission on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa. The current Panel includes: Mr Ahmed Ben Bella; Dr Kenneth Kaunda (Southern African region); Ms Marie Madeleine Kalala Ngoy (Central African Region); Dr Salim Ahmed Salim; and Dr Mary Chinery Hesse of Ghana (West African Region). See: <http://www.africa-union.org/root/au/publications/PSC/Panel%20of%20the%20wise.pdf> (accessed 13 November 2012).

³⁵⁵ Coordination meeting on the implementation of the Memorandum of Understanding between the AUC and AOMA, 20-25 June 2012, Luanda, Angola. 'Final communique' at 2.

³⁵⁶ Shared Values is one of the four pillars of the strategic plan of the AUC - to ensure greater synergy between peace and security issues and democracy and good governance in Africa. The legal instruments to achieve this objective include the Charter on Governance, Democracy and Elections; the African Peer Review Mechanism; the African Union Convention on Preventing and Combating Corruption; the Charter on the Principles and Values of Public Service and Administration; and the African Union Policy Framework on Post Conflict Reconstruction and Development. See: <http://www.au.int/ar/sites/default/files/CONCEPT%20NOTE-DPA%20Retreat%20with%20the%20PSC-02.pdf> (accessed 13 November 2012).

- d) The domestication and implementation of the African Union Shared Values Legal Instruments.
- e) Monitoring the implementation of the African Union Shared Values Legal Instruments, including through the peer-review mechanism at the level of the African Governance Platform.
- f) The creation of synergy between AOMA and other African institutions.
- g) Efficient management of cooperation between the two parties.

Among the specific provisions of the Joint Implementation Framework, is a commitment regarding the recognition of AOMA as a pan-African institution dedicated to the promotion of good governance.

The agreement furthermore envisages AOMA as playing a role in the dissemination and entrenchment of AU shared values, particularly those dealing with governance in Africa. AOMA and its technical engine, the African Ombudsman Research Centre (AORC) - based in Durban, South Africa - were also mooted to play a meaningful role in peace and stability initiatives on the continent, including conflict resolution and election monitoring.

A central provision of the Framework is the entrenchment and enhancement of the Ombudsman institution as a central pillar of good governance in Africa. Both parties expressed a belief in the positive relationship between good governance and the pursuit of peace and development in Africa. According to the South African Public Protector, Thulisile Madonsela - "Good governance is a key factor for the establishment of peace, democracy and development in the African continent."³⁵⁷

1.2. Accreditation to Observer Status

The Executive Committee of AOMA gathered in Addis Ababa, Ethiopia, from 15 to 16 September 2011, for an Executive Committee meeting, and the AORC Board meeting.

Ahead of the EXCO meeting, AOMA was accredited as an Observer, with permanent representation, at the African Union.³⁵⁸ A high-level delegation, including AOMA's Executive Committee members, and led by the Association's President, the Provedor de Justiça of Angola, Dr Paulo Tjipilica, accepted the accreditation of AOMA from the AUC Chairperson, Dr Jean Ping, at the AU Headquarters in Addis Ababa, on 14 September 2011. During the meeting, the President presented to the Chairperson the letter of accreditation of AOMA's First Permanent Observer to the African Union, Judge Ahmed Mohamed Abuzeid, President of the Public Grievances and Corrections Board of Sudan - who was appointed by the Executive Committee to serve as the Ambassador to the AU.³⁵⁹ Judge Abuzeid will be working to enhance AOMA's visibility in the AU and beyond. Speaking at the occasion, Judge Abuzeid said the step constituted the basis for continued cooperation between AOMA and the AUC, and that he was "proud to serve as a representative of AOMA at the august continental institution which stands for solidarity and unity of the beloved continent".³⁶⁰

³⁵⁷ [Office of the] Public Protector of South Africa 'AUC and AOMA adopt Joint Operational Implementation Framework' (available at: http://www.pprotect.org/media_gallery/2012/23062012.asp) (accessed 17 October 2012).

³⁵⁸ African Ombudsman Today, Issue 3, Dec 2011/Jan 2012 at 1.

³⁵⁹ Ibid.

