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# The Role and Effectiveness of the Ombudsman Institution

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*Rule of Law Series Paper*



## Acknowledgements

In response to the challenge of promoting human rights and the rule of law in countries throughout the world, Freedom House, the American Bar Association's Central European and Eurasian Law Initiative, and the National Democratic Institute (NDI) established the Rule of Law Initiative and Global Human Rights Training and Support (RIGHTS) Consortium. The RIGHTS Consortium offers both rapid response and long-term development assistance to developing democracies and countries in transition with an aim to: promote human rights protections and practices; develop judicial, legal, and regulatory frameworks that support democratic institutions and market-based economies; strengthen justice sector institutions and processes; ensure equitable access to justice; and develop technical excellence and state of the art sustainable activities in the fields of rule of law and human rights.



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The paper was written by Dr. Victor Ayeni, drawing on his own work in ombudsmen institutions and an NDI survey of their offices. The paper uses the term ombudsman/men to avoid confusion, but is meant to encompass both genders. Comments and revisions were provided by K. Scott Hubli, Director of Governance Programs—NDI, as well as Jen Ganem, Rebecca Logan, and Amanda Sloat of NDI.

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## CHAPTER ONE

# The Ombudsman: An Overview

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### WHAT IS AN OMBUDSMAN?

The word ‘Ombudsman’ derives from a Swedish term for “agent or representative of the people or group of people.” The modern form of the office originated with the *Justitieombudsman*, which was established by the Swedish constitution of 1809 to oversee the parliament and supervise public administration in government.

In general, the ombudsman office today deals with complaints from the public regarding decisions, actions, or failures to act by public administrative authorities.

While the function of an ombudsman office is tailored to the political culture and historical context of a particular country, some common themes emerge in virtually all of these institutions. The ombudsman is an independent, non-partisan officer (or committee of officers), who exercises oversight of public administration in government. The post is usually provided for in the constitution or created by statute. The ombudsman has the power to investigate, report upon, and make recommendations on individual cases, administrative procedures, and relevant systemic changes. Although the ombudsman deals with complaints from the public about administrative injustice and maladministration, the office is increasingly being given responsibility over human rights, anti-corruption, and other rule of law matters.

The ombudsman office is not a judicial body and typically has only limited, if any, power to enforce orders or reverse administrative action. Rather, the ombudsman’s principal approach is to seek solutions to problems through investigation and conciliation. The authority and influence of the office derives from its basis in law, its mandate to report to one of the principal organs of state (usually the parliament or chief executive), and its power to publicize findings and reports on administrative actions and procedures.

In lay terms, the ombudsman exists to make the bureaucratic world under the authority of the state a better place for ordinary people to conduct their affairs. Citizens approach the ombudsman if they are unhappy with the way a government institution has treated them; for example, if they believe that a decision against them was unfair or that the procedures used to make the decision were inappropriate.

### BENEFITS OF AN OMBUDSMAN INSTITUTION

There are several benefits of an ombudsman institution that make it desirable for citizens and governments alike. Ombudsmen offices promote and protect individual rights, encourage more efficient public administration, provide a cost-effective dispute resolution mechanism, bridge the gap between government and the public, promote cooperation instead of litigation, and allow increased citizen access to dispute resolution.

### **Expanded Protection of Citizen Rights**

The rise of the modern bureaucratic state has increased government involvement in the lives of citizens, introducing ever more complex administrative structures that individuals must navigate. In this environment, it is important to provide citizens with the means to challenge arbitrary or unfair administrative action. An ombudsman institution provides an individual with a vehicle for making complaints and obtaining possible remedies for an inappropriate or unjust state action. When the government acts unjustly, mishandles a situation, or denies citizens their rights or benefits, the ombudsman provides a forum to air grievances and possibly vindicate their rights.

### **More Efficient Public Administration**

Ombudsmen offices not only enhance the protection of individual rights, they also contribute to efficient public administration. Among government institutions, the ombudsman is uniquely positioned to identify and address structural problems within public administration. The technical expertise of the office, which is acquired by investigating and analyzing individual complaints, coupled with its record tracking and classification abilities, enables the ombudsman to identify possible systemic causes of maladministration.

Because a well-functioning ombudsman office cultivates a strong working relationship with other institutions of government and should have a reputation for impartiality and neutrality, public officials are likely to recognize the importance of the ombudsman office's recommendations regarding administrative practices. In many instances, government agencies will proactively seek the guidance of the ombudsman office to ensure fairness in the development and implementation of administrative policies.

### **Less Costly Resolution of Disputes**

Ombudsmen offices represent a good public investment. The financial gains for the citizen are significant, since many offices do not charge for their services. Even more savings accrue with the quick and informal resolution of complaints rather than costly and protracted litigation. The cost-benefits to the government are due largely to its unique structure and use of informal problem solving methods, which minimize the need for a large staff and consequently reduce overhead costs.

### **Bridges the Gap Between the Government and the Public**

The existence of an impartial independent investigator can contribute significantly to the public's sense of security and trust in government action. This is especially helpful in a transitional society that has recently moved from an authoritarian political system to one that is more open and based on democratic norms. Following an investigation of an individual's complaint, the ombudsman office is—at a minimum—in a position to explain the government's actions to the citizen. Depending on the findings of the office, it may also be in a position to recommend that a government decision be changed or revoked. The citizen may not be satisfied with the ombudsman office's conclusions, but s/he will at least be aware that the government is required to justify its actions to an independent reviewer.<sup>1</sup>

An ombudsman office bridges the gap between the government and citizens by promoting a more "people-sensitive" approach to government. As the ombudsman office exercises its power of investigation, public employees are reminded that decisions made and actions taken affect individuals and may need to be explained or justified by an external reviewer with the ability to make his/her recommendations public.

### Cooperation Rather than Litigation

The ombudsman office uses investigation and mediation to find a solution to an underlying problem that is acceptable to both citizens and the government. Unlike a legal advocate, the ombudsman office takes a neutral role. For example, an ombudsman office can not impose legally binding obligations like a judge.

### Increased Access to Dispute Resolution

Finally, the ombudsman office provides an inexpensive, speedy, and flexible extra-judicial mechanism for resolving disputes. Ordinary individuals can turn to the ombudsman office as an accessible safeguard against government abuse of power. This is especially important given that legal recourse against administrative mistreatment is often effectively unavailable, either because of the high costs and prolonged duration of adjudication or because there is no legal remedy.<sup>2</sup>

### TYPES OF OMBUDSMEN OFFICES

The proliferation of ombudsmen during the latter part of the 20<sup>th</sup> century, combined with the need to tailor institutions to the political context of each country, has resulted in substantial variation in the functions and nature of ombudsmen offices worldwide.<sup>3</sup>

There are generally three types of ombudsman offices: legislative, executive, and specialty. The most common is the legislative (or parliamentary) ombudsman office, which is established either in a constitution and/or through the passage of legislation. Though independent, the legislative ombudsman reports to the parliament and assists that body in performing its government oversight function.

In contrast, the executive ombudsman office is appointed by the government or head of government, and is often charged with overseeing a par-

ticular agency or group of agencies within the government. The third type is the specialized ombudsman office, whose jurisdiction is limited to a given functional area such as human rights. Specialized ombudsman may be appointed either by the legislature or the executive.

More often than not, the ombudsman office in a given country does not fall neatly into one category but will straddle two. For example, in Russia, ombudsman candidates are identified by the executive and then one individual is voted into office by the Russian Parliament, the Duma.<sup>4</sup> A

#### Box I: Mission Statement of the Ombudsman Office

##### Peru

The mission of the ombudsman's office is to protect the constitutional and fundamental rights of the person and the community, to supervise the fulfillment of the duties of the administration of the State and the benefit of the services public to the population.

*[www.ombudsman.gob.pe/modules.php?name=Sections&op=viewarticle&artid=4](http://www.ombudsman.gob.pe/modules.php?name=Sections&op=viewarticle&artid=4)*

##### Namibia

The Office of the Ombudsman in Namibia serves to promote and protect human rights, fair and effective administration, combat corrupt practices and protect the environment and natural resources of Namibia through the independent and impartial investigation and resolution of complaints and by raising public awareness.

*[www.ombudsman.org.na/](http://www.ombudsman.org.na/)*

##### Norway

The Storting shall issue a general directive for the functions of the Ombudsman. Apart from this, the Ombudsman shall discharge his duties autonomously and independently of the Storting....The task of the Ombudsman is, as the Storting's representative and in the manner prescribed in this Act and in the Directive to him, to endeavor to ensure that injustice is not committed against the individual citizen by the public administration.

*[www.omineurope.info/uk/gesetz\\_norway\\_uk.htm](http://www.omineurope.info/uk/gesetz_norway_uk.htm)*

more useful distinction between offices is their varying mandates or missions (see Box 1 on the previous page), which ideally are reflected in all office activities and clearly defined and articulated to the public.

