

Terms of Reference

Project: Comparative analysis of legal systems, particularly aspects governing the Ombudsman Offices of Africa.

1. Introduction

The African Ombudsman and Mediators Association (AOMA) is a regional organisation for ombudsman and mediators in Africa. At present 36 African States are members of AOMA¹. The objectives of the AOMA are to encourage the establishment of African ombudsman institutions, to provide information, training and development of ombudsman offices and staff, to promote good governance, to promote the independence and autonomy of ombudsman offices and to foster affiliation and maintain liaison among ombudsman offices and other relevant institutions and organisations.

The African Ombudsman Research Centre (AORC) is an initiative of the AOMA. The primary objective of the AORC is to serve as a focal point for ombudsman offices in Africa, by coordinating their activities and supporting them with the provision of research information and training, and acting as a point of liaison with all participants involved in enhancing good governance in Africa.

The role of AORC is to provide to AOMA members and Ombudsman institutions, service in the following areas:

- Research to provide AOMA members with cutting edge, up-to-date and relevant information necessary in AOMA members' core mandates to their countries
- Training to provide AOMA members the capacity to deliver their mandate effectively
- Coordination of AOMA activities
- Advocacy of the good governance and human rights work by AOMA members

A Needs Assessment Report was presented at a workshop during the launch (March 2011) of the AORC. This Report highlighted the pressing need for research into the various legal systems and laws governing the ombudsman function within AOMA members, with a view to assist in lobbying for improvements in all spheres thereof. The following are some of the issues raised in the report:²

¹ Angola, Ethiopia, Central African Republic, Zambia, Uganda, South Africa, Mauritius, Côte d'Ivoire, Libya, Mali, Botswana, Burkina Faso, Senegal, Gambia, Ghana, Kenya, Malawi, Namibia, Nigeria, Sierra Leone, Rwanda, Seychelles, Sudan, Tanzania, Tchad, Lesotho, Zimbabwe, Gabon, Congo Brazzaville, Djibouti, Tunisia, Madagascar, Mauritania, Togo, Benin, Niger.

² GIZ/Neville Melville: AOMA Needs Assessment Report (June 2011) pp11 - 20

- a) Only about 50% of the Ombudsman in Africa are protected in the various States' Constitutions in addition to legislation, with the remainder established by statute or executive decree. The latter are more vulnerable to abolition or weakening of the institution.
- b) Francophone countries have adopted the médiateur version of the Ombudsman model. Some classical and hybrid ombudsmen are multi-member bodies: some have opted for separate ombudsman and human rights commissions, some have human rights commissions and no ombudsman, while others have no national human rights institutions at all.
- c) A weak constitutional and legal framework establishing the Office of the Ombudsman does not adequately support and empower the office to execute its mandate optimally.

2. Background

The AOMA landscape is in the process of being scrutinised, after enduring many challenges as individual offices and as members of AOMA, especially in respect of the diversity of legal systems governing their structures. Against this backdrop it is prudent for the AORC, as one of its maiden research projects, to undertake a comparative analysis of the various legal regimes in existence among AOMA members.

This comparative analysis will seek to reveal what the challenges and strengths are of the various Ombudsman offices in Africa; what are the areas of differences and similarities amongst them; and what can be done to introduce a degree of harmony with the aim of developing normative standards for the AOMA members.

3. Objectives

The core objective of this analysis is to inform AOMA's future strategy and planning processes.

The specific deliverables of the study (subject to finalisation) are:

- a) A comprehensive comparative analysis report containing the qualitative and quantitative research findings;
- b) An in-depth assessment of a sample of Ombudsman offices by means of relevant and realistic indicators for comparison;
- c) An indication of the areas of shortcomings, process inefficiencies and external factors that have been identified as impeding the efficacy of the sample's contribution to good governance and fair public administration;
- d) Recommendations of best practices, process improvements and lessons learnt; and
- e) A comprehensive file of all working documentation, including electronic data.

The intended outcomes of the study are, that:

- a) The analysis contributes to the development of an enhanced understanding of the strengths, inefficiencies and impediments to the provision of an effective, efficient, economic and equitable service by the offices to the sectors served by them; and
- b) The final report will serve to inform AOMA's future strategy and planning processes in general, and the development of normative standards, in particular.

4. Research Questions

Some of the key research questions that will be addressed by this study are:

- i. Is the Office of the Ombudsman protected by the Constitution of the country, and by legislation?
- ii. What is the mandate?
- iii. How is the Ombudsman appointed? What is the period of tenure, and is it renewable?
- iv. How does the Office stand up to political interference?
- v. What are the core similarities among the legal systems that govern the offices of Ombudsman in Africa?
- vi. How does the diversity of legal systems affect relationships (co-operation arrangements, communication, learning and exchange networks) among these offices?
- vii. How does the diversity of legal systems among AOMA members impact on the work of AOMA itself?
- viii. To what extent have AOMA's initiatives addressed the need for advocacy and outreach to strengthen the ombudsman function of Ombudsman offices in Africa?
- ix. What are the best practice examples against which to benchmark the development of normative standards for AOMA members?
- x. In what ways could the sample offices be improved in order to better fulfill their legislative mandate?

