THE OFFICE OF THE PUBLIC PROTECTOR IN THE REPUBLIC OF SOUTH AFRICA:

A DISCUSSION OF KEY ISSUES IN INTERNATIONAL PERSPECTIVE

-JULY 2000-

provided by the
National Democratic Institute for International Affairs

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in the
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I. INTRODUCTION

The 1993 interim Constitution provided for a Public Protector and in 1994, the Parliament of South Africa adopted the "Public Protector Act." This legislation created an institution capable of investigating maladministration and corruption by government officials, and replaced the previous national ombudsman office. This resolve was confirmed in the Constitution of South Africa adopted by the Constitutional Assembly on 11 October 1996. Chapter 9 of the Constitution, concerning "State Institutions Supporting Constitutional Democracy," outlines the role and duties of the Public Protector. Under Section 182, the Constitution states that the Public Protector's primary power is to "investigate any conduct in state affairs, or in public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice." The Constitution further compels the Public Protector to be accessible to all persons and communities, while it simultaneously compels other organs of state to assist and protect the institution, ensuring its independence, impartiality, dignity, and effectiveness.

What are some of the variables at play in making such an institution work optimally within and alongside government? Many countries, in creating an Ombudsman or Public Protector office, have debated these issues, not only at the establishment of the office but throughout its existence. As the institution is vital to democracy, its specific role and powers continuously evolve along with that democracy. Six years after the creation of the South African Public Protector and in the spirit of debate about the direction of government in the new millenium, it is worthwhile to examine the issues that bear on the Office of the Public Protector.

Background

This project has its roots in discussions between NDI and the Ministry of Justice in 1999. The Ministry assumed several responsibilities at the November 1998 Public Sector National Anti-Corruption Summit. One central obligation for the ministry was to work toward the development of a comprehensive national anti-corruption campaign to provide the government with a long-term strategic approach to eradicate corruption in the country. A critical component of this strategy was a cross-cutting review of the government agencies currently deployed in the fight against corruption. This would involve a review of both the internal and external issues of each agency as they related to constitutional and practical requirements. As part of NDI's commitment to assist the South African government in its anti-corruption program, the Institute agreed to provide a review of the Office of the Public Protector. The purpose of the report is to touch on the broader constitutional and practical matters that relate to the Office of the Public Protector, particularly in the context of international experience.

Issues

NDI consulted with the Public Protector and his staff throughout the project to ensure that areas of importance were a substantial part of the review.

The Office of the Public Protector noted concerns about the perception of a potential lack of independence in its relationship with the Department of Justice; the need for a more direct relationship with Parliament; a misperception about overlap in functions among anti-corruption and human rights agencies in South Africa; and potential delays in expansion to regional offices. These matters are considered in this document.

National Developments

Since the initial discussions, new political ideas and policies have shifted, redefined or expanded the components of the anti-corruption program and debate in South Africa. During 1999, the government hosted two major anti-corruption conferences, one national and one international.

The first was the cross-sectoral Anti-Corruption Summit of April 1999, held in Parliament to reflect the importance of anti-corruption to national policy-making. Resolutions adopted at the summit directly affected the roles of many of the agencies involved. Second was the Ninth International Anti-Corruption Conference, which the South African government hosted in November 1999 in Durban. This gathering of 1,500 delegates from 90 countries, representing government, the private sector, and civil society, showcased South Africa's work against corruption. In hosting this global event, South Africa wished to be identified as one of the countries leading global developments. Another key development was that primary Cabinet portfolio responsibility for anti-corruption shifted from the Ministry of Justice to the Ministry of Public Service and Administration. The Public Service Commission has since moved into a primary role in spearheading and managing anti-corruption education and implementation.

On a political level, President Thabo Mbeki prioritized ethics and anti-corruption initiatives during his first term. His leadership will have a dramatic effect on policy-making in this area. Indeed, in his presentation at the Millenium Debate of the joint houses of Parliament on 19 November 1999, Mbeki stated that:

> *We have to use the Year 2000 to help strengthen the impetus towards the containment and eradication of corruption on our Continent, aiming to have the understanding firmly established in all our countries that none of us will allow that corruption is accepted as a way of life. Our work in this area will clearly require that we bring on board the corporations and governments of the developed countries of the North, so that they lend their own strength to the removal of a cancer which impacts negatively both on their countries and ours.*

Mbeki's vision of addressing corruption, as evidenced in this and other statements, encompasses a broad multi-sectoral, multi-agency program, as well as a deeper philosophical and moral program. This thinking will likely underpin the government's approach in the years ahead.