### ROLE AND POWER OF OMBUDSMEN INSTITUTIONS

#### The Ombudsman Office's Role

Essentially a complaints-handling institution, the ombudsman office exists principally to help individuals resolve problems they may have with virtually any aspect of government. In fulfilling this function, the ombudsman office also helps society at large by promoting administrative reform and drawing attention to what are often systemic problems. Moreover, the office's investigatory role enables it to contribute to parliamentary oversight of government, since it often reports its findings to parliament.

Because of their effectiveness and adaptability, ombudsmen offices have proliferated in many different political environments, while existing offices have been imbued with new powers and responsibilities beyond public administration. This section will focus on the more traditional roles of ombudsmen institutions, while a subsequent chapter will address the expanding roles of the institution.

*Protect the Individual.* The primary role of the ombudsman office is to protect individuals from violations of their rights by the government, abuse of power, errors, negligence, unfair decisions, and maladministration.<sup>5</sup> The ombudsman office is not, however, an advocate for the individual but rather an impartial investigator of individuals' complaints against the government. Where appropriate, the ombudsman office makes recommendations to the government's administrative authority for a possible remedy.

*Promote Administrative Reform.* The ombudsman office's role as a complaint-handling institu-

tion allows it to fulfill a related function: uncovering structural weaknesses in government administrative systems and promoting administrative reform. Because the ombudsman office receives, investigates, and tracks complaints against government agencies or procedures, it is well positioned to identify systemic weaknesses and recommend appropriate changes to the relevant government agency or parliament.

*Support and Supplement Parliament's Oversight Function.* Although the ombudsman office may be independent of government institutions, it often has a mandate to report to parliament. This not only ensures that the ombudsman office be held accountable for its actions, but also enables it to assist the parliament in fulfilling its oversight function.

For their investigations, the ombudsman office typically has access to information regarding activities of virtually the entire government. Ombudsmen's reports (individual and annual) and informal meetings with parliamentary oversight committees give parliament ready access to information that it can use in its dealings with the executive. Furthermore, the existence of an impartial investigator with the capacity to investigate the actions and possible misdeeds of government employees may be a strong deterrent in itself against official abuse in public administration.

#### Fundamental Powers of Ombudsmen Offices

In order to fulfill these essential roles, an ombudsman's office should possess three fundamental powers: to investigate, to recommend, and to report. A more thorough discussion of these powers will follow in Chapter 2.

*Power to Investigate.* Without broad powers of investigation, an ombudsman office is unable to fulfill its core responsibilities. Investigative power typically includes the authority to request documents from any public institution that is the

subject of a complaint or inquiry, and to request access to individuals with knowledge of the issue. In most countries, the institution that is the subject of the inquiry has a corresponding duty to cooperate with and respond affirmatively to reasonable requests.

Frequently, the ombudsman office is only imbued with the power of investigation when a complaint is lodged against the government by an individual or group of individuals. Increasingly, however, ombudsmen offices are being given the power to initiate investigations on their own, in the absence of an individual complaint. These *sua sponte* powers are necessary for systemic investigations and are increasingly viewed as essential tools in fulfilling the office's expanding role.

*Power to Recommend.* Once the ombudsman office has completed an investigation, it may suggest remedies for improper administrative conduct to the authority that is the subject of the inquiry. The ombudsman office may recommend that an act or decision be revoked or changed, or

that restitution be made. With systemic investigations, the ombudsman office may advise that an entire administrative policy or procedure be changed or revoked. The ombudsman office does not have the power to enforce recommendations, nor are its recommendations legally binding.

*Power to Report.* The ombudsman office has the power and duty to report on findings from investigations. These reports are usually given to the agency and the complainant. As mentioned above, the ombudsman office may also report findings and recommendations—as well as responses from relevant government bodies—to the parliament. In addition to reports on individual cases, the ombudsman office typically delivers an annual report of general findings to the parliament, which is then made available to the public. This power to report, and thus to garner publicity, is significant because the ombudsman office does not have the authority to issue binding decisions but rather depends on persuasion. Public authorities often adopt recommendations of the ombudsman office in an effort to avoid a more public discussion of inappropriate actions or unfair policies.

## CHAPTER TWO

# Establishing an Ombudsman Office

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Once the decision to establish an ombudsman office has been made, it is essential to imbue the office with the proper legal authority to carry out essential duties in an effective and accountable manner. In many countries, the office is enshrined in the constitution and supported by an implementing law that defines the powers and jurisdiction of the office. Providing for the office in the constitution rather than solely in legislation raises the profile of the ombudsman office and, to some degree, removes the office from the political sphere. While ombudsmen offices are increasingly being institutionalized through a constitutional instrument, several countries have well-established, high quality ombudsman offices created solely by legislation.

### **DRAFTING THE LEGAL FRAMEWORK AND ENSURING EFFECTIVE IMPLEMENTATION**

Once the authority to create an office has been established, whether by constitution or law, subsequent legislation that specifies the powers and responsibilities of the ombudsman office must be enacted (often referred to as enabling laws).

In many instances, the enabling law is quite specific in outlining the role, powers, and responsibilities of the office. In others, ombudsman office legislation is less comprehensive and leaves details of the office to be defined through inter-

pretation and precedent. At a minimum, there are three issues that will pose significant challenges to the overall effectiveness of the institution if left unaddressed: the independence of the office, the scope of its jurisdiction, and the office's acceptance by and relationship with other government institutions.

More comprehensive enabling legislation will generally include: the function and jurisdiction of the office; the office's independence; methods for appointing and removing the ombudsman; the powers assigned to the office (e.g., to report, recommend, and investigate); the office's enforcement mechanisms and resources; guarantees for adequate resource levels; and mechanisms to encourage government cooperation with the office.

### **Function and Jurisdiction of the Ombudsman Office**

In addition to establishing the independence of the ombudsman office, it is best if enabling legislation clarifies the function of the office and clearly defines its jurisdiction. Typically, the ombudsman office is given broad jurisdiction over governmental behavior and practices. The Ombudsman Act of Malta, for example, declares that the office's function is "to investigate any action taken by, or on behalf of, the Government, or other authority, body or person to whom the Act applies, being taken in the exercise of their

administrative function.”<sup>6</sup> The phrase “other authority” includes private sector institutions in some countries (such as Nigeria), while in the majority it means general authority to oversee privatized services that used to be provided by the government.

The American Bar Association provides the following model ombudsman act for U.S. state governments. It outlines the function and jurisdiction of the office as follows:

The Ombudsman shall conduct a suitable investigation of a complaint that is an appropriate subject for investigation. An appropriate subject for investigation...includes any administrative act which the Ombudsman believes might be:

- Contrary to law or regulation;
- Based on mistaken facts or irrelevant considerations;
- Unsupported by an adequate statement of reasons;
- Performed in an inefficient manner;
- Unreasonable, unfair, or otherwise objectionable, even though in accordance with law; or
- Otherwise erroneous.<sup>7</sup>

Ombudsmen offices must use their best judgment when determining when to initiate an investigation or take action. The office is required to use its discretion to challenge any actions that may appear contrary to accepted principles of good administrative conduct. As the ombudsman of Queensland, Australia, concluded in the 2003 annual report, the office:

Can investigate a decision or action made by, in, or on behalf of a state or local government agency, including statutory authorities, to determine if it was:

- taken for an improper purpose;
- taken on irrelevant grounds;
- taken contrary to law;
- unreasonable;
- unjust or oppressive;
- improperly discriminatory;
- based on a mistake of law or fact;
- made without giving reasons;
- wrong.

Our jurisdiction does not extend to investigating matters concerning:

- Ministers and Cabinet, courts and judges, legal advisers to the Crown, or the Auditor General;
- Police in operational circumstances;
- Commonwealth or interstate departments or agencies;
- Private individuals or businesses.

A second important, and complementary, role of improving the quality of decision-making and administrative practice in public agencies was recognized in the new Act.<sup>8</sup>

The specific range of matters on which a citizen can make a complaint varies widely by office and depends on country specific nuances and local conditions.<sup>9</sup> Ombudsmen offices typically handle a broad range of issues falling under the rubric of maladministration. Thus, the institution relies heavily on the public’s perception of its role and effectiveness, making it essential for the ombudsman office to manage public expectations about what the office can actually deliver. If public expectations are not in line with the office’s capacities or mandate, the office will lose citizens’ trust and thus its persuasive influence with the government; ultimately, its ability to resolve complaints will be significantly weakened.

### Independence of the Ombudsman Office

Ombudsmen offices are state entities, which means they rely on public funds and must maintain political support for continued funding. The office is in an awkward position of investigating the government while relying on it for resources. Nevertheless, perhaps the most important requirement for an effective ombudsman office is that it be independent from other branches of government. It is crucial that there is not government interference with the investigation and recommendation process.