³⁶⁰ The Federal Democratic Republic of Ethiopia: Institution of the Ombudsman 'AOMA signs MoU with the African Union Commission' (available at: http://www.ethombudsman.gov.et/index.php?option=com_content&view=article&id=53%3Aaoma-signs-mou-with-the-african-union-commission&catid=36%3Anews-and-updates&Itemid=58&lang=en) (accessed 17 October 2012).

The African Union Commissioner for Social Affairs, Adv. Gawanas, herself a former Ombudsman for Namibia, attended the meeting and gave words of support and encouragement to meeting attendees. Adv. Gawanas appreciated the role of AOMA - aimed at the building of democracy, protection of human rights, and the fight against corruption across the African continent. She stated that the Association will be "a voice for the voiceless" across the continent, in the interest of the wellbeing of all citizens.³⁶¹

Key resolutions about AOMA's relationship with the African Union, which were taken at the EXCO meeting, included:

- Increasing membership to cover all AU members, so that AOMA could be a pillar of good governance, human rights protection, and be involved in the fight against corruption.
- Creating a databank of the AOMA Ombudsman curriculum vitae for transmission to the AU, so that the Ombudsman could be invited to AU activities or missions in the areas of good governance, democracy and human rights.³⁶²

1.3. The AUC and AOMA: Promoting the Spirit of Good Governance

In order to understand the importance and significance of the formal relationship between AOMA and the AU/AUC, some background information on the origins and mandate of the AU and AUC is warranted. In 1999, the Heads of State and Government of the Organisation of African Unity (OAU) issued a Declaration (the 'Sirte Declaration') calling for the establishment of an African Union, with a view, inter alia, to accelerating the process of integration in Africa, and to enable it to play its rightful role in the global economy whilst addressing multifaceted social, economic and political problems.³⁶³ African countries - in their quest for unity, economic and social development under the banner of the OAU - have taken various initiatives and made substantial progress in many areas, which paved the way for the establishment of the AU. Most noteworthy among these - with relevance to AOMA - are: The African Charter on Human and People's Rights (Nairobi, 1981) and the Grand Bay Declaration and Plan of Action on Human Rights - two instruments adopted by the OAU to promote human and people's rights on the continent.³⁶⁴ The African Charter led to the establishment of the African Commission on Human and Peoples' Rights, which was inaugurated on 2 November 1987 in Addis Ababa, Ethiopia. The Commission's Secretariat was subsequently relocated to Banjul in The Gambia.³⁶⁵

In 2002, at the Durban Summit, the African Union was launched and the First Assembly of the Heads of State of the AU was convened. The African Union Commission (AUC) is responsible for the day-to-day management of the African Union.³⁶⁶ Of the eight portfolios within the Commission, the portfolio for Political Affairs (Human Rights, Democracy, Good Governance, Electoral Institutions, Civil Society Organizations, Humanitarian Affairs, Refugees, Returnees and Internally Displaced Persons) speaks most to the mandate of AOMA.

³⁶¹ African Ombudsman Today, Issue 3 at 2.

³⁶² 'Meeting of the Executive Committee of AOMA', 15 September 2011. 'Resolutions' at 2.

³⁶³ African Union: History. 'African Union in a Nutshell' (available at: <http://www.au.int/en/about/nutshell>) (accessed 18 October 2012).

³⁶⁴ Ibid.

³⁶⁵ Refer to 'African Commission on Human and Peoples' Rights' (available at: <http://www.achpr.org/>) (accessed 18 October 2012).

³⁶⁶ African Union. 'African Union in a Nutshell.'

It was in a spirit of cooperation to further the cause of good governance and human rights in Africa, that the AOMA delegation took the opportunity - during their stay in Addis Ababa after the EXCO meeting in September 2011 - to visit the AU Headquarters. The delegation also held talks with AU Commissioners on issues of mutual concern.³⁶⁷ The AU assured the AOMA delegation of the full support of the AUC in enhancing the bilateral cooperation with AOMA, in several fields of common interest. These include electoral observation missions, advocating peace and democracy on the continent, and promoting respect for human rights, the rule of law and good governance.³⁶⁸ Judge Cowan considers that such cooperation may well lead to an active role for AOMA in the near future, in terms of cross-border mediations and electoral observations.³⁶⁹

Against this backdrop, and in the spirit of good governance and democracy, the key resolutions taken at the AOMA EXCO meeting in Addis Ababa in September 2011, reflect AOMA's commitment to the consolidation and strengthening of African Ombudsman institutions, and through them all the people of Africa.

