

# OMBUDS DAY 2024 WEBINAR

## OMBUDSMAN

### INCREASING AWARENESS AND RECOGNITION OF THE INSTITUTION'S IMPORTANCE.

TUESDAY; OCTOBER 8, 2024

**A presentation by John R. Walters on Challenges and Achievement for Ombudsman Offices:**

**Examining the common challenges faced by Ombudsman offices and highlighting notable successes and best practices.**

#### 1. Introduction

I agree with the former Chief Justice (South Africa) Justice Mogoeng where he said the following :

*“ The Public Protector is a critical and indeed indispensable factor in the facilitation of good governance and keeping our constitutional democracy strong and vibrant “<sup>1</sup>*

And I wish to add: That no democracy can function without an Ombudsman.

The very name Ombudsman Mediateur, Public Protector, Provedoria de Justica or Defensor del Pueblo creates expectations – an expectation of not just service, but effective and efficient service.

**Effectiveness:** (possible impact) is ultimately how far the Ombudsman facilitates the enjoyment of the rights of the public; whether as citizens or simply as human-being.

**Efficiency:** is about how well the Ombudsman Institution does the things it does not whether these things are the best things for it to be doing.<sup>2</sup>

Safeguarding individuals freedoms, checking abuses by public officials, abuses of power by law enforcement officers and preserving basic fairness in government-

---

1. <sup>1</sup> Economic Freedom Fighters V. Speaker of the National Assembly and others. Democratic Alliance V. Speaker of the National Assembly and others, 2016 ZACC 11.

2. <sup>2</sup> Richard Carver; A mission for Justice. The International Ombudsman Institute 1978-2018 at P.25

citizen interaction are the services that citizens expect of the Ombudsman. When the citizen comes in contact with the Public Service, it is the citizen who must be served; the citizen comes first.

## **2. Common Challenges**

### **2.1 Relevancy**

- If it is accepted, that to be effective, the Ombudsman must be relevant to the government, which established it and to the citizens whose complaints it receives.
- It must not only reaffirm, but also reassess its powers and adapt its actions to current expectations.
- Its relevancy will be measured by the extent to which it is responsive to those who encounter unfairness, abuse, deprivation of dignity and violation of their rights .
- If institutions are to remain relevant, they must indeed be open to changes and challenges. Flexibility and adaptation are necessary to meet today's changing needs of citizens. What today's changing needs are, depend on the current conditions of each country and of each Ombudsman office.

### **2.2 Credibility**

- To be effective, the Ombudsman must also enjoy a high degree of credibility.
- To achieve credibility, the Ombudsman must be perceived to be effective.
- The system of complaints handling must be devised in such a way to encourage public confidence while protecting public officials from false accusations and suspicion.

### **2.3 Standard of Performance and Integrity**

- Ombudsman must ensure that they attain the highest possible standards of performance without bias and with complete integrity.
- Their integrity and credibility must be beyond reproach, these are the pillars of the Ombudsman authority. They must establish and sustain that authority by way they perform their functions.

### **2.4 Improving Collaboration**

- Events, conferences and meetings are excellent strategies for collaboration; these are the opportunities where Ombudsman, National

Human Rights Institutions, civil society and parliament can share hard-earned knowledge gained by experience over many years.

- The Ombudsman should develop and conduct outreach activities in collaboration with National Human Rights Institutions and civil society in order to raise awareness of the important role, functions and duties of the Ombudsman.

#### **2.4.1. New Challenges ---- Opportunities for collaboration**

- Global Terrorism
- Migration
- Refugees
- Climate change and Global warming
- Human Trafficking
- Internally Displaced Persons
- Monitor Implementation of the Sustainable Development Goals (SDGs)
- Poverty
- Natural disasters
- Ombudsman and staff victims of threats, victimization, harassment and interference

#### **2.4.2. Human Rights based approach**

- Ombudsman should mainstream human rights into their activities and programmes within the framework of their mandates. Complaint investigations should have a human rights based approach.<sup>3</sup>
- Ombudsman should therefore take the broadest possible view of their role and see it as encompassing two principal aims, i.e. promoting respect for human dignity and protecting individuals who are depending on public authority.<sup>4</sup>

### **3. Existing challenges-- more opportunities to collaborate**

- Unattractive salary and service conditions resulting in high staff turnover
- Outdated Ombudsman legislation needs an overhaul to strengthen ombudsman oversight and enforcement power.

---

3. <sup>3</sup> Office of the United Nations High Commissioner for Human Right (2006), frequently asked questions on a human rights based approach to development cooperation, at P 15. *A human right based approach identifies rights-holders and their entitlements and corresponding duty-bears and their obligations and works towards strengthening the capacity of rights-holders to maks their claims and duty-bearers to meet their obligations.*

4. <sup>4</sup> O' Reilly, E; 2004 Protecting Rights and Freedoms. A paper presented at the 8th Conference of the IOI in Quebec City International Ombudsman Yearbook Vol. 7.

- Resource constraints--- to function effectively, the Ombudsman must be provided with an appropriate level of funding to guarantee its independence and its ability to freely determine its priorities and activities.
- Lack of debate and serious consideration to implementing the recommendations and proposals of the Ombudsman with the aim of addressing claims of complaints (by parliament).
- Lack of interaction and effective cooperation between parliament and Ombudsman.
- Lack of review and respond to Ombudsman annual and special reports by parliament.
- Public expectation of ombudsman offices will inevitably increased because of citizen's ever-increasing demand for effective delivery of human rights and complaint outcomes.