5. Scope of the Study

The scope of the study is outlined below with respect to: period of evaluation, geographic coverage, and the envisaged study participants (role players). This outline is tentative and will be finalised during the Project Planning Phase (Phase One).

- a) Period of Evaluation: This will span all Ombudsman Offices which have become AOMA members (since its inception to the present).

- b) **Geographic Coverage:** Given AOMA's widespread presence across Africa, the sample will include one country from each of the six regional levels (North, South, East West, Central and Indian Ocean). This will be logistically feasible because accessibility will be facilitated through the regional representatives. Furthermore, preliminary research indicates that this sample will encapsulate the diverse legal systems, which are the focus of the research. In addition to the sample of six, two other Ombudsman offices (the oldest and the newest) will also be included.
- c) **Role Players (study participants):** Phase Three of the study will involve administering survey questionnaires to, and conducting interviews with, key role players. One of the main objectives here will be to elicit the perceptions and experience of these stakeholders on the impact of diverse legal systems on AOMA's work, their organizations, and the constituencies they serve. The role players that have been identified to provide veracity to the outcomes of this study include:
- Ombudsman in the offices that form part of the sample;
 - AOMA Exco members;
 - Legal experts;

6. Proposed methodology

6.1 Clarifying and Finalising the Brief

The study will be initiated with a meeting between the Research Team and the Steering Committee (Donor, UKZN Law Faculty, AORC) in order to clarify and finalise the terms of the brief. It is possible that this process could lead to a further refinement of the brief in order to eliminate disparate interpretations on the same issues as well as unintentional ambiguities or open-endedness. This meeting will be held at the outset and will serve as a *precursor* to the actual Project Planning Phase (Phase One) of the study.

6.2 Phase two: Desktop Data Collection

The study will be conducted under the auspices of AOMA and as such the Research Team will be reliant on AOMA members for on-site support in locating, accessing and retrieving available desktop data. The key components of Phase 2 of the study are:

- a) *Collating the sources of desktop data:* These data sources include (but are not limited to):
- Governing legislation
 - Annual Reports
 - Needs Assessment Report
 - AOMA Constitution
 - AOMA Strategic Plan

- b) *Identifying the relevant variables to be used in the study:* Given the scope of the undertaking the list is quite extensive, but will include all variables pertaining to: period of existence of the office, history, administration details, governing legislative framework.
- c) *Analysing and interpreting the desktop data:* This component of the study will largely involve desktop of the secondary data provided by the AOMA sample. The quantitative nature of the data means that cross-tabulations, descriptive statistics and the generation of graphs will be a fairly straightforward exercise.
- d) *Reporting:* The results of the desktop data analysis will be incorporated into the preliminary report for presentation to the Steering Committee and will also be discussed at the proposed monthly progress meeting.

6.3 Phase 3: Field Data Collection

This phase of the study is necessary to assimilate data that is not already available. This data which is largely qualitative in nature will be generated through interviews and surveys, and will seek to elicit the perceptions of key role players on the impact of the differing legal systems on their work and that of AOMA.

The data collection effort for Phase 3 will be more involved than in Phase 2, due to the geographic spread of the sample offices.

The two critical elements of Phase 3 will be:

- a) *Determining the appropriate survey sampling and interviewing methodologies and effectively administering these to collect the required information:*

Theoretically, there are a number of sampling techniques that can be used here that will result in the desired representative samples. Practical constraints of time and cost, however, dictate that we select our samples *efficiently* to obtain the desired accuracy within these constraints. It is proposed that one country from each of the six regions be selected as part of the sample, and two other countries (one with a well-established Ombudsman office, and one with a newly established office)

.Tentatively, the two main research instruments that will be used in this phase of the study will be (i) structured self-completion questionnaires aimed at Ombudsman that are identified as part of the sample, and (ii) in-depth interviews (face-to-face and telephonic) as a follow-up, and with other identified experts in the field of study.

- b) *The second critical element of Phase 3 will be analysing and interpreting the field data:*

Phase 3 will result in the collection of both quantitative and qualitative data. The research instruments will be designed in such a way that the objectives of the study are met without undue complication, ambiguity and open-endedness.

Due to the time and resource constraint of the study, Phase 2 and Phase 3 will run concurrently, with dedicated teams of research and data analysts allocated to each phase.

6.4 Phase 4: Final Interpretation and Reporting

The Research Team will prepare a preliminary report and submit this for the Steering Committee's review. The final comparative analysis report will incorporate agreed amendments, and will contain:

- Detailed quantitative and qualitative research findings;
- In-depth comparative analysis of the different legal systems governing members of AOMA;
- Areas of weakness and strength that are adding to or impeding the efficacy of AOMA's contribution to good governance and fair public administration;
- Recommendations of best practices and improvements; and
- This report will be presented to the AOMA Exco, following which a project closure report will be submitted to signal completion.