According to the resolutions, the AORC will be a vehicle for strengthening the structures of AOMA and for recruiting new members - who would then adhere to principles of good governance and the rule of law. AOMA will strive to increase its visibility through involvement in African governance and human rights activities, and by encouraging all AU members to join AOMA.³⁷⁰ The organisation will also make efforts to associate and link with other multilateral bodies (for example the UN Office on Drugs and Crime) for participation in work on good governance, democracy, human rights and anti-corruption, and will link with other regional bodies similar to AOMA.

Non-member countries that are yet to establish Ombudsman offices - especially countries belonging to the AU family - will, according to the resolutions, be invited to the next AOMA General Assembly meeting, and to join AOMA. This would enable such countries to witness the importance of Ombudsman institutions in delivering their constitutional mandate - for entrenching democracy 'in its proper sense' and good governance throughout Africa.³⁷¹

³⁶⁷ *The Ombudsman. A monthly newsletter of the Ethiopian Institution of the Ombudsman, Issue 1 (8), September 2011* at 5.
³⁶⁸ *Ibid.*
³⁶⁹ Cowan (pers. comm.) (9 November 2012).
³⁷⁰ 'Meeting of the Executive Committee of AOMA', 15 September 2011. 'Resolutions' at 3.
³⁷¹ Cowan (pers. comm.) (9 November 2012).

BIOGRAPHIES OF KEY FIGURES



Mohammed Abuzeid Ahmed³⁷²

AOMA Ambassador to the African Union (September 2012-to date)

Mohammed Abuzeid Ahmed was born in Wad Medani in Sudan. He received his LLB degree from the University of London in 1965, and a Master of Comparative Jurisprudence from Howard University, Washington DC, in 1967.

Judge Abuzeid has held various senior positions in government. In 1967 he became the first Legal Advisor for the Sudan Gezira Board. In 1977 he was appointed Appeal Court Judge, and in 1989 Supreme

Court Judge. In this capacity he served as President of the Dafur Region Judicial Organ, and as President of the Dafur Court of Appeal. From 1981 to 1985 Judge Abuzeid also served as the Legal Advisor (Ministerial Status) of the Sudan Central Region Government. From 1995 to 1997 he was a Member of Parliament for Gezira State, and in 1998 served as a member of the Constitution Committee.

Judge Abuzeid has published on judicial judgements and has presented working papers and articles in the field of law and Ombudsmanship, in both Arabic and English.

In 1998 Judge Abuzeid became President of the Public Grievances and Corrections Board of Sudan. He is the longest-serving member of AOMA. When a new Board of Trustees for the African Ombudsman Centre was elected at the Seychelles Regional Conference in 2001, Judge Abuzeid was nominated to represent the North African Region. In 2003 at the Ouagadougou Conference, he was elected second Vice-President of the African Ombudsman Association - a position he held until 2010. He was elected to the Board of Directors of the IOI from 2005 to 2009.

From 2010 onwards, Judge Abuzeid became an honorary member of the current AOMA Executive Committee. He also was a Founding Father and Treasurer of the Arab Ombudsman Association - established in Egypt in 2010. The Judge has regularly presented papers at AOMA Conferences since 1999 (up until the Luanda Conference in 2010) and has contributed much to the Association - both academically and in practical terms.

Judge Abuzeid was nominated the permanent AOMA Ambassador to the African Union, a position that he officially took up in September 2012.

³⁷²

Sourced from *African Ombudsman Today*, Issue 3, December 2011 at 2, and from an abridged curriculum vitae provided by Judge Abuzeid (26 November 2012).



