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A COMPARATIVE ANALYSIS OF LEGAL SYSTEMS GOVERNING OMBUDSMAN OFFICES IN AFRICA

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EXECUTIVE SUMMARY¹

There is an urgent need for research into the various legal systems and laws governing the Ombudsman function within AOMA member states. AOMA has faced many challenges, especially in respect of the diversity of the legal systems governing the structures of its members. Accordingly, a comparative analysis of the various legal regimes among AOMA members was conducted. The aim of the analysis was to reveal the challenges and strengths of the Ombudsman Offices in Africa; the differences and similarities amongst them; and what can be done to develop normative standards for AOMA members. This was to inform AOMA's future strategy and planning processes relating to its membership.

The research protocol involved *administering qualitative survey questionnaires* (by e-mail) to all AOMA member countries, using relevant indicator variables developed by the AORC staff. A six-page self-administered survey questionnaire was distributed to all 39 AOMA members. Only 14 countries replied. The responses were from: Burkina Faso, The Gambia, Tanzania, Sierra Leone, Mauritius, Cote d'Ivoire, Lesotho, Chad, Namibia, Kenya, Madagascar, Uganda, Mozambique, and South Africa. A further aspect to the research protocol was sourcing *qualitative field data from eight AOMA sample countries* (The Gambia, Cote d'Ivoire, Ethiopia, Burundi, Namibia, Mauritius, Tanzania, and Mozambique). A non-probability sampling method was applied to the sample of eight countries, as per the requirements of the terms of reference for the research. Four main factors were taken into account when selecting the eight countries: the need for a representative number of AOMA countries to be included, a requirement that each AOMA region be represented, a desire to include a representative number of official languages, and the need to include a variety of types of Ombudsman institutions.

For the interviews in each of the eight sample countries, 29 research questions across the following 10 themes relating to the Ombudsman institution were used:

1. Establishment and Structure
2. Powers and Functions
3. Appointment and Removal of Ombudsman
4. Reporting Arrangements
5. Funding Model and Budget
6. Appointment and Removal of Staff
7. Independence
8. Operations
9. Achievements
10. Other.

¹ A summary of recommendations made in the report is listed at the end of each paragraph for each theme addressed, and is in an *italic font*.

The interviews took place in each country between 22 August 2013 (Mozambique) and 2 October 2013 (The Gambia).

Several documents were identified as being reputable and appropriate sources of best-practice principles with respect to the Ombudsman function: (a) the Draft AOMA Standards for the Establishment and Operation of Ombudsman Institutions; (b) the European Code for Good Administrative Behaviour; and (c) the IOI Bylaws. These were used and referred to during the comparative analysis which followed the interviews. Reference was also made to a comparative study of Ombudsman Institutions in Asia, and the 'Shared Values' set out in the African Union's Strategic Plan for 2009–2012.

The results of the interviews, for each theme, are now listed:

Structure of the Office

The complexity and size of the structure seems to relate directly to the size and population of the country, the period of time the Ombudsman Office had been in existence, and also to the government structure and political history of the country concerned.

Recommendation

For very large Offices there could be a (Chief) Ombudsman and two Deputy Ombudsmen with circumscribed duties – perhaps one administrative and one relating to investigation. In terms of the wider organisational structure, two main sections are suggested – one dealing with oversight and administration, and the other (including the actual Ombudsman) covering all other functions including the investigative/executive function.

Constitutional provisions for the Office

There are provisions for the establishment of the Office in all the constitutions of the sample countries. What differs between the countries, however, is the extent to which the description of all the detail – appointment/termination, role, mission, mandate, powers of investigation, independence, requirements for appointment, tenure, structure of the Office – is included in the constitution itself, as opposed to in the enabling legislation, or in both. In Ethiopia (the negative end of the spectrum) the constitution merely refers the issue of setting up and defining the powers and functions of the Ombudsman to the House of Representatives. In the Constitution of Mauritius (the positive end of the spectrum), an entire (detailed) Chapter is devoted to the Office.

Recommendation

As best practice, the Office of the Ombudsman should be enshrined in a constitution, given that the threshold requirements for modification of constitutional provisions are normally higher. The Namibian Constitution is an example of 'good practice' for a country with a hybrid Office.

Enabling legislation

The enabling legislation typically describes and amplifies the powers and responsibility of the Office of the Ombudsman (the requirement to do so is often mentioned in the constitution of the country concerned):

(a) *The Gambia*: The Ombudsman Act 3 of 1997 sets out the powers, duties and functions.

(b) *Cote d'Ivoire*: The Organic Law No. 2007-540 sets out the functions, organisation and operations.

(c) *Ethiopia*: Proclamation No. 21 of 2000 provides for the establishment and lays down, *inter alia*, powers and functions.

(d) *Burundi*: Law No. 1/04 of 24 January 2013 amending Law No. 1/03 of 25 January 2010 on the organisation and functioning of the Ombudsman.

(e) *Namibia*: The powers, duties and functions are articulated – as required by the constitution – in the Ombudsman Act 7 of 1990.

(f) *Mauritius*: The Ombudsman Act of 1969 and to a small extent the Public Service Commission Act.

(g) *Tanzania*: The functions and powers of the Commission are provided for under the Commission for Human Rights and Good Governance Act (7 of 2001).

(h) *Mozambique*: Law 7 (Article 15) of 2006 and Decree 3 of 2013 (a proposed new structure of the Office of the *Providor de Justicia*) deal with establishment, mandate, powers and structure.

Recommendation

The attributes, organisation and functioning of the Office are perhaps more strongly embedded in the legal framework in Cote d'Ivoire than in some of the other sample countries, and this is worthy of consideration by AOMA. The embedding of the Ombudsman institution in organic laws is a possible alternative which may guarantee the maximum of stability for the institution.

Mandate and focus

A wide permutation of elements relating to the 'classic' (dealing with maladministration/good governance only) and 'hybrid' (dealing with maladministration *and* other issues such as corruption and human rights) ombudsman models were evident. Official national bodies dealing with human rights and corruption occur in seven of the eight sample countries (The Gambia is the only apparent exception). This is relevant given that if such bodies do not exist, the mandate and focus of the Ombudsman is likely to be broader, and vice-versa. Ethiopia and Mauritius were the only countries where the mandate and focus of the Office were aligned to the classic model or very close to it. Issues outside the maladministration arena within the mandate of some countries, include, *inter alia*: human rights violations; corruption and the abuse of power; the power to control the administration of public entities; participating in reconciliation and peace efforts (even internationally); promoting dialogue between citizens and between communities; promoting social cohesion; protection of the environment; and labour matters.

Recommendation

There should be a very clearly defined mandate and focus for the Ombudsman and there should possibly be a move towards this as a Standard by AOMA. If anti-corruption or human rights bodies do exist, the mandate to investigate such issues should ideally be transferred to them, in order to avoid duplication of function, confusion and inefficiency. In Cote d'Ivoire the prominent mediation function of its Office seems to conform to many features of the standard 'model of mediation' in dispute-resolution theory and practice. Considering this model of mediation may be relevant to the definition of such issues in AOMA's normative standards.

Status of decisions and ensuring compliance with recommendations and remediation

In all countries, except The Gambia, the initial status of decisions is advisory and in the form of recommendations which have no executive power, and there are no powers of arrest or detention. Decisions are typically implemented by mediation, negotiation and persuasion. There are, however, varied options and procedures that can impact on the respondent if there is non-compliance with recommendations. In Namibia, non-compliance can be remedied by recourse to parliament or the courts (by the Ombudsman); in Mauritius a report and recommendations can be made to the minister concerned or the prime minister, or a further report can be tabled in parliament; in Tanzania the recommendations can be enforced in court as a last resort; in Ethiopia the defaulting individual or government authority can be sued and Special Reports can be submitted to the Delegates Committee of the House; and in Mozambique the relevant minister may be expected to enforce the recommendations. In addition, non-compliance can, *inter alia*, also be enforced by *ad hoc* monitoring and exposure to the media (Burundi).

Recommendation

With regard to measures to ensure compliance with recommendations, to ensure the independence and impartiality of the Ombudsman Office, recourse should not be made to the executive, government ministers or parliament.

Extent of remit

Bodies or individuals who cannot be investigated usually include the executive and the judiciary, while matters before the courts are also typically out of bounds. In other respects, limitations of the power of the Ombudsman relate to a wide variety of circumstances across the different countries.

Recommendation

In the interests of equality and fairness, the executive should not be excluded from the remit of the Ombudsman, and in the interests of the independence of the Office, the executive should not have the power to initiate or halt the investigations of the Ombudsman/Commission/Mediator.

Tenure, appointment procedures and required qualifications

There are a very wide variety of appointment procedures, and Ombudsman (and their deputies) are appointed for initial periods ranging from three to six years – rarely with no option of renewal (Burundi only). There are various options for renewal, ranging through to no specification/limitation in this regard. The Ombudsman and his deputies are typically appointed for the same tenure, except in Cote d'Ivoire where regional mediators are appointed for a shorter period based on a Presidential Decree. A legal background is often required of the appointee, although the actual criteria (and number of criteria) relating to a potential nominee vary widely. Appointments are typically made by the executive on advice from various individuals and/or bodies. However, they are apparently made without the executive's initial participation in Ethiopia, Burundi and Mozambique. The nature of input required to be given to the executive also varies widely. Advisory bodies involved in this regard include the National Assembly (or equivalent) or President thereof (Cote d'Ivoire), nomination committees, and the Judicial Service Commission (Namibia). Only in Cote d'Ivoire

is there no appointment procedure or required qualifications laid down in the law, and decisions in this regard are made at the discretion of the president. The Public Service Commission in Mauritius appoints all staff who are junior to the Ombudsman in the Office, while the Ombudsman is appointed by the president.

Recommendation

Except for shorter appointments where one renewal might be an option, a single appointment of five to seven years is recommended (at least one year longer than the tenure of the legislature). Limitations to re-appointments should be considered and a performance appraisal of an Ombudsman seeking appointment for a second term would be useful. Legal experience/qualification (often being a judge), is a desirable qualification for an Ombudsman appointee and some general qualification criteria should be listed in the enabling legislation and/or in the constitution. An Ombudsman should not be a member of any political party. The appointment process should be as transparent, fair and inclusive as possible, and involve the executive, legislature or other elected body, and a body from which wise, informed and unbiased counsel can be sought – such as a Judicial Service Commission. Impartial counsel may not be derived from a body set up specifically for the purpose by the legislature, and especially by the executive. An impeccable procedure for the selection of Commissioners exists in Tanzania, and may well be another best-practice example (it is exceptional in terms of procedure and the quality and breadth of input that feeds into the procedure). There needs to be a carefully detailed description of chronological procedure for appointment.

Grounds and process for removal

All the countries appear to have a suite of well-established grounds for the removal of the Ombudsman, although the process for removal is variably developed and defined. Grounds for removal typically include: incapacity/inability to discharge functions for whatever reason; illness; misbehaviour/misconduct; loss of impartiality; corruption; revocation; and incompetence. In terms of the actual process of removal, the head of state (president) is often involved and typically makes the final decision on the removal, although this is often preceded by the appointment by him of an investigative commission/tribunal which must advise him on the matter. In addition to this, The Gambia requires a two-thirds majority vote in the National Assembly, and Ethiopia a two-thirds majority vote in the House. In Burundi and Mozambique the National Assembly is the instigating authority (a three-quarters majority vote is required in Burundi). Namibia differs from all the other jurisdictions in that the Ombudsman can be removed from Office by the president after an investigation and recommendation by the Judicial Service Commission.

Recommendation

The grounds for removal should be embedded in the relevant legislation and constitutional framework and there should be meticulous procedure in the case of removal. The legislature or other elected body should be involved in the removal process. At least a two-thirds majority vote in parliament is indicated. As for appointment, a detailed description of chronological procedure should, ideally, be in place.

Reporting arrangements, oversight and accountability

The Ombudsman invariably reports to parliament (also to the Upper House in Burundi) *and* the executive, both of whom, in effect have ‘oversight’ over the institution, although the Ombudsman is not necessarily accountable to them in terms of the constitution and enabling legislation. The content of the oversight is the annual report, and sometimes the quarterly or special reports (as required) that are submitted during the course of the year in some countries. The report may be laid before parliament (sometimes as a public presentation by the Ombudsman), but sometimes via a committee (Ethiopia) or government minister (Tanzania). A deviation from this procedure is in Cote d’Ivoire where the annual report is submitted only to the president and the President of the National Assembly, and not to the Assembly *per se*. This is the only country where the Ombudsman does not report in some way to the legislature. Ethiopia, Namibia and Mozambique stand out, in that their reports only go to parliament, and not to the executive. The content of reports typically relates to the nature of the investigations and the recommendations, difficulties with investigations, and the degree of compliance with remedial recommendations. In The Gambia, the names of the parties investigated are only included in a report to the president and not in the separate report to the National Assembly, while in Burundi the names of complainants and the staff of administrative authorities investigated are excluded from reports.

Recommendation

Reports to parliament (usually annually at least) could be a normative standard for AOMA, but with an option to report to the executive as well as a matter of courtesy. The issue of accountability should be dealt with carefully, and in detail, in the relevant legislation and possibly the constitution.

Funding model and budget allocation

In most countries the budget is sourced entirely from the state coffers, and is typically authorised by parliament. The Office of the Ombudsman in Ethiopia is currently, in addition, enjoying a three-year grant from the World Bank, and is only one of two countries (the other being Burundi) that can source outside grants in order to supplement its budget. Namibia and Mozambique are the only countries where the budget of the Office is managed by a government department – in both cases by the Ministry of Justice. It is not always clear how parliament is involved with the management and allocation of the budget, however, although Ethiopia, Mauritius and possibly Cote d’Ivoire get their funds directly from the treasury. It is also uncertain how the remuneration of the Ombudsman is determined across the sample countries, although in Cote d’Ivoire that of the Mediator and Regional Mediator is determined by a Presidential Decree.

Recommendation

Regulating and defining all financial processes are issues that should be incorporated in enabling legislation, in order to secure the Office of the Ombudsman and to give it independence. The budget should be sourced directly from treasury, and not from a budget vote or allocation from a specific government ministry or department. It is also perhaps not advisable, except in exceptional circumstances, to have the possibility of sourcing outside funding embedded in statutory regulations, as this could potentially compromise the independence of the Office.

Appointment and removal of subordinate staff

There is a wide range of appointment and removal procedures for staff, although they can be roughly divided into three groups: (1) the Office of the Ombudsman is entirely independent in terms of the procedures; (2) there is nominal involvement by the executive/parliament; and (3) there is significant involvement of the state or parliament. The first group comprises the Offices in The Gambia, Ethiopia and Mozambique, although there may be some state influence in that civil-service procedures are used to implement and administer appointments, and in Mozambique staff can only be selected from government departments. The second group comprises Cote d'Ivoire and Burundi. In Cote d'Ivoire the Regional Mediators and General Secretary are appointed with the involvement of the executive and appropriate minister after advice from the Mediator, although other appointments are entirely at the discretion of the Mediator. In Burundi, appointments and removals are done by the Office of the Ombudsman, but only after consultation with the Office of the National Assembly. The third group comprises Mauritius (staff appointed by the Public Service Commission), Namibia (appointment and removal by the state), and Tanzania.

Recommendation

The appointment and removal of subordinate staff should be the responsibility of the Ombudsman and his Deputies; involvement by the legislature/parliament, executive and government bureaucracy in the appointment/removal process should, ideally, be avoided. Preparing detailed guidelines for the appointment and removal of staff in Ombudsman Offices should be considered. In terms of appointment procedures, the Office of The Gambia may be the most inclusive and transparent and is perhaps an example of best practice. Procedures include the placement of national advertisements and interviews done by a carefully selected panel from the Office in the presence of an appropriate expert.

Approach to investigations and the duration thereof (turnaround time)

There is great variation in the approach taken to investigations. The process, however, is *invariably* as follows: (1) direct, oral or written complaints are made, although an Ombudsman may also initiate a complaint himself (Cote d'Ivoire, Tanzania); (2) the admissibility of a case is then assessed and, if admissible, is assigned to an appropriate investigator; (3) a letter is often written to the person/department against whom the complaint has been lodged, or some other form of communication (phone call) is used; (4) interviews may (e.g. The Gambia and Mauritius) or may not be held in camera, and sometimes public hearings and inquiries are held (notably Tanzania); (5) subpoenas may be used and premises searched if necessary, after notice is given (Namibia); (6) investigators then make a recommendation or recommendations and these are sent/proposed to the respondent, or the case may be dismissed; (7) mediation and conciliation may then be entertained; (8) if there is no response with regard to the recommendation the Ombudsman can approach a court for an interdict to compel compliance (Namibia), lodge civil claims (e.g. Namibia) or the matter (as a report) may be referred to the media or a standing committee of parliament or similar (e.g. Ethiopia, Namibia). The duration of a case varies in length; more complex cases can take up to two years or more to resolve, but the average duration is three to six months; Ethiopia has catered for urgent cases which must be resolved within two days.

Recommendation

Mediation and conciliation apparently occur in four countries and are worthy of inclusion in normative standards. Proposing turnaround times for different categories of investigations may be useful to work with and develop standards for.

Extent of acceptance of findings and their implementation

There seemed to be a very high acceptance of findings, and this ranged from 70–100%. The Gambia reported almost universal acceptance of the findings, which can be attributed to the rulings having the status of a court order. On the other hand, the near 100% acceptance rate in Mauritius was stated to be a result of the wide embrace by the populace of the functioning of the Ombudsman Office. When countries reported deviation from acceptance, the reasons typically given were delays in reporting complaints, failure to compromise, and a lack of funds when a recommendation or remediation had financial or monetary implications (typically compensation for the complainant).

Mitigation of political interference and appropriate measures

Most countries considered that they had not experienced any form of political interference, and that statements relating to independence and interference with the Ombudsman's activities in the constitution and enabling legislation mitigated the likelihood of political interference. Burundi went further and stated that the Office of the Ombudsman, in its very demonstration of acting in an independent manner, protected itself from political interference. No jurisdiction had a specific measure in place to mitigate political interference. Only Burundi and Tanzania cited examples of political interference, although in Tanzania it was indirect. In Burundi the interference was at executive and municipal level. In Tanzania, withholding adequate financial support was seen as an indirect form of political interference, and this seems to have been significant in the past. Namibia stated that the government was actively supportive of the independence of the Office.

Recommendation

Political interference should be referred to in the constitutional and legal framework – perhaps even a specific reference to the potential role of the executive and the upper and lower houses of parliament.

Cited recent achievements

An analysis was done of all the issues that the Offices of the different countries reported as being successes for them in recent years, and these were classified into *broad themes*. These themes were all positive or developmental. Themes reported by at least half the countries were: (1) promoting awareness amongst citizens and government; (2) improved efficiency in dealing with complaints; and (3) the establishment and setting up of new offices (or the new Ombudsman Office itself in Mozambique). The first theme speaks to the significance of publicising the importance and relevance of the Ombudsman institution or ombudsman-like institution. The third theme refers to the establishment of new regional offices, re-establishing the institution *per se*, and establishing the Ombudsman Office of Mozambique. These are all positive developments (the Office in Cote d'Ivoire, for example, was re-established after the recent civil war).

Recommendation

Publicising the importance and relevance of the Ombudsman institution or ombudsman-like institution might be an important focus area for AOMA and the AORC, in terms of suggesting how this could be done, and by providing all the relevant materials.

Advocacy and outreach nationally, and international and national consultation and collaboration

All countries referred to regional collaboration and consultation with various national and/or regional bodies/entities, but relationships with international organisations (AOMA excepted) were limited. The Gambia, Cote d'Ivoire and Mauritius stated little or nothing about international relationships. For other countries, with respect to international collaboration/interaction, the following were mentioned: the IOI; the AOMF; individual African and European Ombudsman; the Secretariat of Human Rights Institutions; and the African Commission of Human and Peoples' Rights (ACHPR). Nationally, countries referred to interactions with a wide range of government bodies; various human rights bodies, NGOs and CSOs; and even a variety of religious groups (notably in Burundi). Otherwise, national bodies collaborated with included: government ministries/secretariats; an Independent National Electoral Commission; a National Commission for Land and Other Assets; the Independent National Commission on Human Rights in Burundi; and a National Planning Commission in Namibia. Mozambique refers to interaction with many levels and authorities in government, *inter alia*: the president of the country, the President of Parliament, the prime minister, provincial and local governments, and traditional local authorities. Very little was said about consulting organisations and individuals on difficult matters, aside from reference to government agencies and experts in their fields (Mozambique). The Gambia is the only country that refers to an apparently successful outreach/advocacy programme that involves workshops and radio.

Recommendation

AOMA and the AORC should educate member states on the nature of the Ombudsman institution, its function, and its typical mandate, focus and role. The AOMF has an international membership of French-speaking member states and 16 AOMA member states are members. Given that the associations have a similar mission, some sort of cooperation and collaboration is warranted. AOMA should also collaborate with regional bodies such as the Secretariat of Human Rights Institutions and the African Commission of Human and Peoples' Rights (ACHPR). The Gambia's role in advocacy and outreach may be an example of best or good practice for AOMA when it comes to recommending advocacy and outreach procedures. An option for larger countries with more resources might be to create a separate unit in the organogram for outreach and communication activities.

Value of AOMA's initiatives in driving advocacy and outreach and strengthening the Ombudsman institution

Apart from Namibia and Tanzania, the countries were perfunctory about AOMA's contributions to advocacy, outreach and strengthening the Office/institution; the Mauritius Ombudsman said that AOMA's initiatives have had little impact. The West African countries valued AOMA's (regional) meetings and commented on the exchange of information (especially on good practices) and facilitation of cooperation; a focus on regional issues was,

however, suggested (Cote d'Ivoire). Burundi commented on the value of experts from AOMA states. Mozambique valued information sharing and training. The Namibian Ombudsman lamented the lack of ownership/interest by members in AOMA, and would like the organisation to become more functional and with a full-time Secretariat. Tanzania was more positive about AOMA than any other country, and valued AOMA's: organisation of meetings; facilitating sharing of information by hosting workshops and other events; and its role in research and information sharing (including on good practices). As already stated, the response from the sample countries on AOMA's initiatives driving advocacy and outreach, and the strengthening of the institution, was muted.

Recommendation

Issues and activities that countries currently value most about AOMA should be focused on. These are: organising regional meetings; exchange of information; peer-to-peer learning; information sessions on best practices; facilitating cooperation at all levels; training and workshops of various kinds; sending experts to member states with newly established offices; research activities; spending more time travelling to member states, and offering encouragement, advice and support. AOMA needs to make full use of the power of IT. Much could be done to improve on all the communication difficulties by having a fully functional and free-standing website with many of the necessary resources available there. Online forums and email-based groups could also provide a rich experience for community conversations, debates, interactions and peer-to-peer learning.

Suggestions for improvement and challenges

Themes that were reported by at least half the countries were: (1) accessibility of the Office/reaching remote areas; (2) expansion to regional offices (decentralisation); (3) inadequate financial resources; (4) government resistance to findings/causing delays; (5) inadequate office space and infrastructure; and (6) inadequate staffing (including unfilled vacancies). *Problems relating to appointment procedures and budgetary independence are a recurring theme and warrant attention.*

There were significant differences across many of the themes between the Mediator Office and the Ombudsman Offices in the sample countries. Cote d'Ivoire was the only mediator-type Office and thus generalisations and recommendations relating to the differences cannot be made. Future research reviewing at least two additional countries in West Africa using the mediator system is strongly recommended.

The Mediator system

Cote d'Ivoire was the only country with a true Mediator system. The system in Cote d'Ivoire differs from all the other countries across a range of areas, including the nature of enabling legislation used, the strong focus on mediation, appointment processes, reporting arrangements, and oversight. It is strongly recommended that AOMA supports further research into the Mediator system of its member countries, as generalisations cannot be made based on data derived from only one country; at least two more countries with a Mediator system should be analysed. Subsequent to this research, recommendations could

be made on how best to revise the AOMA Standards to properly and fairly accommodate the two systems.

LIST OF ACRONYMS

ACC	Anti-Corruption Commission
ACHPR	African Commission on Human and Peoples' Rights
AMP-UEMOA	Association of Mediators of UEMOA Member Countries
AOA	Asian Ombudsman Association
AOMA	African Ombudsman and Mediators Association
AOMF	Association des Ombudsmans et Mediateurs de la Francophonie
AORC	African Ombudsman Research Centre
AU	African Union
CENI	Commission Électorale Nationale Indépendante (The Independent National Electoral Commission) (Burundi)
CHRAGG	Commission for Human Rights and Good Governance (Tanzania)
CIA	Central Intelligence Agency
CNDH	National Human Rights Commission (Mozambique)
CNDI	National Commission on Human Rights (Côte d'Ivoire)
CNEB	National Council of Churches of Burundi
CNIDH	Independent National Commission on Human Rights in Burundi
CNTB	Commission Nationale des Terres et autres Biens (National Commission for Land and Other Assets) (Burundi)
CSO	Civil Society Organisation
EHRC	Ethiopian Human Rights Commission
EIO	Ethiopian Institute of the Ombudsman
EISDA	Electoral Institute for Sustainable Democracy in Africa
EU	European Union
FEACC	Federal Ethics and Anti-Corruption Commission (Ethiopia)
CCCC	Gabinete Central de Combate à Corrupção (Central Office for Combating Corruption) (Mozambique)
GDP	Gross Domestic Product
ICAC	Independent Commission against Corruption
ICC	International Coordinating Committee (of National Human Rights Institutions)
ICCPR	International Covenant on Civil and Political Rights
IOI	International Ombudsman Association
IT	Information Technology
JSC	Judicial Services Commission
MOU	Memorandum of Understanding
NANHRI	Network of African National Human Rights Institutions
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
OIF	Organisation Internationale de la Francophonie

OLUCOME	The Observatory for the Struggle against Corruption and Economic Embezzlement (Burundi)
OPREM	Presidential Organ of Mediation (Cote d'Ivoire)
PCCB	Prevention and Combating of Corruption Bureau (Tanzania)
PCE	Permanent Commission of Inquiry (Tanzania)
PPP	Purchasing Power Parity
PSC	Public Service Commission
SDC	Swiss Agency for Cooperation and Development
SWAPO	South West African Peoples Organisation
UEMOA	West African Economic and Monetary Union
UK	United Kingdom
UN	United Nations
USOA	United States Ombudsman Association
WIPO	World Intellectual Property Organisation

NOTES ON REPORT WRITING

Sequence of sections in chapters

In chapters 6 to 13, and in chapter 15, there is a standard sequence of sections. First, there is an indented section (in a smaller font) which summarises the main points of the entire chapter, after which follows the results on each indicator for each sample country. Furthermore, at the end of each of these chapters there is an analysis and discussion section which comparatively discusses the indicator concerned and makes suggestions, recommendations, and also points out difficulties. In most of these chapters – unless otherwise indicated – the data are listed for each of the countries in the following sequence (the same as in Table One): The Gambia, Cote d’Ivoire, Ethiopia, Burundi, Namibia, Mauritius, Tanzania and Mozambique.

Abbreviations of legislation

In chapter six the enabling legislation for each sample country is listed, with full detail. However, thereafter, and *in the context of a discussion of a particular country*, only the terms “the Act”, “the Law”, “the Organic Law”, “the Proclamation” and “the Decree” are used, as pertinent, unless there is likelihood of some confusion (see section 6.3 in chapter six).

Capitalisation

An attempt was made to standardise this throughout. Proper nouns were always capitalised, and all words in phrases such as ‘President Armando Guebuza’ and the ‘Constitution of The Gambia’ were capitalised. However, on their own, words like president, king, legislature, parliament, state, minister, prime minister, investigator and constitution (with a few exceptions) are lower-cased. This concurs with current academic standards, and is not intended to demote the status of the appointees or bodies concerned.

The word Ombudsman is always capitalised, and also the associated ‘Office’, but not the ‘institution’ of the Ombudsman, and not in adjectival terms such as ‘ombudsmanship’.

1: INTRODUCTION

1.1 Background

The Executive Secretary of the African Ombudsman and Mediators Association (AOMA) commissioned a Needs Assessment Report for the establishment of the African Ombudsman Research Centre (AORC) at the University of KwaZulu-Natal, in Durban, South Africa. As part of the preparation for the report, a questionnaire was developed and circulated to 43 African Ombudsman Offices – of which 25 responded with the required information. The replies to the questionnaire formed part of the report,² which was presented at a workshop of AOMA members on 16 and 17 March 2011. The report suggested that the most pressing needs of African Ombudsman Offices are:

- *The need for information* – limited information is available to organisations about sources of support for the Ombudsman institution
- *Better communication* between offices
- *Training*, especially in practical aspects of operating an ombudsman-type organisation.

The report also noted several other areas of concern amongst African Ombudsman Offices:

- Only about half are protected in constitutions in addition to legislation, with the remainder established by statute or executive decree and being more vulnerable to abolition or weakening
- A variety of types of Ombudsman and human rights institutions occur: the médiateur version of the Ombudsman model (Francophone countries); classical Ombudsman; hybrid Ombudsman; separate Ombudsman and Human Rights Commissions; Human Rights Commissions and no Ombudsman; and no national human rights institutions at all.
- There is often a weak constitutional and legal framework establishing the Office of the Ombudsman, which does not adequately support and empower the office to execute its mandate optimally.

Addressing these concerns, and also planning for advocacy, were seen as important objectives, and are a backdrop to the research brief and the comparative-analysis project itself.

1.2 Research brief³

² Neville Melville (2011) *Information, coordination, training, advocacy and research needs of the African Ombudsman and Mediators Association (AOMA)* [unpublished 'Needs Assessment Report'] pp. 1–111.

³ Terms of Reference: *Project: Comparative analysis of legal systems, particularly aspects governing the Ombudsman Offices of Africa* pp. 1–12.

There is a pressing need for research into the various legal systems and laws governing the Ombudsman function within AOMA member states – with a view to promoting improvements of all its aspects. AOMA has faced many challenges, especially in respect of the diversity of legal systems governing the structures of its members. Accordingly, a comparative analysis of the various legal regimes among AOMA members was needed. This analysis will aim to reveal: the challenges and strengths of the Ombudsman Offices in Africa; the differences and similarities amongst them; and what can be done to develop normative standards for AOMA members.

1.3 Research aim, objectives and outcomes

Aim:

Inform AOMA's future strategy and planning processes relating to its membership.

Objectives:

- As a foundation for the research, derive data based on a suite of carefully formulated research questions, from: (a) a sample of AOMA members (see section 1.4(b) below), and (b) supplement this with information culled from an email survey of all AOMA members (see section 1.4(a) below);
- Produce an in-depth assessment of a specified sample of Ombudsman Offices by means of relevant and realistic indicators for comparison;
- Produce a comprehensive, comparative-analysis report of the qualitative and quantitative research findings from the sample countries;
- Identify shortcomings, process inefficiencies and external factors that impede the efficacy of the sample's contribution to good governance and fair public administration;
- Recommend best practices, process improvements, and discuss lessons learned; and
- Provide a comprehensive file of all working documentation, including electronic data.

Outcomes:

General

- An enhanced understanding of the strengths, inefficiencies and impediments to the provision of an effective, efficient, economic and equitable service by the Ombudsman Offices to their respective sectors;
- Inform AOMA's future strategy and planning processes in general, and the development of normative standards, in particular.

Specific

- Establish the core similarities among the legal systems that govern the Offices of Ombudsman in Africa;
- Establish how the diversity of legal systems affects relationships (cooperation arrangements, communication, learning and exchange networks) among these offices;
- Formulate how the diversity of legal systems among AOMA members impacts on the work of AOMA itself;
- Establish the extent that AOMA's initiatives have addressed the need for advocacy and outreach to strengthen the ombudsman function of Ombudsman Offices in Africa;
- Establish best-practice examples against which to benchmark the development of normative standards for AOMA members;
- Suggest how sample offices can be improved in order to better fulfill their legislative mandate.

1.4 Research protocol

- a) *Administer qualitative survey questionnaires* (by email) to all AOMA member countries. Following the collation of a variety of sources of desk-top data, relevant indicator variables are to be identified and formulated into pertinent questions which will be part of the questionnaire. The data are to be analysed, interpreted and reported on.
- b) *Collect qualitative field data from AOMA sample countries*. One country is to be selected from each of the six AOMA regions (North, South, East, West, Central and Indian Ocean), given that preliminary research suggests this sample encapsulates the diverse legal systems which are the focus of the research. In addition, two other Ombudsman Offices (the oldest and newest) are to be included. The two main research instruments will be: (i) structured, self-completion questionnaires, and (ii) in-depth interviews (face-to-face) as a follow-up, and with other identified experts in the field of study. Thereafter, the data are to be analysed, interpreted and reported on.

1.5 Risks

As with most studies involving the administering of surveys, questionnaires and interviews to sampled participants, the issue of disinterest, non-response or very low response rates is always a reality. Although the number of role players involved in this study is fairly small, they may be unavailable for a wide variety of reasons.