Independence is essential for maintaining public trust in the office as an impartial investigator without political motivations. The ombudsman

office must be free to select which complaints to pursue and the methods for pursuing them. It cannot be dependent on other governmental bodies for approval. The ombudsman office's independence should be ensured by appropriate provisions in the law that created it or by constitutional provision.

### Box II

#### Independence and Immunity Clauses in the Spanish Ombudsman Law

1. The ombudsman shall not be subject to any binding terms of reference whatsoever. He shall not receive instructions from any authority. He shall perform his duties independently and according to his own criteria.
2. The ombudsman shall enjoy immunity. He may not be arrested, subjected to disciplinary proceeding, fined, prosecuted or judged on account of opinions he may express or acts he may commit in performing the duties of his office.
3. In all other cases, and while he continues to perform his duties, the ombudsman may not be arrested or held in custody except in the event of in flagrante delicto; in decisions regarding his accusation, imprisonment, prosecution and trial the Criminal Division of the High Court has exclusive jurisdiction.
4. The aforementioned rules shall be applicable to the deputy ombudsmen in the performance of their duties.
5. The post of ombudsman is incompatible with any elected office; with any political position or activities involving political propaganda; with remaining in active service in any public administration; with belonging to a political party or performing management duties in a political party or in a trade union, association or foundation, or employment in the service thereof; with practicing the professions of judge or prosecutor; and with any liberal profession, or business or working activity.

[www.defensordelpueblo.es/index.asp](http://www.defensordelpueblo.es/index.asp)

Although there is a consensus that independence is necessary for an ombudsman office to effectively fulfill its roles, there is no single formula for achieving such independence. There are several ways in which the office's independence can be ensured via enabling legislation, including explicit provisions stating that the office should be allowed to function free of interference from either the executive or legislative branches. Greek legislation governing the ombudsman states simply: "The Ombudsman is not subject to control by a governmental organ or administrative authority."<sup>8</sup> See also the Spanish independence and immunity clauses in Box II.

The enabling law should clearly state whether an ombudsman is allowed to hold any other positions concurrently, as well as include procedures for handling possible conflicts of interest. In addition, ensuring impartiality may also require employees to be prohibited from simultaneously holding public or elective office or from being actively involved in political party activities.

An ombudsman office that is recognized for its independence and impartiality builds citizens' and government's confidence in the institution, thereby boosting its own capacity to contribute to the improvement of public administration.

#### Terms of Employment: Appointment and Removal of the Ombudsman

Enabling legislation should define the method of appointment and state clearly the terms of employment for the ombudsman. Methods of appointment include: nomination by a parliamentary committee and subsequent approval by the entire parliament, or executive nomination with support and consent of parliament.

Legislation should also address an ombudsman's term of office, determining whether this should be indefinite or a set term of years with re-appointment permitted or prohibited. A longer

term, such as five or six years, which does not coincide with the executive or parliamentary election cycle, may be advisable to ensure independence from political influence.

Legislation should make provisions for the illness and physical or mental incapacity of the ombudsman, and delineate circumstances and procedures under which an ombudsman can be removed from office. It may be advisable to make removal of the ombudsman more difficult than appointment—for example, by requiring a larger proportion of the legislature’s vote. Another possibility is to use the same provisions that exist for the removal of judges or other public officials. In this regard, it is also a good idea to provide the ombudsman with the same immunities, if any, from criminal or civil liabilities afforded to judges in the country.

### Powers of Office

Ombudsmen offices are more likely to be effective when they possess the power to investigate, recommend corrective action, and report publicly on administrative actions. These powers are at the heart of the ombudsman system and must be provided for in enabling legislation.

*Power to Investigate.* Ombudsmen offices lack the authority to make legally enforceable decisions. Consequently, the effectiveness of the institution rests largely on the comprehensive nature of the office’s investigative powers. Traditionally, the ombudsman office’s powers of investigation were limited to instances where an individual or group of individuals submitted a written complaint alleging mistreatment or misconduct on the part of public officials. Upon receipt of such a complaint, the ombudsman office could initiate an investigation and employ any and all of the investigative powers as set forth in the office’s enabling legislation.

Recent legislation shows that ombudsmen offices are increasingly being empowered to undertake investigations *sua sponte*, without the submission of an individual complaint. For instance, the New Zealand Ombudsman Act of 1975 states:

Each Ombudsman may make any...investigation either on a complaint made to an Ombudsman by any person or of his own motion; and where a complaint is made he may investigate any decision, recommendation, act, or omission to which the foregoing provisions of this section relate, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act, or omission.<sup>11</sup>

Effective powers to investigate, in addition to the ability to act *sua sponte*, typically include the power to request written or oral evidence related to the case, to examine any person with knowledge of the case, or to commission an expert report on issues or procedures raised by the government’s action or inaction.

An explicit duty on the part of a government agency to comply with reasonable requests by the ombudsman office is an essential component of comprehensive enabling legislation. For example, the legislation establishing the investigative powers of the Greek ombudsman states:

The Ombudsman may request from the public services any information, document or other evidence in the case, examine persons, perform autopsies and order expert reports. At the investigation of documents and other evidence, which are at the disposal of public services, their characterization as confident may not be pleaded against, except if they concern the national defense, the state security and the international relations of our country. All the public services shall facilitate the research by any means. The non-offering of assistance by a public service during the conduct of such research may be the subject of an Ombudsman’s special report to the competent minister.<sup>12</sup>

In developing and implementing legislation that governs the investigative powers of the ombudsman office, it is important to remember that one

of the primary benefits of the ombudsman system is that complaints are handled in a quick and informal manner. While policymakers must ensure that the ombudsman office has all the tools necessary for a comprehensive investigation, care must be taken to avoid legislation that requires overly detailed or bureaucratic investigative procedures. The ombudsman and his/her staff should be given broad discretion in deciding how to carry out each individual investigation.

*Power to Recommend.* Following an investigation, the ombudsman office must decide whether a complaint has proven meritorious and, if so, what sort of solution is most appropriate. The ombudsman office must be empowered to make recommendations to the appropriate government body. Comprehensive enabling legislation explicitly provides for the recommendation powers of the ombudsman office. A notable best practice in this regard may be found in Section 23 of the Ombudsman Act of British Columbia. According to this Act:

Where, after completing an investigation, the Ombudsman believes that:

- A. Decision, recommendation, act or omission that was the subject matter of the investigation was:
  - i. Contrary to law;
  - ii. Unjust, oppressive or improperly discriminatory;
  - iii. Made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;
  - iv. Based in whole or in part on a mistake of law or fact or on irrelevant ground or consideration;
  - v. Related to the application of arbitrary, unreasonable or unfair procedures; or,
  - vi. Otherwise objectionable.
- B. In doing or omitting an act or in making or acting on a decision or recommendation, an authority:
  - i. Failed to give adequate and appropriate reasons in relation to the nature of the matter; or,
  - ii. Was negligent or acted improperly.

- C. If there was unreasonable delay in dealing with the subject matter of the investigation, the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.<sup>13</sup>

The ombudsman office does not usually have the power to enforce the recommendations made to the government. At first glance, this lack of enforcement power leads many to believe the office lacks teeth and is beholden to the government agency accused of inappropriate conduct, which will choose whether to rectify any error. This is true in the sense that the ombudsman office, unlike a court, can not force an agency to act. However, an ombudsman office that has undertaken a comprehensive investigation of a case, and has done so in an impartial and neutral manner, generally has the persuasive authority to elicit compliance with the recommended course of action.

*Power to Report.* In addition to a strong power to recommend, comprehensive enabling legislation usually empowers the office to report on its findings and recommendations to the legislature and the public. The power to report provides the office with a key source of leverage by allowing the ombudsman office to publicize: 1) its findings; 2) recommendations made by the ombudsman office; and 3) the government's decision whether or not to implement the recommendations. The persuasive value of these reports is largely influenced by the credibility and reputation of the ombudsman office.

### **Enforcement**

An important issue in drafting ombudsman legislation is whether to provide the ombudsman office with legal recourse and, if so, in what form. Some offices have limited enforcement powers, particularly in developing democracies where less traditional functions have been assigned to the ombudsman office. In Papua New Guinea, for example, the ombudsman office is able to

charge anyone who has breached the leadership code, which it enforces, to a tribunal with court-like powers. The ombudsmen offices of Ghana and Uganda can apply to a magistrate to enforce their decisions. Many Latin American and Eastern European human rights ombudsmen offices have the power to prosecute in the courts those who have committed human rights violations.

Such enforcement powers are exceptional and not often invoked even when available. The Ghanaian ombudsman, for example, consciously avoids this method and resorts to the court in less than 1% of the cases he handles. On the other hand, the Papua New Guinea ombudsman office was involved in about 32 lawsuits challenging the decisions of the tribunal between 1995 and 1998. This is not the ideal situation, as one of the key benefits of the ombudsman institution is its ability to carry out conflict mediation in preference to more lengthy, confrontational, or expensive legal processes.