National Democratic Institute for International Affairs (NDI)

NDI is an international non-governmental organization based in Washington DC operating offices in more than 30 countries worldwide. The mission of the Institute is to assist in building democratic institutions and practices in emerging democracies. NDI's work is typically initiated by requests from host country institutions and government agencies.

NDI has had an office in South Africa since 1991. NDI began its work in the country in voter education and has maintained continuing projects of cooperation with the national government, parliament, provincial legislatures, local government and civil society organizations. The Institute has worked to assist the development of transparent and accountable government in collaboration with the South African government. In the area of anti-corruption and ethical governance, NDI assisted in 1996 with the establishment of the Parliamentary Committee on Members' Interests and the development of the Office of the Registrar. The Institute was also asked by the Office of the President in 1997 to assist with the development of the "Executive Members' Ethics Act, 1998." NDI has also partnered with the South African Public Service Commission (PSC) in supporting publication of its four-volume series *Fighting Corruption*.

This discussion paper reflects NDI's commitment to assist government in promoting deeper understanding of transparent and accountable government. NDI Program Officer Kevin Patrick drafted it, with assistance from Director Erin Martin.

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Appreciation

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II. THE OMBUDSMAN

The proliferation of ombudsman systems, providing a facility for extra-judicial investigation of citizens' complaints against the administration by an independent expert, and an impartial "citizen's defender," has been a notable feature of political development, almost a worldwide phenomenon, since the mid-1950s.[1]

The same political encyclopedia from which this statement is drawn also notes that due to varying political cultures, constitutions and government structures, there is no specific or uniform nature to an Ombudsman Office. Indeed, analysis shows that offices in each country take on a different direction based on the prevalent public policy or governance goals, usually flowing from particular historical circumstances. This is evident in Latin America, for instance, where many offices emphasize human rights as a historical response to military dictatorships in the region.

Moreover, while the Ombudsman is not traditionally seen as tool deployed by government to fight corruption, the office may take on that focus. One scholar recently noted that:

> *Although not originally designed to combat corruption, but rather to address grievances relating to administrative issues, the institution of the ombudsman, with its unique tools and competencies, has proven itself to be a useful ally in the struggle against this worldwide scourge.*[2]

Thus, the Office of the Ombudsman may be oriented and utilized differently from country to country. However, certain basic and defining characteristics typically apply to the activities, jurisdiction and powers of the office.

The function of an Ombudsman

The International Ombudsman Institute defines the ombudsman as: *"one who deals with complaints from the public regarding decisions, actions or omissions of public administration"* and whose role *"is to protect the people against violation of rights,*

[1] World Encyclopedia of Parliaments and Legislatures; Sponsored by Research Committee of Legislative Specialists, International Political Science Association and Commonwealth Parliamentary Association, edited by George Thomas Kurian, Volume II; Congressional Quarterly Inc.; Washington, DC,1998, p.829.

[2] Memorandum from Adv. Gary Pienaar, Senior Investigator, Office of the Public Protector, South Africa to Professor Tom Lodge, Subject:IXth International Anti-Corruption Conference, Durban -- Workshop 3 - Institutional Interventions to Contain Corruption, Notes on Paper: The Role of the Ombudsman in Fighting Corruption. 30 September 1999.

abuse of powers, error, negligence, unfair decision and maladministration in order to improve public administration and make the government's actions more open and the government and its servants more accountable to members of the public."[3]

The office may be enshrined in a country's constitution and supported by legislation, or created by an act of the legislature alone. The ombudsman typically has powers to conduct an investigation based on a public complaint about an administrative action that may be contrary to the law or demonstrates unfairness. In many cases, an ombudsman may have the power to initiate an investigation without a public complaint. If the investigation uncovers improper conduct, the ombudsman will generally issue a recommendation to correct the problem and prevent recurrence. Generally, an ombudsman will make an annual report to the legislature.