1.6 Members of the research team

Team members were selected at or shortly after the commencement of the project from the School of Law, University of KwaZulu-Natal, Durban. Each member of the team brought specific capabilities and experience to the table. In addition, the AORC participated in a project-management and research-support role throughout the project.

Details of the research team are presented below. All members of the team, except for the report writer, participated in the field research and wrote reports on the field research concerned. The report writer compiled the preliminary report during October and November 2013, based on the contributions of all the other team members. Following input from the team members on this report, the final report was compiled at the end of December 2013 and early 2014.

Members of the Research Team

Advocate Ishara Bodasing (Acting Director, AORC)	<i>Project Manager</i>
Ms Susan Foley (research intern, AORC)	<i>Junior Researcher – Desk-top research and administrator of field visits</i>
Mr Franky Lwelela (research intern, AORC)	<i>Junior Analyst – data capture and analysis; French/English translations</i>
Prof. John Mubangizi (Deputy Vice-Chancellor and Head of the College of Law and Management Studies)	<i>Senior Researcher</i>
Prof. Managay Reddi (Dean and Head, School of Law)	<i>Senior Researcher</i>
Dr Paul Swanepoel (Lecturer, School of Law)	<i>Senior Researcher</i>
Mr Michael Buthelezi (Lecturer, School of Law)	<i>Senior Researcher</i>
Dr David Barraclough (Research Facilitator, School of Law)	<i>Senior Researcher (Report Writer)</i>

2: RESEARCH METHODOLOGY FOR FIELDWORK

2.1 Introduction

This chapter discusses and justifies the research methodology adopted for the sampling and choice of sample countries, lists and reviews the countries selected for the sample, discusses the finalisation of the research questions for the questionnaire, lists dates of interviews and the names of interviewers and interviewees for all countries visited, and, finally, mentions some strengths and weaknesses of the whole sampling experience. Part of the content of the chapter was prepared by Dr Paul Swanepoel.

With respect to the procedures and protocol associated with the *survey questionnaire* which had previously been sent out to all AOMA member countries, please refer to chapter three.

2.2 Choice of sampling method

The choice of sampling technique depends on a number of aspects – including the purpose of the study, the nature of the sample, available resources, as well as research-design, and ethical and legal considerations. The project's constraints of time and cost required formalising an efficient sampling methodology in order to maximise accuracy whilst working within the parameters of the constraints.

The sampling method most appropriate for the project was nonprobability sampling (also referred to as non-random or purposive sampling).⁴ Unlike probability sampling, where sampling methods are generally based on random selection and each member of the target sample has an equal chance of selection, nonprobability sampling does not give some members the possibility of being in the sample. One of the drawbacks of this method is that there is often little evidence that it is representative of the sample as a whole. As a result, it cannot easily be used in generalisations relating to the entire population. In addition, researchers using nonprobability sampling are unable to estimate its sampling error.⁵

In projects using a qualitative or mixed-methods research design, however, a purposive sampling method need not be a weakness; it still aims to arrive at a degree of representativeness, without employing probability methods. Furthermore, the strengths of the method are apparent when there is a need to target specific elements of the sample, where the purpose of the sample is to provide an illustrative example, and where there is limited time and money.⁶ In other words, nonprobability sampling is particularly suited to qualitative research, as it facilitates the collection of rich information. Crucially, when following a qualitative or mixed-methods research design, nonprobability sampling provides

⁴ J Daniel (2012) *Sampling essentials: Practical guidelines for making sampling choices*. London: Sage at 66.

⁵ *Idem* at 69.

⁶ N Blaikie (2000) *Designing social research: The logic of anticipation*. Oxford: Polity Press at 205.

researchers with strong theoretical reasons for their choice of cases.⁷ In this project, therefore, as the research progressed, the data reinforced the reasons underlying the choice of the countries in the sample. In the process, an inductive approach resulted in specific examples further reinforcing and ratifying the project's sampling approach.

Nonprobability sampling is directed at a particular purpose of the researcher, in order to examine certain qualities in a target sample. The object is often to provide illustrative examples where access is difficult. In the present project, subjective selection was an essential aspect of the study, and particular countries were identified as more appropriate for the research than others.⁸ On the whole, exploratory research does not require a rigorous sample, and a nonprobability model with a small sample size will thus suffice. However, the researcher should always provide a rationale explaining why a particular sample of participants was selected.⁹ This rationale is clearly presented in this chapter and elsewhere.

A nonprobability sampling method was applied to the sample of eight countries, as per the requirements of the Terms of Reference for the research. In summary, the four main factors taken into account when selecting the eight countries for the sample were:

- The need for a representative number of AOMA countries to be included
- A requirement that each AOMA region be represented
- A desire to include a representative number of official languages
- To include a variety of types of Ombudsman institutions.

2.3 Countries selected for the sample

As previously mentioned, one country from each of the six regions was selected as part of the sample, together with two other countries (one with a well-established Ombudsman Office, and one with a newly established Office). The sample comprised 8 out of 39 member states¹⁰ – a proportion of 20.5%. Table One (below) lists the eight countries originally selected for the sample by the research team.

Given the uncertainty about accessing three of the member states for the research (Tunisia, Cote d'Ivoire and Burundi) – Mauritania, Ghana and Chad respectively, were chosen as 'back-up' countries.

The North Africa Region was problematic for the sampling protocol. In the end, Tunisia did not have time to take part in the research until 2014, and Mauritania and Libya could not be

⁷ Johnnie Daniel (2012) *Sampling essentials*. Los Angeles: Sage at 90–91.

⁸ S D Lapan & Carol M Haden 'Program evaluation', in: S D Lapan & M T Quartroli (eds), *Research essentials: An introduction to designs and practices*. San Francisco: Jossey-Bass at 192.

⁹ Paul D Leedy & Jeanne E Ormrod (2010) *Practical research: Planning and design*. Boston: Pearson Education International at 213.

¹⁰ For a list of countries, per region (2012 figures), see: Managay Reddi and David Barraclough (2013) *An African journey towards good governance: The history of the African Ombudsman and Mediators Association* at 12.

reached by email or telephonically. Thus all three countries – and the North Africa Region – had to be excluded from the sample. Given the time constraints, there was thus no other option but to choose an alternative country for the sample. The Gambia (part of the West Africa Region) was accordingly chosen because it is the most northerly AOMA member state, and because it is close to Cote d’Ivoire, and thus could be visited during the same field trip. English is the official language.

TABLE ONE: COUNTRIES ORIGINALLY SELECTED FOR RESEARCH SAMPLE

Country	Region/Reason For Selection	Official Language
1. Tunisia¹¹	North Africa	Arabic
2. Cote d’Ivoire	West Africa	French
3. Ethiopia	East Africa	Multilingual
4. Burundi¹²	Central Africa	French/Kirundi
5. Namibia	Southern Africa	English
6. Mauritius	Indian Ocean	(Creole) ¹³ /English
7. Tanzania	Oldest established office	Swahili/English
8. Mozambique	Newly established office	Portuguese

2.4 Relationship between research questions and sampling method

The main goal of nonprobability sampling is to focus on particular characteristics of a given sample that best enable researchers to answer the research questions of the project concerned. If these characteristics are varied, this helps to demonstrate a degree of representativeness, which will add to the validity of conclusions drawn from the research. The Terms of Reference for this research project proposed 10 key research questions – a list which is not exhaustive.¹⁴ Addressing these research questions enabled the aim and objectives of the project to be realised. The questions covered three broad areas: the institution of the Ombudsman itself; the legal systems of the various member countries; and the role of AOMA in strengthening the ombudsman function within individual member states.

¹¹ Replaced with The Gambia.

¹² AOMA has not yet clarified whether Burundi belongs to the Central Africa or East Africa Region. For the purposes of the research it was considered to be a member of the Central Africa Region, and was selected as a country to be included in the sample. In any event, none of the Central Africa member countries could be reached in terms of participating in the project. Furthermore, Burundi – immediately adjacent to Central Africa Region member country Rwanda – is of similar size to Rwanda, and with a comparable history, ethnic composition, history and socio-economic/economic background.

¹³ Although English is the official language of Mauritius, it is spoken by less than 1% of the population, while Creole is spoken by 80.5% of the population (see Chapter Five, Section 5.6(b)).

¹⁴ It should be stressed at this point that this was not the final set of questions used in the sampling, although they formed the basis for the compilation thereof (see Section 2.5).

With regard to the *institution of the Ombudsman*, four research questions were proposed:

1. Is the Office of the Ombudsman protected by the constitution of the country, and by legislation?
2. What is the mandate?
3. How is the Ombudsman appointed? What is the period of tenure, and is it renewable?
4. How does the Office [of the Ombudsman] stand up to political interference?

As previously mentioned, the Ombudsman institution of AOMA members takes several forms (e.g. classical and hybrid, see section 1.1). If the sample of eight countries includes examples of all these forms (in addition to others that may not yet have been identified) – which it apparently did – the sampling method will have achieved a degree of representativeness with respect to these research questions.

With regard to the *legal systems of member countries*, three questions were proposed:

1. What are the core similarities among the legal systems that govern the Offices of Ombudsman in Africa?
2. How does the diversity of legal systems affect relationships (cooperation arrangements, communication, learning and exchange networks) among these offices?
3. How does the diversity of legal systems among AOMA members impact on the work of AOMA itself?

With regard to this set of research questions, and with respect to *official languages*, the sample comprised: two English-speaking countries (Namibia, The Gambia); one French-speaking country (Cote d'Ivoire); two bilingual countries with French as one of the languages (Burundi, Mauritius); one bilingual country without French as one of the languages (Tanzania); a multilingual country (Ethiopia); and a Portuguese-speaking country (Mozambique). This is broadly representative of the languages spoken in AOMA member states. Furthermore, the kinds of legal regimes in the sample also roughly corresponded to those present in the majority of AOMA members. The countries in the sample have legal systems based – *inter alia* – on aspects of English common law, Islamic law, customary law, French civil law, Belgian civil law, Roman Dutch law, and Portuguese civil law.

The final three research questions related to *AOMA's role in individual member countries*:

1. To what extent have AOMA's initiatives addressed the need for advocacy and outreach to strengthen the ombudsman function of Ombudsman Offices in Africa?
2. What are the best practice examples against which to benchmark the development of normative standards for AOMA members?
3. In what ways could the sample offices be improved in order to better fulfil their legislative mandate?

These research questions related to all countries in the sample, but especially to the two countries specifically chosen because of their status within AOMA: a country with a well-established Ombudsman Office (Tanzania), and a country with a newly established Office (Mozambique).

2.5 Finalising the research questions

The research questions were developed and refined by all members of the research team over a period of about two months. The questions from the Terms of Reference were used as the basis for this, although several needed to be reconceptualised, more detail was added, and some questions were eliminated as they could not actually be asked of interviewees (rather, these were questions that could be answered by the results of the research project). These last-mentioned questions related mainly to the legal systems of member countries and AOMA's role in individual member countries.

The final set of interview questions was divided into ten different themes. Each of these themes included a number of questions. The themes and number of questions (in parentheses) are presented below, together with the pertinent *chapter numbers* of the report where they are treated:

1. Establishment and Structure (2) [*Chapter Six*].
2. Powers and Functions (4) [*Chapter Seven*].
3. Appointment and Removal of Ombudsman (3) [*Chapter Eight*].
4. Reporting Arrangements (3) [*Chapter Nine*].
5. Funding Model and Budget (2) [*Chapter Ten*].
6. Appointment and Removal of Staff (3) [*Chapter Eleven*].
7. Independence (4) [*Chapter Twelve*].
8. Operations (2) [*Chapter Thirteen*].
9. Achievements (1) [*Chapter Fourteen*].
10. Other (5) [*Chapters Fifteen and Sixteen*].

All the interview questions are attached as Appendix 1. Note that the tenth theme (Other) was treated as two themes in the report, namely: 'Advocacy/Outreach, and Consultation/Collaboration with International and National Bodies' (Chapter Fifteen), and 'Suggestions for Improvement and Challenges' (Chapter Sixteen).

2.6 Dates/details of interviews with Ombudsman in sample countries

The research questions were typically emailed to interviewees ahead of the face-to-face interviews and discussion. A letter from the AORC Chairperson and the survey questionnaire was at hand at each interview session.

The interviews took place in each country between 22 August 2013 (Mozambique) through to 2 October 2013 (The Gambia). The timing of the interviews depended on the complexity of the travel arrangements, and also on the availability of both the interviewer and all the interviewees. This led to various delays.

The countries visited/date of visit/name of interviewer (all in bold), and the names of the interviewees from the Ombudsman/Mediator Offices (together with their titles and positions) – are all listed below:

The Gambia (2 October, Dr Paul Swanepoel)

- 1) Mrs Fatou Njie – Deputy Ombudsman (currently Acting Ombudsman).
- 2) Mr Pierre S. Secka – Director of Investigation, Investigation Unit.
- 3) Mr Landing Bondi – Acting Director, Human Rights Unit.
- 4) Mr Juma K. Camara – Principal Communications Officer.
- 5) Mrs Aji Sera Ndure – Senior Investigator, Human Rights Unit.
- 6) Ms Bertha S. Saine – Administrative Manager.

Cote d’Ivoire (two sessions) (30 September, Dr Paul Swanepoel and Mr Franky Lwelela)

- 1) Mr Pannan Coulibaly – General Secretary.
- 2) Mr Daouda Tanon – Director of Cabinet.
- 3) Mrs Clarisse Anelone - Chief of Cabinet.
- 4) Mr Kla Konan – Chief of Cabinet Lagune 1.
- 5) Mrs Marie Solange Diane – Investigation and Followup.
- 6) Mr Jacques Gnamkey – Human Resources, Budget and Assets.

Ethiopia (27 August, Prof. John Mubangizi)

- 1) Mrs Sarani Seleshi – Deputy Chief Ombudsman.
- 2) Mr Leul Seyoum – Director, Public Relations and Communications.
- 3) Mr Danek Shanko – Chief Investigator representing the Director of Investigations.
- 4) Mr Abdurzak Abdu – Senior Investigator.
- 5) Mr Gezahegu Tesfaye – Deputy Director, Public Relations and Communications.

Burundi (11 September, Adv. Ishara Bodasing and Mr Franky Lwelela)

- 1) Hon. Muhamed Rukara – Ombudsman.
- 2) Mr Ndiho Jerome – Director of Mediation, Civic Education and Communication.
- 3) Mrs Bigirimana Elijah – Director of Department in charge of Injustice and Human Rights Violations.
- 4) Mr Sunzu Didace – Spokesman.
- 5) Gahimbare Eurydice – Chief of Protocol for the Ombudsman.

Namibia (29 August, Mr Michael Buthelezi)

- 1) Adv. John Walters – Ombudsman.
- 2) Mr Erastus Mwanyangapo – Chief Investigator.
- 3) Mr Sylvester Sibungo – Investigator.

Mauritius (28 August, Prof. Managay Reddi)

- 1) Mr S.M. Hattea – Ombudsman.
- 2) Mr M.A. Zeadally – Senior Investigations Officer.

Tanzania (26 August, Prof. John Mubangizi)

- 1) Justice Amiri Manento – Chair, Commission for Human Rights and Good Governance.
- 2) Ms Epifania Mfundo – Director, Research and Documentation.
- 3) Mr Joshua Taramo – Principal Investigations Officer, Research and Documentation.

Mozambique (22 August, Mr Michael Buthelezi)

- 1) Dr José Ibraimo Abudo – *Provedor De Justicia* (Ombudsman).
- 2) Mr Jeremias Clemente Malôa – Chief of Studies, Department of Planning and Cooperation.
- 3) Mr Carlos Singano Famano Junior – Financial Officer, Research and Documentation.
- 4) Mr Juma Momade Iaca – Legal Officer.

2.7 Strengths and weaknesses of the research methodology

The sampling was dictated to by the availability of Ombudsman in specific member countries – both for answering a suite of research questions, and for being able to commit time for face-to-face interviews. It should be stressed that the willingness, or not, of the sample countries to participate in the project was outside the control of the research team. This, in the end, led to the exclusion of the North Africa Region from the sample, although the compromise sample selection was aligned as closely as possible to the Terms of Reference, and geographically the replacement country (The Gambia) is close to the North Africa Region.

2.7.1 Strengths

Several limitations of the sampling technique were discussed earlier in the chapter, and are not repeated here. However, it should be stressed that there were some advantages to the nonprobability sampling method. The method allowed the targeting of specific elements of the sample, where the sample provided an illustrative example, and where there was limited time and money. All these factors applied to the current research. The sampling technique used covered a diverse array of countries across Africa, that would likely be representative of the full AOMA membership: geographically; historically and politically (Ethiopia is Africa's

oldest independent state and Namibia one of its newest); culturally and in terms of language (as discussed above); in terms of legal systems used (as discussed above); in terms of country size (The Gambia is the smallest country of mainland Africa and Ethiopia is one of the largest); and economically (Burundi has one of the lowest GDP per capita incomes in Africa, and Mauritius has one of the highest).¹⁵

2.7.2 Weaknesses

In terms of the interviews themselves, language was a difficulty with some of the countries (e.g. Cote d'Ivoire and Mozambique) – with translation required.¹⁶ It goes without saying that it is impossible to convey the same amount of detail, and with the same nuances and accuracy, if translation is required. There is also the possibility that meaning was changed unintentionally, which may have impacted on the veracity of the results.

Mention should also be made of the disadvantage of using five different interviewers to undertake the interviews in the different sample countries. This meant that there was a lack of continuity, and as different individuals were involved, so were the interviewing approaches different. This meant that much more data and detail were sourced from some sample countries than others – which made comparative analysis of the data difficult. Added to this was the fact that information supplied by the interviewees was quite often ambiguous, and there was often uncertainty about the source of information. Consequently (as previously discussed), not all content was attributed to a particular source, unless there was a special reason to do so.

¹⁵ For further detail on all these figures, refer to chapter five.

¹⁶ During the Cote d'Ivoire interview there was an English version of the questions and a French version. Mr Franky Lwelela led the interview (in French) and translated the responses of the interviewees. Dr Swanepoel asked questions during the interview, which Mr Lwelela translated. Mr Lwelela compiled the report, following which Mr Lwelela and Dr Swanepoel met and revised it after discussion.

3: METHODOLOGY & RESULTS: SURVEY QUESTIONNAIRE¹⁷

3.1 Introduction

As a follow-up to the survey and research done in the Needs Assessment Report,¹⁸ further data and information were sought to supplement that already available, and also – where possible – to fill in gaps in information for all AOMA member countries.

3.2 Methodology

The staff of the AORC compiled a new set of questions relevant to the Terms of Reference, desk-top research, and an especially useful reference work comparing the Ombudsman Institutions of Asia.¹⁹ A six-page questionnaire, based on this, was finalised and vetted by the Chairperson of the AORC, Adv. Thuli Madonsela at the end of March 2013.

The self-administered survey questionnaire was distributed – under cover of an introductory letter about the project by the AORC Chairperson – to all 39 AOMA members, on 3 June 2013. An initial deadline of 30 June 2013 had to be extended to 15 September 2013 because of a poor return rate.

The survey questionnaire requested organisational, legal and other information, and covered 25 different questions/themes. The questionnaire is attached as Appendix 2.

3.3 Strengths of survey

The aim of the survey was to get – from all AOMA members – a broad overview of the current landscape. The strengths of the survey were:

- A large sample was targeted
- The questionnaires were made available in two of the four official AOMA languages (English and French) in an attempt to increase the validity of the findings
- The questionnaire was pilot tested with the KwaZulu-Natal Office of the Public Protector, and was revised according to feedback – which also increased the validity of the instrument.

3.4 Limitations of survey

¹⁷ Mr Franky Lwelela (AORC) sourced and collated the data upon which this chapter is based.

¹⁸ Neville Melville *Information, coordination, training, advocacy and research needs of the African Ombudsman and Mediators Association (AOMA)*.

¹⁹ Prof. Seong-Pil Hong (2011) *A comparative study on Ombudsman institutions in Asian region*. Anti-Corruption & Civil Rights Commission, Republic of Korea pp. 1–243.

Despite the current research being highlighted in the outcomes of the AOMA Needs Assessment Workshop (March 2011), and despite the AOMA Exco being appraised of this project in 2012, the response from member states was slow and staggered. This is a cause of concern for the AORC and its work – which is to serve the training and research requirements of AOMA.

The Needs Assessment report, which was hailed as the ‘first of its kind’, is the point of departure for the AORC Strategic Plan and for the present report. However, what gives a report meaning is the will to give it expression, and to take steps to implement its recommendations. The poor response to this survey suggests that AOMA members do not fully appreciate the importance of the work of the AORC.

3.5 Results

In the end, only 14 out of 39 countries replied – a response rate of about 35%.²⁰ The responses were from: The Gambia, Tanzania, Sierra Leone, Mauritius, Burkina Faso, Cote d’Ivoire, Lesotho, Chad, Namibia, Kenya, Madagascar, Uganda, Mozambique, and South Africa. This meant further, that in terms of the eight countries chosen for the comparative analysis, only Ethiopia and Burundi did not reply.

3.5.1 Organisational information

(1) Name of institution/Office

Five countries – all with English as their language of communication – refer to their Office as the Office of the Ombudsman (The Gambia, Sierra Leone, Mauritius, Lesotho, and Namibia), while four countries also using English, use a different term. For Tanzania it is the ‘Commission for Human Rights and Good Governance (CHRAGG)’, for Kenya the ‘Commission on Administrative Justice’, for Uganda the ‘Inspector of Government’, while South Africa uses the term ‘Public Protector’. Some four countries with French as their language of communication use the French term *Mediateur de la Republique* to describe their office (Burkina Faso, Cote d’Ivoire, Chad, and Madagascar), while one country with Portuguese as its language of communication uses the term *Provedor de Justica* (Mozambique).

(2) Years in operation

The oldest Ombudsman Office is Tanzania – with 47 years of operation (35 as Ombudsman and 12 as CHRAGG), followed by Mauritius (44 years), Uganda (25 years), Namibia (23 years), Madagascar (21 years), Lesotho (20 years), Burkina Faso (19 years), South Africa (18 years), The Gambia (14 years), Sierra Leone (12 years), Chad (10 years), Kenya (18 months), and Mozambique (1 year). Cote d’Ivoire did not answer the question about the number of years in operation.

²⁰ Burkina Faso was the first to return a completed questionnaire (15 July 2013).

(3) Main focus of Office

- Ten countries had *maladministration* as one of the focus areas, while countries like Cote d'Ivoire and Kenya only focus on maladministration. Four of the countries do not deal with maladministration at all.
- Five countries (Tanzania, Lesotho, Namibia, Mozambique, and South Africa) all had *human rights violations* as one of their focus areas, while the other nine countries do not deal with human right violations.
- Five countries deal with *corruption* as one of their focus areas (The Gambia, Lesotho, Uganda, Mozambique, South Africa), while the other ten countries do not deal with corruption.
- Eight countries deal with *governance* (Tanzania, Sierra Leone, Burkina Faso, Lesotho, Chad, Madagascar, Uganda, South Africa), while the other six countries do not deal with governance. Countries like Burkina Faso and Madagascar only deal with governance.
- Four countries deal with *police complaints* (Sierra Leone, Lesotho, Chad, Namibia), while the other ten do not deal with police complaints.
- *Other focus areas*: Two countries have other main focus areas, in addition to those cited above. Chad also deals with mediation between the armed movement and the government, while Namibia deals with environmental issues and the misappropriation of public money by public officials.

(4) Structure of Office

Eight countries have a central office together with regional/satellite offices, while six countries only have a central office (Mauritius, Lesotho, Madagascar, Chad, Uganda, and Mozambique).

(5) Language used

Nine countries have English as their preferred language of communication, while four use French and one Portuguese.

3.5.2 Legal information

(1) Status of Office

Eight countries have their Office governed by both the constitution and statute, four are only governed by the constitution, and two countries are only governed by statute (Chad, Madagascar).

(2) Rank of Ombudsman

Eight countries rank their Ombudsman as the equivalent of a judge (Mozambique, Tanzania, Sierra Leone, Namibia, Kenya, Mauritius, Uganda, South Africa), one (Cote d'Ivoire) considers the Ombudsman to be a member of the executive, and one country chose other ranks – e.g. Advisor of the High Constitutional Court (Madagascar). One country (Chad) did not answer the question, three countries did not strictly specify the ranking but considered that the Ombudsman should have the same rank as a judge of the High Court, Burkina Faso ranked the Ombudsman as the equivalent of a magistrate, Lesotho considered the Ombudsman Office to be a statutory body.

(3) Laws or sections of constitution that deal with establishment and mandate of Ombudsman

Each country has a set of Acts, Chapters, Articles and Sections of the law that deal with the establishment of the Ombudsman.

(4) Appointment of Ombudsman

In seven countries, the president alone (or king in the case of Lesotho) appoints the Ombudsman; in five countries (Kenya, Burkina Faso, Tanzania, Namibia, South Africa) the appointment is made after recommendation by an appointment committee or after consulting parliament and the Constitutional Council; in one country (Madagascar) the appointment is made after executive and government counsel; and in one country (Mozambique) the appointment is made by parliament.

(5) Removal of Ombudsman

In six countries (The Gambia, Tanzania, Kenya, Madagascar, Uganda and Mozambique), the president can remove the Ombudsman from office, but only after following the procedure prescribed in the constitution; in three countries (Namibia, Lesotho, Burkina Faso) the removal can be done by the president or king, with recommendation from the appointment committee. Cote d'Ivoire did not answer the question. In Chad, the removal is done in the case of treason or after the president's request; in Sierra Leone it is done if requested by one third of the members of the legislature; in Mauritius by the president after receipt of a report by a specially constituted tribunal appointed by the president; and in South Africa following application of Section 194 of the Constitution in the case of misconduct, incapacity or incompetence, and by a resolution in the National Assembly adopted by a two-thirds majority.

(6) Structure of the Office of the Ombudsman

In 12 of the countries the Office is headed by single individual, and in two countries it is a Commission (Tanzania, Kenya).

(7) If Office is headed by an individual – is there a Deputy Ombudsman?

Of the 12 countries run by an individual, only four have a Deputy Ombudsman (The Gambia, Madagascar, Lesotho, and South Africa), while only one of the two countries with a Commission has a Deputy Ombudsman (Kenya).

(8) Tenure/term of Ombudsman (if Office headed by an individual)

One country (South Africa) has a tenure of seven years (non-renewable); in three countries (Kenya, Cote d'Ivoire, Madagascar) the tenure is a six-year term with no chance of renewal; four countries (The Gambia, Sierra Leone, Burkina Faso, Mozambique) have a five-year term (in The Gambia there is unspecified number of renewals, in Sierra Leone and Mozambique there is only one renewal of the five-year term, and Burkina Faso only has one term but the Ombudsman stays in office until the appointment of a new Ombudsman). Three countries (Mauritius, Lesotho, Uganda) have a four-year term, with a chance for a second term only in Lesotho and Uganda, Mauritius enjoys an unspecified number of renewals, while Namibia is the only country with an unlimited term until the age of retirement (65 years, but can be extended to 70 years). Two countries (Chad, Tanzania) did not answer the question.

(9) Power and functions of Ombudsman Office

In all countries the Ombudsman has the power to investigate all specified focus areas, in order to carry out his duties – which differ depending on the mandate.

(10) Membership of other organisations

Twelve countries belong to the IOI, except for Mozambique which only belongs to AOMA. Four countries belong to AOMA, the IOI and the AOMF; three belong to AOMA, AOMF and AMP-UEMOA (Association of Mediators of UEMOA Member Countries (UEMOA = West African Economic and Monetary Union)); and Namibia belongs to AOMA, the IOI, the ICC (International Coordinating Committee of National Human Rights Institutions), and the NANHRI (Network of African Human Rights Institutions).

(11) Political interference

Three countries (Cote d'Ivoire, Kenya, and Madagascar) rely on their constitutional law and decrees which ensure the independence and non-political involvement of the Ombudsman, as a mechanism to withstand political interference. Seven countries have different views on why they are not vulnerable to political interference: support of stakeholders (The Gambia); the Ombudsman being only answerable to the president (Sierra Leone); strong media communication and the relationship with parliament (South Africa); and reporting periodically to parliament (Uganda). Three countries believe there cannot be political interference, and one country (Tanzania) did not answer this question.

3.5.3 Other details

(1) Human resources capacity

The number of staff per country are as follows: South Africa (398 = 104 operational, 153 investigators, and 100 trainees, with all involved in facilitation and mediation and with only 24 in supervision and management); Uganda (349 = 150 support, 199 operational, of which only 3 are involved in receiving and processing complaints, while 10 are involved in facilitation and mediation, 199 in investigation, and 25 in supervision and management).

All other countries have fewer than 100 staff – with the smallest complement being in Mozambique, which only has eight staff in total.

(2) Advocacy of good governance (state/private)

Five countries (Tanzania, Cote d'Ivoire, Chad, Mozambique, and South Africa) are involved in both state and private advocacy, while eight countries are only involved in state advocacy, while one country (Namibia) did not specify either.

(3) Awareness of other initiatives that support adoption of the Ombudsman institution

Nine countries were not aware of any other initiatives, four said they were aware of other initiatives, and one country did not give an answer.

4: REVIEW & ANALYSIS OF BEST PRACTICE STANDARDS²¹

4.1 Introduction

Among the specific deliverables set out in the Terms of Reference, is the formulation of recommendations of best practice. Several documents have been identified during this project as being reputable and appropriate sources of best-practice principles with respect to the Ombudsman function. These include: (a) the Draft AOMA Standards for the Establishment and Operation of Ombudsman Institutions; (b) the European Code for Good Administrative Behaviour; and (c) the IOI Bylaws. Reference has also been made to a comparative study of Ombudsman Institutions in Asia, a recent IOI-sponsored publication on Ombudsman Institutions in Australasia and the Pacific, and the 'Shared Values' set out in the African Union's Strategic Plan for 2009–2012. All these documents are discussed in greater detail later in the chapter.

International standards for the Ombudsman institution's structure and mandate have developed from a number of different legal sources. While there is no international treaty dealing specifically with Ombudsman institutions, one of the most significant international human rights covenants – the International Covenant on Civil and Political Rights (ICCPR) – sets out principles that guarantee effective, fair and timely access to redress – both judicial and non-judicial.²²

The 'Paris Principles',²³ which set out standards relating to National Human Rights Institutions (NHRIs), were endorsed by the UN General Assembly in 1993.²⁴ While these do not specifically relate to Ombudsman institutions, they set out standards for bodies with quasi-judicial competence. They stress independence as an essential characteristic – which must consist of institutional, functional and personal independence.

The UN General Assembly Resolution on the Role of the Ombudsman refers to human rights standards, the rule of law and the principles of justice and equality, as standards to be employed in formulating the mandate of the Ombudsman institution.²⁵ Part of these standards include access to justice, which involves effective remedies, access to courts, the right to a fair trial, redress, judicial protection, due process, legal certainty, reasonable response times, and non-discrimination. The Resolution further stresses the importance of the autonomy and independence of the Ombudsman institution, and its proactive role in

²¹ This chapter was, in large part, compiled by Dr Paul Swanepoel.

²² UN General Assembly Resolution 2200A (XXI) of 1966, available at: <http://www.un.org/en/ga/sessions> (accessed 1 August 2013).

²³ See: Annex 6, 'Paris Principles', available at: http://www.info.gov.hk/info/eoc/annex6_e.pdf (accessed 1 November 2013).

²⁴ UN General Assembly Resolution 48/134 of 1993, available at: <http://www.un.org/en/ga/sessions> (accessed 1 August 2013).

²⁵ UN General Assembly Resolution 63/169 of 2008, available at: <http://www.un.org/en/ga/sessions> (accessed 1 August 2013).

advising governments “with respect to bringing national legislation and national practices in line with their international human rights obligations”.²⁶

Later UN Resolutions refer to the role that Ombudsman institutions play in “promoting good governance in public administrations”.²⁷ Good governance can be defined as a “transparent, fair, all-inclusive and representative process of decision-making and how these decisions are implemented by the administration”. Ombudsman institutions play a useful role in monitoring the implementation of these decisions.²⁸

4.2 AOMA Standards for the Establishment and Operation of Ombudsman Institutions²⁹

This draft document states that the Ombudsman in Africa must be an independent, impartial public official, with authority and responsibility to receive, investigate or address complaints about government actions, and, when appropriate, make findings and recommendations and publish reports.³⁰ An Ombudsman addresses complaints of maladministration and makes recommendations for the improvement of the general administration of the bodies over which it has jurisdiction. The document further states that the term ‘Ombudsman’ should only be used if the following seven conditions are met: *independence, accessibility, fairness, accountability, effectiveness, impartiality and confidentiality*. An Ombudsman Office can be established in accordance with either a constitution or enabling legislation. An Ombudsman shall be a person of recognised knowledge, judgment, objectivity, integrity and good character, and cannot be a member of a political party.

4.3 European Code for Good Administrative Behaviour

The European Code for Good Administrative Behaviour is a tool used by Ombudsman throughout the Europe Union (EU), and contains general principles of good administrative behaviour by which their Ombudsman Offices ought to abide.³¹ The aim of the Code is that it will eventually be transformed into law – obliging all European Ombudsman to take account of the rules and principles contained in the Code when examining cases.

