

Topic : Presentation of induction workshop held for newly appointed MPs and Executives as way of making them understand the role and functions of the Ombudsman

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Introduction

Good governance is a requirement for all governments and a right of all people, which includes fundamental human rights. Ombudsmen are the watchdogs charged to protect those basic rights and pinpoint maladministration. We may not execute our tasks with a tunnel vision, but should be aware of the cross border effects of the rule of law, which tends to become more oppressive.

The changing world we live in today brings new challenges for governments and increased roles for Ombudsman institutions, and such not without challenges of its own. Global acts of terrorism and migration of large groups of people with various intents and purposes require measures to be taken, while safeguarding the fundamental rights of both the nationals and migrants to the guest country. The increased tension between acts curbing freedoms and the protection of fundamental human rights has an impact on the functioning of Ombudsman institutions around the globe. Not only is the quest for new regulations and policies as a result of a changing world, but also – if not more so – changed mind sets and attitudes of administrators, sources of threats for Ombudsmen. Lessons learned from recent history, which are at the cradle of today’s imbalances in the world, should not be ignored.

One tends to evaluate actions and reactions based on what we know and or see happening in the world today. In support of a better understanding of the region I represent, my presentation will be accompanied with background slides, providing historical and statistical information.

The Caribbean challenges in historical context

The dilemma between freedom and security, and the issues of migrants and refugees internationally in relation to the challenges Ombudsmen face, protecting the rights of the people, cannot be reviewed in isolation. The global divide between developed and developing countries as a result of the greatest movement of people/human trafficking over a period of more than three centuries through the Atlantic slave trade cannot not be ignored. The aftermath and lessons learned from the trade triangle between Europe, Africa and the Americas should be considered in proper responding to the movement of people from the African to the European continent - this time voluntary-, and the stream of among others Haitian citizens to the USA.

When it comes to the Latin America and Caribbean region, the challenges presented by the rule of law - sometimes inherited or influenced by the mainland- versus fairness and propriety; freedoms versus security are partly of a generic nature and partly typical for the region. A proper response to the threats and challenges Ombudsmen face within the Caribbean region, cannot be discussed without considering today’s realities from a historic perspective, hence we are doomed to fail and may be faced with yet bigger challenges tomorrow. Quoting Edita Ziobiene, the Ombudsman for Children’s rights of Lithuania: ‘We are yesterday’s children’.

It behooves Ombudsmen, Complaint Officers, Human Rights Commissioners and Public Defenders internationally to sensitize lawmakers and governments to think globally, and not in isolation when seeking responses to contemporary issues. Apart from challenges originated within the Caribbean region, it should be understood that when Europe sneezes, the former colonial territories might catch a cold with immediate and or future global consequences. The implementation of restrictive laws in

developed countries, limiting freedoms, does not only affect our region today, but may have long term effects. Restrictive laws on for example cross border monetary movements may include measures, which require disproportionate added financial burdens to businesses in small territories. Such situations are often overlooked.

Threats facing the Caribbean region

Though the day-to-day issues confronting the people in relation to governments may not differ much, and are practically the same in nature in countries worldwide, the challenges and threats Ombudsmen experience as a result of the differences between developing versus developed countries, small island states and or dependencies versus independent and self-sustaining countries are not to be underestimated in the face of globalization.

For the Latin American and Caribbean region it is rather safe to say that in some countries and territories the Ombudsman institution has been under threat even before it got the opportunity to properly develop and establish in the community. The social and political environment of Caribbean societies are often hostile to the growth and maturity of Ombudsman institutions in the region.¹³⁹ Caribbean countries are relatively young. Self-government in various forms came only in the 1950's; and independence, except for Haiti, in the 1960's onward. Mentioned historical facts together with the heterogeneous composition of Caribbean societies due to their immigrant population, as well as the lack of a vibrant civil society such as a critical and independent media, citizens' watchdog groups and academics are serious challenges for Ombudsmen in the Caribbean. While the small size of the micro-states presents challenges to public administration in general, the web of intertwined personal relationships sometimes undermines the objectivity that underpins the rational legal framework in which the concepts of administrative justice and accountability take root and flourish.

Threats to the independence of the Institution often lay at the core of the struggle for survival of the institution in the region, due to the lack of adequate legal provisions, finances and or a proper profile of an Ombudsman; undue influence of political considerations on the selection and appointment of the officeholder and staff; public disparaging attacks by political members of the Governments on Ombudsman findings and recommendations rather than engaging with respect for the office (a real life example of this with intervention by IOI will be presented this morning); and limited or no authority over resources as they are placed in some other hands, including Parliament.