Victor O. Ayeni

*Director, Commonwealth Secretariat (1997-2004)*³⁷³

Victor Ayeni holds a PhD in Public Administration and is Director of Governance and Management Services International (GMSI), with over 35 years' experience in advancing the quality of public sector governance and management in developing countries and transitional democracies. Formerly Director of Governance and Institutional Development of the Commonwealth Secretariat, London, he was also Deputy Director and Lead Commonwealth Advisor with responsibility for governance and public sector management programmes. In this

capacity he has had a close involvement with the African Ombudsman Association for many years. He was instrumental in establishing many new Ombudsman offices throughout Africa, and in fulfilled a training, advisory and mentoring role for almost 20 years. He wrote the concept document for the AOC, and has facilitated and organised numerous training programmes for African Ombudsman staff.

Before joining the Commonwealth Secretariat, he lectured at universities in South Africa, Botswana and Nigeria, and also worked briefly in the Ondo State Civil Service of Nigeria. He has been a consultant to several governments around the world, and to a host of international and bilateral development agencies.

Professor Ayeni is an accomplished public sector management and development scholar and practitioner. He is a well-known international authority on the Ombudsman and Ethics and Integrity institutions. Professor Ayeni is widely travelled and has conducted assignments in all regions of the Commonwealth. He is also widely published, with some 15 books and over 150 papers to his name - on various aspects of governance and public and development management. He was a member of the Editorial Advisory Board of the International Ombudsman Journal and was Editor of the African Journal of Public Administration and Management. In addition to his previous editorial roles, he continues to provide advice on a number of academic and professional concerns in Commonwealth and anglophone countries.



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Mainly sourced from an abridged curriculum vitae provided by Professor Ayeni (8 October 2012).



Selby Baqwa

*Vice-President of the IOI (2000-2002)*³⁷⁴

Selby Alan Masibonge Baqwa was an attorney of the Supreme Court of South Africa from 1976 to 1988. In 1988 he was called to the bar and practiced as an advocate until 1995, when he was appointed as the first Public Protector of the Republic of South Africa - a position which he held until 2002.

Before assuming the post of Public Protector, Judge Baqwa served on the Browde Commission probing irregularities in the public services of the former South African 'homelands'. Baqwa was a part-time Professor of Mercantile Law and an instructor at the School for Legal Practice at the University of Natal. He was a member of the Durban bar and is a former president, general secretary and executive committee member of the National Association of Democratic Lawyers (NADEL). He took silk (elevated to senior counsel) during 1997. He is the Chancellor of North West Technikon.

In his position as Public Protector of South Africa, Judge Baqwa was elected to serve on the first Board of Trustees of the African Ombudsman Centre, at the African Ombudsman Regional Conference held in Accra, Ghana, in 1997. In this capacity he organised the IOI World Ombudsman Conference held in 2000 in Durban, South Africa, and served as Vice-President of the IOI from 2000 until 2002.

Judge Baqwa was recently appointed a judge of the High Court of South Africa, South Gauteng Division.³⁷⁵

Judge Baqwa holds an LLB from the University of Fort Hare, a postgraduate Diploma in Maritime Law from the University of Natal, and a technical Doctorate (honoris causa) from Technikon North-West.

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Sourced from the Businessweek website (available at: <http://investing.businessweek.com/research/stocks/people/person.asp?personId=25987953&ticker=BAW:SJ&previousCapId=873754&previousTitle=BARLOWORLD%20LTD>) (accessed 13 October 2012)

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See 'Zuma appoints new judges' (available at: <http://www.bizcommunity.com/Article/196/546/75776.html>) (accessed 12 November 2012).



Alifa Chaabane Farouk

*President of AOMA (April 2005-March 2010)*³⁷⁶

Alifa Chaabane Farouk was born in Metline, a village in the north of Tunisia. Having studied German between 1966 and 1969, she read political science and international public law at the Ludwig Maximilian University in Munich. Dr Farouk continued her education and after completing a thesis on the "Legal Status of Western Sahara" she received a Doctorate in Law in 1976. In 1979 she spent a year in Paris studying international societal law at Paris II University.³⁷⁷

Dr Alifa Chaabane Farouk was elected as AOMA's President at the 2005 General Assembly meeting held in Muldersdrift, east of Johannesburg, in South Africa.

