

Topic : The innovative ideas in the Ombudsman work

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INNOVATIVE IDEAS IN THE OMBUDSMAN WORK

The Office of the Ombudsman in Lesotho was established in 1993, pursuant to sections 134 and 135 of the Constitution of Lesotho. It was then enabled by the Ombudsman Act No. 9 of 1996 which came into operation in September 1996. The Lesotho Ombudsman is appointed by the King acting in accordance with the advice of the Prime Minister for a term not exceeding four years. This does not however, bar the Ombudsman from being re-appointed for a further period of four years. The duties and functions of the Ombudsman as stipulated in the Constitution of Lesotho and the Ombudsman Act 1996 are as follows;

- To receive and investigate complaints from aggrieved persons against Government agencies and statutory corporations and /or officials and employees of such agencies and organizations, and to recommend remedial action where a complaint is found to be justified.
- To also initiate investigation where it is alleged or it has come to his/her notice that there is an instance or threat of degradation, destruction or pollution of the natural resources, environment or ecosystem.

In terms of section 7 of the Ombudsman Act No.9 of 1996 the Office of the Ombudsman deals with the following mandate areas;

- Injustice,
- Maladministration,
- Corruption,
- Violation of human rights
- Degradation, depletion, destruction or pollution of natural resources and the environment or the ecosystem.

When discharging his functions the Ombudsman shall not be subject to the directions and/or control of any other person or authority and shall report to Parliament directly. He/she submits his Annual and Special Reports to Parliament. The Speaker of the National Assembly tables the Annual Report before the Members of Parliament while Parliament is in session. Where the Ombudsman's recommendations on resolving a complaint are not complied with or if he deems it necessary he may prepare and submit a Special Report to Parliament. The Special Report is tabled before the two Houses of Parliament, debated and a decision made on the issue presented on the report. Ideally, the submission and debate of these reports by Parliament enhances the Ombudsman's enforcement mechanism and provides the necessary cloud and visibility.

It is noteworthy to note that there are varying views and ideas on the role of Ombudsman with respect to human rights. The new reconstituted legislation of New Zealand said "the basis of doing this was to afford the ordinary citizen some kind of hearing and redress in a simple inexpensive and direct fashion when allegedly dealt with adversely by the actions of a large bureaucracy. The traditional means of redress – citizens being able to raise matters in Parliament through local Member of Parliament, or to obtain judgments through the courts or to energize the press had all proved to be less feasible than when originally envisaged. A further the larger local incentive at the time in New Zealand was the more rather practical one of reducing volume of private "complaint" correspondence over the desks of ministers and members of Parliament in ever increasing amounts.

The larger problem was, however, expressed by Professor Donald Rowat, in a 1962 article called "An Ombudsman scheme of Canada" who although expressing a Canadian viewpoint, registers likewise in a number of settings "It is quite possible nowadays for a citizen's right to be accidentally crushed by the vast juggernaut of the government's administrative machine. In this age of the welfare state, thousands of administrative decisions are made by year by governments or their agencies, many of them by lowly officials; and if some of these decisions are arbitrary or unjustified, there is no way for the ordinary citizen to gain redress."

The Ombudsman or Public Advocate is usually appointed by Parliament, but with a significant degree of independence, who is charged with representing the interest of the public by investigating and addressing complaint of maladministration or a violation of rights.

An office provided for by the constitution or by action of the legislative or Parliament and headed by an Independent high-level public official, who is responsible to the legislative or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his/her own motion and who has the powers to investigate, recommend corrective action and issue reports.

- The Ombudsman is primarily viewed as a public defender/protector- the defender of the public against bureaucracy.
- The Ombudsman is expected to ensure that the government respects its citizen's human rights.
- The Ombudsman is also viewed as a champion or protector of human rights and freedoms, guardian of the law, redresser of public complaints. The Ombudsman is expected to safeguard against governmental abuse of individual liberties.
- The Ombudsman should provide a platform for individuals to lodge complaints where they would otherwise fear

The Right to Complain

The citizens human rights are the rights a person has simply because he or she is a human being. These rights are held by all persons equally, universally and eternally. Moreover, these rights are indivisible and interdependent because all rights are equal in importance and none can be fully enjoyed without the others; all rights have equal status and cannot be positioned in a hierarchical order. The fulfillment of one right often depends, wholly or in part, upon the fulfillment of others. All citizens have a right to complain and it is entrenched in the democratic system which is practiced in a majority of countries around the World.

The Mandate Areas

Injustice: This can be viewed as an unfair treatment or action or violation of the rights of a person. This unfair treatment leads to violation of rights which defies the tenets of democracy and as such necessitates a complaint by a person suffering such.