The document begins with a foreword defining the Ombudsman and his dual role of: (1) investigating complaints and recommending corrective action, and (2) serving as a resource to help institutions better their performance. The document goes on to give a legal context to

²⁶ UN General Assembly Resolution 63/169 of 2008, available at: <http://www.un.org/en/ga/sessions> (accessed 1 August 2013).

²⁷ UN General Assembly Resolutions 63/169 of 2008 and 65/207 of 2010, available at: <http://www.un.org/en/ga/sessions> (accessed 1 August 2013).

²⁸ International Ombudsman Institute (IOI) (ed.) (2013) *Australasia and Pacific Ombudsman Institutions: Mandates, competences and good practice*. Heidelberg: Springer at 8.

²⁹ See Appendix Three.

³⁰ Draft ‘African Ombudsman and Mediators Association Standards for the Establishment and Operation of Ombudsman Institutions’.

³¹ European Ombudsman ‘The European Code of Good Administrative Behaviour’, available at: <http://www.ombudsman.europa.eu/resources> (accessed 3 August 2013).

the code – mentioning European administrative law and the rights of the public to good administration and to complain, as well as what these rights should mean in practice.

These articles indicate the position which ought to be taken by Ombudsman on various issues or the guidelines themselves – beginning with general issues and gradually becoming more specific. For example, the earlier articles deal with absence of discrimination, absence of abuse of power, objectivity, fairness and courtesy, while the later articles deal with the language in which letters of response must be written, the acknowledgement of the receipt of complaints, reasonable time-limits for taking decisions, and the keeping of adequate records. The main function of an Ombudsman institution is to receive, investigate and redress grievances of citizens related to maladministration of government agencies. Examples of best practice are summarised under the following 13 headings:

1. Absence of Discrimination

The principle of equality of treatment must be respected. Members of the public who are in the same situation shall be treated in a similar manner. The Ombudsman shall, in particular, avoid any unjustified discrimination between members of the public based on nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.

2. Proportionality

When taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall, in particular, avoid restricting the rights of the citizens or imposing charges on them when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued. When taking decisions, the official shall respect the fair balance between the interests of private persons, and the general public interest.

3. Absence of abuse of power

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall, in particular, avoid using those powers for purposes which have no basis in the law, or which are not motivated by any public interest.

4. Impartiality and independence

The official should be impartial and independent, and should abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever. The conduct of the official shall never be guided by personal, family, or national interest, or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.

5. Objectivity

When taking decisions, the official shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

6. Legitimate expectations, consistency and advice

The official shall be consistent in his or her own administrative behaviour, as well as with the administrative action of the institution. The official shall follow the institution's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case. Where such grounds exist, they shall be recorded in writing.

The official shall respect the legitimate and reasonable expectations that members of the public have, in light of how the institution has acted in the past.

The official shall, where necessary, advise the public on how a matter which comes within his or her remit is to be pursued, and how to proceed in dealing with the matter.

7. Fairness

The official shall act impartially, fairly, and reasonably.

8. Courtesy

The official shall be service-minded, correct, courteous, and accessible in relations with the public. When answering correspondence, telephone calls, and e-mails, the official shall try to be as helpful as possible, and shall reply as completely and accurately as possible to questions that are asked.

If the official is not responsible for the matter concerned, he or she shall direct the citizen to the appropriate official.

If an error occurs which negatively affects the rights or interests of a member of the public, the official shall apologise for it and endeavour to correct the negative effects resulting from his or her error in the most expedient way, and inform the member of the public of any rights of appeal.

9. Keeping of adequate records

The institution's departments shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take.

10. Duty to state the grounds of decisions.

Every decision of the institution that may adversely affect the rights or interests of a private person, shall state the grounds on which it is based – by indicating clearly the relevant facts and the legal basis of the decision.

11. Reasonable time-limit for taking decisions

The official shall ensure that a decision on every request or complaint to the institution is taken within a reasonable time-limit, without delay, and no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the public and for answers to administrative notes that the official has sent to his or her superiors requesting instructions regarding the decisions to be taken.

12. Notification of decisions

The official shall ensure that persons whose rights or interests are affected by a decision are informed of that decision in writing, as soon as it is taken.

13. Requests for information

The official shall – when he or she has responsibility for the matter concerned – provide members of the public with the information they request. When appropriate, the official shall give advice on how to initiate an administrative procedure within his or her field of competence. The official shall take care that the information communicated is clear and understandable.

4.4 International Ombudsman Institute (IOI) Bylaws (2012)

The IOI Bylaws state that the Ombudsman institution should aim to offer independent and objective consideration of complaints, aimed at correcting injustices caused to an individual as a result of maladministration.³² A further important objective of the Ombudsman is to improve services provided to the public by ensuring that systemic failings are identified and corrected.

The Ombudsman concept has now been adopted and extended across the world. The concept has proved to be extraordinarily adaptable and innovative, while remaining true to its original core principles of independence, objectivity and fairness.

Article 2 (2) of the IOI Bylaws sets out *10 principles* that collectively comprise the expression of an IOI standard:

³² International Ombudsman Institute (IOI) Bylaws (2012), adopted by the General Assembly in Wellington, New Zealand on 13 November 2012, available at: <http://www.theioi.org/publications> (accessed on 3 August 2013).

1. Appointment

An Ombudsman institution should be provided for by a country, state, regional or local constitution and/or an act of a legislature, or by international treaty.

2. Remit

The Ombudsman's role should be to seek to protect any person or body of persons against: maladministration; violation of rights; unfairness; abuse; corruption; or any injustice caused by a public authority, or official acting or appearing to act in a public capacity, or officials of a body providing devolved, partially or fully privatised public services or services outsourced from a government entity, and which could also function as an alternative dispute-resolution mechanism.

3. Confidentiality and impartiality

The Ombudsman Office should operate in a climate of confidentiality and impartiality to the extent its governing legislation mandates, but should otherwise encourage free and frank exchanges designed to promote open government.

4. Independence

The Ombudsman Office should not receive any direction from any public authority which would compromise its independence, and should perform its functions independently of any public authority over which jurisdiction is held.

5. Powers of investigation

The Ombudsman Office should have the necessary powers and means to investigate complaints by any person or body of persons within its jurisdiction.

6. Recommendations

The Ombudsman Office should have the power to make recommendations, and, where appropriate, to propose administrative or legislative reforms for better governance.

7. Accountability

The Ombudsman Office should be held accountable by reporting publicly to a legislature, or other elected body, and by the publication of an annual or other periodic report.

8. Period of Office

The Ombudsman should be elected or appointed by a legislature or other elected body, or with its approval for a defined period of time, in accordance with the relevant legislation or constitution.

9. Removal from office

The Ombudsman should only be dismissed by a legislature or other elected body, or with its approval, for cause as provided by the relevant legislation or constitution.

10. Funding

The Office of the Ombudsman should have adequate funding to fulfil its functions.

4.5 Comparative Study of Asian Ombudsman Institutions

In 2011, the Asian Ombudsman Association (AOA) produced a comparative analysis of 16 of its member states.³³ The purpose of the study was to identify the essential characteristics of Asian Ombudsman Offices, in order to assist in the development of training programmes, and, in turn, to improve capacity-building across Asian Ombudsman Offices.

A number of examples of best practice were identified – most importantly relating to the relationship between Ombudsman and government departments, the manner in which complaints are handled, and the importance of networking.

1. Relations with government departments

In certain Asian countries, Ombudsman institutions notify the heads of government agencies about civil complaints and make recommendations – including time-frames – within which to file reports. While those recommendations are not always enforceable, the heads of government agencies may be required to submit reports within a specified time period to the legislature if they were given recommendations to amend their administrative practices.³⁴

2. Handling complaints

With regard to handling complaints, written submissions must be answered within five working days, and all complaints must be processed within three months. Ombudsman institutions in Asia have greatly enhanced efficiency when handling civil complaints through the use of Information Technology (IT).³⁵

3. Networking and engagement with civil society.

³³ Seong-Pil Hong (2011) *A comparative study on Ombudsman institutions in Asian region.*

³⁴ *Idem* at 214.

³⁵ *Idem* at 215.

In order to perform effectively, Ombudsman institutions must work with stakeholder groups – including similar agencies, civil society such as NGOs and volunteer organisations, and the public – and seek cooperation with them through close communication.³⁶

4.6 Comparative study of Australasia and Pacific Ombudsman Institutions

Based on his analysis of Ombudsman institutions in the Australasia and Pacific Region, Michael Frahm has identified specific good-practice examples that strengthen the independence of the Ombudsman institution, and make its mandate more comprehensive:³⁷

1. Legal basis of Ombudsman institution

Ideally, the Office should be enshrined in a constitution, as the threshold requirements for modification of constitutional provisions are normally higher – which strengthens the independence of the Ombudsman.³⁸

2. Independence

The Ombudsman institution needs to be independent – especially from executive power. This requirement covers appointment procedures, as well as financial independence, budget allocation, and budgetary autonomy.³⁹

3. Appointment and removal procedure

This should be characterised by transparency, fairness and inclusiveness. A meticulous procedure should be followed in cases of removal. Elements of procedural fairness must be followed to guarantee that the Ombudsman is heard and not merely subjected to the process. This is to ensure that the Ombudsman's tenure is stable and that his independence is not compromised.⁴⁰

4.7 AU Strategic Plan of 2009–2012: 'Shared Values'

The AU Strategic Plan of 2009–2012 is based on four pillars that attempt to address the major current and future challenges facing Africa: (1) Peace and Security; (2) Development, Integration and Cooperation; (3) Shared African Values; and (4) Institution and Capacity Building. The rationale for the third pillar was to address the “challenges of instituting the values of good governance, democracy, respect for human rights, response to humanitarian situations, intra-African solidarity, gender equality, respect for African culture and

³⁶ *Idem* at 218.

³⁷ IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 91.

³⁸ *Idem* at 22.

³⁹ *Idem* at 24.

⁴⁰ *Idem* at 92.

protection of African cultural heritage”.⁴¹

The Shared Values espoused in the AU plan are identified as follows: at the *individual level*: those inherent in universal and inalienable human rights; basic freedoms; identity and opportunity; tolerance; participation in governance and development processes; reciprocal solidarity in times of need and sharing; dignity and respect; justice; sense of fairness; equality of persons; respect for the elderly; integrity; community cohesion and inclusive societies; and control of one’s destiny. At *national and regional levels*, the values include: sovereignty; self-determination and independence; adherence to the rule of law; democracy and representation of the will of the people; care for the vulnerable; economic and social justice; public order, equality, and fairness; solidarity of states; and sustainability of the environment.⁴²

4.8 Conclusion

The best-practice examples set out above can be divided into: (a) those relating to the legal basis of the Ombudsman institution, and (b) those relating to the day-to-day operations of the Ombudsman Office. Ideally, the Office should be enshrined in a constitution, as the threshold requirements for modification of constitutional provisions are normally higher, which in turn strengthens the Ombudsman’s independence. The independence of the Ombudsman institution is an essential and important characteristic, and must consist of institutional, functional and personal independence. Appointment and removal procedures must be characterised by transparency, fairness and inclusiveness. Removal procedures, especially, should be meticulous; the Ombudsman should only be dismissed by a legislature or other elected body, or with its approval. Ombudsman Offices must be adequately funded.

In dealing with members of the public, staff in Ombudsman Offices must be service-minded and must endeavour to be accessible, non-discriminatory, accountable, fair, effective, impartial, confidential, objective, consistent and courteous. When taking decisions, measures taken must be proportional to the aim pursued. Furthermore, Ombudsman Offices must keep adequate records, and also have a duty to make decisions as well as state the grounds of such decisions within a reasonable period of time.

Finally, in terms of potential Ombudsman appointees, an Ombudsman should have an excellent reputation, is a person of recognised knowledge, judgment and integrity, and should not be a member of any political party.

5: PROFILES OF THE EIGHT COUNTRIES IN THE ANALYSIS

⁴¹ African Union Commission Strategic Plan 2009–2012, available at: http://www.au.int/ed/sites/default/files/Strategic_Plan2009-2012 (accessed 3 August 2013).

⁴² *Idem* at 30.

Prior to the comparative analysis, a short profile was compiled for each of the eight countries in the sample. This was done because it is difficult to interpret and appropriately consider the issues in the analysis, without any background or context; many African countries have adapted the Ombudsman institution to suit their unique political, economic and social particularities.

Each profile includes: (a) an introduction; (b) a section on the people and society; (c) a review of the legal framework; and (d) information on the government structure. An understanding of these issues will put the position of the Ombudsman institution in each country into perspective, and this understanding will make it easier to make meaningful comparisons and suggestions for improvement. To ensure that the information is accurate and consistent across all the eight countries, it was mostly sourced from the Central Intelligence Agency (CIA) website.⁴³



FIGURE ONE: MAP OF AFRICA SHOWING LOCATION & SIZE OF EACH SAMPLE COUNTRY: THE GAMBIA, IVORY COAST/COTE D'IVOIRE, ETHIOPIA, BURUNDI, NAMIBIA, MAURITIUS, TANZANIA & MOZAMBIQUE.

⁴³ See : Central Intelligence Agency 'World Factbook', available at: <https://www.cia.gov/library/publications/the-world-factbook/> (accessed 2 November 2013).

5.1 Republic of The Gambia

(a) Introduction: Total area: 11 295 km². Population: 1,883,051 (July 2013 est.). Gini Index⁴⁴: 50.2 (1998). GDP⁴⁵: US\$3.459 billion (2012 est.). GDP⁴⁶ per capita: \$1,900 (2012 est.). Gained independence from the United Kingdom (UK) in 1965. Geographically surrounded by Senegal: formed a short-lived federation of 'Senegambia' between 1982 and 1989. In 1991 the two nations signed a friendship and cooperation treaty, but tensions have flared intermittently since then. There was a military coup in 1994 that overthrew the president and political activity was banned thereafter. A new constitution and presidential elections in 1996, followed by parliamentary balloting in 1997, completed a return to civilian rule.

(b) People and society

Ethnic groups: African 99% (Mandinka 42%, Fula 18%, Wolof 16%, Jola 10%, Serahuli 9%, other 4%), non-African 1% (2003 census).

Languages: English (official), Mandinka, Wolof, Fula, other indigenous vernaculars.

Religions: Muslim 90%, Christian 8%, indigenous beliefs 2%.

Literacy rate: 51.1%.

(c) Legal: Constitution approved by national referendum, 8 August 1996; mixed legal system of English common law, Islamic law, and customary law. Highest court(s): Supreme Court of The Gambia. Subordinate courts: Court of Appeal; High Court; Special Criminal Court; Khadis or Muslim courts; district tribunals; magistrate's courts.

(d) Government/political: President both head of state and head of government. Elections: President elected by popular vote for a five-year term (no term limits). Unicameral National Assembly (53 seats; 48 members elected by popular vote, 5 appointed by the president; members to serve five-year terms).

5.2 Cote d'Ivoire – Republic of Côte d'Ivoire

(a) Introduction: Total area: 322,463 km². Population: 22,400,835 (July 2013 est.). Gini Index: 41.5 (2008). GDP: US\$41.01 billion (2012 est.). GDP per capita: \$1,800 (2012 est.). Has had close ties to France following independence in 1960. The development of cocoa production for export, and foreign investment, made the country one of the most prosperous in West Africa. However, in December 1999, a military coup – the first in the country's history – overthrew the government. From that time until April 2011 there was an attempted coup, rebellions, political standoffs and civil war. Several thousand UN peacekeepers and several hundred French troops now remain in the country to support the transition to democracy and the rebuilding of the country and its economy. Laurent Gbagbo was President from 2000 until his arrest in April 2011, and is currently in The Hague awaiting trial for crimes against humanity.

⁴⁴ Also known as the Gini Coefficient. Expresses inequality of income (0 = perfect equality, through to 100 = maximum inequality).

⁴⁵ All GDP values are PPP (Purchasing Power Parity).

⁴⁶ *Ibid.*

(b) People and society

Ethnic groups: Akan 42.1%, Voltaiques or Gur 17.6%, Northern Mandes 16.5%, Krous 11%, Southern Mandes 10%, other 2.8% (1998).

Languages: French (official), 60 native dialects of which Dioula is the most widely spoken.

Religions: Muslim 38.6%, Christian 32.8%, indigenous 11.9%, none 16.7% (2008 est.).

Literacy rate: 56.9%.

(c) Legal: Constitution approved by referendum, 23 July 2000; civil-law system based on the French civil code; judicial review in the Constitutional Chamber of the Supreme Court. Highest court(s): Supreme Court or Cour Suprême (organized into Judicial, Audit, Constitutional, and Administrative Chambers). Subordinate courts: Courts of Appeal (organized into civil, criminal, and social chambers); first instance courts; peace courts [recommendations for reform of the judicial system announced in April 2012].

(d) Government/political: President is head of state and appoints a prime minister as head of government. President elected by popular vote for a five-year term (no term limits). Unicameral National Assembly or Assemblée Nationale (225 seats; members elected in single- and multi-district elections by direct popular vote to serve five-year terms).

5.3 Federal Democratic Republic of Ethiopia

(a) Introduction: Total area: 1,104,300 km². Second most populous country in Africa after Nigeria (93,877,025 (July 2013 est.)). Gini Index: 30 (2000). GDP: US\$105 billion (2012 est.). GDP per capita: \$1,200 (2012 est.). Unique among African countries, Ethiopian has maintained its freedom from colonial rule – except for a short-lived Italian occupation from 1936-41. It is the oldest independent country in Africa and one of the oldest in the world. In 1974, a military junta, the Derg, deposed Emperor Haile Selassie (who had ruled since 1930) and established a socialist state. Torn by coups, uprisings, wide-scale drought and massive refugee problems, the junta was finally toppled in 1991 by a coalition of rebel forces. A constitution was adopted in 1994, and Ethiopia's first multiparty elections were held in 1995. The constitution assigns extensive powers to nine ethnically-based regional states.

(b) People and society

Ethnic groups: Oromo 34.5%, Amhara (Amara) 26.9%, Somali (Somalie) 6.2%, Tigray (Tigrigna) 6.1%, Sidama 4%, Gurage 2.5%, Welaita 2.3%, Hadiya 1.7%, Afar (Affar) 1.7%, Gamo 1.5%, Gedeo 1.3%, other 11.3% (2007 Census).

Languages: Oromo (official regional) 33.8%, Amharic (official) 29.3%, Somali 6.2%, Tigrayan (official regional) 5.9%, Sidamo 4%, Wolaytta 2.2%, Guragiegna 2%, Afar 1.7%, Hadiyya 1.7%, Gamo 1.5%, other 11.7%, English (official) (major foreign language taught in schools), Arabic (official) (2007 census).

Religions: Ethiopian Orthodox 43.5%, Muslim 33.9%, Protestant 18.6%, traditional 2.6%, Catholic 0.7%, other 0.7% (2007 Census).

Literacy rate: 39%.

(c) Legal: Constitution ratified on 8 December 1994; civil-law system. Highest court(s): Federal Supreme Court or Supreme Imperial Court, which has jurisdiction over all constitutional issues. Subordinate courts: federal high courts and federal courts of first

instance; state court systems (mirror structure of federal system); Sharia courts and customary and traditional courts.

(d) Government/political: President is head of state and a prime minister is head of government (appointed by the party in power after elections). President is elected by both chambers of parliament for a six-year term (eligible for a second term). Bicameral parliament consists of the House of Federation (or upper chamber responsible for interpreting the constitution and federal/regional issues) (108 seats; members chosen by state assemblies to serve five-year terms) and the House of People's Representatives (or lower chamber responsible for passing legislation, 547 seats – members directly elected by popular vote from single-member districts to serve five-year terms).

5.4 Republic of Burundi

(a) Introduction: Total area: 27,830 km². Population: 10,888,321 (July 2013 est.).⁴⁷ Gini Index: 42.4 (1998). GDP: US\$5.578 billion (2012 est.). GDP per capita: \$600 (2012 est.). Originally a European and Belgian colony called Ruanda-Urundi, Burundi was separated from Rwanda and gained independence in July 1962. It is the third poorest country in the world⁴⁸. Burundi's first democratically elected (Hutu) President was assassinated by Tutsi soldiers in October 1993, after only 100 days in office. This caused widespread ethnic violence between Hutu and Tutsi factions, and more than 200,000 Burundians perished during the conflict that spanned almost 12 years. Hundreds of thousands of Burundians were internally displaced or became refugees in neighboring countries. An internationally brokered power-sharing agreement between the Tutsi-dominated government and the Hutu rebels in 2003 paved the way for a transition that led to the establishment of a new constitution in 2005 – which prescribes an ethnically structured government⁴⁹. A majority Hutu government was elected in 2005.

(b) People and society

Ethnic groups: Hutu 85%, Tutsi 14%, Twa (Pygmy) 1%.

Languages: Kirundi (official), French (official), Swahili (along Lake Tanganyika and in Bujumbura area).

Religions: Christian 82.8% (Roman Catholic 61.4%, Protestant 21.4%), Muslim 2.5%, Adventist 2.3%, other 6.5%, unknown 5.9% (2008 census).

Literacy rate: 67.2%.

⁴⁷ Burundi, is a small, very densely populated country: 60% bigger than the tiny, landlocked Southern African country of Swaziland, it is almost five times more densely populated (figures derived from WIPO website).

⁴⁸ See: Global Finance 'The poorest countries in the world', available at: <http://www.gfmag.com/component/content/article/119-economic-data/12537-the-poorest-countries-in-the-world.html#axzz2jZlqtsg4> (accessed 3 November 2013).

⁴⁹ Two vice presidents are appointed by the president; they must belong to different ethnic groups and different political parties. Government ministers are appointed by the president in consultation with the vice presidents; the cabinet must consist of 60% Hutus, 40% Tutsis and a minimum of 30% women, and must include members of different parties in proportion to their members in the National Assembly (see: Electoral Institute for Sustainable Democracy in Africa (EISDA) 'Burundi Constitution' (updated June 2010), available at: <http://www.eisa.org.za/WEP/bur5.htm>) (accessed 3 November 2013).

(c) Legal: Constitution ratified by popular referendum on 28 February 2005; mixed legal system of Belgian civil law and customary law. Highest court(s): Supreme Court (organised into Judicial, Administrative, and Cassation chambers). Subordinate courts: Courts of Appeal; County Courts; Courts of Residence.

(d) Government/political: President is both head of state and head of government. The President is elected by popular vote for a five-year term (eligible for a second term). There is a bicameral parliament or parlement, which consists of a senate (54 seats; 34 members elected by indirect vote to serve five-year terms, with remaining seats assigned to ethnic groups and former chiefs of state), and a National Assembly or Assemblée Nationale (minimum 100 seats, 60% Hutu and 40% Tutsi, with at least 30% being women; additional seats appointed by a National Independent Electoral Commission to ensure ethnic representation; members elected by popular vote to serve five-year terms).

5.5 Republic of Namibia

(a) Introduction: With a total area of 824,292 km² and a population of only 2,182,852 (July 2013 est.), Namibia is one of the least densely populated countries in the world. Gini Index: 59.7 (2010). GDP: US\$17.03 billion (2012 est.). GDP per capita: \$7,900 (2012 est.). South Africa occupied the German colony of South West Africa during World War I and administered it as a mandate until after World War II, when it annexed the territory. In 1966 the South West Africa People's Organisation (SWAPO) guerrilla group launched a war of independence, but it was not until 1988 that South Africa agreed to end its administration in accordance with a UN peace plan, and Namibia gained its independence on 21 March 1990.

(b) People and society

Ethnic groups: Ovambo ca 50%, Kavangos 9%, Herero 7%, Damara 7%, Nama 5%, Caprivian 4%, Bushmen 3%, Baster 2%, Tswana 0.5% (plus white 6%, mixed 6.5%).

Languages: English (official) 7%, Afrikaans (common language of most of population and about 60% of the white population), German 32%, indigenous languages (includes Oshivambo, Herero, Nama) 1%.

Religions: Christian 80% to 90% (at least 50% Lutheran), indigenous beliefs 10% to 20%.

Literacy rate: 88.8%.

(c) Legal: Constitution ratified on 9 February 1990; mixed legal system of uncodified civil law based on Roman Dutch law and customary law. Highest court: Supreme Court. Subordinate courts: High Court; Labour Court; regional and district magistrates courts; community courts.

(d) Government/political: President is both head of state and head of government. The President is elected by popular vote for a five-year term (eligible for a second term). Bicameral legislature consists of the National Council, which is primarily an advisory body (26 seats; two members chosen from each regional council to serve six-year terms), and the National Assembly (72 seats; members elected by

popular vote to serve five-year terms; an additional six non-voting members are appointed by the president).

5.6 Republic of Mauritius

(a) Introduction: Total area: 2,040 km². Population: 1,322,238 (July 2013 est.). Gini Index: 39 (2006). GDP: US\$20.53 billion (2012 est.). GDP per capita: \$15,800 (2012 est.). An island nation about 2000 km off the southeast coast of Africa (includes the island of Rodrigues). The French assumed control in 1715 and developed the island into an important naval base overseeing Indian Ocean trade, and establishing a plantation economy of sugar cane. The British captured the island in 1810, and it became a strategically important British naval base. Independence from the United Kingdom was attained in 1968. A stable democracy with regular, free elections and a positive human rights record, the country has attracted considerable foreign investment and has one of Africa's highest per capita incomes.

(b) People and society

Ethnic groups: Indo-Mauritian 68%, Creole 27%, Sino-Mauritian 3%, Franco-Mauritian 2%.

Languages: Creole 80.5%, Bhojpuri 12.1%, French 3.4%, English (official; spoken by less than 1% of the population), other 3.7%, unspecified 0.3% (2000 census).

Religions: Hindu 48%, Roman Catholic 23.6%, Muslim 16.6%, other Christian 8.6%, other 2.5%, unspecified 0.3%, none 0.4% (2000 census).

Literacy rate: 88.8%.

(c) Legal: Constitution adopted on 12 March 1968 and amended on 12 March 1992; civil legal system based on French civil law, with some elements of English common law. Highest court: Supreme Court of Mauritius. Subordinate courts: Court of Civil Appeal; Court of Criminal Appeal; Public Bodies Appeal Tribunal (formed by a 2008 constitutional amendment).

(d) Government/political: President is head of state and appoints the prime minister, who is head of government. The president and vice president are elected by the National Assembly for five-year terms (eligible for a second term). Unicameral National Assembly (70 seats; 62 members elected by popular vote, 8 appointed by the election commission to give representation to various ethnic minorities; members to serve five-year terms).

5.7 United Republic of Tanzania

(a) Introduction⁵⁰: Total area: 947,300 km². Population: 48,261,942 (July 2013 est.). Gini Index: 37.6 (2007). GDP: US\$28.25 billion (2012 est.). GDP per capita:

⁵⁰ Additional detail is presented in this section. This is to give context to, and understanding of, the fact that Tanzania's Ombudsman institution is in the form of a Commission (the only Commission amongst the sample countries). Furthermore, it is considered to be the oldest ombudsman-like institution in Africa, and is also a possible model for best practice. See: EISDA 'Zanzibar: 1964 Revolution and the one-party system',

\$1,600 (2012 est.). Shortly after each achieving independence from the United Kingdom⁵¹, Tanganyika and Zanzibar merged to form the United Republic of Tanganyika and Zanzibar on 26 April 1964. The name 'Tanzania' derives from the names of the two former states, and 'The Articles of Union' which provided for two political parties (one on the mainland and one on Zanzibar) are the main foundation of Tanzania. An ethnically diverse state and archipelago off the coast of Tanganyika, Zanzibar had gained independence from the UK as a constitutional monarchy. However, shortly thereafter, the Zanzibar Revolution led by local African revolutionaries on 12 January 1964 overthrew the Sultan of Zanzibar and his mainly Arab government, which had won a disputed election in July 1963. Bloody reprisals against Arabs and Indians followed and although there are no official figures, many thousands were probably killed. This led to the establishment of the People's Republic of Zanzibar and Pemba (January to April 1964), under its first president – ahead of the merger with Tanganyika in April 1964. One-party rule then continued in each of Zanzibar and mainland Tanzania until 1977, when their two political parties merged. One-party rule in Tanzania ended in 1995, when the first democratic elections were held in the country since the 1970s. Zanzibar's semi-autonomous status and popular opposition have led to two contentious elections since 1995.

(b) People and society

Ethnic groups: Mainland: African 99% (of which 95% are Bantu consisting of more than 130 tribes), other 1% (Asian, European, and Arab). Zanzibar: Arab, African, mixed Arab, and African.

Languages: Kiswahili or Swahili (official), Kiunguja (name for Swahili in Zanzibar), English (official, primary language of commerce, administration, and higher education), Arabic (widely spoken in Zanzibar), many local languages. Kiswahili's vocabulary draws on a variety of sources, including Arabic and English; it has become the lingua franca of central and eastern Africa.

Religions: Mainland: Christian 30%, Muslim 35%, indigenous beliefs 35%. Zanzibar: More than 99% Muslim.

Literacy rate: 67.8%.

(c) Legal: Constitution adopted 25 April 1977, with major revisions in October 1984; English common law; judicial review of legislative acts limited to matters of interpretation. Highest court: Court of Appeal of the United Republic of Tanzania (chief justice and 14 justices); High Court of the United Republic for Mainland Tanzania (principal judge and 30 judges organised into commercial, land, and labour courts); High Court of Zanzibar (chief justice and judges). Subordinate courts: Resident Magistrates Courts; Kadhi courts (for Islamic family matters); district and primary courts.

available at: <http://www.eisa.org.za/WEP/zan1964revolution.htm> (accessed 3 November 2013); Helen-Louise Hunter (2010) *Zanzibar: The hundred days revolution*. Santa Barbara, CA: Greenwood Publishing Group pp. 1–122; Yasmin Alibhai-Brown (2009) 'Unveiling Zanzibar's unhealed wounds' (Zanzibar Institute for Research and Public Policy, 16 October), available at: <http://zirppo.wordpress.com/2009/10/16/unveiling-zanzibars-unhealed-wounds/> (accessed 3 November 2013).

⁵¹ Tanganyika gained independence on 9 December 1961, and Zanzibar on 10 December 1963.

(d) Political: President is head of state and appoints the prime minister, who is head of government. Zanzibar elects a president who is head of government for matters internal to Zanzibar. Unicameral National Assembly or Bunge (357 seats; 239 members elected by popular vote, 102 allocated to women nominated by the president, 5 to members of the Zanzibar House of Representatives; members serve five-year terms, up to 10 additional members appointed by the president, 1 seat reserved for the Attorney General). In addition to enacting laws that apply to all of Tanzania, the Assembly enacts laws that apply only to the mainland; Zanzibar has its own House of Representatives with jurisdiction exclusive to Zanzibar (50 seats; members elected by universal suffrage to serve five-year terms).

5.8 Republic of Mozambique

(a) Introduction: Total area: 799,380 km². Population: 24,096,669 (July 2013 est.). Gini Index: 45.6 (2008). GDP: \$26.69 billion (2012 est.). GDP per capita: \$1,200 (2012 est.). After independence from Portugal in 1975, large-scale emigration, economic dependence on South Africa, a severe drought, and a prolonged civil war, hindered the country's development until the mid-1990s. The ruling Frelimo party formally abandoned Marxism in 1989, and a new constitution the following year provided for multiparty elections and a free-market economy. An UN-negotiated peace agreement between Frelimo and rebel Renamo forces ended the fighting in 1992. In December 2004, Joaquim Chissano stepped down after 18 years in office, and his elected successor, Armando Emilio Guebuza, promised to continue the sound economic policies that have encouraged foreign investment; he remains in office.

(b) People and society

Ethnic groups: African 99.66% (Makhuwa, Tsonga, Lomwe, Sena, and others), Europeans 0.06%, Euro-Africans 0.2%, Indians 0.08%.

Languages: Emakhuwa 25.3%, Portuguese (official) 10.7%, Xichangana 10.3%, Cisena 7.5%, Elomwe 7%, Echuwabo 5.1%, other Mozambican languages 30.1%, other 4% (1997 census).

Religions: Catholic 28.4%, Protestant 27.7% (Zionist Christian 15.5%, Evangelical Pentecostal 10.9%, Anglican 1.3%), Muslim 17.9%, other 7.2%, none 18.7% (1997 census).

Literacy rate: 56.1%.

(c) Legal: Constitution adopted 30 November 1990; mixed legal system of Portuguese civil law, Islamic law, and customary law. Highest court: Supreme Court (court president, vice president, 5 judges); Constitutional Council (7 judges). Subordinate courts: Administrative Court (capital city only); provincial courts or Tribunais Judiciais de Província; District Courts or Tribunais Judiciais de Distrito; customs courts; maritime courts; courts marshal; labour courts; community courts.

(d) Government/political: President is head of state and appoints the prime minister, who is head of government. The president is elected by popular vote for a five-year term (eligible for three terms). There is a unicameral Assembly of the Republic or Assembleia da República (250 seats; members directly elected by popular vote to serve five-year terms).