The pivotal role of the Ombudsman in the checks and balances within a democracy is often ill understood, or not taken serious, resulting in undermining of the institution from within the organization of governments. Lack of action on reports presented by the Ombudsman undermines efforts for good governance at various levels. Failing to appoint vacancies and the establishment of powerless sterile entities are ways to create an illusion of proper checks and balances to handle issues of maladministration, abuse of powers,

¹³⁹ Guyana was the first country in the Caribbean to establish the institution of ombudsman in its 1967 independence Constitution. Nonetheless, the country does not have an actual history of an operating Ombudsman office. Other Commonwealth Caribbean countries such as Jamaica, Trinidad and Tobago and Barbados followed in the seventies. Currently most of the remaining English speaking countries have offices (St. Lucia, Antigua and Barbuda, Grenada, Belize and St. Kitts and Nevis), not necessarily being Parliamentary Ombudsman institutions. Haiti, has a *Protecteur du Citoyen* since 1995, while the National Assembly of Suriname, also a member of CARICOM, unofficially established an Ombuds-bureau in 2012 to assist this body to listen and deal with complaints from the public. Commonwealth Caribbean countries that remain without public ombudsmen are Bahamas, St. Vincent and the Grenadines, and Dominica.

Various British Overseas Territories in the Caribbean have established offices (Turks and Caicos Islands in 1994 and followed by Cayman Islands (2004), Bermuda (2005), the Virgin Islands (BVI) (2009) and Montserrat (2013) varying in scope and nature of their mandates. Anguilla is the only Caribbean British Overseas Territory without an Ombudsman.

In the Dutch Antilles, Curaçao first established an office in 2004, followed by Sint Maarten in 2010 on transitioning to being an autonomous country within the Dutch Kingdom, while three of the former Netherlands Antilles fall directly under the jurisdiction of the National Ombudsman of the Netherlands. Aruba is the only Dutch territory without an established Ombudsman institution.

In the Spanish Caribbean, Puerto Rico and the Dominican Republic have Ombudsman offices. The latter has only recently become operational with the appointment in 2014 of the first *Defensora del Pueblo*.

and violations of fundamental rights such as freedom of speech. Exposing maladministration as a result of nepotism and incompetency within the civil service may result in not extending, or cutting short the term of an effective Ombudsman.

Requirements for expertise and adequate funding to execute the tasks of the Ombudsman heighten as international demands on governments increase to deal with 21st Century threats globally. The focus of political leadership starts drifting to meet international demands in various areas, not necessarily favorable to the people, or considering the fundamental rights of their constituencies. Compliance with international demands may even escape the checks from the Ombudsman, distorting the balance in protecting the rights of the people. The calls and need for integrity, anti-corruption, anti-terrorism and anti-human trafficking legislation bring new challenges regarding the protection of fundamental rights, transparency and proper governance at the level of compliance and implementation, as legitimate complaints of infringements get outside the reach of the authority of the Ombudsman. Ill-defined boundaries and or collaboration between newly established supervisory entities and the Ombudsman cripples transparency and actions taken by the public. Shifting the scope of authority of the Ombudsman and the protection of the rights of the people through legislation and privatization, also render the authority of the Ombudsman to investigate complaints regarding the services provided non-existent.

In conclusion

Considering the historical imbalance between the developed and developing territories, establishing authority and gaining the respect of the public and civil service by strengthening the operation and investigations of the Ombudsman through training and sharing best practices is important for the Caribbean region.

Approaches by the IOI to safeguard the independence and role of the institution in the Caribbean region can be found in: sensitizing governments on the mainland to consider the effects of their laws and policies beyond their continental borders; empowering regional institutions through training, more academic research to identify regional sensitive areas that require special attention, sharing of best practices, (upon request) addressing Governments with general information about the Ombudsman institution, and requirements to develop or reform an effective Ombudsman scheme, and finally addressing Governments in support of Ombudsman under attack.

Last mentioned approach was applied when the integrity of the Office of the Bermuda Ombudsman was publicly attacked and called into question by a member of the Executive. The experience will be shared by the Ombudsman of Bermuda.

It is evident that providing for an Ombudsman in the laws of the land does not guarantee the independent functioning of the institution. As such we believe that the voice of IOI as an international organization should play a leading role in sensitizing governments regarding the threats and long term effects of these globally.