#### 4. Notable Successes

- The Ombudsman is not a historic monument; it is a "living" institution. An important indication of its success, is the fact that it has been a lasting institution. The same institution still exist since 1809.
- Through their work, the Ombudsman has established the right to good governance as a fundamental right, also the right to complain to the Ombudsman and have their complaint dealt with professionally, courteously, speedily and effectively.<sup>5</sup> Ready access to the Ombudsman now qualifies as a right itself that every citizen is entitled to in a modern democratic state.
- The number of complaints handled by the Ombudsman is important in its own right as an indication of the frequency with which citizens turn to the Ombudsman for assistance.<sup>6</sup>
- Through accessible and simple complaint handling procedures, the Ombudsman is recognized as the citizens' crusader against error and abuse by public officials and defender of fundamental rights, at no cost.
- The strategic goal to give all citizens equal access to the Ombudsman, was met with astounding success. In this regard six regional offices were established with ±100 visiting points. (in Namibia)

---

5. <sup>5</sup> Bruce Barbour; The Ombudsman and Today's Demographic Realities (2004). A paper presented at the International Ombudsman Institute (I.O.I ) Quadriennial Conference, Quebec City.

6. <sup>6</sup> McMillian J, The Ombudsman and the rule of law (2004 ) Vol.8 International Ombudsman Yearbook P.26

- Correctional facilities and police detention cells are visited to receive complaints from inmates and inspect facilities. During such a visit to a police cell, complaint investigators discovered 41 foreigners in unlawful detention. The Ombudsman approached the High Court which ordered the release of the immigrants.
- The Annual Report of the Ombudsman is not only a tool to measure, but it documents the origin, establishment and development of the office. It is undoubtedly a valuable source of history.

## **5. Best Practices**

- As pointed out above, the establishment of regional offices was aimed to bring the ombudsman closer to the citizens. Through the annual complaint intake clinics, investigators of head and regional offices visit towns and villages in their regions. It is to give those who may otherwise not have the opportunity to access the office, the opportunity to file their complaints with the investigators at the visiting point. It then gives the investigator the opportunity to resolve many of the complaints on the spot. By visiting these places, the investigators also get the opportunity to visit communities, do public education and get first hand knowledge of problems and challenges faced by different communities.
- Radio is a powerful tool that is used to convey messages and information to citizens who live in remote and difficult to reach areas of the country in different languages.
- Systemic investigations and public inquiries are used to examine laws, policies, practices patterns of behaviour which operate in a discriminatory manner in violation of human rights law. The product is a comprehensive report on the issue with recommendations for action.

**See: Report on the National Inquiry into Racism, Racial and other Forms of Discrimination and Tribalism 2017**

- Own motion investigations on a specific issue resulted in a special report submitted to parliament.

**See: Special report on conditions prevailing at Police Cells throughout Namibia 2006**

**Is this Justice? 2013 – a special report on the inordinate delays in the justice criminal system**

- Litigation is an expensive process, but necessary where all avenues have been exhausted with no results. The Ombudsman successfully used court proceedings to force compliance.

**See: The Office of the Ombudsman of the Republic of Namibia**  
**VS**  
**The Station Commander, Katutura Police station, Windhoek and**  
**Others; 2017**

## 6. Conclusion

Today, the popularity of the Ombudsman is unquestionable, so popular that businesses and institutions like the European Union, World Trade Organisation, World Bank, United Nations, to mention but a few, have adopted the concept of Ombudsmanship. The adoption of the classical model of the Ombudsman in Africa should be seen as proof of the adaptability of the institution to a country's political, social, economic and administrative climate.

However the following questions must be asked:

“Is the African Ombudsman as it is today constituted, powerful enough, resourceful enough, organised enough, effective enough, innovative enough, accepted enough, funded enough, influential enough, appreciated enough and independent enough to respond to the cries of the citizens as they seek protection of their rights, good governance, peace, better life and a more equitable future?”

## 7. References/Footnotes

1. Economic Freedom Fighters V. Speaker of the National Assembly and Others. Democratic Alliance V. Speaker of the National Assembly and Others, 2016 ZACC 11.
2. Richard Carver; A mission for Justice. The International Ombudsman Institute 1978-2018 at P.25
3. Office of the United Nations High Commissioner for Human Rights (2006), frequently asked questions on a human rights based approach to development cooperation, at P 15. *A human right based approach identifies rights-holders and their entitlements and corresponding duty-bears and their obligations and works towards strengthening the capacity of rights-holders to make their claims and duty-bearers to meet their obligations.*
4. O' Reilly, E; 2004 Protecting Rights and Freedoms. A paper presented at the 8th Conference of the IOI in Quebec City International Ombudsman Yearbook Vol. 7.

5. Bruce Barbour; The Ombudsman and Today's Demographic Realities (2004). A paper presented at the International Ombudsman Institute (I.O.I ) Quadriennial Conference, Quebec City.
6. McMillian J, The Ombudsman and the rule of law (2004 ) Vol.8 International Ombudsman Yearbook P.26.