6: STRUCTURE OF OMBUDSMAN OFFICE, CONSTITUTIONAL PROVISIONS & ENABLING LEGISLATION

This chapter reviews the structure and development of the Ombudsman Offices in the sample, discusses the manner in which the Ombudsman is provided for in the constitutions of all the countries concerned, details the enabling legislation, and provides further analysis and discussion. Note, that given the relatively long history of the Ombudsman institution in some of the countries (e.g. Tanzania), an extensive *historical* review of provisions and legislation is not presented, unless this omission detracts from the understanding of other issues discussed.

6.1 Structure of the Ombudsman Office

As would be expected from a sample of countries as diverse as the one being studied, each country has a different form and structure of Ombudsman Office, and the complexity and size of the structure seems to relate directly to the size and population of the country, the period of time the Ombudsman Office has been in existence, and also to the government structure and political history of the country concerned. The federal or quasi-federal system – for example in Ethiopia and Tanzania respectively – may be positively correlated with the complexity and size of the structure, although both countries also have long-established Ombudsman institutions, which may also account for this. It should also be noted, however, that the Francophone ‘Mediator of the Republic’ system that occurs in Cote d’Ivoire also works with a very sizeable and complex structure. Burundi – whose tumultuous recent political history is well known, is a good example of a country where the complexity of the structure of the Office probably relates to its recent past and concerns about ensuring functionality as prescribed by the law; for a relatively small country with an Ombudsman institution established by statute only in 2010, its Office is remarkably complex and sizeable. There were likely concerns that the structure of the Office in Burundi should cater for the issues of interested parties across the country, and at all levels – given its recent history.

Each of the structures of each Office is now described.

Mozambique and Mauritius probably have the smallest offices, currently. This is to be expected as Mozambique’s Office is only 18 months old, and Mauritius is a small island nation, and in terms of size and population the smallest country in the sample. In Mozambique the Office is currently headed only by the Ombudsman (*Provedor de Justica*). He is soon to appoint a ‘Cabinet of the People, much like a president appoints cabinet ministers. When the new structure comes into operation there will be seven ‘departments’ – one of which will be a Secretariat General. The roles and functions of these so-called departments will be set out in Decree 3 of 2013. In Mauritius there is a one-person Ombudsman Office comprising the Ombudsman and a Senior Investigations Officer, a Higher Executive Officer, several Executive

Officers, and other minor staff.⁵² There is no Deputy Ombudsman and there are no branches, as the island is small and all parts are easily accessible.

Based on the information derived from the interview, the Office of the Ombudsman in The Gambia is headed by an Ombudsman, who has two deputies. The Office currently comprises two main units – the Investigation Unit and the Human Rights Unit – but, in practice, they function as a single entity. On the face of it, this seems like a small and simple Office. However, it may in reality be larger and more complex. There is a current focus on decentralisation, with two additional regional offices in place and plans for other offices to serve and sensitise the rural areas.⁵³

The Office of the Ombudsman in Namibia started under the Acting Ombudsman on 23 July 1990. It has one central office in the capital city, Windhoek, and three regional offices spread across the country, and a fourth is planned. There is currently an Ombudsman, and below him Section 2 (2) of the Act makes provisions for a Deputy Ombudsman – although only once appointed a decade ago. Below the Deputy Ombudsman are two Deputy Directors - one responsible for the investigators (the Head of Investigations) and the other responsible for support staff. Currently, the entire office has a total of 16 investigators. However, proposals for a new structure – including children’s advocate responsible for a legal office and social workers – have been approved.

The Ombudsman Offices of Cote d’Ivoire, Burundi, Ethiopia and Tanzania are all more complex and sizeable, and each is now described and discussed.

In Cote d’Ivoire, ‘The Office of the Mediator’ comprises three offices for the: (a) Chief Mediator; (b) Regional Mediators; and (c) the General Secretariat. The ‘Cabinet’ of the Chief Mediator comprises: One Director (Chief Mediator); One ‘Chief’; Two Special Advisors; and one Head of the Private Secretariat. For the Regional Mediators, the Office currently only covers three regions, and each Regional Office comprises a: Chief of Cabinet (Regional Mediator); Complaints Management Officer; Secretariat of Operations; and Support Personnel. A General Secretariat offers services for both the Chief and Regional Mediators, and includes a Complaints Management Office; a Financial, Budget and Asset Management Office; and a Human Resources Office. This whole structure is likely to be revised in the future, however, and there will be decentralisation to the regions and the restructuring of departments based on the nature of the cases received.

In Burundi the Office of the Ombudsman comprises two bodies: the ‘Cabinet’ Office (oversight and administrative function), and the Executive Office (all other activities). The *Cabinet Office* consists of a: Chief of Staff; Spokesperson; Protocol Officer; Cabinet Secretary; Internal

⁵² Confidential Secretary to the Ombudsman, an Office Administrator, a Finance Officer, two office attendants, and a driver.

⁵³ Office of the Ombudsman of The Gambia, Presentation to IOI 10th World Conference (November 2012), ‘Decentralisation and sensitisation in the face of financial constraints’, pdf available from IOI website (accessed 5 November 2013).

Auditor; and an 'Intendant'. The Cabinet develops the general policy of the institution and ensures that it functions in accordance with the requirements of the law. The *Executive Office* comprises the: Ombudsman; Chief of Staff; Director of Administration and Finance; Director of Department dealing with Reception, Analysis, Investigation and Monitoring of Complaints about Injustice and Violation of Human Rights; Director of a similar Department that deals with complaints about Mismanagement; and a Director of a Department of Mediation, Civic Education and Communication. Furthermore, there are four regional offices (at provincial level).

The Ethiopian Institution of the Ombudsman, as it is known, comprises a 'Council of Ombudsman' and eight directorates. The Council includes the: Chief Ombudsman (Chairperson); Deputy Chief Ombudsman; Ombudsman in Charge of the Affairs of Children and Women; and the Ombudsman in charge of Branch Offices (not yet appointed although provided for by statute). The following are the eight Directorates/Departments, each of which is headed by a Director supported by the necessary staff:

- Public Relations and Communications
- Investigations
- Prevention of Maladministration
- Children, Women and People with Disabilities
- Access to Information and Law Implementation
- Human Resources Administration
- Planning, Procurement, Finance and Property Administration
- Internal Audit.

In Tanzania the Ombudsman function is unique in the sample, as it is performed by a Commission – the Commission for Human Rights and Good Governance (CHRAGG). It is headed by a Chairman assisted by a Vice Chairman, five Commissioners, and two Assistant Commissioners. Together they form the 'Commission', which is supported by a 'Secretariat' headed by an Executive Secretary. Under the Executive Secretary are several directorates, including:

- Documentation and Research
- Human Rights
- Administrative Justice
- Legal Services
- Administration and Personnel
- Human Rights, Public Education and Training

These directorates are headed by Directors, and are supported by three units: the Procurement Unit, Information Technology (IT) Unit, and the Accounts and Auditing Unit. This means that the 'Commission' alone numbers nine senior staff, who must cover the need

to deal with the broad mandate of the Office and include appointments from both Zanzibar and mainland Tanzania.

6.2 Constitutional provisions for the Ombudsman Office

There are provisions for the establishment of the Office of the Ombudsman/Mediator in all the constitutions of the sample countries. What differs between the countries, however, is the extent to which the description of all the detail – appointment/termination, role, mission, mandate, powers of investigation, independence, requirements for appointment, tenure, structure of the Office – is included in the constitution itself, as opposed to in the enabling legislation, or in both. In Ethiopia (the negative end of the spectrum) the constitution merely refers the issue of setting up and defining the powers and functions of the Ombudsman to the House of Representatives, ranging through (in the sample countries) to the positive end of the spectrum in the Constitution of Mauritius, where an entire (detailed) Chapter (Nine) is devoted to the Office. The Cote d’Ivoire (the only Mediator system in the sample) is also notable and distinctive in that the Office of the Mediator has evolved from being an organ of mediation within the Presidency in 1995 (established by various Presidential Decrees), through to being an Office established by Article 115 of the 2000 Constitution.

In The Gambia, according to Chapter X (Articles 163–165)⁵⁴ of the 1997 Constitution, the National Assembly is to establish the Office of the Ombudsman: “... an Act of the National Assembly shall within six months of the coming into force of this Constitution establish the office of Ombudsman and provision for his or her functions and duties” – while reference is also made to the appointment and tenure (Article 164) and independence of the Ombudsman.

The Office of the Mediator in Cote d’Ivoire has evolved from originally being a single organ of mediation *within the Presidency* (created in 1995 as the Presidential Organ of Mediation (OPREM) by Presidential Decree No. 95-816 of 29 September), to deal with the mediation of all complaints directly addressed to the president. Thereafter, Presidential Decree No. 96-PR/12 of 13 August 1996 nominated the Mediator, and later, in the 2000 Constitution (English translation), Title XI – A mediation body “the Mediator of the Republic” was established, which is to be “an independent administrative authority, with a mission of public service and receives instructions from no authority” (Article 115). In Articles 116–118⁵⁵ –

⁵⁴ World Intellectual Property Organisation (WIPO, self-funding agency of the United Nations) ‘Constitution of the Republic of the Gambia’, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=221243 (accessed 5 November 2013).

⁵⁵ “Article 116

The Mediator of the Republic is appointed by the President of the Republic, for a non-renewable mandate of six years, after the advice of the President of the National Assembly. He can be terminated in his functions, before the expiration of this time period, in case of incapacity declared by the Constitutional Council seized [sic] by the President of the Republic.

Article 117

The Mediator of the Republic cannot be prosecuted, arrested, detained or judged because of the opinions or acts emitted by him in the exercise of his functions. The functions of the Mediator of the Republic are incompatible with the exercise of any political function, of any public office and of any professional activity.

Article 118

inter alia – the appointment, termination, and immunity from prosecution of the Mediator are described. Importantly, however, the attributes, organisation and functioning of the Office are to be established by “organic law” (statute)⁵⁶. The Office of the Mediator is only now working on the adoption of a Decree of “best organisation” (dealing with functions, organisation and operation (including decentralisation)) – to establish itself as an independent and fully-functional constitutional institution like the Supreme Court (in an organic law), even though prior enabling legislation (discussed below) was passed in 2007.

In Ethiopia, Article 55 (15)⁵⁷ of the constitution only provides that the House of People’s Representatives “shall establish the institution of the Ombudsman, and select and appoint its members. It shall determine by law the powers and functions of the institution”. No further mention of the Ombudsman is made in the constitution, although in Article 55 (14), the House is also asked to establish a “Human Rights Commission and determine by law its powers and functions.”

With respect to Burundi, the Ombudsman Office is established in the post-transition 2005 Constitution, where all information on appointment, term of office and functions are detailed.⁵⁸

In Namibia the Office of the Ombudsman is established in Chapter 10 of the Constitution and the Ombudsman Act 7 of 1990. Article 89 of the Constitution deals with the establishment and

The attributions, the organization and the functioning of the Mediator of the Republic are established by an organic law.”

(see: Constitutionnet ‘Côte d’Ivoire Constitution’ (adopted at the referendum of 23 July 2000), available at: <http://www.constitutionnet.org/files/Cote%20D'Ivoire%20Constitution.pdf> (accessed 5 November 2013).

⁵⁶ In Côte d’Ivoire, ‘organic’ laws regulate the various institutions, structures, and systems planned or qualified by the Constitution. They are voted on and modified through a special procedure. Once proposed, the National Assembly only has 15 days in which to deliberate and come to a vote on an organic law. The text can only be adopted by the National Assembly with a two-thirds majority vote. Furthermore, organic laws can only be promulgated after the Constitutional Council (presumably of the Supreme Court) has declared that they conform with constitutional principles (see: Kouable Clarisse Gueu (2009) ‘The legal system in Côte d’Ivoire: Where do we stand?’, Hauser Global Law School Program, available at: http://www.nyulawglobal.org/globalex/cote_divoire.htm#_5.1.1_The_Ivorian (accessed 9 November 2013).

⁵⁷ See: WIPO ‘Constitution of the Federal Republic of Ethiopia’, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=234349 (accessed 5 November 2013).

⁵⁸ “The Ombudsman is established by the Constitution Post-Transition de la Republique du Burundi (2005, Article 237) to investigate violations of civil rights by state officials.

Appointment

In terms of Article 239 the Ombudsman is appointed by the National Assembly with a three-quarters majority and the appointment must be ratified by the Senate with a two-thirds majority.

Term of office

Article 239 lays down a non-renewable term of six years for the Ombudsman.

Functions

The functions of the Ombudsman, as laid out in Article 237, are to:

- Receive and investigate complaints of managerial misdeeds and violations of civil rights made by public officers and make recommendations to the relevant authorities.
- Mediate between the public administration and citizens and the ministries and the administration and acts as watchdog by scrutinizing the operations of the administration.” (See: EISA ‘Burundi Ombudsman’, available at: <http://www.eisa.org.za/WEP/buragency.htm> (accessed 5 November 2013).

independence of the Ombudsman, Article 90 with appointment and term of office, Article 91 with its functions, Article 92 with the powers of investigation, and article 94 with removal from office.⁵⁹

In Mauritius the Ombudsman is referred to in great detail in the 1968 Constitution (Chapter IX, Articles 96–102).⁶⁰ This includes information on the Office (including appointment), investigations and procedure relating to that, disclosure of information, proceedings after investigation, and discharge of functions. The Public Service Commission (PSC) is responsible for making appointments to the Office of the Ombudsman, barring the appointment of the Ombudsman, and for filling any vacancies that arise, but Article 89 (7) of the Constitution states that “Before making any appointment to any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.”

In Tanzania⁶¹ CHRAGG was established by Article 129 (1) of the Constitution of the United Republic of Tanzania of 1977, as amended by Act 3 of 2000. Articles 129(2) to 129(4) of the Constitution deal (in great detail) with the appointment of Commissioners and Assistant Commissioners, whereas Articles 130 and 131 deal with the functions and powers of CHRAGG.⁶² Tanzania is the only Ombudsman institution in the sample that functions through a Commission.

In Mozambique Chapter III (Articles 256–261)⁶³ of the 2004 Constitution refers to the definition of the Office of the *Provedor de Justica*, and also its election, independence, powers, and duty to collaborate.⁶⁴

⁵⁹ See: WIPO ‘Namibia: The Constitution of the Republic of Namibia’, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=222893 (accessed 5 November 2013).

⁶⁰ See: WIPO ‘Mauritius: The Constitution of 1968’, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=189309 (accessed 5 November 2013).

⁶¹ Established in 1965 as the Permanent Commission of Enquiry (PCE), it was the first Ombudsman in Africa. In 2001 the functions of the PCE were taken over by CHRAGG, which had been established in 1977. CHRAGG therefore plays a role as a Human Rights Commission, although most of the work undertaken is of an Ombudsman nature.

⁶² See: WIPO ‘The Constitution of the United Republic of Tanzania of 1977’, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=216576 (accessed 5 November 2013).

⁶³ See: WIPO ‘Constitution of the Republic of Mozambique’, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=206607 (accessed 5 November 2013).

⁶⁴ “CHAPTER III
OMBUDSMAN

Article 256

Definition

The Ombudsman is an office established to guarantee the rights of citizens and to uphold legality and justice in the actions of the Public Administration.

Article 257

Election

The Ombudsman shall be elected by a two-thirds majority of the deputies of the Assembly of the Republic, for a term which shall be determined by law.

Article 258

Independence

1. The Ombudsman shall be independent and impartial in the exercise of his functions and he shall owe obedience only to the Constitution and the laws.

2. The Ombudsman shall provide a report annually on his activity to the Assembly of the Republic.

Article 259

Powers

6.3 Enabling legislation⁶⁵

The legislation listed below – for each country – typically describes and amplifies the powers and responsibility of the Office of the Ombudsman. The requirement to do so is often mentioned in the constitution of the country concerned.

(a) The Gambia: The Ombudsman Act 3 of 1997 sets out the powers, duties and functions of the Ombudsman [hereafter “the Act⁶⁶”].

(b) Cote d’Ivoire: The Organic Law No. 2007-540 of 1 August 2007 sets out the functions, organisation and operations of the Mediator [hereafter “the Organic Law”].

(c) Ethiopia: Proclamation No. 21 of 2000 provides for the establishment of the Institution of the Ombudsman and lays down its powers and functions, amongst other things [hereafter “the Proclamation”].

(d) Burundi: Law No. 1/04 of 24 January 2013 amending Law No. 1/03 of 25 January 2010 on the organisation and functioning of the Ombudsman. Section 8 of the Law states that “the

1. The Ombudsman shall investigate the cases submitted to him. He shall not have power to make decisions about the cases, but shall submit recommendations to the appropriate offices to correct or prevent illegalities or injustices.

2. If the investigations of the Ombudsman lead to the conclusion that the Public Administration has committed serious mistakes, irregularities or violations, he shall inform the Assembly of the Republic, the Attorney General of the Republic and the central or local authority, with recommendations for pertinent measures.

Article 260

Duty to Collaborate

The offices and agents of the Public Administration shall be under a duty to collaborate with the Ombudsman in the exercise of his functions, should he so request.

Article 261

Statute, Procedures and Organisation

The law shall determine all other aspects pertaining to the statute, the procedures, and the organisational structure supporting the Ombudsman.” (See: WIPO ‘Mozambique: Constitution of the Republic of Mozambique’, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=206607 (accessed 8 November 2013).

⁶⁵ “The major factors in Ombudsman legislation include:

1. Name
2. Constitutional basis
3. Establishment of the office
4. Appointment process, qualifications, term, benefits, removal process
5. Hiring staff, Deputy Ombudsman, delegation of responsibilities, benefits
6. Powers of the office
7. Investigations
8. Reports
9. Privileges, immunities, protections and penalties
10. Miscellaneous provisions”

(see: Dean M Gottehrer (2009) ‘Fundamental elements of an effective ombudsman institution’ (IOI Publication, World Conference, Stockholm, 2009)).

⁶⁶ In a country-specific context, as previously stated. This applies to all the countries in the sample.

Ombudsman is an independent authority. Within the limits of its powers, the Ombudsman does not receive instructions from any authority.”

(e) Namibia: The powers, duties and functions of the Ombudsman are articulated – as required by the constitution – in the Ombudsman Act 7 of 1990 [hereafter “the Act”].

(f) Mauritius: Both the Constitution and the Ombudsman Act of 1969 form the enabling legislation (and to a small extent the Public Service Commission Act). The latter statute is concerned with operational, procedural and administrative matters [hereafter the Ombudsman Act is referred to as “the Act”].

(g) Tanzania: The functions of the Commission are provided for under Article 6 of the Commission for Human Rights and Good Governance Act (7 of 2001), while the powers of the Commission are provided for under Article 15 of the same Act [hereafter “the Act”].

(h) Mozambique: Law 7 (Article 15) of 2006 and Decree 3 of 2013 (a proposed new structure of the Office of the *Provedor de Justicia*) deal with the establishment, mandate, powers and structure of the Office of the Ombudsman [hereafter “the Law” and “the Decree”, respectively].

6.4 Analysis and discussion

The Ombudsman institutions are structured in a wide variety of ways in the sample countries. This reflects the varied responsibilities and mandates in the jurisdictions concerned, available resources, the longevity of the Office and the political landscape. Ideally, however, for very large Offices there could be a (Chief) Ombudsman and two Deputy Ombudsman with circumscribed duties – perhaps one administrative and one relating to investigation. The Ethiopian organogram, with one Chief Ombudsman; one Deputy Chief Ombudsman; and two Ombudsman – each with specific responsibilities – is perhaps a blueprint/model for a large and populous country. That said, there are also possible advantages associated with a monocratic structure. It is an unspoken truth that the effective leverage of the Ombudsman institution often does not derive from formal powers conveyed on it by law, but rather from the perceived reputation, standing and competence that an *individual* Ombudsman has.⁶⁷

In terms of the wider organisational structure of the actual Office, it is difficult to prescribe any particular organogram – which is dictated to by jurisdiction-specific requirements. However, the structure in The Gambia seems to be particularly sound. It is divided into two main sections – one dealing with oversight and administration, and the other (including the actual Ombudsman) covering all other functions – including the investigative/executive function. There are also several lower-ranking offices at provincial level.

⁶⁷ See: IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 27.

In chapter four, Section 4.6 (1) of this report, it was stated that as best practice, the Office of the Ombudsman should be enshrined in a constitution – given that the threshold requirements for modification of constitutional provisions are normally higher, and that this would strengthen the Ombudsman’s independence and give the institution more security and authority in the political landscape. The more difficult it is to change the legal basis for the Ombudsman’s Office, the more likely it will be permanently established, which in turn creates stability for the Office and credibility for it in the public mind; the Ombudsman will have more freedom to function independently without fear that the Office will be abolished or restricted. This report concurs. However, with regard to the sample countries, the Ombudsman institution is not always strongly embedded in all their constitutions, and a weak constitutional framework is of particular concern in Ethiopia. Here the Ombudsman is referred to in one sentence in the constitution – which refers the establishment, function and powers of the Office to the House of Representatives. Most of the constitutions of the sample countries were sighted and it is germane to refer to the provisions in the Namibian Constitution, which is perhaps an example of ‘good practice’ for a country with a hybrid Office⁶⁸ (it should be noted that the Office holds an A-accreditation with the IOI for compliance with the Paris Principles). The constitution succinctly and unambiguously covers all the core aspects which define and regulate the Ombudsman institution: the establishment and independence of the Office, the appointment and term of office, functions, powers of investigation, and removal from office.⁶⁹ The relevant section in the constitution is attached in its entirety, as Appendix Four.

Reference needs to be made to the constitutional and legal framework in Cote d’Ivoire that relates to the Office of the Mediator, given that it is the only mediator-type Office in the sample. In the 2000 Constitution, the attributes, organisation and functioning of the Office are said to be established by “organic law”. As previously stated, organic law in Cote d’Ivoire can only be adopted after a two-thirds majority vote in the National Assembly and after approval by the Constitutional Council (of the Supreme Court) – which must confirm that the law complies with constitutional principles. Thus, the attributes, organisation and functioning of the Office are perhaps more strongly embedded in the legal framework in Cote d’Ivoire than in some of the other sample countries, and this is worthy of consideration by AOMA. This is both in terms of AOMA’s dealings with the Office of the Mediator in Cote d’Ivoire, and in terms of recommendations for best practice for other member countries. It has in fact been suggested that the embedding of the Ombudsman institution in organic laws is an alternative which may guarantee the maximum of stability for the institution.⁷⁰ However, it has not been determined whether the organic law in Cote d’Ivoire requires a two-thirds majority to be repealed, or whether there are special procedures associated with this.

Of concern in Mozambique is that a 2013 Decree (for a proposed new structure of the Office) – and not a Law or Act – has already been used as part of the framework establishing the new

⁶⁸ Hybrid provisions (e.g. conservation of the environment) are clearly evident in the Namibian Constitution.

⁶⁹ See, also: WIPO ‘Namibia: The Constitution of the Republic of Namibia’, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=222893 (accessed 5 November 2013).

⁷⁰ See: IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 22.

Office in the country. Recommendations for stronger enabling provisions are probably warranted.

7: POWERS & FUNCTIONS OF OMBUDSMAN OFFICE

This chapter reviews the mandate and focus of the Ombudsman Offices in the sample, discusses the status of their decisions and how they ensure compliance with recommendations and remediation, and details the extent of the remit (with particular reference to limitations of power). Finally, an analysis and discussion of the issues is presented.

7.1 Mandate and focus

The mandate and focus of the Ombudsman was diverse across the sample countries, and included a wide permutation of elements relating to the ‘classic’ (dealing with maladministration/good governance only) and ‘hybrid’ (dealing with maladministration *and* other issues such as corruption and human rights) ombudsman models. It was established that official national bodies dealing with human rights and corruption – set up by government and enabled by legislation – occur in seven of the eight sample countries (The Gambia is the only apparent exception). This is, indeed, relevant – given that if such bodies do not exist, the mandate and focus of the Ombudsman is likely to be broader, and vice-versa. Ethiopia and Mauritius were the only countries in the sample where the mandate and focus of the Office were aligned to the classic model (or very close to it). Issues outside the maladministration arena within the mandate of some countries, include, *inter alia*: human rights violations (including relating to the judiciary); corruption and the abuse of power; the power to control the administration of public entities; participating in reconciliation and peace efforts (even internationally); promoting dialogue between citizens and between communities; promoting social cohesion; protection of the environment; and labour matters (these are all discussed further in section 7 (4), below).

The classic Ombudsman institutions will be discussed first, and thereafter the hybrid ones – in increasing order of complexity. Mauritius and Ethiopia were the only countries where the Ombudsman Office was largely aligned to the classic (maladministration only) model.

In Mauritius the Ombudsman only investigates matters and complaints relating to maladministration. The Ombudsman has the power to investigate any complaint or any conduct regarding any action or inaction on the part of any officer in authority in the exercise of his administrative functions – which causes injustice to any member of the public. There is also, however, some focus on mediation and conciliation.

In Ethiopia the mandate and focus of the Institution of the Ombudsman are laid down in Article 5 of the Proclamation, to include “bringing about good governance ... of high quality, efficient and transparent ... based on the rule of law ... ensuring that citizens’ rights and benefits ... are respected by organs of the executive”. The Preamble to the Proclamation also

states that the Office is one of the parliamentary institutions instrumental in the control of maladministration. Under Article 6, the Ombudsman has powers and duties to:

- Ensure that administrative decisions do not contravene citizens' rights
- Receive and investigate complaints
- Conduct supervision and oversight to prevent maladministration
- Seek remedies where maladministration has occurred
- Undertake research on how to curb maladministration
- Make recommendations.

In The Gambia the mandate and focus is somewhat broader. The functions of the Ombudsman are: investigating the complaints of citizens relating to maladministration, mismanagement and discrimination (including recruitment issues) in government departments/authorities or public bodies (including the Public Service Commission, police force and prisons service); investigating unfair treatment from public officers; and investigating complaints about the failure of public officers to observe the relevant code of conduct prescribed in the constitution (which could be construed as corruption). Furthermore, the Ombudsman can investigate any matter on his own initiative. Importantly, however, and unlike Mauritius and Ethiopia, corruption/the abuse of power can also be investigated (Section 3 (1)(a) of the Act).⁷¹

Cote d'Ivoire arguably has a similarly broad mandate⁷² to The Gambia, but with a focus on different areas. The Mediator's mandate is to: protect citizens from discrimination (economic and social); protect citizens from the violation of their rights; and promote order through dialogue between citizens and between communities. Mediation can be used to settle all manner of disputes relating to government bodies that offer a public service to citizens (including local authorities). Mediation relating to maladministration can lead to the formulation of recommendations by the Mediator to the administration involved. As already alluded to, there is a unique focus on mediation and social cohesion, and "the Mediator of the Republic may at the request of the President contribute to any act of reconciliation between the government and the social and professional organisations".

The *Provedor de Justica* in the relatively new Office in Mozambique has a wider mandate than Cote d'Ivoire, although there is insufficient detail available to discuss this much further.

⁷¹ "3. (1) (a) In addition to the functions of the Ombudsman under the Constitution, the Ombudsman shall have the following functions -
to investigate complaints of injustice, corruption, abuse of power, maladministration and unfair treatment of any person y a [sic] public officer in the exercise of official duties;"

⁷² The Mediator is to carry out (Article 7 of the Organic Law): "the task of settling conflicts and disputes of all kinds submitted to the President of the Republic, through mediation without prejudice to the powers vested by the laws and regulations in institutions and State organs; these are mainly disputes between:

- A public legal person and the Administration;
- A civil servant or public officer and the Administration;
- A private natural or legal person and the Administration;
- Two persons, either natural or legal persons"

However, included within the mandate and focus are maladministration, labour matters, the abuse of power (corruption), and violations of the human rights of citizens. It should be noted that there are both a national human rights body and an anti-corruption body set up by government in Mozambique, and the human rights commission has a broad mandate on human rights' issues (see also, section 7.4, below).

In Burundi the mandate and focus of the Ombudsman Office is more complex. Although there is still a strong emphasis on maladministration (mediating between government departments and citizens, observing the operation of public entities, receiving complaints and investigating mismanagement and the violation of citizens' rights by the public administration and making recommendations to competent authorities), the Office also has the power to "control [the] operation of the administrative entities" (Article 2, 2013 Law) – including local authorities, public institutions, and any organisation with a public-service mandate (Article 6, para 1, 2013 Law). This is presumably a remedial action, but this is uncertain. Of note, also, is reference in the mandate to investigating the violation of the rights of citizens committed by the *judiciary* (which is typically excluded from the remit in most countries). Other unusual/unique (within the sample) aspects of the mandate/focus are its extension to reconciliation and peace-making; in other words there are strong elements of the role of a Peace Commission. This almost certainly relates to Burundi's recent turbulent past, which is discussed in chapter five (Section 5.4(a)). In this regard, based on the 2013 Law, the President of the Republic may ask the Ombudsman to:

- Participate in acts of reconciliation between the public administration and "social and professional forces" (Article 6, para 3)
- Deal with special missions of settlement and reconciliation on general issues concerning relations between "the political and social forces" (Article 6, para 4)
- Undertake specific tasks relating to issues of reconciliation and peace *internationally* (Article 6, para 5).

Namibia has a relatively broad mandate and is seen as a hybrid institution in the literature.⁷³ It can investigate maladministration (or, as the current Ombudsman calls it, 'bad administration'); human rights violations; and the degradation of the environment and natural resources. In terms of Article 91 of the Constitution, the mandate of the Ombudsman includes violations of fundamental human rights – including violations of fundamental rights and freedoms under the constitution by any other institutions. Until 2005/6, the Office's mandate also included fighting corruption. This mandate, however, has largely been transferred to the Anti-Corruption Commission (ACC). Curiously, however, some aspects of this mandate still remain with the Ombudsman Office – namely, the investigation of misappropriation of government money and property.

⁷³ For further information, see: John C Mubangizi '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'. *The Comparative and International Law Journal of Southern Africa* XLV (3): 304–323.

Tanzania is the only Commission in the sample (the CHRAGG), and has a broad mandate in terms of promoting awareness of human rights and investigating violations – although, as previously stated, the work, in reality, is largely of an Ombudsman type. There is an unusual focus on education, research, an advisory function, and conciliation and mediation through alternative dispute resolution (see detail below). The CHRAGG:⁷⁴

- Receives and investigates complaints about human rights violations and maladministration, and conducts public hearings on the same and proposes compensation where appropriate
- Educates the public on human rights and good governance issues, carries out research on human rights and good governance, and monitors compliance with human rights standards and good governance principles
- Advises the government and other public organs and private-sector institutions on specific issues relating to human rights and administrative justice
- Offers mediation and conciliation through alternative conflict resolution.

7.2 Status of decisions and ensuring compliance with recommendations and remediation

In all the jurisdictions – except The Gambia – the initial status of decisions is advisory and in the form of recommendations, which have no executive power. The decisions do not have the force of law that court judgments have, are not binding, and there are no powers of arrest or detention in any of the countries in the sample. The decisions are typically implemented by mediation, negotiation and *persuasion*. The Ombudsman, however, is not necessarily a ‘toothless tiger’. There are varied options and procedures in place that can impact on the respondent if there is non-compliance with the recommendations made by the Ombudsman Office. This occurs in Namibia, where non-compliance can be remedied by recourse to parliament or the courts (by the Ombudsman); in Mauritius a report and recommendations can be made to the minister concerned or the prime minister, or a further report can be tabled in parliament; in Tanzania the recommendations can be enforced in court as a last resort; in Ethiopia the defaulting individual or government authority can be sued and Special Reports can be submitted to the Delegates Committee of the House; and in Mozambique the relevant minister may be expected to enforce the recommendations. In addition to all these procedures, non-compliance can, *inter alia*, also be enforced by *ad hoc* monitoring and exposure to the media (Burundi), which, in essence, is a form of persuasion.

In The Gambia orders, writs and directions issued by the Ombudsman have, as stated above, the same force of law as those issued by the High Court. Once there has been a ruling by the Ombudsman in favour of a complainant, a notice is sent out to urge compliance with the

⁷⁴ Please refer to: EISDA ‘Tanzania: Commission for Human Rights and Good Governance’, available at: <http://www.eisa.org.za/WEP/tanagency.htm> (accessed 6 November 2013).

order. Furthermore, the Act also refers to the possibility that the decision can, in effect, be enforced by the president, if he sees fit, and this has indeed occurred.⁷⁵

In Cote d'Ivoire opting for mediation is regarded as a willingness to solve the problem amicably without resorting to legal action. There is no coercive power and depending on the parties involved in the conciliation, the personality of the Mediator can play a big role. In accordance with Article 7 of the Organic Law, the role of the Mediator is to settle through mediation any kind of disputes. This is, however, more than an advisory mechanism supported by the drafting of written agreements signed by both parties in good faith to carry out such agreements.

In Ethiopia most decisions are advisory and recommendatory, and the Institution of the Ombudsman has no judicial powers. Thus its decisions have no force of law such like those of the courts, and are not binding; they are implemented mainly through negotiation. Compliance with remediation can be facilitated by a "Letter of demand" from the Institution; by Special Reports submitted to the Delegates Committee of the House; by suing the defaulting individual or government authority; by using media exposure (public shame); and by persuasion.