Overwhelmingly, ombudsmen offices rely on the extensive use of informal, non-adversarial methods of resolving disputes, including the public highlighting of injustices, techniques of persuasion, negotiation and mediation. When used competently and appropriately, these methods may be highly effective.

All parties in a dispute must see the ombudsman office as impartial—neither a mouthpiece of government agencies nor an advocate of complainants. Laws in the Seychelles, Sierra Leone, Mauritius, and many other countries explicitly require the ombudsman office to ensure due process for every authority against whom a complaint is brought and who may be the subject of any recommendations.

### **Sufficient Funding**

Legislation should include a requirement that the office be sufficiently funded to enable it to prop-

erly handle all cases brought forward. A frequently used approach that ensures adequate funding and preserves independence requires the ombudsman office to submit a proposed annual budget directly to parliament for its approval, without executive intervention. To promote accountability, audit requirements should be established via enabling legislation.

It is essential that the ombudsman office be capable of meeting the expectations of the public regarding what cases it can take and resolve. Recent global trends indicate a tendency to expand the jurisdiction of the ombudsman office to include cases dealing with human rights abuses and government corruption. This expansion of jurisdiction is unlikely to produce strong results, however, unless it is accompanied by a corresponding expansion of resources.

Every time an ombudsman office tells a citizen that assistance cannot be provided due to a lack of resources or limited jurisdiction, the standing of the office is diminished. This, in turn, diminishes the ombudsman office's ability to perform its functions in the future since much of an ombudsman office's power is dependant upon its reputation.

### **Government Cooperation with the Ombudsman Office**

A strong working relationship with other government institutions is critical to the success or failure of the ombudsman office. As previously noted, the office's effectiveness requires it to be independent from institutions such as executive and administrative agencies; however, because the ombudsman office lacks independent enforcement powers, it must work closely with these institutions in order to encourage them to act on its recommendations. Without acceptance of and cooperation with the ombudsman office by other government bodies, the office cannot

effectively carry out its duties. Additionally, the office may depend on the executive and the legislative branches for resource allocation. If a strong relationship is not cultivated, and if little recognition is given to the ombudsman office, it is unlikely to garner the necessary resources.

The majority of ombudsman office enabling laws include provisions that require the government to cooperate with investigations undertaken by the office. In particular, these laws tend to empower the office to request the production of documents and records relevant to the investigation, require any person to testify or produce evidence reasonably relevant to the investigation, and obtain access to agency premises for inspection. Provisions that give the ombudsman office discretion to keep matters confidential, such as the identities of witnesses, are also important in maintaining the integrity and independence of the investigations.

### OFFICE DESIGN AND STAFF STRUCTURE

In its classical form, the ombudsman office was one individual. Therefore, the success and scope of the institution relied primarily on personal preferences and style. The contemporary ombudsman office, in contrast, is a more complex administrative bureau that has a prescribed scope of work. Organization and staff structure vary among countries according to individual needs, yet there are some general trends.

#### Leadership

Generally, ombudsman offices fall into one of three leadership structures:

*Single Member.* One ombudsman with or without an official deputy. Examples include Belize, Guyana, the South African Public Protector, and the UK Parliamentary Commissioner of Administration.

*Commission-Type.* Two or more ombudsmen of equal rank who operate from one or multiple centers. This is most common in federal systems, including the Tanzanian Commission for Human Rights and Good Governance, the Ombudsman Commission of Papua New Guinea, and the Public Complaints Commission of Nigeria.

*Multiple Headships.* The Swedish office presents another peculiarity, also found in the Dominican Republic, where members of the ombudsman commission are of equal rank and specialize in different functional areas. Multiple membership raises additional issues of dividing, organizing, and coordinating the office's work, especially when the roles of the different positions are not clearly defined. However, experience indicates that this arrangement can work if each ombudsman has a clearly defined role and is supported by staff and operational resources at his/her discretion.

#### Staff Structure

The office should be vertically structured yet flexible enough to work through teams and collaborative arrangements. Professional organizations thrive when members are allowed ample scope to utilize their own initiative; yet ombudsman offices face the real challenge of reconciling this with the need for consistency.

One good practice is to ensure that the office's policies and procedures are well documented. Further, the ombudsman office should be organized into departments that encourage specialisation in the different work areas. This is even more crucial if the office has an obvious multi-functional mandate. Ghana's Commission for Human Rights and Administrative Justice has organized itself using departments that reflect its parallel focus on maladministration, human rights, and anti-corruption. Each department is headed by a full-time senior professional officer who reports to the commissioner (ombudsman) or a deputy commissioner.

**Staff**

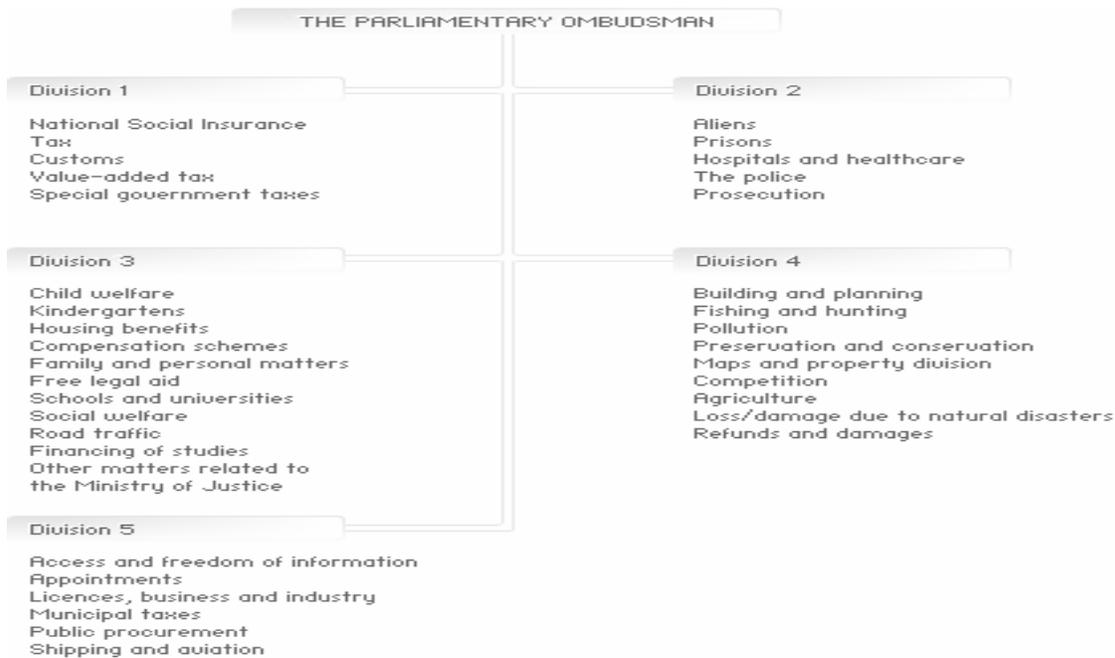
It is difficult to determine a standard “good” size for offices, as available funding, level of economic development, administrative tradition, level of cooperation enjoyed by the office, technology, system of complaints management, etc., must all be considered. Nevertheless, it is accepted best practice that the office should be relatively small, not only because this is more efficient but also because it sets good standards for the agencies under its purview. Skeletal staff structures, however, should be avoided. As

ombudsman work is labor-intensive; salaries tend to account for a substantial part of the office’s budget.

Assuming a reasonable level of technology use and a fairly well-established administrative culture, most ombudsmen offices could do with a staff of about 50 mostly professional people for an annual workload of about 4,000 complaints or a population of about 2.5 million, assuming a rate of 20 complaints for every 10,000 people.<sup>14</sup> By the same token, a larger number of highly qualified personnel will be required if the administra-

**Box III: Ombudsman of Norway (a Parliamentary Ombudsman)**

*Mission:* The Storting’s Ombudsman for Public Administration - the Civil Ombudsman - shall endeavor to ensure that injustice is not committed against the individual citizen by the public administration and that civil servants and other persons engaged in the service...of the public administration do not commit errors or fail to carry out their duties. If the time limit pursuant to... the Act – one year - is exceeded, the Ombudsman is not thereby prevented from taking the matter up on his own initiative. (As of 2000, the Storting’s mandate was expanded to include citizen access to information, i.e., freedom of information.) Each Division, including Special Assignments, is of equal stature.



<http://www.sivilombudsmannen.no/eng/statisk/som.html>

tive culture is less established, as is the case in many developing democracies. The situation may be compounded if there is frequent need for formal and system-wide investigations. The reality is that developing democracies invariably have a greater need for qualified staff, yet paradoxically they are usually the least able to acquire and retain them.