Dr Farouk was the Mediator of the Republic of Tunisia (commonly known as the Administrative Mediator of Tunisia) from 1998 to 2010.

Her name is associated with a rich career, both in her country (where she had also been one of the prominent figures of the Rassemblement Constitutionnel Démocratique of the former President Ben Ali), as well as internationally. She has occupied positions such as the Vice-President of the IOI and the Vice-President of the AOMF (French speaking Ombudsman and Mediators Association) before her election as the second President of AOMA.

In March 2010, Dr Farouk was appointed as the Tunisian Ambassador to Germany; she has had long-standing associations with the country.

In addition to her qualifications in law and political sciences Dr Farouk is also known for her fluency in French, English, German and Arabic.



³⁷⁶

See Ndagirwa 'The AOMA and the AORC: History and developments' at 45.

³⁷⁷

See Institute for Cultural Diplomacy website (available at: <http://www.culturaldiplomacy.org/academy/index.php?Farouk-Alifa-Chaabane>) (accessed 11 November 2012).



Bience Gawanas

*Executive Secretary of the AOC (1997- 2003)*³⁷⁸

Bience Philomina Gawanas - born in Windhoek, Namibia - left her country of birth to go into exile in 1977. On her return 12 years later, she was appointed Public Service Commissioner of Namibia in 1991, and was admitted as an Advocate to the High Court of Namibia in 1993. She played a key role in the reform of Namibia's civil service, and in 1996 was appointed the first woman to head the Namibian Ombudsman Office – this from 1996 to 2003.

Advocate Gawanas has also been a lecturer in Gender Law at the University of Namibia, Director of the Board of the Central Bank of Namibia, and has been involved in many NGOs, including being Secretary General of the Namibian National Women's Organisation (1993-1999) and patron of the Namibian Federation of Persons with Disabilities. As Chairperson of the Law Reform Commission, she oversaw the passage of the Married Persons' Equality Act. The Commission also did extensive work on Rape Acts and other important laws that were eventually passed after her input and departure. She has always been a champion for women's rights in Namibia, and was the Chairperson of Women's Action for Development (2001-2002).

Advocate Gawanas was elected for a four-year term as the AU Commissioner for Social Affairs based in Addis Ababa - at the African Union's Heads of State Summit in Maputo in July 2003. In 2008 she was re-elected for a further four-year term. She has been responsible for coordinating regional policies on issues such as health, nutrition, employment and crime.

She holds an Executive MBA from the Graduate School of Business at the University of Cape Town and an LLB Hons from the University of Warwick. The University of the Western Cape awarded her a Doctor *legum honoris causa* at their September 2012 graduation ceremony.



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Information sourced from the Every Woman, Every Child website (available at: <http://www.everywomaneverychild.org/resources/accountability-commission/commissioners/bience-gawanas>) (accessed 20 October 2012)



Jean-Baptiste Kafando

*President of AOA (July 2003-March 2005)*³⁷⁹

Jean Baptiste Kafando served as the second Mediator of the Republic of Burkina Faso (commonly known as the Médiateur du Faso) - since October 2000.

In June 2003 he was elected the first President of the African Ombudsman Association in July 2003. Mr Kafando was also appointed Chair of the International Ombudsman Association (IOA) in 2003, and held several high positions in the Burkinabe government, including Chairman of the Labour Tribunal, Vice President of the Court of Appeal of Ouagadougou, and Advisor to the Supreme Court.³⁸⁰

His contribution to the African Ombudsman Association was crucial to the commitment of the francophone African countries towards the creation and promotion of the Association. He was considered one of the pillars of unity between French-speaking and English-speaking members of the Association.

Mr Kafando's 50 year career ended abruptly when he died on 12 March 2005 at the Val de Grâce Hospital in France, after his evacuation from Ouagadougou a month before. His colleagues from the African Ombudsman Association remember him for his quiet wisdom.



³⁷⁹ See Ndagirwa 'The AOMA and the AORC: History and developments' at 44.