In Burundi the institution of the Ombudsman is referred to as a "gentle force" (by the interviewees) that promotes mediation between the parties, and if there is non-compliance after mediation, recommendations to the appropriate authorities can be made. Signing the agreement ending the dispute between the parties in front of the Ombudsman and the media, and the creation of an ad-hoc monitoring and implementation team to follow up on the application of the settlement, are cited as methods for ensuring compliance with remediation and recommendations.

In Namibia, where there is a non-compliance with the recommendations of the Ombudsman, the Ombudsman can issue a special report to parliament, urging parliament to take action against the offending party. The Ombudsman may also approach a court of law for an interdict compelling the offending party to comply with his recommendations (as provided for under Article 91 (e) of the Constitution). However, a subpoena is seen as the most effective tool available to the Ombudsman under these circumstances. Civil claims are pursued when there has been a violation of the rights of citizens.

In Mauritius, once the recommendation is made, the Ombudsman gives the person/department concerned a specified period of time to abide by it, although further consideration of the matter can also be recommended.⁷⁶ The period of time is intended to encourage reflection on the

⁷⁵ "The President may, on receipt of the report of the Ombudsman on any investigation conducted by him or her, or during the continuance of any such investigation, take such decision in respect of the matter investigated or being investigated into by the Ombudsman as the President deems fit." (Section 14 (1) of the Act).

⁷⁶ The recommendation that can be made is that the matter should be given further consideration. In such a case, it would be referred back to the Ministry or Department concerned. Or the recommendation can be that an omission should be rectified, or that the decision taken should be cancelled, reversed or varied, or

recommendation. If, at the end of the period there is no compliance, then the Ombudsman can report and make recommendations to the minister concerned and to the prime minister, and eventually make a further report to the National Assembly, where it will probably be debated and a resolution taken. The law does not provide for what happens if the recommendation is still ignored or inappropriately implemented after that.

In Tanzania there are various mechanisms for ensuring compliance with remedial directives. First, a letter of request is sent, and then summons are issued. Article 28(3) of the Act allows the Commission to “bring an action before any court or recommend to any competent authority to bring an action before any court ... and seek such remedy as may be appropriate for the enforcement of the recommendations of the Commission.” This, however, is usually done as a last resort – when everything else has failed

In Mozambique non-compliance, in general, is reported to the relevant minister who must enforce the order. However, the approach is generally to afford the offender the chance to object to complying with the order/decisions of the Ombudsman. Thereafter, mechanisms for ensuring compliance with remedial directives include simply asking the offender why they did not comply. As one of the mechanisms to ensure compliance, offenders may be reported to the State President.

7.3 Extent of remit

Bodies or individuals who cannot be investigated usually include the executive and the judiciary, while matters before the courts are also typically out of bounds. In other respects, limitations of the power of the Ombudsman relate to a wide variety of circumstances across the different countries in the sample.

In The Gambia, in terms of Section 9 of the Act, the Ombudsman does not have the power to question or review court decisions, or any matter relating to the affairs of the president.

In Cote d’Ivoire the Mediator cannot hear a case pending before a court or question/criticise the merits of a court decision. There can only be involvement of the Mediator if there is discontinuance or withdrawal of a legal action, and after mutual agreement of the parties (Article 15, Organic Law).

In Ethiopia the extent of the remit is contained in Article 7 of the Proclamation – which provides for the limitation of the Ombudsman Institution’s power. Accordingly, the Ombudsman cannot investigate decisions of “Councils established by election”, cases pending in courts, matters under investigation by the Auditor General, and decisions of the security forces on matters of national security.

that reasons should have been given for the decision. The Ombudsman can also recommend an amendment to any law.

In Burundi the Ombudsman may not intervene in proceedings before courts or question the soundness of a court decision. He may, however, in the event of a breach of a court order, have enforcement powers, and require the body concerned to comply. If a matter under investigation is a criminal offence, it is referred to the General Prosecutor of the Republic.

In Namibia the Ombudsman cannot investigate most matters of corruption, as these fall within the mandate of the Anti-Corruption Commission.

In Mauritius the jurisdiction of the Ombudsman is ousted with respect to the president or his personal staff, the Chief Justice, the Director of Public Prosecutions or his staff, or any Commission which is established under the constitution. If the Ombudsman receives a complaint involving an allegation of fraud, corruption or bribery – or any other criminal offence – the matter is referred either to the police or the Independent Commission against Corruption (ICAC), or both. The Ombudsman has no oversight over the ICAC or the police, as his Office does not deal with criminal matters.

In Tanzania, in terms of Articles 130 (5) and 131 (2) of the Constitution and Articles 16 (1) and (2) of the Act, the Commission cannot investigate the President of Tanzania or President of Zanzibar. It also cannot investigate a matter pending before a court of law, a matter involving relations between the government and other governments or international bodies, or a matter relating to the prerogative of mercy. The president may also order the Commission to investigate certain matters or functionaries, or he/she may order the Commission not to investigate certain matters.

In Mozambique, in terms of Articles 130 (5) and 131 (2) of the Constitution and Articles 16 (1) and (2) of the Act, the Ombudsman cannot investigate judges in their judgments – except: where there are delays in dispensing justice; when indigent citizens cannot access justice; and when the actions of judges relate to public-administration functions (such as treatment of their own staff members).

7.4 Analysis and discussion

The mandate and focus of the Ombudsman institutions in the sample were exceptionally varied, and, as previously noted, included – in addition to maladministration – the investigation of such issues as corruption and human rights violations. There is no specific best-practice model in this regard, and, furthermore, the mandate and focus of a specific Ombudsman institution is prescribed by the constitution and the enabling legislation of the country concerned.

It has been established that official national bodies dealing with human rights and/or corruption – set up by government and enabled by legislation – occur in seven of the eight sample countries:⁷⁷

- *Cote d'Ivoire* – National Commission on Human Rights in Côte d'Ivoire (CNDI)
- *Ethiopia* – The Ethiopian Human Rights Commission (EHRC) and the Federal Ethics and Anti-Corruption Commission of Ethiopia (FEACC)
- *Burundi* – Independent National Commission on Human Rights in Burundi (CNIDH)
- *Namibia* – The Anti-Corruption Commission (ACC)
- *Mauritius* – The National Human Rights Commission (NHRC) and the Independent Commission Against Corruption (ICAC)
- *Tanzania* – The Prevention and Combating of Corruption Bureau (PCCB)
- *Mozambique* – The National Human Rights Commission (CNDH) and the Central Office for Combating Corruption (Gabinete Central de Combate à Corrupção, GCCC).

Thus, two countries in the sample (Ethiopia and Mozambique) have an Ombudsman Office, *plus* both an anti-corruption commission and a human rights commission. In Namibia and Mozambique corruption and human rights, for example, are also included in the mandate of the Ombudsman Office, and yet other bodies theoretically duplicate aspects of these functions. Namibia has the ACC and Mozambique the CNDH *and* the GCCC. This could certainly lead to duplication of function and confusion. In Namibia, the corruption mandate of the Ombudsman has largely been transferred to the ACC (probably for the reason just cited), but issues relating to the misappropriation of government money and property (corruption) still remain with the Ombudsman. All this speaks of the need to have a very clearly defined mandate and focus for the Ombudsman (and there should possibly be a move towards this as a Standard by AOMA), and if anti-corruption or human rights bodies do exist, the mandate to investigate such issues should ideally be transferred to them in order to avoid duplication of function, confusion and inefficiency. Furthermore, it would also be very difficult for an Ombudsman institution to have meaningful competence across a very wide range of issues, such as is exemplified above. The mandate to investigate criminal matters should be transferred to the appropriate bodies – as typically occurs in the sample countries.

In Cote d'Ivoire the prominent mediation function in its Office seems to conform to many features of the standard 'model of mediation' in dispute-resolution theory and practice. In this theory:

- Mediation is voluntary
- The mediator's role is to assist the parties by focusing and facilitating communication in a way that allows them to reach a settlement
- The mediator is neutral and must be perceived by both parties to be so

⁷⁷ Information based on own research, but see, also: Chris Maina Peter (2009) 'Human rights commissions in Africa – Lessons and challenges', in: Anton Bösl and Joseph Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion*. Windhoek: Konrad Adenauer Foundation at 352–353.

- The mediator does not impose a settlement
- The process is private and confidential
- Mediation should not occur where there is a significant power imbalance between the parties.⁷⁸

Considering this model of mediation may well be relevant to the definition of such issues in AOMA's normative standards. The model may, in fact, be particularly important in this regard, given that a significant number of AOMA's member states are Francophone countries with a mediator-type ombudsman system, and given that mediation/conciliation are also elements of the mandate in some of the other sample countries.

With regard to measures to ensure compliance with recommendations in the sample countries, even though recommendations typically do not have the status of court judgments (and, in any event are meant to be persuasive), there are many useful options open to the Ombudsman to enforce compliance, should such be required – and these are not always used. Options include various administrative injunctions such as letters of demand, media exposure, *ad hoc* monitoring, and – as a last resort (and if permitted by the constitution and enabling legislation) – recourse to the courts. However, to ensure the independence and impartiality of the Ombudsman Office, recourse should not be made to the executive (for example, as occurs with the president in The Gambia), government ministers or parliament, which sometimes occurs in the sample countries. This would impact negatively on the all-important *perception* of impartiality, fairness and independence of the Ombudsman institution.

Finally, and in the interests of equality and fairness, the executive should not be excluded from the remit of the Ombudsman, although this is likely to be controversial. Only three countries in the sample (The Gambia, Tanzania, and Mauritius) exclude the executive, and, furthermore, in terms of international norms, only 4 of the 16 countries in a study of countries in the Australasian/Pacific Region also excluded the executive from the remit of the Office.⁷⁹ In addition (and this does occur in Tanzania, for example), in the interests of the independence of the Office, the executive should not have the power to initiate or halt the investigations of the Ombudsman/Commission/Mediator.

⁷⁸ Edward R Hill (2004) 'A structural analysis of the Ombudsman of Vanuatu', Masters of Laws thesis, University of the South Pacific, Port Vila, available at: http://www.vanuatu.usp.ac.fj/sol_adobe_documents/world/paclaw/hill.htm#_Toc61499771 (accessed 14 November 2013).

⁷⁹ IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 46.

8: APPOINTMENT & REMOVAL OF OMBUDSMAN & THEIR DEPUTIES

This chapter reviews the tenure, appointment procedures, required qualifications of the Ombudsman, grounds for removal, and removal procedures of the Ombudsman in the sample countries (this usually relates to the Ombudsman only, as interviewees typically did not report on procedures for Deputies). An analysis and discussion of all the issues is also presented.

8.1 Tenure, appointment procedures and required qualifications

There are a very wide variety of appointment procedures in the sample countries, and Ombudsman (and their deputies) are appointed for initial periods ranging from three to six years – rarely with no option of renewal (Burundi only). Otherwise there are various options for renewal, ranging through to no specification/limitation in this regard. The Ombudsman and his deputies are typically appointed for the same tenure, except in Cote d’Ivoire, where regional mediators are appointed for a shorter time period based on a Presidential Decree. A legal background is often required of the appointee, although the actual criteria (and the number of criteria) relating to a potential nominee vary widely. Appointments are typically made by the executive on advice from various individuals and/or bodies. However, appointments are apparently made without the executive’s initial participation in Ethiopia, Burundi and Mozambique. The nature of input required to be given to the executive also varies widely, and can be a permutation of inputs. Advisory bodies involved in this regard include the National Assembly (or equivalent) or President thereof (Cote d’Ivoire), nomination committees, and the Judicial Service Commission (Namibia). Only in Cote d’Ivoire is there no appointment procedure or required qualifications laid down in the law, and decisions in this regard are made at the discretion of the president. The Public Service Commission in Mauritius appoints all staff who are junior to the Ombudsman in the Office, while the Ombudsman is appointed by the president.

In The Gambia, The Ombudsman and Deputy Ombudsman are appointed to five-year terms, with the right of renewal, and with no restrictions on the number of terms they can enjoy. Article 164 (1) of the constitution provides that the president shall appoint the Ombudsman and his/her deputies in consultation with the Public Service Commission, subject to confirmation by the National Assembly. However, where the National Assembly rejects a person nominated by the president, it *cannot reject the replacement candidate*.

In Cote d’Ivoire the Mediator is appointed (in terms of the constitution) for a non-renewable term of six years, by the President of the Republic – after consultation with the President of the National Assembly. Presidential Decree No. 97-PR/001 of 11 June 1997 provides for the nomination of regional mediators for a renewable term of five years. Notably, the processes for appointment and the required qualifications of the Mediator are not provided for by the law, and fall within the discretion of the President of the Republic.

In Ethiopia the Chief Ombudsman, Deputy Chief Ombudsman and other members of the Ombudsman Council are appointed for five years (renewable, although number of terms not specified). All these candidates are appointed by the House of Peoples' Representatives from a list presented by a nomination committee formed in terms of the Proclamation. The committee includes the Speaker of the House, Speaker of the House of the Federation, seven members elected by the House, and the President of the Federal Supreme Court. Criteria for appointment include: being an Ethiopian national; qualifications in law, administration or other relevant discipline; being older than 55 years of age; being reputable for diligence, honesty and good conduct; good health; loyalty to the constitution; and not having been convicted for a criminal offence.

In Burundi the Ombudsman is elected for a term of six years (non-renewable) by the National Assembly (three-quarters majority required); nominating the candidate Ombudsman occurs after a call for application in the manner prescribed by the Office of the National Assembly. Approval of the appointment is required from the upper house (two-thirds majority needed). The appointee should be Burundian by birth; be of good conduct and enjoy civil and political rights; be in possession of a university degree (at least Honours level); be at least 40 years old; and have relevant professional experience of at least 15 years – typically in the legal, administrative, political or social fields.

The Namibian Ombudsman is appointed by Proclamation of the President at the recommendation of the Judicial Service Commission, in terms of Article 89 (4) and Article 90 (1) of the Constitution and Section 2 (1) of the Act. The candidate must be a judge of Namibia or a person who possesses legal qualifications that would entitle him to practice in all Namibian courts. The Ombudsman is appointed until the age of 65 years, although the president can extend this to 70 years.

In Mauritius the Ombudsman is appointed by the president for a four-year term, but all other members of staff in the Office are appointed by the Public Service Commission. Although the Ombudsman is appointed by the president, the president must first consult the prime minister, the leader of the opposition, and the leaders of all parties represented in the National Assembly. Of note is that the current Ombudsman has been in office since 1990, and is the longest serving Ombudsman in AOMA, and has been appointed to the position for five consecutive terms. Normally, the post of Ombudsman is reserved for retired judges or people from other high office.

In Tanzania the Chairman, Vice Chairman and all other Commissioners are appointed for three years – renewable for one more term. The president appoints the Chairman, Vice Chairman, Commissioners and Assistant Commissioners on the recommendation of a nomination committee comprising: the Chief Justice of the Court of Appeal, the Speaker of the National Assembly, the Chief Justice of Zanzibar, the Speaker of the House of Representatives, and the Deputy Attorney General.⁸⁰ The Chairman must have qualifications for appointment

⁸⁰ "At the time of the Commission's establishment, civil society insisted – and the government conceded – that they should have some say in the choice of Commissioners. Therefore, a very transparent method of

as a judge, and the Vice Chair is appointed on the basis of the principle that if the Chair is from mainland Tanzania, the Vice must be from Zanzibar, and vice-versa. This rigorous and detailed appointment procedure probably mirrors the nature of the loose federation in Tanzania and the semi-autonomous position of Zanzibar (see chapter five, Section 5.7(a)).

In Mozambique the *Providor de Justica* is appointed for a once-renewable period of five years (Article 6 of the Law). Each political party in parliament submits the name of their preferred candidate to the National Assembly, and thereafter candidates are voted on by the National Assembly (Article 257 of the Constitution and Articles 4 to 6 of the Law); the appointment must be supported by a two-thirds majority. The appointment is presumably confirmed by The Presidency. The *Providor* must be a citizen of Mozambique, and must be fit and impartial – although there are no other formal qualifications required for appointment to the post.

8.2 Grounds and process for removal

All the countries in the sample appear to have a suite of well-established grounds for the removal of the Ombudsman, although the process for removal is variably developed and defined. Grounds for removal typically include: incapacity/inability to discharge functions for whatever reason; illness; misbehaviour/misconduct; loss of impartiality; corruption; revocation; and incompetence. In terms of the actual process of removal, the head of state (president) is often involved and typically makes the final decision on the removal, although this is often preceded by the appointment by him of an investigative commission/tribunal which must advise him on the matter. In addition to this, The Gambia requires a two-thirds majority vote in the National Assembly, and Ethiopia a two-thirds majority vote in the House. In Burundi and Mozambique, however, the National Assembly is the instigating authority (a three-quarters majority vote is required in Burundi). Namibia differs from all the other jurisdictions in that the Ombudsman can be removed from Office by the president after an investigation and recommendation by the Judicial Service Commission.

In The Gambia, in terms of Article 164 (6) of the Constitution, an Ombudsman or Deputy Ombudsman may be removed from office by the president on the grounds of inability to discharge the functions of the Office or because of misconduct. However, the Ombudsman cannot be removed unless the National Assembly has appointed a tribunal to investigate the case, and his removal must have been approved by a resolution in the National Assembly, supported by a two-thirds majority vote. The Ombudsman or Deputy Ombudsman has the right to be heard before the tribunal, and also the right to legal representation.

appointing Commissioners emerged, and conforms with the Paris Principles. The appointment process is aimed at ensuring that the Commissioners are not only independent, but also competent and qualified. Under this arrangement, once applications are received, a small group comprising members of civil society and some specialists sit to screen the applicants and shortlist the best potential candidates. The names of those identified by this group as qualifying for consideration are advertised in the media for members of the public to give their views on their suitability. The views of the public and other comments are taken to a selection committee, which in turn advises the President of the United Republic of Tanzania. The President is obliged to make the final appointments from among the shortlisted candidates, taking into account the public's input." [see: Chris Maina Peter (2009) *Human rights commissions in Africa* at 364–365.

Article 3 of the Organic Law provides that the Mediator in Cote d'Ivoire can be terminated before the end of his/her term, only if a Constitutional Council established by the president finds circumstances that prevent the Mediator from performing his or her duties (e.g. death, physical incapacity or misconduct).

In Ethiopia an appointee (Chief Ombudsman, Deputy Chief Ombudsman, and other Ombudsmen) may be removed from office due to: resignation; inability to properly discharge duties due to illness; corruption; and manifest incompetence. This takes place subsequent to an investigation by a Special Inquiry Tribunal formed in terms of the Proclamation (Article 17). This Tribunal submits a recommendation to the House which must support the decision with a two-thirds majority vote.

In Burundi the National Assembly may terminate the appointment of the Ombudsman after a three-quarters majority vote:

- On his request
- When his state of health adversely affects the performance of his duties
- By revocation, if he exercises a specified function, job or mandate
- For very serious reasons noted by a Special Investigation Commission.

In Namibia, in terms of Article 94 of the Constitution, the state president may remove the Ombudsman on the recommendation of the Judicial Service Commission. The grounds for removal could be incapacity or gross misconduct. The removal can be done after an investigation by the JSC, in terms of Article 94 (3) of the Constitution.

In Mauritius Section 92 of the Constitution makes provision for the procedure to be followed in the removal from office of the Ombudsman. The Ombudsman can be removed only for inability to discharge the functions of his office – from infirmity of the body or the mind, or through any other cause – or for misbehaviour. If the question of removal arises, the president appoints a special tribunal which consists of a chairman and not less than two other members, being persons who hold or who have held office as a Judge of a Court, having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth. The tribunal reports to the president who is the appointing authority, and based on the report, the president will act accordingly. The president does not have to take the matter back to parliament or discuss it with the leaders of the parties, or the opposition, or the prime minister.

In Tanzania a Commissioner can be removed from office due to: the inability to perform the functions of his/her office; illness; and behaviour inconsistent with the leadership code or ethics of the Office. When an allegation or allegations is/are made, the president appoints a special tribunal which investigates the matter and advises him within 90 days. During that period, the president may suspend the Commissioner concerned, but such suspension may

be rescinded at any time, and can lapse if the tribunal advises the president against the removal of the Commissioner concerned.

In Mozambique the *Providor de Justica* may be removed upon losing impartiality. The removal process follows the same procedure as the appointment. There must be a certification by a legal process that the Ombudsman is no longer eligible to serve. Thereafter there must be a voting process in the National Assembly to remove him or her from the post.

8.3 Analysis and discussion

In terms of tenure for the post of Ombudsman and options for renewal, as previously stated there are many variations across the sample countries. In one jurisdiction the initial appointment is only for three years (Ethiopia), and in others it ranges through to six years. In Mauritius the current Ombudsman has been in Office for 24 years, and in some countries it is not clear if there are any limitations on the number of renewals of appointment (Burundi is the only country in the sample that does not allow re-appointment or a second term). In AOMA's own Draft Standards (see Appendix Three), the following is suggested with regard to tenure: "The Ombudsman shall be appointed for a fixed term ...," and this report concurs, except that this should be taken to mean one term. Options for renewal, especially unlimited options, could lead to the loss of independence and impartiality of the Office if the appointee seeks to garner support (even if subconsciously) from the appointing authorities towards the end of his tenure; re-appointments are not advisable for this reason.⁸¹ That said, one renewal might be appropriate for shorter appointments. Otherwise, an appointment term of at least five years seems to be sensible.⁸² In fact, an appointment of at least *one year longer* than the term of the relevant legislative body has been suggested in the literature, as it removes the Ombudsman from the "political winds of the moment".⁸³ It is quite clear that in some of the jurisdictions the law does not refer to re-appointments, or discuss limitations relating thereto, and it is important that limitations be considered. Furthermore, and ideally, some form of performance appraisal of an Ombudsman seeking appointment for a second term, would be useful.

With regard to the qualifications of potential candidates for the Office of Ombudsman, most countries in the sample (Ethiopia, Burundi, Mauritius, Namibia, Tanzania) require some sort of legal experience/qualification (often being a judge), and this report regards this as desirable. No specific mention was made of political-party membership by the interviewees in this research,⁸⁴ but in the interests of impartiality and independence of the Office, AOMA's position on the matter in its Draft Standards – that an Ombudsman should not be a member of any political party – is supported by this report. Membership of a political party by an

⁸¹ See, also: IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 29.

⁸² In South Africa the Public Protector is appointed for a non-renewable term of seven years (Section 183 of the 1996 Constitution).

⁸³ Dean M Gottehrer and Michael Hostina (1998) 'Essential characteristics of a classical Ombudsman' (unpublished), available from the website of the United States Ombudsman Association (USOA) (<http://www.usombudsman.org/>).

⁸⁴ Although such is referred to indirectly in the Constitution of Cote d'Ivoire, for example: "The functions of the Mediator of the Republic are incompatible with the exercise of any political function ..." (Article 117).

Ombudsman could open up the office to the risk of political influence on, or partisanship in, the exercise of the Office.⁸⁵ Further to this, at the very least, some general qualification criteria should be listed in the enabling legislation and/or in the constitution. Such is lacking, for example, in Cote d'Ivoire, where the president has the discretion to make the appointment (and decide whether the qualifications of a candidate are suitable). All this said, too rigid and lengthy a list of qualifications required for appointment could limit the choice of potential candidates and preclude the selection of candidates with a personality and reputation in which the public will have confidence⁸⁶ – and, as already stated, the leverage of the Ombudsman institution often relates to the *perceived* reputation, standing and competence that an appointee might have.

In terms of the appointment process of the Ombudsman, this varies substantially across the jurisdictions. However, it should be as transparent, fair and inclusive as possible. This would suggest the involvement of the executive, the legislature or other elected body (as prescribed in the IOI Bylaws), and a body from which wise, informed and *unbiased* counsel can be sought without fear or favour. Impartial counsel may not be derived from a body set up specifically for the purpose by the legislature, and especially by the executive. A good example of an impartial, independent and well-informed body would be a Judicial Service Commission, as is used in Namibia in the appointment of their Ombudsman. Another impeccable procedure for the selection of Commissioners exists in Tanzania, and may well be another best-practice example (it is exceptional both in terms of procedure and in terms of the quality and breadth of input that feeds into the procedure). It involves the shortlisting of potential candidates by civil society and selected specialists, with these names published in the media for input from the public, whereafter the input is taken to a selection committee which make a selection and refers the name to the president, who is then obliged to make the appointment(s), taking into consideration the public's commentary.⁸⁷ With regard to the sample countries, only The Gambia, Burundi (the only country specifying a two-thirds parliamentary majority or higher) and Mozambique currently have parliament involved in the actual appointment procedure, and this is somewhat limited in The Gambia, where the National Assembly cannot reject a second candidate nominated by the president. This needs to be remedied. All this said, there needs to be a carefully detailed description of chronological procedure for the appointment – beginning with receipt and shortlisting of nominations (perhaps by an impartial body like a Judicial Service Commission), through to the actual appointment. This is lacking in most of the sample countries, and warrants attention.

All the countries appear to have carefully considered grounds for removal of the Ombudsman, which will not be discussed further here; however, it is important that such grounds be embedded in the relevant legislation and constitutional framework. Furthermore, there needs to be a *meticulous procedure* in the case of removal; perhaps even more so than for appointment. For similar reasons as those specified for appointment, the legislature or

⁸⁵ *Idem* at 31.

⁸⁶ Gabriele Kucsko-Stadlmayer (ed) (2008) *European Ombudsman-Institutions: A comparative legal analysis regarding the multifaceted realisation of an idea* Springer: Vienna at 11.

⁸⁷ See footnote 80.

some other elected body should be involved in the removal process.⁸⁸ Requirements for this would decrease the likelihood of political interference from the executive, and increase the confidence of the public with regard to the veracity of the process. To emphasise inclusiveness and fairness, at least a two-thirds majority vote in parliament is indicated (as occurs in Ethiopia and Burundi). As for appointment (discussed above), a detailed description of chronological procedure should, ideally, be in place. An exceptional example of this occurs in the Australian state of Queensland, which may be a useful point of departure in terms of normative standards. The procedure is, as follows:⁸⁹

- The premier requests parliament to address the matter
- The premier then needs to consult the appropriate parliamentary committee about the proposed motion and obtain agreement from all its members “*or from a majority of its members other than a majority consisting wholly of members of the political party or parties in government*”
- Prior to this, the premier must inform the Ombudsman about the process and the reason(s) for it, and the response of the Ombudsman is included in the motion put before parliament.

This process mitigates the likelihood of a new government in office – with a large majority – from needlessly or inappropriately using its new-found authority to remove the Ombudsman from office.

Finally, it is important to emphasise that the processes for appointments, reappointments and removal, and the qualification criteria for appointment, should all have a firm legal basis in the constitution and/or enabling legislation.

⁸⁸ In terms of the IOI Bylaws (Principle 9): “The Ombudsman should only be dismissed by a legislature or other elected body, or with its approval.”

⁸⁹ IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 146.

9: REPORTING, OVERSIGHT & ACCOUNTABILITY

This chapter reviews the reporting arrangements, oversight and accountability of the Ombudsman in the sample countries. An analysis and discussion of pertinent issues is also presented.

9.1 Reporting arrangements, oversight and accountability

In terms of reporting arrangements, oversight and accountability, the Ombudsman invariably reports to parliament (also to the Upper House in Burundi) *and* the executive, both of whom, in effect have 'oversight' over the institution, although the Ombudsman is not necessarily accountable to them (in terms of the constitution and enabling legislation), and this conundrum is discussed at the end of the chapter. The content of the oversight is the annual report, and sometimes the quarterly or special reports (as required) that are submitted during the course of the year in some countries in the sample. The report may be laid before parliament (sometimes as a public presentation by the Ombudsman), but sometimes via a committee (Ethiopia) or government minister (Tanzania). A significant deviation from this procedure is in Cote d'Ivoire where the annual report is submitted only to the president and the President of the National Assembly, and not to the Assembly *per se*. This is the only country in the sample where the Ombudsman does not report in some way to the legislature. Ethiopia, Namibia and Mozambique stand out in that their reports only go to parliament, and not to the executive. The content of reports typically relates to the nature of the investigations and the recommendations made, difficulties with investigations, and the degree of compliance with remedial recommendations. In The Gambia, the names of the parties investigated are only included in a report to the president and not in the separate report to the National Assembly, while in Burundi the names of complainants and the staff of administrative authorities investigated are excluded from reports.

In The Gambia the president and the National Assembly have oversight over the Ombudsman, to whom the Ombudsman reports. The Ombudsman is required to submit to the president a report about every investigation conducted. This report contains a summary of the evidence taken, together with conclusions and recommendations made, and statements of any action taken by the person/department/authority whose conduct is under investigation. In practice, this takes the form of an annual report. The Ombudsman is also required to submit an annual report to the National Assembly, but in this report the identity/names of those investigated is not revealed.

The Office of the Mediator in Cote d'Ivoire prepares an annual report of activities undertaken. This report is officially handed over to the president with a copy given to the President of the National Assembly, and it can be published in the "Official Journal". In essence then, only the executive/president has oversight. The report will outline, *inter alia*:

- Statistics of all received claims, grouped by case categories
- Reports of local and national meetings
- Difficulties encountered by the Mediator
- Recommendations that the Mediator considers necessary for the improvement of his or her functions.

In Ethiopia, in terms of Article 13 of the Proclamation, the Chief Ombudsman is accountable to the House of Peoples' Representatives. Under Article 19 (2)(f), the Chief Ombudsman is required to "submit a report, to the House, on matters of maladministration and on the activities of the Institution". It is through these reports that the House exercises its oversight over the institution of the Ombudsman. The reports are submitted quarterly to a Standing Delegates Committee. However, annually, the Chief Ombudsman makes a physical presentation to the House which includes a question-and-answer session with the participation of the public. Whenever necessary, Special Reports are submitted to the Delegates Committee.

In Burundi the Ombudsman must submit an annual report of his activities to the President of the Republic, the National Assembly, and the Senate; he can also submit interim quarterly reports if he deems it necessary. The Ombudsman's report is published in the Official Bulletin of Burundi. The reports contain recommendations that the Ombudsman considers necessary and outlines the potential difficulties encountered in the exercise of his function. The identity of the complainants and staff of administrative authorities cannot be mentioned in the reports. The Ombudsman can be heard in the National Assembly at his request, or at the request of the National Assembly (by its Office or in terms of a two-thirds majority vote).

In Namibia the parliament has oversight over the Ombudsman, to which the Ombudsman reports by means of annual reports and special reports (when there is non-compliance with recommendations made by the Ombudsman). The reports document – *inter alia* – the scope of the activities of the Office, major activities, investigations and outreach/public education activities.

In Mauritius the Ombudsman is required to file his annual report with the president, and the report is also laid before the National Assembly. If there are questions arising from the report, members of parliament may put such questions to the Ombudsman directly. This is the only sort of oversight that exists. There is no statutory provision which speaks about the accountability of the Ombudsman, although it could be assumed that the president and parliament have oversight functions (see also, discussion, below).

In Tanzania the CHRAGG is responsible to the National Assembly (Article 31 of the Act), and reports (a legal requirement) to parliament and the executive, who have oversight. Annual reports, special reports and other reports must be laid before parliament via the Minister of Constitutional and Legal Affairs, although such reports are not ordinarily discussed by MPs.

In Mozambique the Ombudsman reports annually to parliament as required by law (Article 258 (2) of the Constitution, and Article 19 of the Law). The parliament thus has an oversight function over the Ombudsman.

9.2 Analysis and discussion

In seven of the eight sample countries (the Cote d'Ivoire and the Mediator system excepted) the Ombudsman reports to parliament (usually annually at least). This could be a normative standard for AOMA, but with an option to report to the executive as well, as a matter of courtesy (in other words, not a legal requirement). A reporting line to parliament appears to be an international norm; for example, 15 of 16 jurisdictions studied in the Australasia/Pacific Region conform in this regard.⁹⁰ Furthermore, the IOI Bylaws state that the Office of the Ombudsman should be held accountable by publicly reporting to the legislature or other elected body, and by publishing an annual/periodic report (principle 7).

An important issue is that of accountability, and in several sample countries discussed below there is no statutory provision relating to accountability *per se*,⁹¹ although there is always an expectation that an annual report is sighted by parliament and/or the executive, and this is typically mentioned in the legal framework. In the constitution of three sample countries, it is stated that the Ombudsman is independent and not subject to the direction or control of any person or authority.

In the Gambia, in Section 165 (1) of the Constitution: "... the Ombudsman and a deputy Ombudsman shall not be subject to the direction or control of any other person or authority but subject only to the Constitution and the law." This is not contradicted or qualified in the enabling statute. In Mozambique, in Article 258 (1) of the Constitution: "The Ombudsman shall be independent and impartial in the exercise of his functions and he shall owe obedience only to the Constitution and the laws", although the enabling legislation has not been seen. Finally, in Mauritius, the constitution provides that: "In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law." (Section 101 (1)), and there are no other statutory provisions which speak about the accountability of the Ombudsman. It could thus be said that all the Ombudsmen above (Mozambique possibly excepted) are required to report to parliament (file a report), but are not accountable to it. This may have significant implications with regard to the possibility of the oversight authority attempting to halt or suppress knowledge of investigations reported on by the Ombudsman, or to divert the focus thereof, and this issue warrants attention in terms of the development of normative standards.