In terms of staff, the following positions are generally found in an ombudsman office:

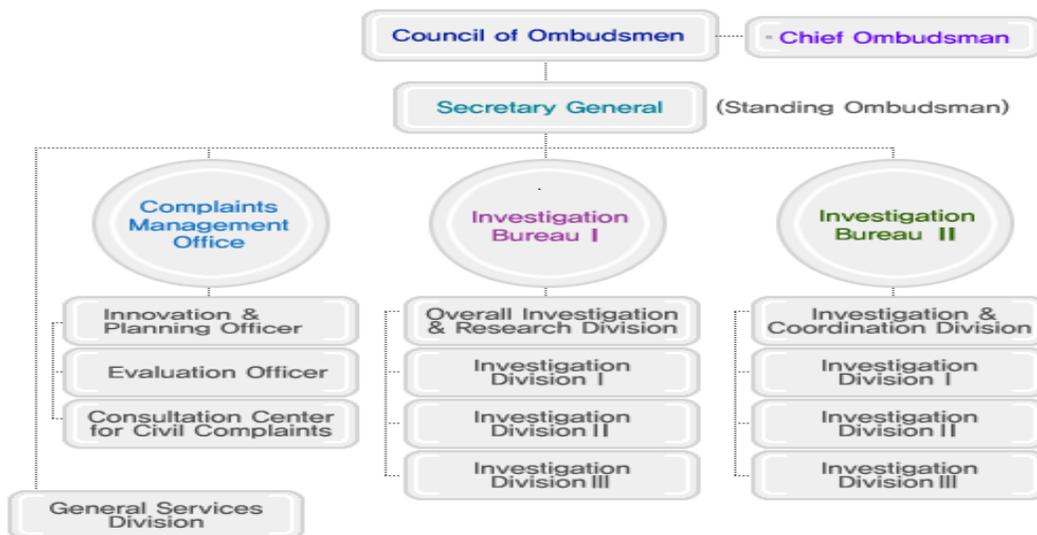
- Investigators
- Subject-Area Specialists
- Legal Counsel/Advisor
- Public Relations Officers
- Financial Officers/Accountants
- Record Managers

- Researchers/Statisticians
- Computer/Information Systems Experts
- Language Translators

In addition to full-time staff, most legislation empowers the ombudsman office to contract with experts on a temporary basis. This is indispensable when the ombudsman office conducts major or highly specialized investigations that go beyond the normal demands of the office. But the costs associated with such contracts may be quite high. As an alternative, many ombudsmen offices are increasingly relying on expertise available in sister offices, other branches of government, and from professional networks and associations. For example, South Africa has provided this type of assistance to neighboring offices in Botswana and Namibia.

### Box IV: Ombudsman of Korea (An Executive Ombudsman)

*Mission:* Consulting, investigation and settlement of civil petitions for [administrative] grievances; [making] recommendations for corrective measures when investigations reveal unlawful or unreasonable administrative procedures; stating opinions or making recommendations for improvement of administrative systems and their operations; and requiring relevant administrative agencies to provide notification of settlements that are conducted as a result of recommendations or opinions conveyed as stated above in provisions (2) and (3).



[http://www.ombudsman.go.kr/pub\\_root/english/aboutus/organization/](http://www.ombudsman.go.kr/pub_root/english/aboutus/organization/)

The most remarkable area of institutional cooperation has been in staff training and development. Training in ombudsman work is still largely ad-hoc, dispersed, and evolving, as there are no established curricula and most training is carried out through tailor made short-term orientations or on-the-job. Inter-institutional collaboration has proved very helpful in this regard. All new offices surveyed by NDI confirm that they have received support from older ombudsman institutions. Such efforts are increasingly complemented by the work of NGOs and other inter-

governmental organizations, such as: the Commonwealth Secretariat in London, the United Nations Development Program, the Canadian International Development Agency, USAID, and the International Ombudsman Institute.

For illustrative purposes, the staff structure for the ombudsmen offices of Korea and Norway were shown in Boxes III and IV on the preceding pages. An office's staff structure would naturally vary according to a country's individual needs and the mandate of the ombudsman office.

## CHAPTER THREE

# Effective Service Delivery

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### COMPLAINT MANAGEMENT

Ombudsmen offices often seek to resolve complaints informally by discussing the matter under investigation with the agency concerned. Complaint resolution in this manner is the ideal situation. It may have been that the citizen misunderstood the government policy or procedure, or that the agency at fault agrees to solve the problem. In either case, the ombudsman office would likely follow-up to ensure that the agency has changed or clarified its policy.

If the complaint cannot be resolved informally, the ombudsman office follows a proscribed procedure to gather and articulate detailed investigative findings. These findings may result in a report, but this is not always the case. Malta's ombudsman office law, like most other enabling laws, presents a number of options for corrective action that may be taken by the ombudsman office, including:

- Referring the matter to the appropriate authority for further consideration and disciplinary action;
- Requesting that the reasons for the administrative decision or action be formally provided;

- Modifying the practice on which the controversial decision or action was based;
- Calling for immediate action and an apology from the agency at fault;
- Recommending compensation;
- Writing and distributing a report of key findings and recommended next steps;
- Presenting findings to the executive or legislative branches;
- Proposing legislative ideas to Parliament.<sup>15</sup>

Some ombudsman offices, especially those with an active human rights or anti-corruption mandate, may initiate court proceedings to enforce their recommendations. However, most ombudsman offices, as previously observed, have no determinative or binding powers and can only make recommendations. Nevertheless, compliance with ombudsman office recommendations tends to be high. The Queensland Ombudsman summed up the point as follows:

Nearly all my recommendations in recent times have been implemented either totally, or following negotiation and further consultations, partially and satisfactorily. Indeed, in most cases it is not necessary to make an official recommendation to achieve a successful outcome, and that is my preferred outcome.<sup>16</sup>

### **Box V: Korean Ombudsman Charter and Service Goals**

In an effort to restructure the civil complaint mechanism in Korea and to guarantee the public's expectation of fairness and accuracy in the processing of civil complaints, the Ombudsman of Korea has established the Ombudsman Charter. The Charter was publicly announced at the Commemoration Ceremony of the Fifth Anniversary of the Ombudsman of Korea held on April 9, 1999. It reads as follows:

- Citizens have the right to quality administrative services, so naturally, they have the right to submit civil complaints. The Ombudsman duly recognises its obligation to faithfully resolve civil complaints;
- Civil complaints shall be processed fairly, accurately and without discrimination based on objective facts;
- The Ombudsman shall deal with complaints they receive in the same way they would deal with the problems faced by their family members, and thus, will process them as politely and rapidly as possible;
- In the belief that the processing of a civil complaint is considered complete when the complainant is satisfied, the Ombudsman shall exert continuing efforts to be creative and professional;
- Where inconvenience or dissatisfaction results from unfair processing of a civil complaint, the Ombudsman shall, without delay, rectify the situation and provide appropriate compensation;
- The ombudsman of Korea shall promote the spirit of the Shin-moon-go, and through active and aggressive processing of civil complaints, shall grow as an organisation that citizens can turn to at any time.

[http://www.ombudsman.go.kr/pub\\_root/english/activity/1999/](http://www.ombudsman.go.kr/pub_root/english/activity/1999/)

### **BEYOND COMPLAINTS: PROMOTING SYSTEMIC REFORM**

While complaint resolution is a major part of the ombudsman's responsibilities, the office's role has grown in recent history. A natural outgrowth of complaint resolution activities has been the inclusion of system-wide investigation and reform, demand management, and governance training.

#### **System-wide Investigations**

System-wide investigations have implications for the ombudsman office's influence on society and the government. By addressing the system, the office can reduce the number of individual complaints and, in turn, its own workload and costs. Introducing a systemic approach, however, requires technical expertise and casework knowledge acquired through conducting investigations for individuals—the office's first priority. Only with years of experience can an ombudsman office attain the "capacity and responsibility to identify and remedy systemic causes of recurring unfairness."<sup>17</sup>

#### **Demand Management: A Proactive Approach**

In Australia and New Zealand, ombudsman offices are continually asked to demonstrate improved "demand management" as part of their justification for funding. Among other things, this requires the office to help agencies develop administrative systems that enhance clients' satisfaction and thereby minimize grievances.

Such demand management efforts are becoming more pervasive. Nearly all offices undertake at least one major system-wide investigation annually to review policies, procedures, and systems that demonstrate the presence of a systemic problem based on individual complaints. In fact, some ombudsmen offices categorize complaints by type and investigate them jointly to determine whether there is an underlying problem.

It is rare that parliaments ask ombudsmen offices to investigate an individual's complaint or a more general problem to ascertain whether there is a larger issue at stake. However, the South African Parliament has made extensive use of the ombudsman office in this way since the end of apartheid, including an investigation into an arms deal that led to far-reaching systemic recommendations for defense and security reforms. Similarly, ombudsman offices in countries undergoing far-reaching governance reforms (such as Bosnia-Herzegovina) play active leadership roles, compelled either by parliament or initiated themselves.