³⁸⁰ 'Burkina Faso ombudsman passes on' (available at: http://www.accessmylibrary.com/coms2/summary_0286-19115899_ITM) (accessed 12 November 2012).



Thulisile Madonsela

Executive Secretary (April 2010-to date)³⁸¹

Thulisile Madonsela was elected Executive Secretary of AOMA at the April 2010 General Assembly meeting held in Luanda, Angola - as successor to Adv. Mushwana. Like Mushwana, she became Public Protector of South Africa and succeeded him in October 2009.

A human rights and constitutional lawyer, equality expert and policy specialist with over two decades of post-legal qualification experience, Adv. Madonsela holds the degrees of BA (Law) and LLB.

One of the drafters of South Africa's post-apartheid Constitution, Adv. Madonsela has also participated in several international forums and has contributed to key international documents, including the Beijing +5 and WCAR Outcomes documents, and several countries' human rights reports.

A member of several professional bodies, Adv. Madonsela regularly provides training and addresses conferences on equality and other areas associated with her expertise. She is a prolific author of journal articles, book chapters, books, and learning resources. In this regard she has co-authored a Bench Book for Equality Courts, a SAWLA Legal Advice Handbook on Family Law and Related Matters, and Handbooks on Gender Management and Gender Mainstreaming.

Advocate Madonsela has been involved in human rights and civic activism since the early 1980s, and has held numerous senior positions in government and civil society. During her tenure as the Executive Secretary of AOMA, she has already earned the esteem of her colleagues as a tireless and hard-working leader, driven by results and determination.

The successful launch of the AORC in March 2011 added credit to the leadership of Adv. Madonsela within AOMA's membership.



³⁸¹

Sourced mainly from the official website of the Public Protector - South Africa (available at: http://www.publicprotector.org/about_us/profile_public_protector.asp) (accessed 11 October 2012).