Another important aspect to reporting is the possibility of the Ombudsman making public his reports (not mentioned by the interviewees of the sample countries) – especially when there is non-compliance with regard to the recommendations made. This may be useful and have

⁹⁰ IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 71.

⁹¹ A comprehensive analysis of all sample countries is beyond the scope of this report.

the effect of enforcing compliance, and is worthy of consideration when drafting statutory regulations and normative standards. Another important aspect to reporting is the possibility of the Ombudsman making public his reports (not mentioned by the interviewees of the sample countries) – especially when there is non-compliance with regard to the recommendations made. This may be useful and have the effect of enforcing compliance, and is worthy of consideration when drafting statutory regulations and normative standards.

10: FUNDING MODEL & BUDGET

In this chapter the funding model (including the source of funds) and budget allocation are considered for each sample country. An analysis and discussion of the findings is also provided. Note that all figures are in US dollars (although regional currencies are sometimes mentioned).

10.1 Funding model and budget allocation

In most of the sample countries the budget is sourced entirely from the state coffers, and it is typically authorised by parliament. The Office of the Ombudsman in Ethiopia is currently, in addition, enjoying a three-year grant from the World Bank, and is only one of two countries in the sample (the other being Burundi) that can source outside grants in order to supplement its budget. Namibia and Mozambique are the only countries where the budget of the Office is managed by a government department – in both cases by the Ministry of Justice. It is not always clear how parliament is involved with the management and allocation of the budget, however, although Ethiopia, Mauritius and possibly Cote d’Ivoire get their funds directly from the treasury. It is also uncertain how the remuneration of the Ombudsman is determined across the sample countries, although in Cote d’Ivoire that of the Mediator and Regional Mediator is determined by a Presidential Decree.

In The Gambia an annual budget is submitted to the Ministry of Finance and Economic Affairs for approval and is derived from the Consolidated Revenue Fund, according to the Act. It comprises a personnel budget and a current-expenditure budget. The current ceiling for the personnel budget was not reached in 2013 as there are vacant positions. The budget could, however, be increased, especially to facilitate further expansion into the regions. The Office is able to function reasonably well on its existing budget. The current budget is about US\$500,000.

In Cote d’Ivoire the current legislation prescribes that the budget is adopted and approved by parliament and it is included in the financial budget of the state. The budget is managed by the Mediator and is subject to the rules applicable in public institutions. Notably, however, Article 25 of the Organic Law states that the remuneration, benefits and allowances of the Mediator and Regional Mediator are determined by a Decree of the President. The 2013 budget is about US\$2,500,000.

In Ethiopia, in terms of Article 36 of the Proclamation, the budget of the Institution of the Ombudsman consists of a budgetary allocation from government, and grants and assistance from other sources, although the bulk of the institution’s budget is allocated from treasury through the House of Peoples’ Representatives. In 2013 the allocated budget was about US\$1,600,000. However, an amount of US\$2.07 million has been granted by the World Bank to be used over a period of three years.

In Burundi the funds needed for the operation of the Ombudsman Office derive from the state, although the Ombudsman may also receive donations and legacies. The annual budget of the Ombudsman is 950 million Burundian Francs (US\$617,500).⁹²

The budget for the Ombudsman in Namibia is linked to the Ministry of Justice, which is responsible for managing it. In 2013 the annual budget was N\$8 million (UD\$776,000).⁹³ The bulk of the amount is spent on personnel (over 85% of the budget), and the balance on operations. The proposed new structure (already approved) is expected to almost quadruple the budget to N\$30 million (US\$2,900,000). The Office can receive more funds from the Finance Ministry, upon request by the Ministry of Justice.

Funding in Mauritius is received directly from the consolidated fund, which is awarded by parliament. As a result, the Office of the Ombudsman is not dependent on any government Ministry for its funding. The budget for 2013 was US\$300,000. The budget receives an annual increase based on the justification of estimates for the upcoming year, and includes the salary of the Ombudsman.

In Tanzania the Commission receives its budget from the treasury through a specific vote. Procedurally, however, the Commission's budget is included in the minister's budget speech – mainly for reading. The Commission received a 2013 budget of 3.7 billion Tanzanian Shillings (about US\$2,300,000).⁹⁴

The Office of the Ombudsman in Mozambique receives its budget directly from the treasury, *but* through the Ministry of Justice. The year 2013 was the first annual budget, but it was exhausted within six months. The Office was relying on the Minister of Justice to provide further funding for the remainder of 2013. The Office has asked for MT40,000,000 (US\$1,356,000) for 2013, but presumably received significantly less than this⁹⁵ (the Office believes it needs more than twice its requested budget in order to fulfil its mandate).

10.2 Analysis and discussion

Receiving adequate funding and having a significant amount of budget autonomy are crucial to the independence of the Ombudsman institution.⁹⁶ Unfortunately, it was not always clear from the information sourced from the sample countries exactly what the dynamics are among parliament, government departments and the treasury in terms of allocating, approving and monitoring the budget of the Office, and in terms of deciding what are the

⁹² Exchange rate at 9 November 2013.

⁹³ Exchange rate at 9 November 2013.

⁹⁴ *Ibid.*

⁹⁵ This was not revealed by the interviewees.

⁹⁶ AOMA Draft Standards (C 5): "The Ombudsman shall be provided with sufficient human, financial, and operational resources to enable the Office to carry out its activities in an effective and timely manner...". The Comparative Study of Australasia and Pacific Ombudsman Institutions, discussed in chapter four, also discusses the need for financial independence and budgetary autonomy.

remuneration scales and benefits of the Ombudsman and associated staff. Regulating and defining all financial processes are issues that should be incorporated in enabling legislation, in order to secure the Office of the Ombudsman and to give it independence. Ideally the budget should be sourced directly from treasury, and not from a budget vote or allocation from a specific government ministry or department, which may have a specific agenda that could impact on the amount received and how it is disbursed.

Two countries in the sample are able to supplement their budget from non-government sources. Although this might be useful during times of funding crisis or perhaps when an Office is being set up and an appropriate budget has not yet been determined, it is perhaps not advisable to have the possibility of sourcing outside funding embedded in statutory regulations. This is because this procedure could potentially compromise the independence of the Office, which might become beholden to certain benefactors.

A point of interest is *what is spent, per capita*, on the Ombudsman institution by the different countries in the sample. With reference to total population numbers sourced from the country profiles in chapter five and the information on funding (above), it is possible to establish a rough spend, per capita, on ombudsman activities for each country. The results (in US cents) are as follows (from low to high): *Ethiopia (2)*; *Tanzania (5)*; *Burundi and Mozambique (6)*; *Cote d'Ivoire (11)*; *Mauritius and The Gambia (27)*; and *Namibia (36)* [see Figure Two, below]. Ethiopia's Office is clearly seriously under-resourced in terms of funding to deliver on its mandate, and this probably explains its recourse to outside funding from the World Bank. Namibia has the highest spend – which is planned to almost quadruple to 133 cents in order to fund the proposed new structure for the Office, and calls the need for this into question; Namibia is one of the most sparsely populated countries in the world. Of course the above figures do not consider the country's GDP or its ability to cater for an Ombudsman in its budget based on available financial resources.

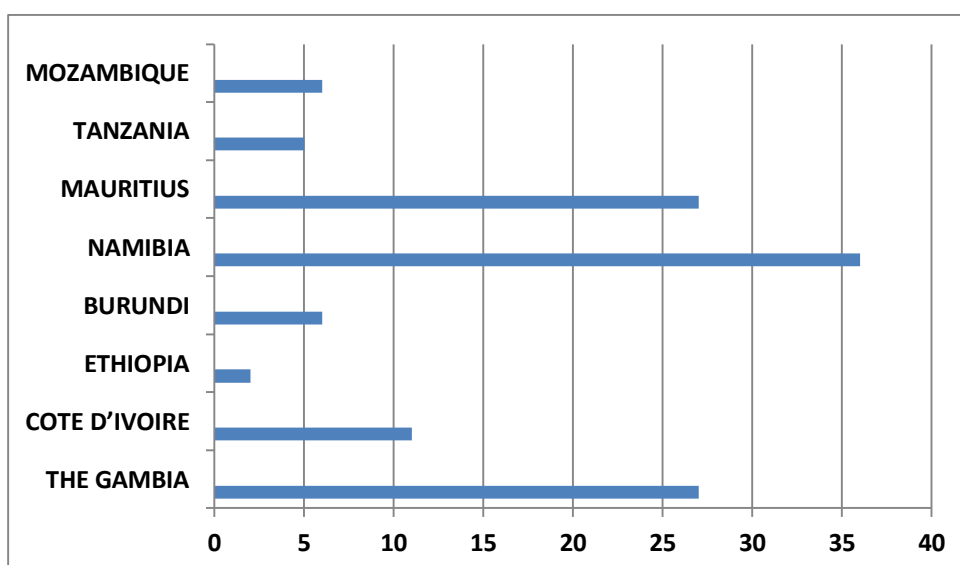


FIGURE TWO: SPEND (IN US CENTS), PER CAPITA, ON THE OMBUDSMAN FUNCTION

In terms of the budget allocated to the Ombudsman institution, this ranged from US\$300,000 in Mauritius (13 staff), through to US\$2,500,000 in Cote d'Ivoire (80 staff) [see Figure Three, below]. Ethiopia has an official budget of US\$1,600,000 – but with a very large staff complement of about 270. This again suggests that the Office is drastically under-resourced. Note that some of these figures are approximations given by the interviewees.

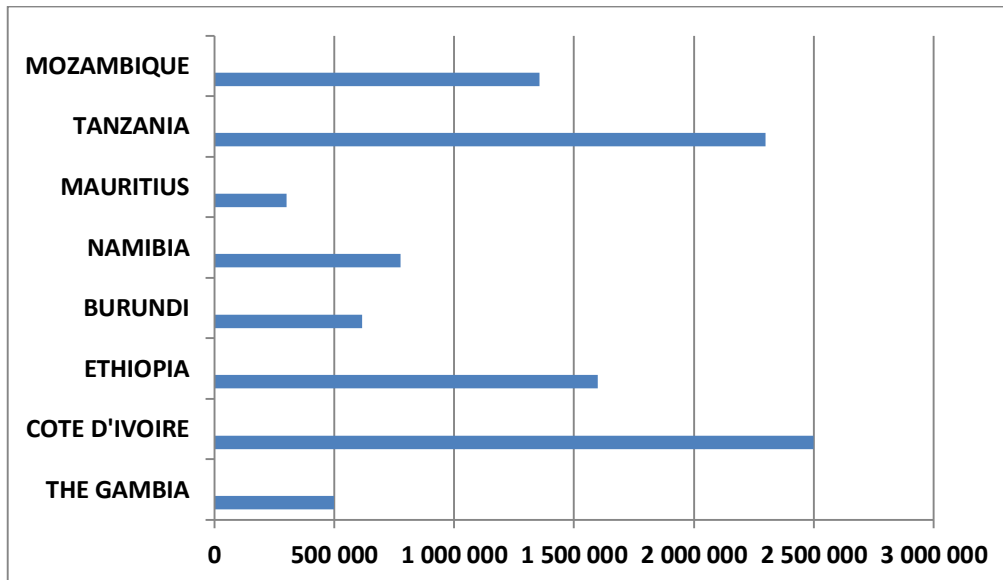


FIGURE THREE: ANNUAL BUDGET (US DOLLARS) FOR THE OMBUDSMAN FUNCTION

11: APPOINTMENT & REMOVAL OF STAFF WITHIN THE OMBUDSMAN OFFICES

In this chapter, the appointment and removal of staff within the Ombudsman offices of the sample countries is considered, and an analysis and discussion of the findings is presented. Note that many interviewees referred to the total staff complement in their offices – inclusive of the Ombudsman and his Deputies – and the staff complements discussed below sometimes reflect this.

11.1 Appointment and removal of subordinate staff

There is a wide range of appointment and removal procedures for staff in the sample Offices, although they can be roughly divided into three groups: (1) where the Office of the Ombudsman is entirely independent in terms of the procedures; (2) where there is nominal involvement by the executive/parliament; and (3) where there is significant involvement of the state or parliament. The first group comprises the Ombudsman Offices in The Gambia, Ethiopia and Mozambique, although there may be some state influence in that civil-service procedures are used to implement and administer appointments, and in Mozambique staff can only be selected from government departments. The second group comprises Cote d'Ivoire and Burundi. In Cote d'Ivoire the Regional Mediators and General Secretary are appointed with the involvement of the executive and appropriate minister after advice from the Mediator – although other appointments are entirely at the discretion of the Mediator. In Burundi, appointments and removals are done by the Office of the Ombudsman, but only after consultation with the Office of the National Assembly. The third group comprises Mauritius (staff appointed by the Public Service Commission), Namibia (appointment and removal by the state), and Tanzania.

In The Gambia staff are appointed by the Ombudsman in consultation with his deputies. Shortlists are drawn up after the placement of national advertisements, and potential candidates are interviewed by a panel comprising the Ombudsman and his/her deputies, human resources staff from the Office, and a representative from the Personnel Management Office. An expert, such as a lawyer, is also normally invited to the interviews. There are currently 47 posts in the organogram, with 11 vacancies (including that of the Ombudsman and one Deputy Ombudsman). The interview and appointment procedure is believed to be fair, transparent and inclusive.

In Cote d'Ivoire the Regional Mediators are appointed by the president on the advice of the Mediator and the Minister in charge of relations with Republic Institutions (Article 10 of Organic Law), while the General Secretary is appointed by a Decree issued by the Council of Ministers on the advice of the Mediator and the same Minister (Article 10). Other staff are appointed by provisions established by the Department of Public Services, as most are civil servants, and this is at the discretion of the Mediator – in accordance with prevailing labour practices. The current staff complement is 80, of which 55 are professional staff. Of the 55 professional staff, 18 are Regional Mediators. The processes for appointment and removal

are considered to be generally fair and transparent, as they follow the “procedural ethics” of the Republic.

In Ethiopia the Heads of Directorates and Branch Directors are appointed by the Council of Ombudsman. The other staff are appointed in terms of a manual drawn up and approved by the Council of Ombudsman. The manual contains rules and procedures that conform with the basic principles of the Federal Civil Service Laws. The appointment of these members of staff is therefore through the normal civil-service process implemented by the institution’s Human Resources Division. The current staff complement is about 120 employees at Head Office and about 150 in the branches (thus a total of 270). The processes for appointment and removal are considered to be generally fair and transparent, as they are in terms of the manual approved by the Ombudsman Council, and are all supervised by the Chief Ombudsman.

In Burundi the Ombudsman appoints, manages and dismisses staff, while “the statute and framework of staff” is decreed by the Ombudsman in consultation with the Office of the National Assembly (Article 19 of the Law). There are 20 senior-ranking Directors and Advisors, five support staff at Headquarters, and five executives in the Regional Office. Appointment and removal procedures are considered to be fair, transparent and equitable, because such are made after consultation with the Office of the National Assembly.

In Namibia, the state provides staffing for the Ombudsman Office, and the staff are thus civil servants. The Ombudsman Office can recruit, shortlist and interview candidates for positions, but cannot appoint or dismiss staff members, although it may recommend that a staff member be dismissed. Currently, the Office has 16 investigators. While appointment and removal procedures are transparent, they are considered to be unfair to the Office in some respects; for example, it may take more than six months to fill a vacancy due to the nature of appointment procedures in the public administration. The Ombudsman considers appointment procedures to be negatively impacting on the operations/independence of the Office

In Mauritius the appointment of the staff of the Office of the Ombudsman is done by the Public Service Commission, over which the Ombudsman has no jurisdiction. If anybody feels aggrieved by a decision of the Public Service Commission, they have recourse to the Supreme Court for judicial review, in which case the Court may become the appointing authority. There is a small total staff complement of 13, two at a senior level (the Ombudsman and Senior Investigation Officer), while the others are in administration.

In Tanzania, the Executive Secretary is appointed by the president. Other employees are appointed in terms of the normal civil-service procedures. The CHRAGG’s full staff complement is about 198 members, including staff in the various branches. The appointment and removal procedures for staff are considered to be generally fair, as they are in terms of civil-service procedures.

In Mozambique, the staff in the Office of the Ombudsman are civil servants and are regulated by the law applying to such. The Ombudsman selects his staff from various departments in the administration of the Republic. The Office has 12 staff members: three investigators, one other person (without portfolio) who also helps with investigations, and an additional eight administrative staff. Appointments are made through the 'headhunting' of suitable persons by the Ombudsman, but it is considered that this system may be open to abuse.

11.2 Analysis and discussion

As is discussed elsewhere in this report, maintaining the independence of the Office of the Ombudsman is crucial in terms of it being able to deliver on its prescribed mandate in an effective and impartial manner. This should also apply to the appointment and removal of subordinate staff within individual Offices in the sample countries. There was significant involvement by the legislature/parliament, executive and government bureaucracy in the appointment/removal of subordinate staff in some countries, and this involvement should ideally be avoided (a consideration for mention in normative standards). Only senior staff within a particular Office could/would be able to define the required qualities of potential candidates, based on an awareness of the functionality and needs of the Office, and the same applies to dismissals. Preparing detailed guidelines for the appointment and removal of staff in Ombudsman Offices should be considered.

In terms of defined processes for appointment, the Office of The Gambia seems to be most inclusive and transparent and is perhaps an example of best practice in the sample. The appointment procedure includes the placement of national advertisements, interviews done by a carefully selected panel from the Office (including the Ombudsman and his Deputies), and with the presence of an appropriate expert such as a lawyer.

Significant problems relating to the appointment of staff have emerged in a few of the sample Offices, and warrant consideration. In Mozambique, staff can only be selected from government departments, with no apparent selection procedure laid down. This restricted pool of potential talent may lead to the appointment of inferior or unsuitable candidates (the Mozambique Office is of course very new, and this appointment process may well change as the need for more skilled staff develops). In Namibia, there are delays of as much as six months because of the involvement of the state in making staff appointments, and this is understandably preventing the Office from delivering effectively on its mandate. In Mauritius staff are appointed by the Public Service Commission without the involvement of the Ombudsman Office at all, and this is clearly undesirable for the reasons discussed above.

Finally, as might be expected from a range of Ombudsman offices with different mandates, serving different population sizes, and established over a wide range of time (the PCE was established almost 50 years ago), their staff complements vary in size considerably – from 13 in Mauritius, through to about 270 in Ethiopia [see Figure Four, below].

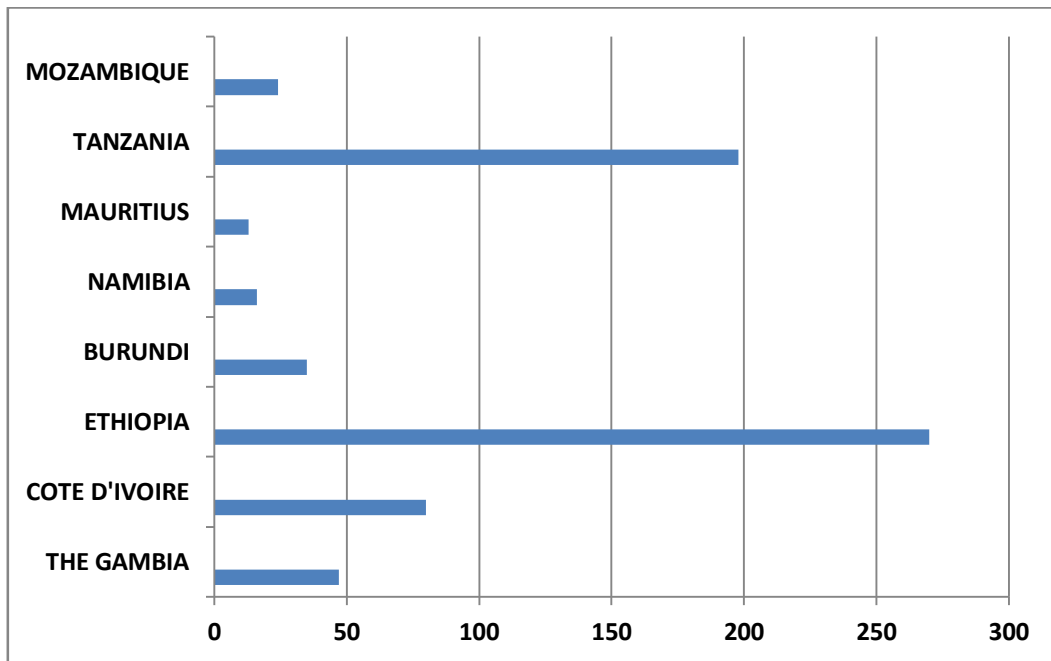


FIGURE FOUR: STAFF COMPLEMENTS OF THE OMBUDSMAN OFFICES

12: OPERATIONS OF THE OMBUDSMAN OFFICES

In this chapter, the approach to investigations by the Ombudsman Offices in the sample countries, the turnaround time relating to their investigations, and the acceptance and implementation rates of their recommendations, are discussed. An analysis and discussion of the findings is also presented.

12.1 Approach to investigations and the duration thereof (turnaround time)

As might be expected, there is great variation in terms of the approach taken to investigations across the sample countries. The process, however, is *invariably* as follows: (1) direct, oral or written complaints are made, although an Ombudsman may also initiate a complaint himself (Cote d'Ivoire, Tanzania); (2) the admissibility of a case is then assessed and, if admissible, is assigned to an appropriate investigator; (3) a letter is often written to the person/department against whom the complaint has been lodged, or some other form of communication (phone call) is used; (4) interviews may (The Gambia and Mauritius, although not all interviewees supplied the information) or may not be held in camera, and sometimes public hearings and inquiries are held (notably Tanzania); (5) subpoenas may be used and premises searched if necessary, after notice is given (Namibia); (6) investigators then make a recommendation or recommendations and these are sent/proposed to the respondent, or the case may be dismissed; (7) mediation and conciliation may then be entertained (the power of persuasion is considered useful); (8) if there is no response with respect to the recommendation the Ombudsman can approach a court for an interdict to compel compliance (Namibia), may lodge civil claims (e.g. Namibia) or the matter (as a report) may be referred to the media or a standing committee of parliament or similar (e.g. Ethiopia, Namibia). The duration of a case varies in length; more complex cases can take up to two years or more to resolve, but the average duration is about three to six months; Ethiopia has catered for urgent cases which must be resolved within two days.

In The Gambia hearings are held in camera. Complainants can submit oral or written complaints. A file is opened and the complaint is sent to the Ombudsman for perusal. If the case is pursued, the Ombudsman assigns the matter to an Investigator. Most decisions in this regard are made by the Ombudsman in consultation with a Deputy Ombudsman. The person against whom a particular complaint is directed is then contacted by the Investigator, and is invited to resolve the matter. He/she may be ordered to give evidence at the Ombudsman's office. The average turnaround time is three to six months – very rarely are matters not resolved within a year.

In Cote d'Ivoire investigations are initiated in two ways: (1) the Mediator himself suspects incidents of maladministration and decides to investigate; or (2) a complaint is submitted in

writing to the Mediator. In both situations, the first step will be the investigation. Hearings and mediation will follow. Given that the Mediator doesn't have coercive power, it may be difficult to obtain information, especially in cases involving the higher echelons of government. However, the average turnaround time ranges from three months to two years.

In Ethiopia, complaints may be submitted directly, by telephone, or in writing. On receipt of a complaint, the Investigations Department first establishes its admissibility and advises on the proper channel. Simple cases may be resolved immediately, otherwise they are assigned to investigators who will investigate and come up with findings and recommendations. If maladministration is proven, conciliation and mediation are first attempted. When this fails, execution of the recommendations should then follow, failing which the case may be referred to the public media or reported on in a Special Report to the Standing Delegates Committee of the House. The Institution does not conduct public hearings or hearings in camera, but mainly relies on field investigations and expert witnesses. For *urgent cases* requiring an immediate solution (e.g. destruction of a residential house), immediate direct contact has to be made with the relevant government authority, and the turnaround time should not exceed two days. For *normal cases* the turnaround time is usually determined by external factors such as the willingness of the responsible authority to cooperate, and usually is up to three months, but may take up to a year or more, if complex. With *special cases* (e.g. involving children, women and persons with disabilities), the turnaround time is similar to that of normal cases.

In Burundi the phone is used to contact the parties involved and investigatory site visits are made as needed. The Ombudsman may use public hearings, in-camera hearings and mediation during investigations. When a decision is made by the Ombudsman, the parties involved are informed in writing. The average time for processing complaints is up to three months – except for land disputes which take, on average, three to six months.

In Namibia, usually, after receiving a complaint, the Ombudsman Office requests information from the alleged offender/office, and can subpoena a person to appear before the Ombudsman and answer questions regarding the complaint or failure to respond to the request for information (it is a criminal offence to fail to appear before the Ombudsman after being subpoenaed). The Office of the Ombudsman, after giving telephonic or written notice to the relevant party, can also enter premises to search for relevant information. The usual approach is to notify the offending party telephonically that they need to remedy the wrong. Where there have been violations of human rights, however, the Ombudsman has pursued civil claims against the offenders, but, generally, the Ombudsman uses the power of persuasion. Furthermore, the Ombudsman can issue a special report to parliament which “will ensure compliance” and can also approach a court of law for an interdict that will compel the offending party to comply with the recommendations (as provided for under Article 91 (e) of the Constitution). The Ombudsman seldom uses public hearings. By law, the turnaround time is 90 days, but in practice the resolution of complaints may take up two years, or rarely, even longer if it's a complex case.

In Mauritius when the Ombudsman proposes to conduct an investigation he must give the Principal Officer of the Department concerned an opportunity to comment on any of the allegations or allegation; the Ombudsman may contact the complainant if he needs further information or wants clarification. The government officer against whom the complaint has been made is asked to come to the Office with all his/her files and documentation for a discussion with the Ombudsman, who must listen to both parties. The law provides that the investigation shall be conducted in camera. Complainants are entitled to have their privacy and anonymity protected, if this is requested. The Ombudsman then tries to conciliate the parties, but if this is unsuccessful he would make his own recommendation in the matter. The average time for processing complaints is one to three months, depending on their complexity.

In Tanzania, investigations are conducted in terms of Articles 26 to 28 of the Act. Complaints are submitted or may be initiated on the Commission's own initiative. They are then processed for admissibility, which is followed by an inquiry. A response is then sought from the person or entity concerned (against whom the allegation is made). Investigations may be done through interviews, public inquiry (information gathering), public hearing (evidence gathering) and/or direct contact, in order to verify the allegations. Mediation may also be attempted between the parties. The Commission will then advise, make recommendations, or dismiss the complaint. The average turnaround time depends on the complexity of the case. In practice, an average complaint will take three to six months, and complicated cases up to 12 months or more.

In Mozambique, depending on the nature of the complaint, the Ombudsman writes to the offending party – demanding explanations (the main approach). After considering the matter, the Ombudsman then writes to the offending party instructing him/her to remedy the situation. The Ombudsman may also conduct public hearings and in-person investigations. He can also use experts in complicated matters. The turnaround time depends on the complexity of the case, and is usually very short, and investigations usually take two months (the longest case to date took more than 6 months).

12.2 Extent of acceptance of findings and their implementation

On the whole, there seemed to be a very high acceptance of the findings of the Ombudsman across the sample countries. This ranged from 70–100%. The Gambia reported almost universal acceptance of the findings, which almost certainly can be attributed to the rulings having the status of a court order in the country. On the other hand, the near 100% acceptance rate in Mauritius was stated to be a result of the wide embrace by the populace of the functioning of the Ombudsman Office. When countries reported deviation from acceptance, the reasons typically given were delays in reporting complaints, failure to compromise, and a lack of funds when a recommendation or remediation had financial or monetary implications (typically compensation for the complainant). Few countries in the sample differentiated between the acceptance and implementation rates.

In The Gambia it was stated that there is a compliance rate of almost 100% with the rulings made by the Ombudsman. This is no doubt driven by the fact that rulings have the effect of court orders.

In Cote d'Ivoire the Mediator does not have the power to enforce the implementation of agreements, but the acceptance rate of recommendations is said to be 80–85%.

In Ethiopia about 75% of proven investigative findings are accepted; however, there is only about a 60% implementation rate. The main reasons for deviation or lack of implementation are non-acceptance of the findings, delays in reporting complaints resulting in effluxion of time, and an alleged lack of funds – where a person is to be compensated or reinstated.

In Burundi, the acceptance rate on recommendations is 70–75%. The reasons for deviation include the unwillingness of the parties to consider mediation as an opportunity to 'give and take' (compromise).

In Namibia there is a general acceptance of the findings of the Ombudsman, because of the power of persuasion. This 'power' has made the relevant stakeholders realise that the Ombudsman is not an 'enemy', but rather operates for the good of everyone and to help government departments better fulfil their mandate. Since the current Ombudsman has been in Office, there has not once been a refusal to accept his findings.

In Mauritius – according to the current Ombudsman – it seems that the level of acceptance is almost 100%, and that the percentage of implementation will therefore also be around 100 percent. It was stated that because the Office of the Ombudsman is fully embraced by the populace, whatever eventuates its recommendations will be accepted and acted on.

In Tanzania, with respect to maladministration, there is generally more than 90% acceptance and implementation of findings. The main reasons for deviation are lack of funds (where a monetary or financial recommendation is made) or non-agreement with the finding(s).

Mozambique is a new Office and thus a limited amount can be said about the acceptance and implementation of findings, although normally there has been a general acceptance of the findings of the *Providor de Justica*.

12.3 Analysis and discussion

A succinct description of the typical process from receipt of a complaint, through to the delivery/enforcement of recommendations has been presented in section 12 (1). There is rather little to discuss further, as the information supplied across the sample countries was uneven, and therefore comprehensive comparisons cannot be made. Important decisions to consider are whether investigations should take place in camera, whether there are public hearings and inquiries, whether the Ombudsman/Mediator can initiate inquiries, and

whether mediation and conciliation are used. Mediation and conciliation apparently occur in four countries – Cote d’Ivoire, Ethiopia, Tanzania, and Mauritius – and are worthy of consideration for inclusion in normative standards. Note that the use of negotiation and mediation is already in the AOMA Draft Standard (A 5 (b)). It seems that in only two jurisdictions (Cote d’Ivoire, Tanzania) did the Mediator/Commissioner have the power to initiate investigations. This may be perceived to be in conflict with perceptions of impartiality, although in some international jurisdictions (e.g. the European Ombudsman and the Finnish Ombudsman) own-initiative inquiries by an Ombudsman are not unusual.⁹⁷ Another important aspect worthy of consideration for normative standards is the necessity for accessibility of the Office, which is also mentioned in the AOMA Draft Standards (C 2 (a)). This was, however, not analysed across the sample countries.

Of concern is the turnaround time for investigations in many of the sample countries. One investigation in Namibia took more than five years, and most countries reported turnaround times of up to one or two years with more complex cases. In this regard, the European Code of Good Administrative Behaviour suggests that there should be a reasonable time period for the Ombudsman to conclude investigations (of not more than two months), while a study of Asian Ombudsman Institutions⁹⁸ considered that complaints should be processed within three months. Although these time-frames might be unrealistic, especially in the context of developing countries, proposing turnaround times for *different categories* of investigations may be useful to work with and develop standards for. For example, in Ethiopia, provision is made for urgent cases to be completed within two days.

A very high acceptance rate of findings was reported by nearly all the interviewees. This does not mean that there was a similar implementation of recommendations, and this warrants further investigation, as it is of concern. In Tanzania, for example, there has reportedly been only one major inquiry to date (2009), which was not implemented or respected by the government. Furthermore, there are many occasions where CHRAGG’s work is frustrated by government functionaries who do not reply to its letters, or, worse, even hinder its investigative activities.⁹⁹

⁹⁷ “Each year, the [Finnish] Ombudsman launches some 30–50 investigations on his own initiative. They can relate to shortcomings which have been highlighted in publicity or matters which have emerged, for example, in the course of his on-site inspections. In 2010 the Ombudsman ... took 63 matters under investigation on his own initiative, and decision was made in 52 matters. Matters chosen for investigation on the Ombudsman’s own initiative are examined in the same way as ordinary complaints.” (see: The Parliamentary Ombudsman of Finland ‘Investigations on the Ombudsman’s own initiative’, available at: <http://www.oikeusasiamies.fi/Resource.php/ea/english/ombudsman/work/investigations.htx> (accessed 11 November 2013).

⁹⁸ Seong-Pil Hong (2011) *A comparative study on Ombudsman institutions in Asian region* at 215.

⁹⁹ Chris Maina Peter (2009) *Human rights commissions in Africa* at 377.

13: INDEPENDENCE OF OFFICE

In chapter thirteen the independence of the Office of the Ombudsman is discussed – with particular reference to political interference. An analysis and discussion are also presented.