This may be the most basic definition of the ombudsman office and role. These tasks and powers tend to be common to the ombudsman office, wherever in the world. However, the applicable jurisdiction may be much more specific within each circumstance. For instance:

> *Generally, the public sector ombudsman has a general jurisdiction over a broad range of governmental organizations. For some, the range may extend to include the judiciary, police and military, while in other countries, one or more of these are specifically excluded. A number of countries have also created ombudsmen who deal only with one specific aspect of government such as access to information, corrections, police services, the armed forces or ethical conduct of officials. In other situations, the ombudsman has specific mandates to protect the environment, deal with cultural or linguistic rights, or to investigate corruption in government.*[4]

A telling aspect of the proliferation and usefulness of the ombudsman concept is the manner in which private entities in business or fields such as education have adapted the institution for their own internal oversight arrangements.

Nomination of the Ombudsman

Historically the ombudsman has been elected by Parliament – and still is in a great number of countries. Within a European context, the ombudsman is elected by Parliament in the Scandinavian countries, Holland, Portugal, Spain and Austria. There is historical precedent for the ombudsman to be seen by Parliament as an instrument to oversee the executive. However, in some countries the ombudsman is selected by the executive or an executive council. In France, the Council of Ministers selects the ombudsman, while in Ireland it is the President, and in the United Kingdom, it is the Prime Minister.

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[3] International Ombudsman Institute, web page at www.law.ualberta.ca

[4] Ibid.

Origin and History of the Ombudsman

The original creation of the Office of the Ombudsman, in its modern form, goes back to 1713 when King Charles XII of Sweden appointed an ombudsman called the Chancellor of Justice. In 1809, major changes in the system of government in Sweden took place and a more democratic constitution was adopted. Provision was made for a new office called the "Justitieombudsman" to supervise public administration.[5] Meaningful development of the institution internationally dates to the 1960s. Indeed, the period between 1960 and the early 1980s saw great institutionalization of the office worldwide. In this period, the Office of an Ombudsman was created in, among other countries:

New Zealand	1962	United Kingdom	1967
Canadian provinces	1967	Tanzania	1968
Israel	1971	Australia	1972-79
France	1973	Portugal	1975
Austria	1977	Spain	1981

Ombudsman structures now exist in more than 90 countries in any number of different permutations. While in a several cases (Canada, India, Italy), the office exists only at a sub-national level, the overwhelming majority of countries have national structures only. Several countries have an advanced and devolved ombudsman system that operates at both national and sub-national level. These include Australia, Argentina, Mexico and Spain. The creation under the 1995 Maastricht Treaty of a European Ombudsman suggests a continuing confidence in this institution and its potential. That is likely to continue in this century, with the Gambia having created an ombudsman office in early 2000 and several other countries considering its establishment.

Human Rights, Democracy and the Ombudsman

It is worth noting that many countries adopted an ombudsman after independence from colonial rule or periods of an autocratic domestic rule. Indeed, human rights have figured prominently in the brief of some ombudsmen, and international forums often center on this connection. Many ombudsman offices throughout the world use the nomenclature of human rights.[6]

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[5] Correspondence to NDI from Adv. C H Fourie, Chief Investigator, Office of the Public Protector, 12 December 1999.

[6] The International Ombudsman Institutes states as much:

> *Also, in a number of countries, the protection of human rights is one of the major purposes of the ombudsman office, and this is reflected in the name of the office. For example, there is Mexico's Comisión Nacional de Derechos Humanos (National Commission of Human Rights) and the state-level offices with a similar name, the Guatemala Procurador de los Derechos Humanos (Counsel of Human Rights), the Procurador Para la Defensa de los Derechos Humanos (Counsel for the Defence*

The Ombudsman of Namibia has written:

> *I cannot deny that the legacies of the past are still continuing to haunt the people of this country, in particular in their daily encounter with racism and sexism. It must be acknowledged that the relevancy of this Office will be measured by the extent to which it is responsive to those who encounter violations of their basic human rights.*[7]

Thus a clear connection appears between the international emphasis on human rights and the development of the ombudsman. In fact, the former Ombudsman of Poland noted that adoption of the ombudsman office in 1988 was a concession by the collapsing regime intended to build credibility and improve the perception of the international community.[8] A case can be made that the international development and expansion of ombudsman offices is consistent with and linked with transitions to democracy. The International Ombudsman Institute refers to the confluence of democracy and ombudsman offices, explaining that:

> *In particular, the transition of many countries to democracy and democratic structures of governance over the past two decades has led to the establishment of many more ombudsman offices during this most recent period. This transition to democracy accompanied by the reform of government, including the ombudsman or ombudsman-human rights complaint office, has been evident particularly in Latin America, Central and East Europe, as well as in parts of Africa and Asia-Pacific.*[9]