Lethebe Maine

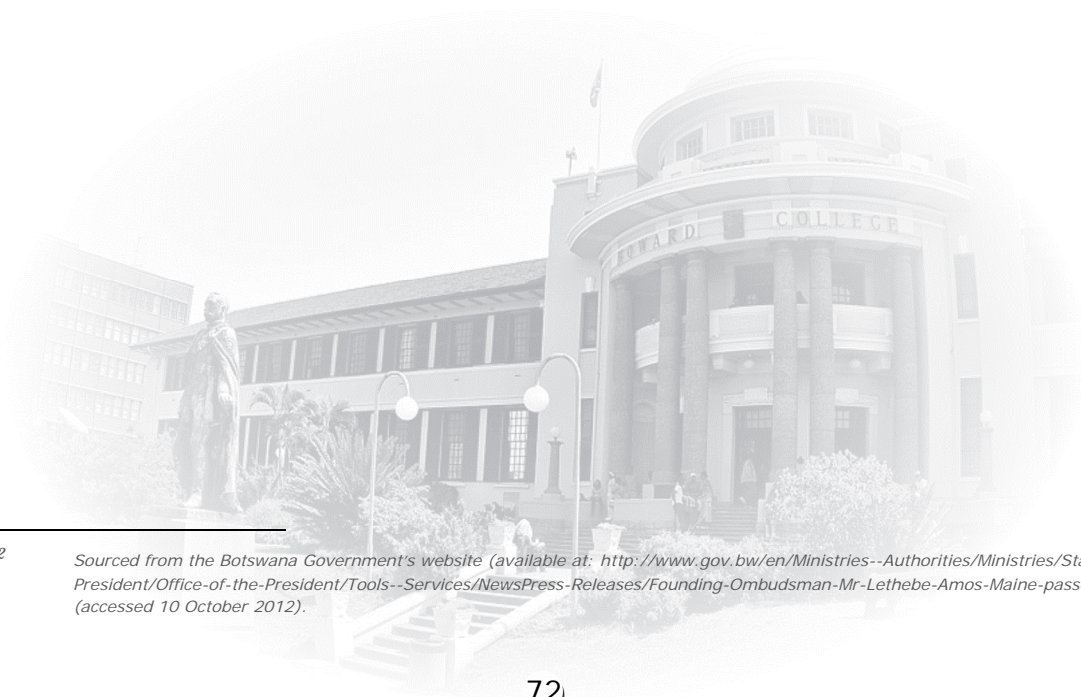
*President of the AOC (2001-2003)*³⁸²

Born in Mafikeng, South Africa, Lethebe Amos Maine was a lawyer and the first Motswana to be appointed Acting Judge of the High Court of Botswana. Adv. Lethebe Maine's career as a lawyer dates back to 1974, when he was appointed state counsel at the Attorney General's Chambers. In 1976, he went into private practice until 1997 - when he was appointed Botswana's first Ombudsman. Adv. Maine served two consecutive four-year terms as the Botswana Ombudsman - from December 1997 to November 2005.

As the country's first Ombudsman, Adv. Maine was faced with the mammoth task of establishing the office with no precedent. This entailed much hard work, which included networking and benchmarking practices across the world. He led the Ombudsman office from an infantile stage to an institution with a strategic focus by the time he left in 2005.

Lethebe Maine also contributed significantly to the development of the Ombudsman institution in Africa and abroad. He served as the President of the AOC from 2001 to 2003 and as Vice-President of the IOI - the world body for Ombudsman institutions, with a membership of over 150 countries. He has also served on the Board of Advisors of the International Institute for Democracy and Electoral Assistance (IDEA).

Adv. Maine died on 2 December 2011.



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Sourced from the Botswana Government's website (available at: <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Office-of-the-President/Tools--Services/NewsPress-Releases/Founding-Ombudsman-Mr-Lethebe-Amos-Maine-passes-on/>) (accessed 10 October 2012).



Florence Mumba

*Vice-President of IOI (1994-1996)*³⁸³

Florence Ndepele Mwachande Mumba was born at Mufulira in Zambia. She became the Director of the Department of Legal Aid in 1978, and has held judicial office since 1980. She was the first woman to be appointed a High Court Judge in Zambia.

After eight years as a High Court Judge, she was appointed to the Office of the Investigator General (Ombudsman) in 1989. Whilst holding this office, she served as a Director on the IOI Board, to which she was elected Vice-President until 1996. Justice Mumba also served

on the UN Commission on the Status of Women, from 1992 to 1995.

Within the International Commission of Jurists - of which she has been a member since 1993 - she participated in the work of the Committee of Legal Experts for the Protocol to the African Charter on the Establishment of an African Court on Human Rights in 1995. Judge Mumba took part in the Sixth World Conference of Ombudsman held in Argentina in 1996, both as African Regional Director and Vice-President of the International Ombudsman Institute.

Judge Mumba has also been a member of various national commissions, such as the Commission of the Law Development of Zambia from 1976 to 1979, the Council of Law Reporting Editorial Board of Zambia from 1981 to 1983, the Council of Legal Education from 1985 to 1990, and the Zambian Electoral Commission from 1992 to 1994.

In 1997 Judge Mumba was appointed a Supreme Court Judge and was elected a Judge of the International Criminal Tribunal for the former Yugoslavia (ICTY) at The Hague, where she also served as Vice-President from 1999 to 2001. Justice Mumba served as a Judge of the Appeals Chamber in the ICTY and International Criminal Tribunal for Rwanda (ICTR). From August 2008 until January 2011, she served as Chairperson of the Electoral Commission of Zambia. She is currently a Supreme Court Judge in Zambia. As a distinguished lawyer and women's rights activist, she has travelled extensively - presenting papers and delivering lectures worldwide.

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Sourced from the UN International Criminal Tribunal website (available at: <http://www.icty.org/sid/8158> United Nations International Criminal Tribunal for Yugoslavia) (accessed 13 October 2012).



Lawrence Mushwana

*Executive Secretary of AOA/AOMA (July 2003- October 2009)*³⁸⁴

Mabedle Lawrence Mushwana was born in Limpopo Province, South Africa. Adv. Mushwana was elected the first Executive Secretary of the African Ombudsman Association at the July 2003 Constituent Assembly held in Ouagadougou, Burkina Faso - a position he held for six years. His term as Executive Secretary of AOA/AOMA is associated with great developments and growth within the Association. Having started with an Association of only 18 member states, Adv. Mushwana left AOMA with double the number - 36 registered member states.