7. Possible Risks

7.1 Desktop Data Collection (Phase 2)

As mentioned, the study will be conducted under the auspices of AOMA and as such, the Research Team will be reliant on AOMA for on-site support in locating, accessing and retrieving available desktop data. The systems and databases from which the information will be extracted belong to the AOMA member that forms part of the study. It will be incumbent upon that office to appoint a support staff member to assist the Research Team in accessing the information in its most complete and current form. Incomplete information will impact on the veracity of the outcomes.

7.2 Field Data Collection (Phase 3)

As with most studies involving the administering of surveys questionnaires and interviews to sampled participants, the issue of 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 occupy high levels of office, thus impacting on their availability. The Research Team trusts that it will be able to enlist the co-operation of AOMA Exco in implementing and endorsing a communication strategy for the relevant role players that will encourage their participation and thereby improve response rates.

8. Project management plan

8.1 Project Management Methodology

AORC will appoint a dedicated research project manager to the study who will be the first point of contact.

On completion of Phase 1: Project Planning, AORC will hold a project workshop with the Steering Committee. At this workshop, the Research Team will submit a detailed schedule of tasks, milestones and timelines against which progress will be evaluated.

AORC will avail their project manager for monthly progress meetings with and a full progress report will be made available at these meetings. Over and above these meetings, AORC will adopt a strategy of open lines of communication with and will bring to the attention of the Steering Committee any pertinent issues that warrant mutual discussion.

Where necessary, the Research Team may modify its methodology in the interest of time and cost, but not at the expense of accuracy. Time lost due to unforeseen delays and circumstances beyond the reasonable control of the Research Team will be accordingly reported to the Steering Committee and corrective steps will be adopted to compensate for it. The Research Team should, however, include buffers in its work schedule as contingency measures.

8.2 Project Management Methodology

A detailed work plan with timelines and outputs is presented below (Table 1). The exact start date has not yet been established but it is envisaged that the project will commence in October 2011 and run through to March 2012 (6 months).

9. Budget

The list below (Table 1) sets out the proposed hourly rates for the Research Team. A detailed costing of the proposed research is set out in Table 3 below.

Table

Level of Research Team Member	Hourly Rates
Project Manager (PM)	R 350.00
Senior Researcher (SR)	R 350.00
Senior Analyst (SA)	R 350.00

Junior Researcher/Analyst (JR/JA)	R 250.00
Admin Support (AS)	R 50.00

Table 2 Schedule of Tasks and Timelines

TASK	WEEK	WEEK	WEEK	WEEK	WEEK	WEEK	WEEK	WEEK	WEEK	WEEK	WEEK	WEEK
	1-2	3-4	5-6	7-8	9-10	11-12	13-14	15-16	17-18	19-20	21-22	23-24
Signing of Contract	•											
Clarifying and Finalising Brief	•											
PHASE ONE: Project Planning	←————→											
Define Scope and Design Research Framework	←————→											
Communication with sample offices	↔											
Identify analysis criteria and comparative Indicators		↔										
Identify sources of Data (evidence)		↔										
Develop Implementation Plan			↔									
Project Workshop with Steering Committee				↔								
PHASE TWO: Desktop Data Collection				←————→								

Data collection from AOMA sample				←	→								
Analyse and Interpret Desktop Data						←	→						
PHASE THREE: Field Data Collection				←	→								
Identify appropriate Respondents				↔									
Design Research Instruments				↔									
Administer Surveys and Interviews				←	→								
Analyse and Interpret Field Data								←	→				
PHASE FOUR: Reporting													
Preliminary Impact Report										←	→		
Presentation to Steering Committee and AOMA Exco											↔		
Comprehensive Final Report													↔

Table 2 Project Costing by Deliverable for the Comparative analysis

TASK	DELIVERABLES	HOURS	COST
Signing of contract		0	R -
Clarifying and finalising brief		3	R3 000
PHASE 1: Project Planning (PM, SR, JR, AS)	Define Scope and Design Research Framework	10	R10 000
	Communication with sample offices	10	R10 000
	Identify analysis criteria and comparative Indicators	4	R4 000
	Identify sources of Data (evidence)	10	R10 000
	Develop Implementation Plan	10	R10 000
	Project Workshop with Steering Committee	5	R5 000
	Define Scope and Design Research Framework	5	R5 000
PHASE 2: Desktop Data Collection and Analysis (SR, SA, JA)	Data collection from AOMA sample	20	R19 000
	Data collection from other sources	10	R9 500
	Analyse and Interpret Desktop Data	20	R19 000
PHASE 3: Field Data collection and Analysis (SR, SA, JA)	Identify appropriate Respondents	5	R4 250
	Design Research Instruments	5	R4 250
	Administer Surveys and conduct Interviews (including S&T)	60	R150 000
	Analyse and Interpret Field Data	20	R19 000
PHASE 4: Final Interpretation and Reporting (PM, SR, AS)	Preliminary Analysis Report	50	R37 500
	Presentation to Steering Committee and AOMA Exco	5	R3 750

	Comprehensive Final Report	20	R15 000
Total excluding VAT			R350 000