The convergence of emerging democracies, concern for human rights, and the flourish of ombudsman offices has been noted by many observing ombudsman work. As such, the proceedings of the 5th Roundtable with European Ombudsman, under the auspices of the Council of Europe, were considered under the twin concepts of human rights and democracy

Continuing debate about the Ombudsman

Beside the international trend toward proliferation of ombudsman offices, several countries are debating whether to expand or redefine their current model. For

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of Human Rights) of El Salvador, the Commission on Human Rights and Administrative Justice of Ghana, the Civil Rights Protector of Poland, the Human Rights Ombudsman of Slovenia, and the Parliamentary Commissioner for Human Rights in Hungary. In other countries (e.g. Argentina, Colombia, Spain), this aim is established by the constitution and by a regulatory law.

[7] Introduction to the Annual Report of the Ombudsman of Namibia, January 1 1998 - December 31, 1998.

[8] "The Ombudsman and Basic Rights," by Ewa Letowska; East European Constitutional Review, Winter 1995.

[9] International Ombudsman Institute website.

instance, the Canadian Ombudsman Association issued a call in 1999 for the creation of a Federal Ombudsman for Canada. The president of the association, Ontario Province Ombudsman Roberta Jamieson, said in the Association's press release that the "absence of an ombudsman at the national level represents a long-standing deficiency in Canada's democracy." The president also indicated that in her province alone more than 1,800 complaints were made in each of the last three years against federal bodies over which she had no jurisdiction to investigate, and for which there was no available independent recourse to review complaints from the public. She noted that, "the complaints covered the range of federal government authority including employment insurance, income security, tax administration, immigration, public works and federally regulated industries." [10]

Commentators draw from this and other examples that no hemisphere or country has perfectly defined the nature and range of the ombudsman role. The debate is indeed ongoing and will continue both internationally and within individual countries.

[10] June 8, 1999 press release by the Office of the Ombudsman, Ontario, Canada.

III. INTERNATIONAL EXPERIENCE

In this section, the paper seeks to explore issues in the light of international experience. As South Africa must find its *own* answers, specific to its *own* conditions and goals, these examples are raised for comparative purposes, illustrative of several dimensions consistent with ombudsman work internationally.

The Ombudsman in Southern African

In **Zambia**, a Commission for Investigations acts in the place of an ombudsman. In 1971, Zambia's first President, Dr. Kenneth Kaunda, established a commission of inquiry to examine public sentiment on how best to provide a check against abuse of authority by government. After conducting interviews around the country, the commission concluded in October 1972 that an office should be created to address the matter. The Constitution of 1973 thus established the Commission for Investigations, made operational by a 1974 Act of Parliament.

Under the current Commission for Investigations Act of 1991, the Commission consists of an Investigator General and three (3) commissioners appointed by the President (Sec. 4.1). Commissioners hold their position for a three (3) year term and may be re-appointed by the President, but not within three (3) years of holding the office (Sec. 5). Commissioners may not be removed from office by the President for reasons other than infirmity of mind or misbehavior. The Investigator General may be removed by the President upon a two-thirds majority vote of the National Assembly, and concurrence by an appointed tribunal of inquiry. The President may also direct the Commission not to investigate a certain matter (Subsections 8a and 21.1).

Under subsection 21.3, a report to the National Assembly by the Commission must not disclose the identity or contain any statement that might reveal the identity of an individual under investigation. Under section 16 of the Act, every investigation must be undertaken in camera.

Zimbabwe ratified its independence through the adoption of the Lancaster Constitution in 1979 and, with the same document, made provision for the establishment of an Office of the Ombudsman. Like the Namibian Constitution, Section 107 (2) affirms that the Ombudsman, and any Deputy Ombudsman, will be appointed by the State President on advice of the Judicial Services Commission.

Parliament enacted the Ombudsman Act in 1982, to be administered by the Minister of Justice, Legal, and Parliamentary Affairs. Section 4(1) of the Ombudsman Act limits the term of office to one renewable 3-year term, with a mandatory retirement at

age 65. Section 5 of the Act states that the ombudsman's salary is to be determined by the President, but shall not be less than that of a Secretary to a Ministry.