Maladministration: Situation where the individual or group in charge is unjust, dishonest, or ineffective in the discharge of its duties. When this occurs it normally leads to the citizens suffering which provokes an investigation and possibly reprimand of such by the Ombudsman.

Corruption: In his presentation at the 45th Commonwealth Parliamentary Conference in Arusha Tanzania (17th-27 July 2014), Honorable Ihedioha defined corruption as the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others. In other literature it has been referred to as dishonest or fraudulent conduct by those in power, typically involving bribery. Normally corruption leads to skewed allocation of resources towards those in power and those close to them and leaves the majority of the population in poverty. As a result, the nation has a right to complain to the Ombudsman about any suffering resulting from acts of corruption.

Human Rights Violation: Human rights have been referred to above and justified to why citizens have to complain about any violation of their rights.

The challenge of any service organization is in making itself known to the public it serves and to other stakeholders. In addition the Ombudsman is a relatively new concept to Lesotho and this necessitated program, the design and implementation of a multi-pronged Information Education Communications (IEC) program.

The Principles underpinning the Ombudsman Office

The Office of the Ombudsman like any Governance Institution to function effectively, it must be rooted in all essential principles of good governance viz independence, impartiality, integrity, transparency, efficiency, professionalism and service mindedness.

Independence means it should not bend to government, political or other partisan influences on its decisions. The simplest way to promote independence of actions and decisions their safeguards must be entrenched into the legal framework, in Lesotho both the constitution and enabling legislation state categorically that when the Ombudsman exercises his powers he must not be under the direction or authority of anybody or person Ombudsman act 1996.

Impartiality to establish the integrity and credibility of the institution and to promote widespread acceptance of the decisions of the Ombudsman, the office or institution must conduct itself in a fearless and independent manner, it must also be impartial in its actions, without impartiality and independence in its decisions the integrity of the decisions are likely to fail, making it difficult to instill widespread belief in the credibility of the institution. It is important that the general public perceives the Ombudsman office as impartial; this can best be achieved by ensuring that all actions decisions are transparent and just and are effectively publicized and communicated.

Integrity is At the heart of Ombudsman existence in preserving the ability of the public to participate genuinely in issues of governance, the ethical behaviors of the officials must be of implacable credentials.

The report of the Global Commission on Elections Democracy and Security (September 2012). Notes that integrity refers to the incorruptibility or a firm adherence to a code of moral values, the term also generally refers to the soundness or an unimpaired condition, the report therefore defines good governance on the democratic principles of universal suffrage and political equality.

The Commission acknowledges that at its root integrity is a political problem in large part because integrity depends on public confidence, it is not enough to reform institutions, citizens need to be convinced that are real and deserve their confidence. Transparency in operational and financial management lays out for public scrutiny the decisions and rational of Ombudsman. Transparency is basic good practice for Ombudsman activities. It helps to combats perception of and identifies actual financial fraud or lack of competence or favoritism towards particular political tendencies which can enhance its credibility. In Lesotho this transparency is in the form of briefing of the Executive, MPS etc. The absence of transparency invariably leads to suspicion that fraudulent activities are taking place.

Efficiency and professionalism, governments and public expect that funds for running oversight institutions should be used wisely and services delivered efficiently, a successful oversight institution must have integrity, competence and efficiency, these attributes help generate public confidence, where trust is lacking, the oversight institution is unlikely to be given the benefit of the doubt.

Professionalism in oversight bodies requires accurate, service-oriented processes by suitably skilled staff, there is need that all core staff are well trained have the necessary skills to apply high technical standards in their technical work. Professional training prompts public trust that the entire process is in good hands, but is equally important that the personal commitment from each individual of an oversight institution to equality, accuracy, diligence and service in all they do and to self-improvement necessary to maintain professionalism.

It is important to highlight that one of the challenges facing developing democracies is that all institutions of higher learning have not been able and will not be able in the near future to produce a critical mass of people, which can be easily absorbed by oversight institution and hit the ground running, it is almost mandatory or compulsory to recruit new entrants in to the Public Sector and who still need further investment in retooling them for tasks at hand, the net impact is delays in the implementation and execution of the processes.

Lack of visible professionalism in oversight institution creates public suspicion of inaccurate and perhaps fraudulent activity and lack of trust. Service mindedness oversight bodies not only have responsibility to provide a service to their communities, which is a *raison de 'etre* for their existence, stakeholders perceptions of oversight institutions performance are critical in influencing public judgments of the institutions integrity and effectiveness.