13.1 Mitigation of political interference and appropriate measures

Most of the countries in the sample considered that they had not experienced any form of political interference, and that statements relating to independence and interference with the Ombudsman's activities in the constitution and enabling legislation mitigated the likelihood of political interference. Burundi went further and stated that the Office of the Ombudsman, in its very demonstration of acting in an independent manner, protected itself from political interference. No jurisdiction had a specific measure in place to mitigate political interference. Only Burundi and Tanzania cited examples of political interference, although in Tanzania it was indirect. In Burundi the interference was at executive and municipal level. In Tanzania, withholding adequate financial support was seen as an indirect form of political interference, and, indeed, this seems to have been significant in the past. Namibia stated that the government was actively supportive of the independence of the Office of the Ombudsman, even when it came down to controversial recommendations.

According to the acting Ombudsman of the Gambia, there have been no instances of political interference from the executive or the National Assembly. Furthermore, the constitution is quite clear on the independence of the Office (Article 165 (1)): "(1) Subject to the provisions of this chapter, in the exercise of his or her functions, the Ombudsman and a deputy Ombudsman shall not be subject to the direction or control of any other person or authority but subject only to the Constitution and the law."

In Cote d'Ivoire there are no provisions in the law for dealing with political interference, and there have not been any cited cases of direct political interference with the functions, investigations and duties of the Office of the Mediator. As a result, there has not been an occasion to implement any measures to deal with interference.

In Ethiopia there have not been any cases of direct political interference with the functions, investigations and duties of the Institution. Were this to happen it would be addressed to the Speaker of the House for intervention and resolution. As there have not been cases of political interference, there has not been an occasion to implement any measures to deal with such interference.

In Burundi it was stated that the constitution and relevant legislation are the only guides with respect to political interference with the Office of the Ombudsman. The Office demonstrates proof of effective independence, in order to mitigate the likelihood of manipulation, guidance and political control. Three cases of political interference with the work of the Ombudsman

were cited: (1) a land dispute between the President of the Republic of Burundi and the citizens of Gasenyi, who demanded fair compensation before expropriation of land intended for the construction of the Office of the President, the presidential palace, and related infrastructure; (2) a case relating to the destruction of the house of a citizen by a municipality; and (3) during the expropriation without compensation and demolition of houses belonging to residents of the urban commune of Buterere.

In Namibia there are no specific measures in place for dealing with political interference relating to the activities of the Ombudsman. However, these can be inferred directly from the powers that the Ombudsman has under the constitution (Article 89 (3))¹⁰⁰ and the relevant Act, with the constitution clearly stating that the cabinet, legislature and any organ of state shall not interfere with the work of the Ombudsman. By and large, the office enjoys support/protection from the government. The Ombudsman related two examples of this: (1) a public official was reluctant to comply with the recommendations of the Ombudsman because of a conflicting report of the Attorney General, but after the Ombudsman informed the Attorney General that his report was flawed, the Attorney General withdrew his opinion and asked the official to comply with the recommendations of the Ombudsman; and (2) an official complained to the president about the findings of the Ombudsman, but the president simply told the official that “the buck stops with the Ombudsman”.

The Mauritius Ombudsman only had this to say: “let me tell you that ever since I have been Ombudsman I have never received any phone call at all from any Minister or member of parliament, or any other political leader or political person, never ever, and I know they will not even dare to do it ... they know they mustn’t approach me because I am going to give them the full measure.” Furthermore, the authority of the constitution mitigates the likelihood of any political interference.¹⁰¹

In Tanzania political interference is usually not direct: the biggest tool used by government to “control” the Commission is through budgetary allocations.¹⁰² The Commission deals with this through the relevant parliamentary committee. It also tries to raise funds from elsewhere. More importantly, the Commission engages directly with parliamentarians

¹⁰⁰ “No member of the Cabinet or the Legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and all organs of the State shall accord such assistance as may be needed for the protection of the independence, dignity and effectiveness of the Ombudsman.”

¹⁰¹ “In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.” (Section 101 (1)).

¹⁰² According to Chris Maina Peter (Prof. of Law, University of Dar es Salaam), this has been a significant problem in the past: “Since its inception, the CHRGG has been funded mainly by donors, particularly the Royal Danish Embassy. The latter even funded the building of the premises where the Commission and the Law Reform Commission of Tanzania are based. With donor funds coming to an end, however, the Commission is almost at a standstill, with little if any finances apart from being able to cover normal operational costs ... With that attitude from the government, one cannot sincerely say that human rights in Tanzania are protected. All these hardships notwithstanding, it is important for the members and staff of the Commission to remember ... that, although they are established by governments, human rights institutions are not part of the government and should be independent of the government.” (see: *Human rights commissions in Africa* at 368).

through seminars (education and training), in order to educate them about the role of the Commission.

In Mozambique it was stated that the independence of the Office of the Ombudsmen is guaranteed under Article 258 (1)¹⁰³ of the Constitution and Article 7 of the Law. However, there are no specific measures in place to deal with possible political interference. The Office is new and there have not, so far, been occasions where ministers have interfered politically.

13.2 Analysis and discussion

The independence of the Office of the Ombudsman – especially from political interference – is seen as a fundamental requirement in terms of ensuring the efficacy of the Office and allowing it to fearlessly deliver on its mandate. Virtually every authoritative text in the literature discusses this at some level, and this report concurs with this viewpoint. Most of the countries in the sample refer to the *authority of the constitution and associated Acts as being the most important deterrent of political interference*. Indeed, as is discussed earlier in the chapter, many of the constitutions have clauses that specifically refer to the independence of the Ombudsman and the immunity of the Office from interference, although ‘*political*’ interference is not always referred to *per se*, but rather can be assumed.

In the literature, wanton executive interference or unwarranted influence, or the threat thereof, are seen as the biggest threat to the independence of the Office. Connection to parliament is, however, seen as a valuable aspect of ensuring independence from the executive,¹⁰⁴ and for this reason it was recommended (as good practice) in chapter eight, that parliament should be involved in the appointment process of the Ombudsman – and especially with the termination process, should this eventuate.

All good-practice texts discussed in chapter four, including the European Code of Good Administrative Behaviour, the IOI Bylaws,¹⁰⁵ and the Draft Standards of AOMA, refer to the importance of the independence of the Office.¹⁰⁶ However, the most pertinent lesson derived from the sample countries – in terms of mitigating political interference – is the necessity to have political interference referred to in the constitutional and legal framework – perhaps even a specific reference to the executive and the upper and lower houses of parliament. Should this be implemented, and should the Office be confident in the execution of its mandate (i.e. demonstrating its independence), political interference is likely to be reduced or minimised.

¹⁰³ “The Ombudsman shall be independent and impartial in the exercise of his functions and he shall owe obedience only to the Constitution and the laws.”

¹⁰⁴ IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 24.

¹⁰⁵ “The Ombudsman Office should not receive any direction from any public authority which would compromise its independence, and should perform its functions independently of any public authority over which jurisdiction is held.” (IOI Bylaw 4).

¹⁰⁶ “The Ombudsman shall be free from outside pressure and not subject to any hierarchical instruction.” (C (1) (b)).

The apparent financial difficulties associated with the Office of the Tanzanian Ombudsman are worrying, and should be taken up at a higher level. An Ombudsman Office cannot deliver on its mandate if it does not have the appropriate resources to do so.

14: CITED RECENT ACHIEVEMENTS OF THE OMBUDSMAN OFFICES

This chapter lists the achievements cited by the interviewees of the sample countries, and then analyses and discusses them. Not all achievements could be listed for each country; only the more significant issues which were typically part of a broader theme were selected. Furthermore, some of the achievements stretch back more than three years, despite the questionnaire asking for a restriction to three years. This additional information is, nevertheless, included. Some of the countries included much more information than others, which is clearly evident from the length of the bulleted lists.

Note that a summary of the main points is not presented at the beginning of the chapter and reference should be made to section 14.2 and Table Two, instead.

14.1 Recent achievements

The Gambia

- *Expansion to the regions (offices now set up in three of the six regions)*
- *Capacity-building (e.g. staff undergoing higher education).*

Cote d'Ivoire

- *Reinstatement of different services after the post-election political crisis*
- *Developing a new Organisational Decree that has been submitted to the Council of Ministers for approval (decentralisation will create Regional Mediators and bring the institution closer to the people – so strengthening it)*
- *Received 146 cases in 2012, and 36 were resolved in certain ways.*

Ethiopia

- *Increased public awareness of the Ombudsman, leading to an increased intake of complaints*
- *Expansion of the Institution to six regional branches*
- *Capacity-building – leading to better quality and quantity of investigations and recommendations*
- *More than 50,000 complaints received and more than 90% have been resolved*
- *Recommendations accepted by all departments investigated*
- *Improved relationship with the executive and government*
- *Supervision of specific government departments (e.g. Education and Health).*

Burundi

- *Mediation in disputes between citizens and central/provincial government; and between teachers' unions and the Ministry in charge of primary and secondary education*
- *Mediation in land conflicts (municipal competence)*
- *Controlling "the proper functioning of" prisons, the Office of Revenue Services, the Mayor of Bujumbura, various police entities, and the Port of Bujumbura*
- *Educating Burundian diaspora on the organisation and functioning of the Office of the Ombudsman*
- *Educating citizens (including students and academic and administrative staff of public and private universities) on the organisation and functioning of the Office of the Ombudsman*
- *Organising football tournaments in the name of 'Peace and Reconciliation' – to develop social harmony between the military, police and youth associations, which are frequently in conflict with the defence and security forces*
- *Opening a Regional Office of the Ombudsman in Ngozi District (decentralisation)*
- *Organising community-development work to promote the prevention of conflict between the governors and the governed*
- *Organising conferences and meetings (inter-religious dialogue conference attended by senior government officials, religious groups, diplomats, the media, citizens and other state/non-state partners; 'lunch-dialogue' attended by representatives of the executive, MPs, diplomats, consular officials, and civil society; regional conference on "Transformation of identity conflicts and the prevention of war and crimes against humanity in the African Great Lakes Regions", attended by delegations from Uganda, Kenya, Rwanda, the Democratic Republic of the Congo, Tanzania and Burundi)*
- *Addressing several inter-religious conferences in Tanzania on the role of religious leaders in promoting peace and social harmony.*

Namibia

- *Improved accessibility of the Office: established three regional (and soon a fourth) offices across the country since 2004/5*
- *Office conducts annual complaints' intake clinics in remote areas*
- *Visits police holding cells regularly; takes complaints and inspects facilities*
- *Undertaken an initiative called 'Human Rights Action Plan', which was to be launched on 18 September 2013*
- *Annually holds celebrations of Constitution Day (9 February) to create awareness among citizens, and distributes copies of the constitution; this has contributed to publicising the Office*
- *Successful investigations: an investigation of a parastatal led to the dismissal of a number of its employees; investigation of the City of Windhoek led to the reinstatement of a member of the opposition who had been removed/demoted; a state-owned company that had erected its site on land owned by the San community without giving them compensation, after mediation by the Ombudsman agreed to compensation, and the community was satisfied with the settlement*

- *Resolving systemic problems that affect citizens:* e.g. serving protection orders when this had not been done by the police; and securing identity documents in highly problematic cases.

Mauritius

- Despite the establishment of new institutions (National Human Rights Commission, Independent Commission Against Corruption, Equal Opportunities Commission) *the relevance of the Office has been maintained*
- *Educating sponsoring officers of various Ministries of Departments:* the Office serves the citizens and deserves support to help it deal with complaints, to provide a fast service, and to be fair to citizens with all their complaints.

Tanzania

- *Increased human rights public awareness* dramatically
- *Increased education and training activities*
- *More acceptance by government of the Commission's recommendations*, even when they are opposed to such
- *Reformation of prisons* – improved living conditions, as a result of visits of the Commission, as required by Article 6 (1)(h) of the Act
- Over the last 10 years have *handled more than 30,000 cases, and only about 6000 are pending*
- *Provision of legal advice and assistance in court proceedings;* the Commission is sometimes seen to be the 'poor man's lawyer'
- *Timeous and prompt submission of annual reports and special reports*
- *Capacity-building* in and outside the Commission.

Mozambique

- *Setting up a credible 'cabinet' and making it known to members of the public*
- *Resolved at least 60% of complaints* that have come before the Office
- *Resolved numerous labour issues relating to salaries and promotions*
- *Resolved successfully several (mostly) major human rights matters:* human rights violation in one prison; a complex housing matter; poor hospital conditions; serious transgressions of the police (beating and inappropriately arresting citizens).

14.2 Analysis and discussion

An analysis was done of all the issues that the Offices of the different countries reported as being successes for them in recent years, and these were classified into *broad themes* (see Table Two, below). These themes were all positive or developmental. Note that although there are definite, separate aspects to each of the themes, each country was allocated only once to each theme.

Brief commentary will now be made on the themes that were reported by at least half the countries (i.e. four bullets). These were: (1) promoting awareness amongst citizens and government; (2) improved efficiency in dealing with complaints; and (3) the establishment and setting up of new offices (or the new Ombudsman Office itself in Mozambique). The first of them speaks to the significance of publicising the importance and relevance of the Ombudsman institution or ombudsman-like institution. It suggests that this might be an important focus area for AOMA and the AORC, in terms of suggesting how this could be done, and by providing all the relevant materials. Little can be said about the second theme, although the reports of improved efficiency in dealing with the complaints may not be accurate; further investigation may be required. The third theme refers to the establishment of new regional offices, re-establishing the institution *per se*, and of course establishing the Ombudsman Office of Mozambique. These are all positive developments (the Office in Cote d'Ivoire, for example, was re-established after the recent civil war).

In conclusion, reference should be made to the themes (italicised in Table Two, below) that do not relate directly to the Ombudsman function: (1) community-development work; (2) controlling/supervising the functioning of public entities; and (3) promoting peace, reconciliation and harmony. All these themes are reported from the newly established Burundi Ombudsman Office, and refer directly to Burundi's recent political past. The Office of the Ombudsman is not a Peace Commission, nor should it be involved with themes (1) and (2) in the long run. It suggests a strong need for AOMA and the AORC to educate member states on the nature of the Ombudsman institution, its function, and its typical mandate, focus and role. As previously stated, exceptionally broad mandates could be counter-productive, and, in this case with a new Office may indeed hinder its success.

TABLE TWO: 'SUCCESS' THEMES REPORTED BY SAMPLE COUNTRIES

THEME	INCIDENCE
Acceptance of recommendations	●●
Accessibility	●
Awareness amongst citizens and government	●●●●
Capacity-building	●●●
<i>Community-development work</i>	●
<i>Controlling/supervising functioning of public entities</i>	●●●
Developing Organisational Decree	●
Educating/Training	●●●
Efficiency in dealing with complaints	●●●●●
Expansion/establishment of offices	●●●●●
Legal advice	●
Human rights matters	●●●
Mediation in disputes	●●●
<i>Promoting peace, reconciliation and harmony</i>	●
Relationship with executive and government	●
Submission of reports	●

15: ADVOCACY & CONSULTATION/COLLABORATION WITH INTERNATIONAL & NATIONAL BODIES

This chapter discusses the importance of national advocacy and outreach initiatives, international and national collaboration/consultation by AOMA member states, and the view of the sample countries on the value of AOMA's initiatives in terms driving advocacy and outreach and strengthening the Ombudsman institution. An analysis and discussion of the issues is also presented.

15.1 Advocacy and outreach nationally, and international and national consultation/collaboration

All the sample countries referred to regional collaboration and consultation with various national and/or regional bodies/entities, but relationships with international organisations (AOMA excepted) were rather limited. The Gambia, Cote d'Ivoire and Mauritius say little or nothing about international relationships.¹⁰⁷ For other countries, with respect to international collaboration/interaction, the following were mentioned: the IOI; the AOMF; individual African (Namibia has received complaints from the South African Public Protector) and European Ombudsman; the Secretariat of Human Rights Institutions; and the African Commission of Human and Peoples' Rights (ACHPR). Nationally, sample countries referred to interactions with a wide range of government bodies; various human rights bodies, NGOs and CSOs; and even a variety of religious groups (notably in Burundi). Otherwise, national bodies collaborated with included: government ministries/secretariats; an Independent National Electoral Commission; a National Commission for Land and Other Assets; the Independent National Commission on Human Rights in Burundi; and a National Planning Commission in Namibia. Mozambique refers to interaction with many levels and authorities in government, *inter alia*: the president of the country, the President of Parliament, the prime minister, provincial and local governments, and traditional local authorities. Very little was said about consulting organisations and individuals on difficult matters, aside from reference to government agencies and experts in their fields (Mozambique). The Gambia is the only country that refers to an apparently successful outreach/advocacy programme that involves workshops and radio.

In The Gambia the Office has an active outreach programme, mainly involving workshops across the country. Participants include heads of public institutions, chiefs and community leaders, and there are representatives from the army, police and prisons' services. The purpose of the workshops is to create awareness of the Office and to ascertain the opinion of the public regarding its work, with a view to enhancing service delivery. Relevant radio programmes are organised in the various regions, sometimes in phone-in formats. The Office mainly works on its own but does liaise with certain government departments: some matters

¹⁰⁷ However, according to Adv. Ishara Bodasing, The Gambia chairs NANRI and Mauritius is on the AOMA Exco and is active with AOMF.

are referred to the Ministry of Justice and the Alternate Dispute Resolution Secretariat in the country.

In Cote d'Ivoire there is close collaboration with human right representatives and NGOs in the country. Consultations and collaboration (outside of AOMA) seemed to be very limited, and a single big meeting of – *inter alia* – AOMA and AMP-UEMOA (of whom the Office is a member) is the only reference to such.¹⁰⁸

In Ethiopia the Ombudsman Office is a member of the IOI and AOMA, and has a good working relationship with the Ethiopian Human Rights Commission and the Federal Ethics and Anti-Corruption Commission of Ethiopia – with whom they form the Forum of Democratic Institutions. Nationally, the institution has an MOU with the Youth Federation and works closely with several other CSOs. It also works closely with the criminal-justice and law-enforcement agencies in Ethiopia, such as the police, the National Justice Forum and the Ministry of Justice, and all levels of courts.

In Burundi, the Ombudsman works closely with several national partners. These include: the watchdog anti-corruption NGO 'Observatory for the Struggle against Corruption and Economic Embezzlement' (OLUCOME); civil society (who are invited to its various conferences to encourage their contribution to the prevention and management of conflict); various Burundian religious denominations working in Burundi (e.g. Episcopal Conference, National Council of Churches of Burundi (CNEB), Forum of Churches of Burundi, and the Interfaith Council). Furthermore, there is consultation and collaboration with several government bodies: the Independent National Electoral Commission (CENI) (to prepare for transparent and peaceful elections in 2015); the National Commission for Land and Other Assets (CNTB);¹⁰⁹ and the Independent National Commission on Human Rights (CNIDH)¹¹⁰ – to avoid conflict of mission between these bodies. Internationally, there is fruitful collaboration with the AOMF, and the Ombudsman of Senegal, Angola, Tanzania, Belgium, France, the Netherlands, and Norway.

The Namibian Office of the Ombudsman has working relationships with several national bodies: NGOs and CSOs (especially in respect of its human rights mandate) and who may refer

¹⁰⁸ Limited membership of national and international Ombudsman bodies is, however, not necessarily limited in West African countries. Burkina Faso, for example, in addition to being a member of AOMA, is also a member of IOI, AOMF and AMP/UEMOA.

¹⁰⁹ The CNTB deals with disputes over land tenure in Burundi, where almost 80% of disputes brought to court relate to land governance (see: Swiss Agency for Cooperation and Development (SDC) 'Land governance in Burundi: Reform of the Land Code to allay conflicts', available at: http://www.deza.admin.ch/en/Home/Projects/Selected_projects/Land_governance_in_Burundi (accessed 13 November 2013).

¹¹⁰ The CNIDH has a broad human rights mandate to ensure the protection of fundamental rights in Burundi. The Commission is invested with powers of requisition, enforcement, inquiry, and the ability to launch own-motion investigations and to access information (see: Access 'Independent National Commission on Human Rights in Burundi: National Human Rights Institution', available at: <http://accessfacility.org/independent-national-commission-human-rights-burundi> (accessed 13 November 2013).

complaints to the Ombudsman; and also government institutions (e.g. the National Planning Commission of Namibia). Internationally, the Ombudsman Office is a member of the IOI and of National Human Rights Institutions (NHRIs). The Office has accepted complaints from foreign institutions (e.g. the South African Public Protector) and has allowed foreign organisations to make presentations on a matter falling under the Marine and Fisheries Act (Namibia).

In Mauritius the Office of the Ombudsman had very little to say: it does not formally have any relationship with other stakeholders, and has not had the need to consult with anybody else on difficult matters.

In Tanzania, internationally, CHRAGG is a member of the IOI and AOMA, Africa's Secretariat of Human Rights Institutions, and also has accreditation with the African Commission of Human and Peoples' Rights (ACHPR). On the other hand, nationally, there is collaboration with: NGOs and CSOs; and governance departments (e.g. there is an MOU with the police). Furthermore, the Commission has 'focal persons' in every ministry and district, and is working to establish Human Rights and Good Governance Committees in every district. It has been working with government to establish a Good Administrative Behaviour Code, and has already coordinated the development of a Human Rights Plan of Action. When it comes to difficult matters, or matters of mutual interest and competence, the Commission consults other institutions and government departments.

In Mozambique the Office of the Ombudsman has a relationship with other overseas institutions (e.g. Portugal, with a similar legal system). Nationally (according to the Ombudsman) the Office has an "inter-organic" relationship with various stakeholders: the president of the country, the President of Parliament, the prime minister, the President of the Higher Council of Magistrates, provincial and local governments, traditional local authorities, human rights organisations, and NGOs. With the newly proposed organogram for the Office, the Ombudsman is planning a Coordinating Council wherein NGOs, lawyers and other community-based organisations can contribute to the formulation of policies of the Office of the Ombudsman in an annual, collegial meeting. The Ombudsman consults different experts (e.g. medical practitioners, engineers and auditors) from different fields, with regard to complex matters.

15.2 Value of AOMA's initiatives in driving advocacy and outreach and strengthening the Ombudsman institution

Apart from Namibia and Tanzania, the sample countries were perfunctory about AOMA's contributions to advocacy, outreach and strengthening the Office/institution; the Mauritius Ombudsman said that because of skills and experience gained from the lengthy period of existence of the Mauritian Office, AOMA's initiatives have had little impact. The West African countries valued AOMA's (regional) meetings and commented on the exchange of information (especially on good practices) and facilitation of cooperation; a focus on regional issues was, however, suggested (Cote d'Ivoire).

Burundi commented on the value of experts from AOMA states. Mozambique valued information sharing and training. The Namibian Ombudsman lamented the lack of ownership/interest by members in AOMA, and would like the organisation to become more functional and with a full-time Secretariat. Tanzania was more positive about AOMA than any other country in the sample, and valued AOMA's: organisation of meetings; facilitating sharing of information by hosting workshops and other events; and its role in research and information sharing (including on good practices).

In the Gambia, AOMA meetings have been attended in Libya, Senegal, Cote d'Ivoire and South Africa, and staff have also benefited from interaction with representatives from AOMA member states. Earlier in 2013, the Office hosted a delegation from Liberia, which was on a fact-finding mission.

In Cote d'Ivoire there has been consultation with colleagues from other AOMA member states: there was an exchange of information on good practices and facilitation of cooperation between the Mediator and civil society with Burkina Faso and Niger earlier in 2013. It was considered that there should be a focus, not only on national problems, but also on regional ones. The institution has shared information and experiences with AOMA, and the AOMA President and Deputy President have recently visited.

In Ethiopia the IOE has shared information and its experience with AOMA. The President and Deputy President of AOMA have recently visited Ethiopia and have acknowledged its work.

In Burundi relations with AOMA are said to be good. Burundi organised a meeting for the adoption of the AOMA 2012-2017 Strategic Plan, and invited the Ombudsman of Senegal and Gabon (also AOMA members) to come and help (these countries sent experts to provide information on experiences from their countries). In addition, the President of AOMA has been invited to visit Burundi as soon as possible.

The Namibian Ombudsman is passionate about regional cooperation – and AOMA in particular (with the exception of Mauritius and Togo, Namibia is the longest serving member). The lack of ownership of the Association by its members is lamented – either through active participation or paying of membership fees. The Ombudsman would like to see AOMA become more functional, and with a full-time Secretariat.

In Mauritius the Ombudsman said that its Office was already a properly established institution before AOMA's establishment, and felt that AOMA's initiatives therefore have had little impact.

The CHRAGG in Tanzania considered that AOMA had been helpful in a variety of ways. The Commission stated that AOMA:

- Coordinates and organises meetings
- Helps with the Commission's interaction on the international scene

- Facilitates information sharing by hosting – *inter alia* – events and workshops (e.g. a meeting of East African AOMA members was recently held in Dar es Salaam)
- AOMA plays an important role in promoting the Ombudsman concept through research, sharing of information (including on good practice), and sharing of templates.

In Mozambique, the Ombudsman values its AOMA membership highly – especially information sharing and training.

15.3 Analysis and discussion

It is beyond the scope of this report to comment in detail on the membership by AOMA member states of certain international Ombudsman organisations – except for the AOMF (Association of Ombudsmen and Mediators of La Francophonie), which is in turn supported by the OIF (Organisation Internationale de la Francophonie). The AOMF has an international membership of French-speaking member states and 16¹¹¹ AOMA member states are also members of AOMF. Given that the associations have a similar mission, this is problematic, and some sort of cooperation and collaboration is warranted. Based on comments from the interviewees, AOMF has a significant presence in West Africa.

In terms of membership of regional bodies by AOMA member states, The Gambia and Mauritius are somewhat insular in this regard, and say very little – but it is clear that information sharing and developing and expanding the scope of collaboration with certain regional African bodies or organisations (or regional chapters of international bodies such as the IOI), could have a significant impact. Regional bodies (as mentioned by interviewees) include, *inter alia*: the Secretariat of Human Rights Institutions; and the African Commission of Human and Peoples' Rights (ACHPR). In this regard, AOMA may be able to collaborate and network with such institutions to help it deliver on its mandate. There was a notable paucity of commentary in the sample countries on consulting colleagues from other institutions on difficult matters, and this is of concern. It probably pertains to limited networking opportunities or knowledge thereof.

A point of great concern was the apparent limited use of advocacy and outreach/education/awareness-raising programmes by the countries in the sample. Advocacy and outreach mean increasing public awareness of the functions of the Ombudsman institution, and its importance, which is then likely to raise public confidence in the institution and ensure its independence and survival. The Gambia may well be an example of best or good practice for AOMA when it comes to recommending advocacy and outreach procedures. Its apparently successful programme shows what can be done by a poor, small country with limited resources. The Gambia has an active outreach programme involving

¹¹¹ Based on a the list of AOMF members states on the AOMF website (http://www.aomf-ombudsmans-francophonie.org/les-membres_fr_000023.html, accessed 15 November 2013). The countries are: Cote d'Ivoire, Mali, Niger, Tunisia, Senegal, Mauritius, Gabon, Djibouti, Congo, Chad, Mauritania, Central African Republic, Burundi, Benin, Burkina Faso, and Seychelles.

workshops (and the use of radio) across the country, and including a very wide range of participants from civil society and government bodies. The workshops create awareness of the Office and also – importantly – function as a simultaneous feedback mechanism to gauge public opinion on the work of the Office, with a view to enhancing service delivery. With regard to the sample countries, one option for the larger ones – with more resources available – might be to create a separate unit in its organogram for outreach and communication activities for targeting both public-administration staff and the public at large.¹¹²

As already stated, the response from the sample countries on AOMA's initiatives driving advocacy and outreach, and the strengthening of the institution, was muted. Perhaps the answer in the end is to move forward, with increased vigour and determination, and *focus on the issues and activities that member countries currently value most about AOMA*:

- Organising regional meetings
- Exchange of information
- Peer-to-peer learning
- Information sessions on best practices
- Facilitating cooperation at all levels
- Training and workshops of various kinds
- Sending experts to member states with newly established Offices
- Research activities.

Another option for AOMA may be to spend more time travelling to member states – offering encouragement, advice and support. Most of the sample countries particularly mentioned AOMA's visits and their significance, and the value of this cannot be over stated.

With regard to all the issues already discussed in this chapter, another suggestion is that AOMA needs to make full use of the power of information technology (IT). This, for example, is well used in Asian Ombudsman Offices to speed up the submission of civil complaints.¹¹³ In the context of AOMA, however, and with the profound difficulty of communicating with a large and diverse audience, much could be done to improve on all the difficulties discussed above by having a fully functional and *free-standing* website with many of the necessary resources available there. It should ideally be separate from the AORC website. With proper development and use of this resource, and with the education of member states on the functionality of the website, a great deal could be achieved. The website could, *inter alia*, provide:

- *A full list of all member states* with all the necessary contact details
- *Information on membership*: criteria for membership and the required forms
- *Notifications of international, regional and national meetings* relating to ombudsmanship

¹¹² See: IOI (2013) *Australasia and Pacific Ombudsman Institutions* at 88.

¹¹³ Seong-Pil Hong (2011) *A comparative study on Ombudsman institutions in Asian region* at 215.

- *All AOMA's important documents* such as its Constitution, Standards, minutes of past meetings, and annual reports
- *Information on best practices* relating to ombudsmanship
- *Training materials on ombudsmanship* (including PowerPoint presentations in English and French at least)
- *Information on successful advocacy and outreach programmes* and their implementation
- *All recent newsletters*
- *A large and relevant library resource of academic material to facilitate research.*

Finally, there is freely available functionality on the internet¹¹⁴ that allows groups of professionals (much like the group of Ombudsman in AOMA member countries) to create and participate in online forums and email-based groups. This provides a rich experience in terms of community conversations, debates, interactions and peer-to-peer learning, which would be hugely beneficial for the Association – even if there need to be English and French sub-groups.

¹¹⁴ See: 'Google Groups', available at: <https://groups.google.com/forum/#!overview>

16: SUGGESTIONS FOR IMPROVEMENT & CHALLENGES

This chapter discusses the suggestions for improvement *made by* sample countries, so that they could better fulfil their legislative and/or constitutional mandates. The cited challenges of the Offices are also reviewed, and an analysis and discussion of the issues is presented. Note that a summary of the main points is not presented at the beginning of the chapter, and reference should be made to section 16.2 and Table Three, instead.

16.1 Suggestions for improvement and challenges

In the Gambia the current structure is seen as being functional and adequate, but a website is currently being developed and will be operational by 2014. There are plans to open a documentation centre to carry out research on awareness creation. With regard to *challenges*: More funds are needed for the expansion of regional offices, and although provision has been made in the budget for employing qualified staff, there are a number of key vacancies in the Office (the posts of Ombudsman and one Deputy Ombudsman are currently vacant, as are six other important posts).

In Cote d'Ivoire, with regard to ways of improving and restructuring the Office, the following were noted:

- Decentralising to reach/strengthen activities in all regions, including remote areas
- Training in Mediator techniques and good practice
- Creating a library of relevant texts on the function of the Mediator and good practice
- Capacity-building
- Providing Mediator resources online
- More financial resources are needed to solve staff shortages and to add office space
- Computerised management of, and processing of, complaints
- Restructuring of services.

Challenges were listed as: resistance from some government departments to accept findings and recommendations of the institution; difficulties in attending to complaints from people in the provinces; inadequate facilities to accommodate current staff; lack of adequate infrastructure; inadequate human resources.

In Ethiopia the following were reported as being important in terms of improving and restructuring the Office:

- Capacitation of human resources
- The development of internal systems
- More experience sharing
- More financial resources, and resources such as vehicles and computers

- Retaining skilled staff.

Challenges were listed as: lack of skilled manpower; inadequate resources; resistance from some government departments to accept findings and recommendations; and accessibility of investigators to institutions, departments and rural people.

In Burundi, in order to improve the functionality of the Office, decentralisation was mentioned as having the potential to make the Office available for mediation across the country. Currently, one office is functional in the north of the country in Ngozi, but at least three other offices still need to be opened. The major *challenges* were listed as: problems of decentralisation; lack of material and human resources; dealing with sensitive cases; working in the difficult context of the post-conflict Burundian era.

In Namibia the Office has already had a new structure and appropriate budget approved by the Ministry of Justice, which will effectively help it to improve delivering on its mandate – especially the human rights aspect. However, as previously mentioned in this report, the filling of vacancies in the Office remains a challenge (delays) due to “the dependence” of the Office on the appointment procedures of the Ministry of Justice – thus affecting the independence of the Office. Furthermore, there is no prospect for growth/promotions for staff members in the Ombudsman Office. Accessibility of the Office is another issue that could be improved, in terms of taking it to the remotest regions. Current under-staffing could also be resolved, with more time allowed for education and outreach by the appropriate staff (and not by investigators). The *challenges* of the Office include: delays in receiving information from relevant departments in the case of complaints (appeal matters may take up to five years), which cannot always be resolved by subpoenas; the filling of vacancies (in 2012 only 50% of complaints were dealt with (87% average previously) and this probably is a result of under-staffing); accessing the remotest areas, with limited resources; and the limited budget (largely spent on staff with little left for operations, which are the core function of the Office).¹¹⁵

In Mauritius, the Ombudsman stated that the Office was working well, and did not need reorganisation, although the Ombudsman Act had been amended in December 2012 to stipulate a time-frame for queries to the ministries and departments to be responded to (they were taking too long to reply). At the same time, the Act was revised to remove the necessity that complainants had to provide a copy of their complaint to a member of the National Assembly (which made no sense and probably had origins in European protocol).¹¹⁶ The Ombudsman mentioned that the Office did not have the problems experienced in many mainland member countries, which were very large geographically (unlike Mauritius).