As the mandate of the ombudsman office expands to include more proactive approaches, such as demand management, the office is more likely to become involved in training and support for public sector reform programs. For example, in Lesotho, Seychelles, Antigua and Barbuda, and Trinidad, ombudsmen offices have been actively involved in conducting seminars for government officials and implementing reform programs.

### **EFFECTIVENESS AND ENFORCEMENT MECHANISMS**

Ombudsmen offices have few express powers to impose or enforce binding decisions. Rather, the office's effectiveness originates from its status or influence as an impartial investigator—by which it is perceived as non-threatening and helpful to both parties.

#### **Extra-Judicial Role**

The role of the ombudsman office is, in effect, that of an extra-judicial body. While the court's enforcement power is one of its strengths, the adversarial nature of court proceedings can make dispute resolution bitter and protracted. The ombudsman office, in contrast, seeks to settle complaints in a manner that can enhance public understanding of the government and improve agency administra-

tion. As the Ombudsman of Queensland observed:

One problem with determinative powers is that they introduce an element of confrontation and legalism into the process, with the potential for legal challenges along the way, and this could be inconsistent with the informal and speedy resolution of legitimate grievances.<sup>18</sup>

#### **High Rate of Voluntary Compliance**

In response to an NDI survey<sup>19</sup> on government acceptance of ombudsman office findings, the majority of office respondents reported that their recommendations are acted upon most of the time while some respondents said their suggestions are nearly always followed.

### **IMPROVING OPERATIONAL EFFICIENCY**

The effectiveness of the ombudsman office is largely measured by how well it is able to deal with individual complaints, the discretion it uses when determining which problems to address, and, to a more limited extent, its ability to influence broader administrative reforms. Office effectiveness and efficiency are often influenced by the legal authority granted to the ombudsman and the realities of operating such an office.

The previous section dealt with how the institution could be established and strengthened through legislation. This chapter looks primarily at operational activities or changes that the ombudsman office can institute to help improve its effectiveness and ensure its continued relevance in improving democratic governance.

The ombudsman office workload varies from office to office, usually in response to factors such as population size, level of social and economic development, and how effectively the office is encouraging public access and use. Regardless of these contributing factors, however, an NDI survey of ombudsman offices found that most offices continue to experience a steady rise in the

**Box VI: Queensland Ombudsman Demand Management Option Checklist**

(a)	<b>Internally</b>
1.	Identify trends in complaints, by regular review of intake for individual agencies via computer generated reports
2.	Identify trends in complaints, by regular review of breach code trends
3.	Identify trends in complaints, by assistant commissioners and investigating officers being alert to trends in their specialized areas
4.	Identify trends in regional agencies, by recording complaints according to branch or region
5.	Develop and use a case database
(b)	<b>Externally</b>
6.	Regularly report to agencies and discuss trends in complaints with senior agency personnel
7.	Provide agencies with information and advice on issues with a view to avoiding new complaints
8.	Provide agencies with newsletters on systemic issues, legislation and other changes affecting public administration
9.	Provide information for the public and prepare educational articles for agencies
10.	Prepare guidelines for good administrative behavior for use by agencies
11.	Train agency personnel in good administrative behavior
12.	Have an information website
13.	Prepare, suggest or encourage client service charters for agencies
(c)	<b>Internally within agencies</b> (proactive measures to assist agencies in dealing with complaints internally, and thus reduce demands on the ombudsman)
14.	Encourage and develop internal customer service and complaint handling processes for agencies that don't have them; improve on those already existing
15.	Train agency personnel in the application of those guidelines and techniques
16.	Conduct anonymous analyses or tests of agency complaint handling procedures
17.	Review agency procedures in light of complaints received to ensure they are working on a macro level, e.g. <ul style="list-style-type: none"> <li>• Why are complainants still coming to the office after internal review? Is it simply because they are not getting the decision they want, or is something wrong with the internal review process?</li> <li>• The official visitor program – is it effective?</li> </ul>
(d)	<b>Externally</b> (proactive measures the ombudsman can take to effectively and efficiently manage the demand that remains after the above reforms)
18.	Require that complainants use the complaints handling system within agencies
19.	Review the system used in particular cases to ensure it was properly followed by the agency
20.	Prepare a model for agencies to follow when responding to ombudsman inquiries
21.	Have contact officers online for joint training, advice on systemic and other issues; client service charters; and changes to legislation, policy and practice, so that ombudsman staff are aware of developments in agencies and better understand complaints
22.	Ensure that regional and correctional visits are targeted at areas of demand and that adequate time is allowed for onsite resolution
23.	Ensure that office policies on declining certain categories of cases are appropriate and are followed

level of complaints received. While less than 25 percent reported that the number of complaints received had remained relatively constant over the last 3 years, over 75 percent claimed the number had either increased slightly or significantly. Less than 3 percent reported a decrease over the same period.

The workload of the ombudsmen offices can have a significant impact on their ability to resolve complaints in an efficient and timely manner to the satisfaction of complainants. While the office must maintain a certain level of professional service to ensure public and government support, the workload is likely to increase over the long term. If an office has a heavy overall workload, there is a risk that consideration of the most meritorious and important complaints will be delayed or not even addressed. Developing a method of prioritizing complaints and inquiries may assist the office in pursuing its mandate most effectively under conditions of limited resources. This is just one of a variety of ways to improve operational efficiency.

### **Maximize Public Access to the Ombudsman Office**

In order for the ombudsman office to be an effective complaint handling institution or viable alternative dispute resolution mechanism, the office must be accessible to the public. Several steps can be taken to achieve this goal.

*Be Thoughtful about Office Location.* Ensure the office is located where it can be easily reached by individuals interested in submitting a complaint. This means that the office should be easily accessible by rail, bus or other public transportation. In addition, the office space should itself be “accessible” and comfortable for complainants from all socio-economic backgrounds. Efforts should be made to avoid lavish office space that may be intimidating and is a drain on resources.

*Supply Adequate Telephone Access.* The office should have adequate telephone access. If possible given resources, toll-free numbers should be established and collect long-distance calls accepted. Sufficient numbers of staff should be allocated to answer phones and adequately trained to handle initial complaint screenings.

*Provide Regional Points of Contact.* The office should be accessible to individuals who cannot come in person to the main office. Establishing regional offices, if resources allow, or arranging regularly scheduled regional visits ensures that the office reaches the greatest number of people. Citizens outside of the capital are often the ones most in need of the services of the ombudsman office, but are often the least informed about the services provided.

*Provide Services Free of Charge.* It is almost universally accepted that individuals should not be subject to any fees for services rendered by the ombudsman office.

*Assist Citizens with Complaint Resolution Procedures.* Complaints are usually required in writing. In order to help address the burden this requirement places on individuals with limited formal education, offices should provide assistance with transcribing an individual’s oral complaint. Moreover, the ombudsman office should be well-versed on where to direct individuals should their issues fall outside of the office’s jurisdiction. The office should determine where the individual may look for a remedy and provide the appropriate referral. Care should be taken that such a referral is not made in haste, so as not to divert too many resources from resolving complaints that are actually within the purview of the office.

*Generate Public Awareness of the Institution.* The office should have an easily understood name that is culturally appropriate and conveys the role and function of the institution. Also, it is

a good idea for a relatively new office to engage in annual public education campaigns to inform citizens of the role and functions of the institution. Public information should be sufficiently detailed and readily available to the public.

### **Coordinate Reporting and Public Relations Strategies**

Without traditional enforcement mechanisms, ombudsman offices typically rely on the power of public scrutiny through increased transparency to enforce their recommendations. This requires offices to incorporate reports and reporting into their public relations strategy.

*Public Reports to the Parliament.* It is critical that the ombudsman office take advantage of its ability to report directly to the parliament. Public reports are the primary means for the office to inform parliament of its work and to draw attention to systemic reforms that may require legislation. Without an effective reporting system, an ombudsman may be unable to function properly.

*Make Reports Accessible to the Public.* The ombudsman office should make copies of reports (including all annual reports and those in which privacy concerns are not an issue) easily accessible to the public. The office may also wish to include press statements with all disseminated reports, translate reports and all office documents in local languages and place them online, and provide audio versions of reports to be aired on the radio for those who are not literate.

*Cultivate a Relationship with the Media.* The ombudsman office should take every opportunity to explain the role, jurisdiction and activities of the office to the public and the government agencies that fall within its jurisdiction. The media is the best outlet for conveying this message to the broadest section of the public, serving as a valuable resource for the ombudsman and a useful ally in promoting the office to the public. It is

helpful to provide media outlets most likely to be interested in the activities of the ombudsman office with a media-sensitive guide that provides basic facts about the office, its functions, and the names and contact information of relevant individuals. It is also essential to make the office as transparent as possible in daily operations—while maintaining the privacy of clients—to allow for an open exchange with the media.