Advocate Mushwana's colleagues in the African Ombudsman community often refer to him as a strong leader - quiet and collected - and whose meticulous and methodical approach has preserved the Association's integrity, even in times of crisis and antagonism.

Prior to his tenure as South Africa's Public Protector (a position he held from 2002 to 2009), Adv. Mushwana had a successful career in the legal fraternity dating back to 1974 - both in government and the private sector. He was admitted as an Attorney of the High Court of South Africa and went on to establish his own law firm in 1992. He participated in the drafting of the South African Constitution. Adv. Mushwana was a member of parliament and served on several parliamentary committees. He chaired the Audit Commission and Judicial Services Commission. He resigned from the position as Deputy Chairperson of the National Council of Provinces, in order to take up office as the second Public Protector of South Africa on 1 November 2002.

Advocate Mushwana was appointed as Chairman of South Africa's Human Rights Commission in October 2009 - a position that he still holds.

Advocate Mushwana holds a B. Juris degree from the University of South Africa . He also studied at the University of Zululand where he obtained two postgraduate diplomas in law and later an LLB degree.



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Sourced from the website of the South African Human Rights Commission (available at: <http://www.sahrc.org.za/home/index.php?ipkContentID=46>) (accessed 11 October 2012).



Emile Francis Short

*President of the AOC, 1997-2001*³⁸⁵

Emile Francis Short was a judge and an academic, who served as the first Commissioner of Ghana's Commission for Human Rights and Administrative Justice (CHRAJ), after its inception in 1993, and until 2004; before that he was the head of a Ghanaian law firm for 20 years. While he was a Commissioner, the Commission took on the functions of the Ombudsman, in addition to its human rights functions. Of his many achievements - the most important was upholding the constitutional guarantee of the Commission's independence throughout his tenure. In a post-military era, the

Commission created widespread awareness of human rights in Ghana, by exposing corruption in government, reporting publicly on human rights violations, and providing training programmes to inculcate in public officials a sense of respect for the observance of human rights and the rule of law.

In 1997 - at the African Ombudsman Regional Conference in Accra, Ghana - Justice Short was elected onto the Board of Trustees of the AOC, and the following year, at the first Board meeting in Dar es Salaam, was elected the first President of the AOC. At the 2001 Regional Conference in the Seychelles, he was re-elected for another term as the representative for the West African Region.

Justice Emile Short served as a judge on the United Nations International Criminal Tribunal for Rwanda (ICTR) from 2004 to 2009, when he returned to his position in the Commission for Human Rights and Administrative Justice in Ghana. Judge Short retired from the CHRAJ in 2010.

He earned an LLM degree from the London School of Economics and Political Science in 1967. He also received an honorary doctorate from Northwestern University in Evanston, Illinois, in recognition of his leadership and moral courage in tackling highly sensitive political issues.





Paulo Tjipilica

President of AOMA (April 2010-to date)³⁸⁶

Paulo Tjipilica was elected President of AOMA at the April 2010 General Assembly meeting held in Luanda, Angola.

Dr Tjipilica had served as Minister of Justice of Angola from 1998 to 2010, before he was appointed Ombudsman of Angola (commonly known as the Provedor de Justiça of the Republic of Angola) in 2004.

His return to Angola after a long career as a private lawyer in Portugal, is associated by many with the revival of the judiciary in Angola, following the end of the decades-long civil conflict that prevented any form of administrative development in the country.

Dr Tjipilica - as was his predecessor - is also known within AOMA as one of the members who is conversant in all four languages of the Association.

Under Dr Tjipilica's leadership, AOMA gained permanent Observer status within the African Union. His vision for his term as President of AOMA is to lead the Association to greater exposure, and to promote the public image of the Association in general, and that of the African Ombudsman in particular. Faithful to his personal motto (*seria serie tractanda sunt*: serious issues are dealt with in a serious manner), Dr Tjipilica is known as a determined and results-driven man.



³⁸⁶

See Ndagirwa 'The AOMA and the AORC: History and developments' at 46.