¹¹⁵ It was also stated that more resources were required for the Office, because of its very broad mandate.

¹¹⁶ The Office was receiving 150–200 complaints in 1990, but that has increased to 350–400 cases in 2013.

However, twice the number of complaints are received against institutions/bodies outside the jurisdiction of the Office, which are referred elsewhere (although not always).

In Tanzania the Commission and its structure were considered to be satisfactory. What was needed, however, was an expansion of the lower support base in terms of more branches. More capacity and resources are also required. It was stated that AOMA could help in this regard. *Challenges* were cited as:

- Lack of skills and capacity to ensure compliance with human rights
- Non-compliance (or lack of immediate compliance) with the Commission's recommendations; often, there are delays from government institutions
- Inability to meet public expectations
- Limited budget to execute the mandate (thus inadequate facilities and resources)
- Lack of a clear understanding of the concept and existence of the Commission.

In Mozambique the Office is new. It needs to decentralise to different regions/provinces and more resources (financial and human) are thus needed. Capacitating was important given the wider mandate of the Office, which includes human rights violations. The Office needs to administer its own budget, which currently falls under the Justice Department. It also needs to set down rules on the appointment of its own staff (currently appointed by the Ombudsman from different government departments, with no statutory regulations on required qualifications or criteria for appointment). Specific *challenges* were:

- The formal structure of the 'cabinet' remains unapproved
- Limited staffing and associated training (the Office has only three full-time investigators that need appropriate training)
- Inability to acquire suitable persons from government departments
- Accessibility: there is/are no local office/s for the Ombudsman
- Limited budget.

16.2 Analysis and discussion

An analysis was done of all the issues that the Offices of the different countries reported as being 'concerns' for them in different ways – both in terms of wanting something changed, or as a challenge affecting their ability to deliver on the mandate of the Office. As in chapter fourteen, these issues were classified into *broad themes* (see Table Three, below). Note that although there are definite, separate aspects to each of the themes, but each country was allocated only once to each theme.

Brief commentary will now be made on the themes that were reported by at least half the countries (i.e. four bullets). These were: (1) accessibility of Office/reaching remote areas; (2) expansion to regional offices (decentralisation); (3) inadequate financial resources; (4) government resistance to findings/causing delays; (5) inadequate office space and infrastructure; and (6) inadequate staffing (including unfilled vacancies). Of note is that item '(2) expansion to regional offices', is also cited as a significant achievement in chapter 14. It suggests that the expansion and decentralisation is an ongoing process and is enjoying substantial growth. This is particularly the case in Cote d'Ivoire and Burundi (recovering

from civil war and serious internal conflict respectively), and Mozambique (a new Office trying to establish its presence). Inadequate staffing and financial resources are significant problems in six of the eight sample countries, and are of serious concern.

In closing, attention needs to be drawn, yet again, to the problems relating to appointment procedures and budgetary independence. Both are problems in Namibia and Mozambique, where the budget of the Ombudsman Office falls under the Department of Justice. Thus, they do not have financial and budgetary autonomy, which are serious issues for the functionality and independence of both Offices. Both countries also have inappropriate appointment procedures. In Mozambique, the staff can only be appointed from government departments and there are no statutory regulations on the criteria for appointment, while in Namibia the lengthy appointment process through the Department of Justice is effectively compromising the independence of the Office and hampering its ability to deliver on its mandate. On analysis, nothing is said about the appointment of staff in the Office of the Ombudsman in the Namibian Constitution, but according to the Act (Section 7 (2)): “The Ombudsman may obtain the services of any person, not being the officer [in the public service] referred to in subsection 1, for the purposes of the Ombudsman’s functions on such conditions as may be determined by agreement with such person.” This suggests that the current appointment procedure may be partially in contravention of the Act, and this should be taken up by the parties concerned.

TABLE THREE: ‘CONCERN’ THEMES REPORTED BY SAMPLE COUNTRIES

THEME	INCIDENCE
Accessibility of Office/reaching remote areas	●●●●
Appointment procedures (staff)	●●
Budgetary independence (from authorities)	●●
Compliance with recommendations (non- or delayed)	●
Expansion to regional offices (decentralisation)	●●●●●
Experience sharing	●
Financial resources (inadequate)	●●●●●●
Government resistance to findings/causing delays	●●●●
Information Technology (use of)	●●
Legislation (amending)	●
Office space/infrastructure (inadequate)	●●●●
Outreach and education	●
Public perceptions/understanding of Office	●●
Sensitive cases	●
Staffing (inadequate/unfilled vacancies)	●●●●●●
Training	●●●

17: RECOMMENDATIONS

17.1 Summary of recommendations made in the report

Recommendations to AOMA are made throughout this report, and are summarised and discussed further below. For the more important issues, if no mention of such is made in the current AOMA Standards, this is referred in the discussion.

17.1.1 Organogram and structure of Office

In terms of the organogram of very large Ombudsman Offices, a (Chief) Ombudsman and two Deputy Ombudsman with circumscribed duties – perhaps one administrative and one relating to investigation – are suggested. The Ethiopian organogram, with one Chief Ombudsman; one Deputy Chief Ombudsman; and two Ombudsman – each with specific responsibilities – is perhaps a blueprint/model for a large and populous country. There are, however, possible advantages associated with a smaller and monocratic structure. It is an unspoken truth that the effective leverage of the Ombudsman institution often does not always derive from formal powers conveyed on it by law, but rather from the perceived reputation, standing and competence that an *individual* Ombudsman might have.

In terms of the wider organisational structure of the actual Office, it is difficult to prescribe any particular arrangement, however, the structure in The Gambia seems to be particularly sound. It is divided into two main sections, one dealing with oversight and administration, and the other (including the actual Ombudsman) covering all other functions (including the investigative/executive function).

17.1.2 Constitutional provisions

As best practice, the Office of the Ombudsman should be enshrined in a constitution, given that the threshold requirements for modification of constitutional provisions are normally higher. This would strengthen the Ombudsman's independence and give the institution more security and authority in the political landscape.

The Namibian Constitution is perhaps an example of '*good practice*' for a country with a hybrid Office (most of the sample countries have hybrid Offices). The constitution succinctly and unambiguously covers all the core aspects which define and regulate the Ombudsman institution: the establishment and independence of the Office, the appointment and term of office, functions, powers of investigation, and removal from office.

17.1.3 Use of organic laws

The attributes, organisation and functioning of the Office are perhaps more strongly embedded in the legal framework in Cote d'Ivoire than in some of the other sample countries,

and this is worthy of consideration by AOMA. This is both in terms of AOMA's dealings with the Office of the Mediator in Cote d'Ivoire, and in terms of recommendations for best practice for other member countries. It has been suggested that the embedding of the Ombudsman institution in organic laws is an alternative which may guarantee the maximum level of stability for the institution.

17.1.4 Clearly defined mandate and focus

There is a need to have a very clearly defined mandate and focus for the Ombudsman Office and there should possibly be a move towards this as a Standard by AOMA; this is not currently specifically discussed in the Standards. If anti-corruption or human rights bodies do exist, the mandate to investigate such issues should ideally be transferred to them in order to avoid duplication of function, confusion and inefficiency. Furthermore, it would also be very difficult for an Ombudsman institution to have meaningful competence across a very wide range of issues, and a focus on maladministration may be best.

17.1.5 A model for the mediation function

In Cote d'Ivoire the prominent mediation function in its Office seems to conform to many features of the standard 'model of mediation' in dispute-resolution theory and practice. Considering this model may well be relevant to the definition of such issues in AOMA's normative standards. The model may be particularly important in this regard, given that a significant number of AOMA's member states are Francophone countries with a mediator-type ombudsman system, and given that mediation/conciliation are also elements of the mandate in some of the other sample countries.

17.1.6 Measures to ensure compliance with recommendations

With regard to measures to ensure compliance with recommendations, to ensure the independence and impartiality of the Ombudsman Office, recourse should not be made to the executive, government ministers or parliament, which sometimes occurs in the sample countries. This would impact negatively on the all-important *perception* of impartiality, fairness and independence of the Ombudsman institution. This is not currently mentioned in the AOMA Standards.

17.1.7 Exclusion from remit and power to initiate/halt investigations

In the interests of equality and fairness, the executive should not be excluded from the remit of the Ombudsman. In addition, in the interests of the independence of the Office, the executive should not have the power to initiate or halt the investigations of the Ombudsman or Commission or Mediator. Both these issues are not currently mentioned in the AOMA Standards.

17.1.8 Tenure/term and re-appointments

In AOMA's Draft Standards a fixed term for the Ombudsman is suggested and this report concurs – except that this should be taken to mean one term. Options for renewal, especially unlimited options, could lead to the loss of independence and impartiality of the Office if the appointee seeks to garner support from the appointing authorities towards the end of his tenure; re-appointments are not advisable for this reason. That said, one renewal might be appropriate for *shorter* appointments. Otherwise, an appointment term of at least five years seems to be sensible, and a term of seven years (as occurs in South Africa) or at least one year longer than the term of the parliament/legislature might be ideal.

Re-appointments and limitations relating thereto are important and should be considered. Furthermore, and ideally, some form of performance appraisal of an Ombudsman seeking appointment for a second term would be useful.

Issues of tenure/term and re-appointments require more detail in the AOMA Standards.

17.1.9 Qualifications

Some sort of legal experience/qualification is recommended, although this is not mentioned in the AOMA Standards. In the interests of impartiality and independence of the Office, AOMA's position in its Draft Standards – that an Ombudsman should not be a member of any political party – is supported. Further to this, at the very least, some general qualification criteria should be *listed* in the enabling legislation and/or in the constitution. However, too rigid and lengthy a list of qualifications required for appointment could limit the choice of potential candidates and preclude the selection of candidates with a personality and reputation in which the public will have confidence. Personality and especially reputation are important as the leverage of the Ombudsman institution often relates to the *perceived* reputation, standing and competence that an appointee might have.

17.1.10 Appointment process

The appointment process should be as transparent, fair and inclusive as possible and involve the executive, the legislature or other elected body (as prescribed in the IOI Bylaws), and a body from which wise, informed and *unbiased* counsel can be sought. It might be impossible to seek impartial counsel from a body set up specifically for the purpose by the legislature, and especially by the executive. A good example of an impartial, independent and well-informed body would be a Judicial Service Commission. An impeccable procedure for the selection of Commissioners exists in Tanzania, and this may well be an example of best-practice (it is exceptional both in terms of procedure and in terms of the quality and breadth of input that feeds into the procedure). It involves the shortlisting of potential candidates by civil society and selected specialists, with these names published in the media for input from the public, whereafter the input is taken to a selection committee which make a selection and refers the name to the president, who is then obliged to make the appointment(s), taking into consideration the public's commentary.

There needs to be a carefully detailed description of chronological procedure for the appointment, beginning with receipt and shortlisting of nominations (perhaps by an impartial body like a Judicial Service Commission) – through to the actual appointment.

17.1.11 Grounds for removal and the process thereof

It is important that the grounds for removal be embedded in the relevant legislation and constitutional framework. Furthermore, there needs to be a *meticulous procedure* in the case of removal; perhaps even more so than for appointment. For similar reasons as those specified for appointment, the legislature or some other elected body should be involved in the removal process. At least a two-thirds majority vote in parliament is indicated for removal. As for appointment, a detailed description of chronological procedure should, ideally, be in place.

17.1.12 Reporting arrangements and accountability

In seven of the countries the Ombudsman reports to parliament (usually annually at least). This could be a normative standard for AOMA, but with an option to report to the executive as well, as a matter of courtesy (in other words not a legal requirement).

The status of actual *accountability* is often unclear and this may have significant implications with regard to the possibility of the oversight authority attempting to halt or suppress knowledge of investigations reported on by the Ombudsman, or with regard to the oversight authority attempting to divert focus away from an investigation or investigations. Accordingly, this issue warrants attention in terms of the development of normative standards, and the issue should be clarified in the relevant legislation and possibly in the constitution. The issue of accountability *per se*, is not currently mentioned in the AOMA Standards.

17.1.13 Regulating financial processes, and outside funding

Regulating and defining all financial processes are issues that should be incorporated in enabling legislation, in order to secure the Office of the Ombudsman and to give it independence. Further detail on this should also be presented in the AOMA Standards. Ideally the budget should be sourced directly from treasury, and not from a budget vote or allocation from a specific government ministry or department. It is perhaps not advisable to have the possibility of sourcing outside funding embedded in statutory regulations. This is because this procedure could potentially compromise the independence of the Office, which might become beholden to certain benefactors.

17.1.14 Appointment and removal of subordinate staff

There was significant involvement by the legislature/parliament, executive and government bureaucracy in the appointment/removal of subordinate staff in some countries, and this

involvement should ideally be avoided, and this is a consideration for mention in normative standards. Preparing detailed guidelines for the appointment and removal of staff in Ombudsman Offices should be considered.

In terms of defined processes for appointment of staff, the Office of The Gambia seems to be most inclusive and transparent and is perhaps an example of best practice. The appointment procedure includes the placement of national advertisements, interviews done by a carefully selected panel from the Office (including the Ombudsman and his Deputies), and with the presence of an appropriate expert such as a lawyer.

No mention of the appointment or removal of subordinate staff is made in the AOMA Standards.

17.1.15 Mediation and conciliation

Mediation and conciliation apparently occur in four countries, and are usual features in an Ombudsman/Mediator Office. They are worthy of consideration for inclusion in normative standards by AOMA.

17.1.16 Turnaround time for investigations

Proposing turnaround times for *different categories* of investigations may be useful to work with and develop standards for. In Ethiopia, provision is made for urgent cases to be completed within two days.

17.1.17 Mitigating political interference

The most pertinent lesson derived from the sample countries in terms of mitigating political interference is the necessity to have political interference referred to in the constitutional and legal framework – perhaps even a specific reference to the role of the executive and the upper and lower houses of parliament.

17.1.18 Publicising the importance of the Ombudsman institution

The importance and relevance of the Ombudsman institution or ombudsman-like institution might be an important focus area for AOMA and the AORC, in terms of suggesting how this could be done, and by providing all the relevant materials.

17.1.19 Mentoring of member states

There is a strong need for AOMA and the AORC to educate member states on the nature of the Ombudsman institution, its function, and its typical mandate, focus and role. Exceptionally broad mandates could be counter-productive, and with a new Office may hinder its success.

17.1.20 Cooperation and collaboration with other bodies

The AOMF has an international membership of French-speaking member states and 16 AOMA member states are also members of AOMF. Given that the associations have a similar mission, this is problematic, and some sort of cooperation and collaboration is warranted. Attention should be devoted to this. Relevant regional bodies (as mentioned by interviewees) include, *inter alia*: the Secretariat of Human Rights Institutions and the African Commission of Human and Peoples' Rights (ACHPR). In this regard, AOMA may be able to collaborate and network with such institutions to help it deliver on its mandate.

17.1.21 Advocacy and outreach

There was limited use of advocacy and outreach/education/awareness-raising programmes in the sample countries. The Gambia may be an example of best or good practice for AOMA when it comes to recommending advocacy and outreach procedures. Its apparently successful programme shows what can be done by a poor, small country with limited resources. For larger countries with more resources, it might be useful to create a separate unit in the organogram for outreach and communication activities – for targeting public-administration staff and the public at large.

17.1.22 AOMA's initiatives with member states

A focus on the issues and activities that member countries currently value most about AOMA is recommended:

- Organising regional meetings
- Exchange of information
- Peer-to-peer learning
- Information sessions on best practices
- Facilitating cooperation at all levels
- Training and workshops of various kinds
- Sending experts to member states with newly established Offices
- Research activities.
- Spend more time travelling to member states – offering encouragement, advice and support.

17.1.23 Use of information technology, the internet and the AOMA website

AOMA needs to make full use of the power of information technology (IT). In the context of AOMA, with the difficulty of communicating with a large and diverse audience, much could be done to improve on all the communication and related difficulties by having a fully functional and *free-standing* website (i.e. separate from the AORC), with many of the necessary resources available there. With proper development and use of this resource, and

with the education of member states on the functionality of the website, a great deal could be achieved. There is also freely available functionality on the internet that allows groups of professionals (much like the group of Ombudsman in AOMA member countries) to create and participate in online forums and email-based groups. This provides a rich experience in terms of community conversations, debates, interactions and peer-to-peer learning, which would be hugely beneficial for the Association – even if there need to be English and French sub-groups. Use of this technology is recommended in the longer term.

17.2 The Mediator system

In the comparative analysis, Cote d'Ivoire was the only country with a true Mediator system. The system in Cote d'Ivoire differs from all the other countries across a range of areas – including the nature of enabling legislation used, the strong focus on mediation, appointment processes, reporting arrangements, and oversight. It is tempting to discuss these differences further, but this would be speculation. It is strongly recommended that AOMA supports further research into the Mediator system of its member countries; at least two more countries should be analysed. Subsequent to this research, recommendations could be made on how best to revise the AOMA Standards to accommodate the two systems.

It should be mentioned also that the Mediator system was abandoned in France in 2011 and was replaced with a *Défenseur des droits* (Defender of Rights). This is an independent administrative authority which was created by a 23 July 2008 constitutional amendment and established by the Organic Law of 29 March 2011. The Defender is responsible for defending the rights of citizens against maladministration and has special responsibility for promoting children's rights, the fight against discrimination, and for ensuring compliance with the rules of conduct of persons performing security activities. This mandate and focus is markedly different and broader than any of the systems used by countries discussed in this report, and it is perhaps a window of opportunity for AOMA – given that it has a substantial Francophone membership – to educate its members about and to promote the value of systems with a more circumscribed mandate and focus.

APPENDIX ONE

AORC Research Project: Comparative Analysis of Legal Systems

INTERVIEW QUESTIONS

Introductions (*take letter from AORC Chairperson and survey questionnaire*)

A. Establishment and Structure

- a. How is your Office structured? (*NB because some are one person, deputies, and others are bodies*)
- b. Please expand on the laws and/or sections of your constitution that deal with the establishment and mandate of the Ombudsman/Médiateur.

B. Powers and Functions

- a. Is there enabling national legislation that establishes and supports your Office?
- b. Please describe the mandate and focus of your Office (*including accountability and reporting requirements, powers of investigation, confidentiality and impartiality*).
- c. What is the status of your decisions?
- d. What is the extent of your remit? (*Any exclusions in respect of organs of state, functionaries, and levels of government?*)

C. Appointment and Removal of Ombudsman

- a. What is the Ombudsman's period of tenure?
- b. Please provide information regarding the appointing authority, process for appointment, and required qualifications.
- c. Please furnish information on the grounds and process for removal.

D. Reporting Arrangements

- a. Who has oversight over the Ombudsman? (*Parliament, the executive, or some other body?*)
- b. To whom does the Ombudsman report?
- c. What is the content of the oversight?

E. Funding Model and Budget

- a. Do you receive your budget directly from parliament, or from treasury or other body?
- b. How much is your budget, per annum?

F. Appointment and Removal of staff

- a. How are staff appointed?
- b. How many staff do you have in your organisation?
- c. Would you consider the appointment and removal procedures in your Office to be fair, transparent and inclusive?

G. Operations

- a. How do you approach investigations? (*conciliation, mediation, public hearings, hearings in camera, in writing, direct contact*)
- b. What is the average turn-around time for handling complaints? (*0–3 months; 3–6 months; 6–9 months; 9–12 months; or more than 12 months*)

- c. What is the extent of acceptance of your findings, the percentage of implementation, and any reasons for deviation?
- d. What mechanisms are in place for ensuring compliance with remedial directives or recommendations?

H. Independence

- a. What steps are in place to deal with political interference? (*directives, frustration of investigations, manipulation of outcomes, political control*)
- b. Has there been occasion to implement these measures?

I. Achievements

- a. What are the main achievements of your Office over the last three years?

J. Other

1. *Advocacy and outreach:*
 - a. Does your Office have working relationships with stakeholders (*e.g. similar agencies, civil society (e.g. NGOs and volunteer organisations), and the public*)? *Please give details.*
 - b. Is there consultation with colleagues from other institutions on difficult matters?
 - c. To what extent have AOMA's initiatives driven advocacy and outreach to strengthen the ombudsman function of your Office?
2. In what ways could your Office be improved or restructured in order to better fulfil your legislative and/or constitutional mandate?
3. What are the main challenges/obstacles faced by your Office in trying to achieve its mandate?

APPENDIX TWO



مركز بحوث الرقابيين الأفارقة

African Ombudsman Research Centre

Centre de Recherche des Ombudsmen Africains

Centro de Investigaçao da Provedoria de Justica Africana

COMPARATIVE ANALYSIS OF LEGAL SYSTEMS FOR AFRICAN OMBUDSMAN AND MEDIATORS ASSOCIATION (AOMA)

SURVEY QUESTIONNAIRE

Instructions for completing this form:

You can either print the form, fill it in using a pen and then scan and email it to lshara.aorc@gmail.com or fax it to +27 (0)86 205 2964 / +27 (0) 31 260 3824 (South Africa)

OR

save the form on your hard drive, open it using Microsoft Word 2007, complete it and save changes, and then email it to lshara.aorc@gmail.com

The security settings on your word processor may require that you enable the Macro & ActiveX content in this document – watch for the prompt when you first load the document and then enable this content (it will not work otherwise)

PLEASE ENSURE THAT THIS FORM IS RETURNED BY 30 June 2013

1. ORGANISATIONAL INFORMATION

1.1 Country: 1.2 Name of organisation:

(ombudsman/commission/mediator etc)

1.3 Years in operation:

1.4 Main focus of the organisation:

Maladministration

Human rights violations

Corruption

Governance

Police complaints

other (please specify):

1.5 Structure:

Central office only

Central office with regional/satellite offices

Other (please specify):

1.6 Contact details:

Person authorised to complete form:

Telephone: *(include international dialing code)*

e-mail: Fax:

Postal address: (Number, Building, Street, Suburb)

(City, Country)

1.7 Preferred language of communication/ instruction:

2. LEGAL INFORMATION

2.1 What is the legal status of your Office?

- Governed by the constitution
- Governed by a statute
- other (please specify):

2.2 Is the rank of the Ombudsman/ Médiateur equivalent to that of:

- A Judge?
- A Member of the executive?
- Other (please specify) :

2.3 Please list the laws or sections of the constitution that deal with the establishment and mandate of the Ombudsman/ Médiateur:

2.4 How is the Ombudsman/Médiateur appointed?

- By the State President

- By the executive
- Other (please specify):

2.5 How is the Ombudsman/ Médiateur removed from office?

2.6 How is the Ombudsman/ Médiateur's Office structured?

- As a board
- As a commission
- Headed by single individual
- Other (please specify):

2.7 If the Ombudsman/ Médiateur's Office is headed by a single individual, is there a Deputy Ombudsman/ Médiateur?

- Yes
- No
- Other (please specify):

2.8 Please list the powers and functions of the Ombudsman/ Médiateur's Office:

2.9 If the Ombudsman/ Médiateur's Office is headed by a single individual, what is the tenure of the Ombudsman/ Médiateur?

- Life appointment
- Appointment for a fixed period (please specify):
- Other (please specify):

2.10 If the appointment is for a fixed period, is there the possibility of reappointment for a further period?

- No
- Yes (please specify additional period/s):

2.11 Does your organisation belong to any of the following organisations:

- International Ombudsman Association (IOI)
- Association des Ombudsmans et Médiateurs de la Francophonie (AOMF)
- African Ombudsman and Mediators Association (AOMA)
- Other - specify:

2.12 How does the Office stand up to political interference? Please provide examples.

3. OTHER DETAILS

3.1 HUMAN RESOURCE CAPACITY

3.1.1 Please supply us with a breakdown of your staff compliment:

Total number of staff members

Total support staff

Total operational staff

of which how many are:

- mainly involved in receiving and processing complaints
- mainly involved in facilitation/mediation
- mainly involved in both investigation and report writing
- mainly involved in only investigation
- mainly involved in only report writing
- supervision/ management

3.1.2 Please share any other information you feel is relevant regarding your human resource capacity:

3.2 ADVOCACY

This section seeks to establish the extent to which good governance is currently advocated in state and private institutions through supporting the adoption of the institution of the Ombudsman, and lobbying for the strengthening of the powers of the Ombudsman Office.

3.2.1 Is your Office involved in advocating good governance in state and private institutions?

State Yes No

Private Yes No

Please provide details:

3.2.2 Are you aware of any other initiatives that support the adoption of the institution of the Ombudsman?

Yes No

Please provide details:



3.3 FINAL COMMENTS AND OTHER ISSUES YOU FEEL ARE RELEVANT

Please provide details.



If you require assistance in completing this form, please contact Adv. Ishara Bodasing

Tel : +27 31 260 3768 / +27 83 411 2875.

APPENDIX THREE

DRAFT

AFRICAN OMBUDSMAN AND MEDIATORS ASSOCIATION STANDARDS FOR THE ESTABLISHMENT AND OPERATION OF OMBUDSMAN INSTITUTIONS

PREAMBLE

The Ombudsman is an independent, impartial public official with authority and responsibility to receive, investigate or address complaints about government actions, and, when appropriate, make findings and recommendations, and publish reports.

An Ombudsman addresses complaints of maladministration and where appropriate, makes recommendations for the improvement of the general administration of the bodies over which it has jurisdiction.

The term 'Ombudsman' should only be used if the following conditions are met: independence, accessibility, fairness, accountability, effectiveness and impartiality.

A. ESTABLISHMENT AND OPERATIONS

A country intending to establish an Ombudsman office should do so pursuant to its constitution or its enabling statute in plain language, and should readily be available and accessible to the public. Such legislation should clearly stipulate the role, powers and functions which authorise the said institution to:

1. receive complaints about alleged acts or omissions of cases of maladministration and improprieties;
2. exercise discretion to accept or decline to act on a complaint;
3. operate by fair and timely procedures which assist in the just resolution of a complaint;
4. gather or demand relevant information from bodies under investigation;

5. resolve issues within a reasonable time, after:
 - (a) conducting an inquiry
 - (b) facilitating, negotiating, and mediating
 - (c) making recommendations to the concerned authorities
 - (d) issuing annual reports.

B. QUALIFICATIONS

- (a) An Ombudsman shall be a person of recognised knowledge, judgment, objectivity, integrity and good character.
- (b) An Ombudsman shall not be a member of any political party.

C. INDEPENDENCE, ACCESSIBILITY, FAIRNESS, ACCOUNTABILITY, EFFECTIVENESS, IMPARTIALITY AND CONFIDENTIALITY

In order to ensure the effective operation of an Ombudsman Office, the constitution or legislative enactment shall authorise the Ombudsman to operate consistently with the following essential characteristics:

(1) Independence

- a) The Ombudsman shall not be part of any of the powers of the state, and certainly not of the bodies subject to its scrutiny.
- b) The Ombudsman shall be free from outside pressure and not subject to any hierarchical instructions
- c) The Ombudsman shall be appointed for a fixed term and shall not be removed from office unless as provided by law.
- d) The Ombudsman shall be appointed by the head of state or the parliament.
- e) The Ombudsman's salary and other terms of employment shall be regulated by law and shall be in accordance with the authority vested in the post.
- f) The Ombudsman shall employ members of staff of the Office.
- g) The Ombudsman shall be immune from civil or criminal liability for acts carried out in the discharge of the functions of the Office.
- h) Any person who holds the Office of the Ombudsman shall not be employed in any other capacity.

(2) Accessibility

- a) The Office of the Ombudsman shall be accessible to members of the public in terms of geographic location and access to information.
- b) The services of the Ombudsman shall be free of charge.

(3) Fairness

The Ombudsman shall make decisions based on the principles of equity, natural justice and good conscience.

(4) Accountability

- a) The Ombudsman shall carry out the functions of the Office in a transparent manner.

- b) The Ombudsman shall submit reports about the activities of the Office to the appointing authority and parliament.

(5) Effectiveness

- a) The Ombudsman shall be provided with sufficient human, financial, and operational resources to enable the Office to carry out its activities in an effective and timely manner.

(6) Impartiality

The Ombudsman shall conduct inquiries and investigations in an impartial manner, free from bias and conflict of interest.

(7) Confidentiality

The Ombudsman and the staff must maintain the confidential nature of any information acquired by them during the exercise of their duties.

D. LIMITATIONS

An Ombudsman shall not:

- a) conduct an investigation where administrative or judicial proceedings are pending.
- b) accept jurisdiction over an issue where the complainant has not exhausted all available internal remedies.

E. PRINCIPLES OF CONDUCT

Officials of the Ombudsman office shall, at all times, maintain the independence, impartiality and integrity of the Office and shall:

- i. Render, with integrity, a responsive and effective service which is accessible to complainants.
- ii. Respect the authority that he or she has as an official of the Office in dealings with any person, complainant or organisation.
- iii. Act fairly and impartially in respect of all parties when exercising any discretion in the performance of duties.
- iv. Truthfully investigate and report on every matter regardless of the consequences.
- v. Maintain high professional standards at all times.
- vi. Avoid conduct that can result in the perception of bias – this includes conflicts of interest and perceived conflicts of interest situations.

APPENDIX FOUR

CHAPTER 10 [NAMIBIAN CONSTITUTION]

The Ombudsman

Article 89 Establishment and Independence

- (1) There shall be an Ombudsman, who shall have the powers and functions set out in this Constitution.
- (2) The Ombudsman shall be independent and subject only to this Constitution and the law.
- (3) No member of the Cabinet or the Legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and all organs of the State shall accord such assistance as may be needed for the protection of the independence, dignity and effectiveness of the Ombudsman.
- (4) The Ombudsman shall either be a Judge of Namibia, or a person possessing the legal qualifications which would entitle him or her to practise in all the Courts of Namibia.

Article 90 Appointment and Term of Office

- (1) The Ombudsman shall be appointed by Proclamation by the President on the recommendation of the Judicial Service Commission.
- (2) The Ombudsman shall hold office until the age of sixty-five (65) but the President may extend the retiring age of any Ombudsman to seventy (70).

Article 91 Functions

The functions of the Ombudsman shall be defined and prescribed by an Act of Parliament and shall include the following:

- (a) the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society;
- (b) the duty to investigate complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such

services;

- (c) the duty to investigate complaints concerning the over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia;
- (d) the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place;
- (e) the duty and power to take appropriate action to call for the remedying, correction and reversal of instances specified in the preceding Sub-Articles through such means as are fair, proper and effective, including:

(aa) negotiation and compromise between the parties concerned;

(bb) causing the complaint and his or her finding thereon to be reported to the superior of an offending person;

(cc) referring the matter to the Prosecutor-General;

(dd) bringing proceedings in a competent Court for an interdict or some other suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures;

(ee) bringing proceedings to interdict the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise ultra vires;

(ff) reviewing such laws as were in operation before the date of Independence in order to ascertain whether they violate the letter or the spirit of this Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon;

(f) the duty to investigate vigorously all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Prosecutor-General and the Auditor-General pursuant thereto;

(g) the duty to report annually to the National Assembly on the exercise of his or her powers and functions.

Article 92 Powers of Investigation

The powers of the Ombudsman shall be defined by an Act of Parliament and shall include the power:

- (a) to issue subpoenas requiring the attendance of any person before the Ombudsman and the production of any document or record relevant to any investigation by the Ombudsman;
- (b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent Court
- (c) to question any person;
- (d) to require any person to cooperate with the Ombudsman and to disclose truthfully and frankly any information within his or her knowledge relevant to any investigation of the Ombudsman.

Article 93 Meaning of "Official"

For the purposes of this Chapter the word "official" shall, unless the context otherwise indicates, include any elected or appointed official or employee of any organ of the central or local Government, any official of a para-statal enterprise owned or managed or controlled by the State, or in which the State or the Government has substantial interest, or any officer of the defence force, the police force or the prison service, but shall not include a Judge of the Supreme Court or the High Court or, in so far as a complaint concerns the performance of a judicial function, any other judicial officer.

Article 94 Removal from Office

- (1) The Ombudsman may be removed from office before the expiry of his or her term of office by the President acting on the recommendation of the Judicial Service Commission.
 - (2) The Ombudsman may only be removed from office on the ground of mental incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.
 - (3) The Judicial Service Commission shall investigate whether or not the Ombudsman shall be removed from office on the grounds referred to in sub-Article (2) hereof and, if it decides that the Ombudsman shall be removed, it shall inform the President of its recommendation.
 - (4) While investigations are being carried out into the necessity of the removal of the Ombudsman in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Ombudsman from office.
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