*Assign Staff to Public Relations and Outreach.* A successful ombudsman office must have a public profile and reputation for handling cases efficiently and professionally. If the public is unaware of the ombudsman or misinformed regarding its activities, the office will not be successful. Because public education and outreach are essential to managing public expectations, it is helpful

#### **Box VII: Methods for Facilitating Access to the Ombudsman**

- Multi-lingual policy
- Vulnerable groups strategically targeted
- Telephone hotline
- Toll-free telephone number
- Allow collect telephone calls (reverse charges)
- Established website
- Web-based citizen/customer relations
- Complaints accepted via the internet
- Complaints accepted via representatives
- Designated reception/receipt officer(s)
- Established system of receiving complaints
- Designated neighborhood/agency contact person or liaison officer
- Relevant specialized units within office
- Decentralization of office/activities (for receipt/handling of complaints)
- Outreach activities
- Existence of publicity unit
- Good reports with robust statistical analyses

to have at least one person on staff whose specific function is to direct outreach efforts.

### **Maintain Good Working Relationships with Government Institutions**

As discussed in Chapter 2, it is critical that the ombudsman office establish a good working relationship with all branches of the government. This can be accomplished by developing relationships and maintaining impartiality.

*Develop Relationships with Public Administration within Office's Jurisdiction.* Public servants are likely to be skeptical regarding the role and functions of the ombudsman office, particularly in early stages. It is essential that the office provide clear information regarding the process of handling and resolving complaints to the individuals subject to its jurisdiction. Assembling and distributing outreach materials (like a media kit) that target public servants is a useful initial step. Ombudsman office staff should also be encouraged to provide informal face-to-face training at government institutions to highlight their work and to explain a typical complaint and process of investigation. The first contact a public servant has with the office should not be after a complaint has been filed.

*Maintain Impartiality.* In order for the office to succeed, the ombudsman must continue to be viewed as an impartial investigator and not an advocate on behalf of the citizen.

### **ACCOUNTABILITY OF THE OMBUDSMAN OFFICE**

Parliaments typically hold ombudsman offices accountable through their funding authority over the office and through the performance standards that are used to assess the office. While accountability is important to ensuring the ombudsman's effectiveness and impartiality, it must be balanced with the need for independence from political influence.

### **Parliamentary Support and Ombudsman Office Independence**

The ombudsman office has a dual task of garnering support from the public as well as the government. As one observer noted, it is essential the office "earn and maintain the respect of government through its reasonableness. Without this, it will be at best ignored and, at worst, ridiculed."<sup>20</sup>

Ombudsman offices are state entities, which means they rely on public funds and must maintain political support for continued funding. Thus, they are in an awkward position of investigating the government while relying on funds from the government. This can present a problem for the office's independence and overall credibility, which is usually resolved through a combination of institutional arrangements.

#### **Box VIII Elements of Optimal Ombudsman-Legislative Relations<sup>21</sup>**

- There is a clearly defined relationship between the two bodies in enabling legislation;
- Legislature has authority over appointment and removal of ombudsman;
- Ombudsman is an independent entity;
- Ombudsman is accountable to parliament and has regular reporting requirements;
- There are agreed upon performance standards and measures for the ombudsman;
- Special parliamentary oversight committee exists with well-defined functions;
- Cooperative, non-adversarial, non-combative approach to legislature by ombudsman;
- Ombudsman supports grievance-handling role of legislators;
- There is a nonpartisan approach to the ombudsman office by the legislature.

It is first necessary to ensure adequate protection for the existence of the office. Thus, it is imperative to define the jurisdiction and powers of a governmental ombudsman office in enabling legislation. Second, the process of appointing and removing the director of the ombudsman office must be clearly prescribed. The director should be guaranteed appropriate remuneration and conditions of service, as well as enjoy immunity from prosecution while in office. A good practice is to tie these conditions to that of an appropriate high judicial officer.

### Accountability to Parliament

In a democracy, the legislature is widely seen as the most appropriate institution for establishing, funding, and overseeing the ombudsman office. The classical ombudsman office is, in fact, an organ of parliament because of its natural link to the legislature's traditional role of watchdog and grievance-handler. Further, parliament is a pluralistic institution and unlikely to be captured by a narrow point of view.

Like any other public organization, the ombudsman office must be held accountable for its performance and use of state resources.

### Accountability to the Public

Ombudsman offices must be aware that they exist primarily to assist the public, and are first and foremost accountable to the people they serve. The ombudsman office of British Columbia in Canada, for example, has adopted a procedure whereby individuals who are dissatisfied with the office's processing of a claim can register a complaint. This triggers an internal review of the office's handling of the complaint. This process was established to ensure that the British Columbia ombudsman office "practices what it preaches."

The checklist in Box IX, on the following page, provides a benchmark against which the public

and government agencies can assess their success in creating an effective ombudsman institution. The criteria are divided into two levels that correspond roughly to the typical evolutionary phases an office goes through from establishment to maturation. The first covers criteria that an office must seek to fulfill in its early years, while the second relates to more medium and longer term considerations.

There is an initial period of about five years when the ombudsman office must vigorously assert itself in order to demonstrate to the public and the government that it is serious and credible. A new office should aim to meet Level 1 requirements, as outlined in Box IX, by the end of its third year or soon after. The office should be on track to completing the next level by the fifth or sixth year. The checklist is a rough guide and is not meant to suggest that one set of effectiveness criteria is at any time more or less important than the other; the point is to underscore the fact that effective ombudsman offices emerge over time.

Ombudsman offices, like many governmental institutions, are not advanced in assessing the effectiveness of office operations or programs. First, programs to enforce accountability are difficult to evaluate. Second, ombudsman offices seem to object to systematic evaluation. Some offices even oppose the idea of evaluating a program that promotes the interests of ordinary citizens. But ombudsman offices can hardly expect to gain and maintain public support if they cannot demonstrate that their work is effective.

One method of evaluating the effectiveness of the ombudsman office is to categorize their objectives into outputs, outcomes, and impacts. *Outputs* are services actually rendered, usually on an immediate or short-run basis. They are relatively easy to measure. *Outcomes* are the consequences of programs in human terms. They are usually more

qualitative and have more long-term consequences for society. Because they are often quite remote, outcomes are difficult to ensure. *Impacts* are the longer term effects of the program. They are the most difficult to measure because the mechanisms by which they are achieved are uncertain and the time period can be long.

When these distinctions are applied to ombudsmen offices, the main outputs are resolutions of individ-

ual complaints, including correcting wrongs perpetrated on individuals and vindicating civil servants when they have been improperly accused. The outcomes are making the bureaucracy more humane, lessening public alienation from government and preventing bureaucratic abuses. The long-run impact is administrative reform. An ombudsman office must keep reliable, detailed records in order to conduct a meaningful evaluation of activities and results.

### Box IX

#### Checklist of Ombudsman Effectiveness in First Two Stages of Development

##### Level 1

- Constitutional or statutory authority;
- Objectivity, impartiality, and operational independence;
- Secured tenure and conditions of service for ombudsman;
- Wide operational and investigative powers, including self-initiated complaints;
- Prestige and personal influence of the ombudsman;
- Ability to use informal and flexible methods to resolve disputes;
- Proactive approach to problem solving;
- Ability to recommend and secure adequate remedial actions;
- Ability to influence compliance with recommendations;
- Office the public can easily identify with;
- Evidence of speed and promptness in case handling;
- Credibility in the eyes of the public;
- Transparency and openness.

##### Level 2

- High profile in governmental hierarchy;
- Adequate resources;
- Competent and motivated staff;
- Autonomy in staffing and financial management;
- Small and manageable office;
- Modern systems of management;
- Capacity to carry out research and undertake systemic investigations;
- Visibility of office and accessibility to public, including vulnerable people;
- Effective and sustained programs to promote public awareness;
- Effective reporting system;
- Power to refer complaints to other bodies for further necessary action;
- Ability to network with other government institutions;
- Good working relations with civil society and non-governmental organizations;
- Public accountability of the office, including through the legislature.

## CHAPTER FOUR

# Global Trends: The Expanding Mandate

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In the last decade, the ombudsman institution has been increasingly viewed as an effective resource for countries undergoing a democratic political transition as well as for more fully established democracies. Flexibility in form and structure has allowed countries to adapt the basic elements of the office to their particular political and social needs. Two important global trends emerging in the past few years include an expansion in the role and jurisdiction of the office and an increase in the office's capacity to encourage regulatory reform on a systemic level.