The IEC program has entailed:-

- Design, printing and distribution of various educational materials.
- Public addresses for school children, students, the general public, ward and Principal Chiefs etc.
- Insertions and articles in local newspapers
- Radio and TV phone-ins programs
- Hosting publicity stalls at National events
- Regular updates on the Office's website
- Sensitization workshops for various levels of the Executive and other stakeholders
- The public rallies or addresses are very interactive and the communities are able to engage the officials.

For purpose of this paper the focus is on sensitization workshops for various levels of the Executive in general and sensitization workshops for Members of Parliament and Cabinet Ministers in particular. Since the establishment of the Office in 1993 the Office has organized and hosted national workshops for the following levels in Lesotho:-

- Members of Parliament
- National leaders
- The media and non-governmental organizations
- Principal Secretaries and Chief Executives of parastatals
- Directors of the Human Resources cadre in the Public Service
- The command structure in the Army, National Security, Police Service and Correctional Services

Now to focus on sensitization workshops for Cabinet Ministers and MP's: The workshops for the former are organized by Central Government as a general induction program for newly sworn in Ministers. It is at this forum where the Ministers are sensitized on the various structures and Offices which serve the public in one form or another.

Regarding the MP's the special relationship between Parliament and the Ombudsman has already been highlighted. Furthermore, Parliament can be regarded as the Ombudsman's principal since he/she reports directly to Parliament. However, the relative novelty of the Ombudsman concept in Lesotho has meant that there has been a lack of clarity on the nature of this relationship and how these two bodies should be complementing each other. This is why previous Ombudsman in the early 2000's together with other Heads of oversight bodies played a pivotal role in the formulation and establishment of Parliamentary select committee. These later graduated into the Parliamentary Portfolio Committees (PPC). These PPC oversee the budget allocation, operational and financial performance of the Ombudsman Office. Every incoming session of Parliament should, for the duration of its tenure, receive continuous sensitization on all aspects of the Ombudsman's work.

As part of the IEC program, the Ombudsman engages different stakeholders through workshops and other fora. These workshops have been conducted for all these stakeholders as they all have a role to play in building effective institutions which is the work of the Office to promote. These workshops have been found to be quite important and have harmonized the working relations between these bodies and the Office. Furthermore, they were meant to make it easier to understand the roles and functions of the Ombudsman.

This practice has not just been done as a norm or tradition but to make sure that all the stakeholders of the Office are kept abreast of the developments taking place at the Office and what are the expectations of the Office from them all. It has also been critical for the Office of the Ombudsman to have a buy-in of the Parliament and all the stakeholders for future cooperation in addressing public complaints and to get the necessary support for capacity building initiatives as there would be better understanding of the roles of the Ombudsman. In addition, the interaction with Parliament is expected to expand the knowledge base as the members are subsequently expected to disseminate the information to the constituencies and able to broaden the ownership of the processes.

Challenges

While there might be slight differences due to each Country's context, the challenges may be similar to us all. The level of cooperation from Ministries and Agencies has not been satisfactory. Some Ministries take too long to respond to enquiries of the Ombudsman which causes delay in resolving cases. After the Ombudsman has made determinations/recommendations, the level of compliance is still very low which ultimately affects public confidence in the Office. The creation of the specialized organization like the DCEO, Human Rights Commission and Ministry of Environment have not resulted in streamlining of the legal mandate of the Ombudsman mandate this results in unnecessary duplication of efforts, lack of clarity as to who deals with, what or when?

On the other hand, though by law the Office is established as an independent identity, it still depends on government for its budget, recruitment and regulatory policies. In these regard it means that the independence of the Ombudsman is not fully optimized therefore this calls for review of the Law of Autonomy of the Ombudsman.

The office is found in Maseru, the capital, people in the districts have no access to its services. This implies that only people with resources to come to Maseru. The majority of the population which is in rural areas remains marginalized in this regard.

Conclusion

The multiple mandates as reflected in the Lesotho's Ombudsman create several problems. One of them is problem multiple skills that an institution is supposed to have and yet it is almost impossible to have all those skills combined in one institution. The second problem is that it creates a national expectation that the institution is going to deliver on all its mandate, viz environments corruption etc to the ordinary citizen he/she is expecting a service delivery, he is not bothered or is she/he aware that there are specialized organizations like the ministry of Environment or for corruption there is the Directorate on Corruption and Economic Offences, therefore instead of empowering the Ombudsman's Office, it erodes the public's confidence in the oversight bodies in general, from two perspectives the public is being tossed between institutions and finally they get demotivated and demoralized and loose confidence in the institutions that are supposed to guarantee or protect their rights.

Acronyms

IEC	Information Education and Communication Programme
MP's	Members of Parliament
DCEO	Directorate on Corruption and Economic Offences
PPC	Parliamentary Portfolio Committees

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