### EXPANDED ROLE AND JURISDICTION

The ombudsman office has been shown to be an effective governance tool, partly because it can succeed in a wide range of institutional environments. The ombudsman institution is not limited to the arena of public administration, but is now also used in such varied subject areas as banking, aviation, child and youth affairs, human rights, and promoting integrity. It has become clear that a wide range of options is available to policy-makers in determining whether to create or expand the role of an office.

Although the trend is particularly strong among newer offices, many of the older institutions have also acquired a number of additional specialized functions. For example, the New Zealand Om-

budsman doubles as Information Commissioner; the British Parliamentary Commissioner for Administration functions as Health Service as well as Information Commissioner; and the Ombudsman of Malta is also the University Ombudsman.<sup>22</sup>

The current popularity of the ombudsman office reflects its prominence in the development of new democracies, which focus not only on individual rights but also on the protection of society and the public interest at large. In addition, the ombudsman concept has recently benefited from governments' willingness to experiment with institutional reform and to copy ideas from elsewhere in order to boost capacity and serve citizens better. Finally, the need to make good use of declining state resources demands creativity from existing institutions and an avoidance of duplicated efforts.

The global expansion of the role and jurisdiction of the ombudsman office is not unexpected. Even in the early years, the ombudsman was recognized as a multi-functional institution. The classic example is Israel's ombudsman institution, which from the outset was coupled with the State Comptroller's office. Previously, any additional function for the ombudsman office was essentially conceived as a logical part of its core business. There has been an increasing willingness not just to experiment with new responsibilities but to define them explicitly in the enabling instruments.<sup>24</sup>

The ombudsman office has thus moved from a situation in which it was not empowered to deal with certain matters aside from its main role of checking maladministration and protecting individual rights, to one where further activities have become obligations expressed in law. It is this more prominent involvement of the ombudsman office in areas that were traditionally regarded as outside of its mandate that is the most important recent development affecting the office. At the national level, two of the most recent and substantial areas of expansion for ombudsman offices are human rights and government corruption.

### **Role of Office in Promoting Human Rights and Anti-Corruption**

It has been argued that ombudsmen offices frequently draw on international human rights norms in the interpretation and application of their jurisdiction. Indeed, several more recent pieces of legislation (typified by the so-called hybrid institutions and used in many post-1990 ombudsman offices in Africa, the Caribbean, Eastern Europe, Latin America, and the Pacific) give ombudsmen an express mandate to focus not only on the traditional area of maladministration but also on human rights matters.

The Ombudsman Regulation applicable to the Interim Administration of Kosovo presents this expanded role quite explicitly. It states that the ombudsman shall consider:

- (a) alleged or apparent violations of human rights and fundamental freedoms in Kosovo, as provided in the Constitutions of the Federal Republic of Yugoslavia and the Republic of Serbia, and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; and
- (b) alleged or apparent violations of the rights of national communities specified in this Agreement.<sup>23</sup>

Remarkably, the mandate of most human rights ombudsmen offices calls for their involvement in

so-called first generation human rights (civil and political) and in economic, development and environmental issues.

The offices in Papua New Guinea and Uganda illustrate a further use of the ombudsman model, where the office is given an explicit anti-corruption mandate in addition to its traditional duties.

Namibia's Ombudsman Act goes even further, creating an ombudsman office with traditional ombudsman responsibilities but also human rights and anti-corruption mandates. In this regard, it provides that:

The ombudsman shall enquire into and investigate in accordance with the provision of this Act, and take action or steps as may be prescribed by this Act on any request or complaint in any instance or matter laid before the Ombudsman in accordance with the provisions of subsection (3)(a) or (b), and concerning:

- (a) alleged, apparent or threatened instances or matters of violations or infringements 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 an organ of Government (whether national 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 functioning of the Public Service Commission, administrative organs of the State, the defense force, the police force and prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or fair administration in relation to such services;
- (c) 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) practices and actions by persons, enterprises and other private institutions where such complaints allege that violation of fundamental rights have taken place;
- (e) all instances or matters of alleged or suspected corruption and misappropriation of public moneys or other public property by officials.<sup>25</sup>

The expansion of ombudsman office jurisdiction has, according to some critics, introduced its own problems. Role changes invariably put pressure on structures, procedures, and operational methodologies—all of which, some argue, stretch the essential idea of the ombudsman office towards its breaking point. Many people have dismissed some of the newer versions of the institution as unsuitable for the role of the ombudsman office. Others prefer to call these types of offices ‘Hybrid Ombudsman’ as a compromise.

At the heart of the controversy, however, are uncertainties regarding the office’s ability to fulfill its original roles while taking on new ones. Critics often cite the strain on resources as one of the strongest arguments against role expansion. The office will be effective in neither its new roles nor its traditional ones if it does not receive sufficient resources for increases in the complaints it processes and the matters it investigates.

Even if additional resources are available and properly allocated, policymakers must take care to ensure that the office’s expanded role is compatible with its existing role, as set forth in the enabling legislation, and with accepted precedents and practice. For instance, a new role must not interfere with the ombudsman office’s ability to fulfill its traditional role as an independent and impartial investigator, and must not strain the ombudsman office’s relationship with the government. This is particularly important when the ombudsman office’s jurisdiction has been ex-

panded to include cases dealing with suspected corruption on the part of government officials and alleged human rights abuses.

### **MAKING EXPANSION WORK**

Can ombudsman offices really implement new functions that are compatible with traditional duties? The evidence suggests that the answer is an equivocal ‘yes’, as combining traditional ombudsman office roles with other governance functions can save costs and conserve institutional resources. However, as this paper discussed, there are risks with expansion that could undermine the ombudsman office’s overall effectiveness. Policymakers must therefore pay close attention to the conditions that make expansion work.

In order to be effective, a role expansion must be carried out with the institution’s comparative strengths and weaknesses in mind. Generally, ombudsman offices are more effective in implementing roles that draw on their powers of moral persuasion, personal influence, and reasoned judgment. They are far less effective in matters that involve criminal aspects or where a binding decision would be necessary.

An ombudsman office is essentially an institution for handling complaints pertaining to public administration; other roles will ultimately be secondary. Although the ombudsman office is able to deal with either specialized or general purpose matters, a clear definition of its responsibilities is vital.

## Endnotes

1. Dennis Pearce, “The Ombudsman: Review and Preview – The Importance of Being Different,” *International Ombudsman Anthology*, Hague: Kluwer Law, 1999
2. Stephen Owen, “The Ombudsman: Essential Elements and Common Challenges,” *International Ombudsman Yearbook*, Volume 4, 2000.
3. Within the category of parliamentary ombudsman there is significant diversity regarding the role and function of the office. Some offices are limited to the more traditional role of handling cases of government maladministration, while other offices have a more extensive mandate including human rights and anti-corruption cases. These latter offices are often call “Hybrid Ombudsmen” to reflect their more expansive and non-traditional mandates.
4. [http://www.omeurope.info/uk/index\\_e.html](http://www.omeurope.info/uk/index_e.html)
5. International Ombudsman Institute: [www.law.ualberta.ca/centres/ioi](http://www.law.ualberta.ca/centres/ioi).
6. <http://www.privacyinternational.org/countries/malta/ombudsman%20act%20CHAPT385.pdf>
7. <http://w3.abanet.org/home.cfm>
8. <http://www.ombudsman.qld.gov.au/publications/documents/OMBUDSAR2003Frontend.pdf>
9. Stephen Owen, op cit
10. [http://www.omeurope.info/uk/index\\_e.html](http://www.omeurope.info/uk/index_e.html)
11. <http://www.ombudsmen.govt.nz/ombudsme.htm#Interpretation>
12. Dennis Pearce, op cit.
13. [http://www.qp.gov.bc.ca/statreg/stat/O/96340\\_01.htm#section23](http://www.qp.gov.bc.ca/statreg/stat/O/96340_01.htm#section23)
14. Author’s professional opinion
15. Malta
16. Author’s professional experience
17. Stephen Owen, op cit.
18. Author’s professional experience
19. Suggested activities for improving the effectiveness of ombudsman offices were reported to NDI through a global survey of select offices conducted in late 2002. The survey was sent to 102 national level ombudsman offices. 66 offices confirmed their receipt of the survey, while 24 offices completed and returned it.
20. Stephen Owen, op cit.
21. NDI global survey of ombudsman offices, 2002.
22. Stephen Owen, op cit.
23. [http://www.balkan-archive.org.yu/kosovo\\_crisis/documents/kia\\_0127.html#IX](http://www.balkan-archive.org.yu/kosovo_crisis/documents/kia_0127.html#IX)
24. Other notable institutions with a clear multi-functional role include: in Africa—Ghana, Namibia, Malawi, Lesotho and Uganda; in the Caribbean—Belize, Jamaica and Haiti; in Latin America: Argentina, Chile and Peru; in the Pacific—Australia, Papua New Guinea and Vanuatu. Several offices in Canada, Europe and the United States have been expanded as well.
25. Namibia