The Zimbabwean Ombudsman Act differs from other legislation in specifically exempting investigation by the Ombudsman of the President and Prime Minister and their personal staff. Certain government officials are exempted, particularly when charges relate to their legal advice to government. They include: Cabinet Office, Judicial Officers, the Attorney General, and the Secretary to the Ministry and staff responsible for legal advice to government.

Malawi also incorporated specific articles on an Office of the Ombudsman into the country's 1995 constitution. Under Chapter X of the Malawian Constitution, the ombudsman is appointed by the Public Appointments Committee of the National Assembly. Uniquely, Chapter XI, creating a Human Rights Commission, also declares the ombudsman to be a permanent commissioner along with the Law Commissioner, while other members are referred for participation by the ombudsman and Law Commissioner. The Office of the Ombudsman was later established under legislation.

In **Namibia**, the Office of the Ombudsman is provided for in the 1990 Constitution. The broad outline of the ombudsman office was further clarified by rapid adoption of the Ombudsman Act in June 1990.

The Namibian Constitution sets out in Article 90 the nature of the appointment and term of office of the ombudsman. Section (1) states that, the "Ombudsman shall be appointed by Proclamation by the President on the recommendation of the Judicial Services Commission; while section (2) declares that, "the Ombudsman shall hold office until the age of 65, but the President may extend the retiring age of any Ombudsman to 70." To this degree, nomination of the ombudsman in Namibia retains the same basic features as the Zimbabwean model.

These statutory frameworks are common to the operation of the ombudsman in several southern African countries.

Ombudsmen internationally also make the point that within statutory constraints an ombudsman may also bring to the office a unique drive and commitment to highlight certain issues, establish effective partnerships and demonstrate leadership. In keeping with this, the ombudsman may undertake special projects or duties that help strengthen the office. For instance, Namibian Ombudsman Adv. Bience Gawanas served as the Patron of the Multimedia Campaign on Persons with Disabilities. She noted in her annual report that:

> *Persons with disabilities have not really utilized the services provided by this Office and I hope through my involvement with this campaign, that I will have contributed not only to increase the awareness of the rights of persons with disabilities, but also increase awareness amongst people with disabilities themselves to speak up and be counted.*[11]

[11] Annual Report of the Ombudsman of Namibia, 1998-1999.

More broadly, there is a sense that the office of the ombudsman is fulfilling a needed role in the Southern Africa region. Justice Florence N. Mumba, the Investigator General of the Commission for Investigations in Zambia, once offered a general perspective on the successes of her commission, when saying that the Commission:

> *... has proved to be an essential tool of good governance ... exercis(ing) its jurisdiction to foster equity in the public service. It protects the interests of the individual from bureaucratic injustices, and enhances public confidence in the Government machinery. Instead of the individual dragging the State into court, the State and the individual are harmonized. Consequently, the Commission serves to promote social harmony and political stability.*[12]

The Ombudsman in Other Countries

In **France**, the ombudsman exists in a unique and specific form known as the Mediateur de la Republique. The French determined not to use the traditional term "ombudsman." Instead, the French official is meant to be very much what the name suggests, a mediator.

Proposed by former Prime Minister M. Pierre Messmer on 2 October 1972, the post was officially created 3 January 1973. The Mediator is named for a 6-year term (Art. 2, 1973) by Cabinet decree, not by Parliament. He or she is appointed by the executive because of the French belief that the Mediator's interventions will be better received if they emanate from an authority placed by Government, rather than appearing as a form of legislative control over the executive. Additionally, the Mediator's budget is drawn from that of the Office of the Prime Minister (Art. 15, 1973).

The basis for a complaint is broad, demanding only that a given government action did not conform to the essential mission of the public service (Art. 6, 1973). The law requires that action first be taken directly with the agency concerned with the contravention before appeal can be made to the Mediator (Art. 7, 1973). A complaint could thereafter be lodged with a given citizen's elected representative at the national level, who may then transmit the complaint to the Mediator (Art. 6, 1973). However, a complaint may not be lodged against the actions of an individual no longer in that specific public office (Art.8, 1973).

Available figures show that at the national level the office of the Mediateur de la Republique is staffed with 80 individuals, half of whom are high level civil servants with a specialization in law or administrative procedure. The Office is devolved to lower levels of government through the use of "departmental delegates." This second

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[12] The Ombudsman in Southern Africa: Report of a Subregional Conference, edited by Ephraim Kasuto and Arnold Wehmhorner; Friedrich Ebert Stiftung; Gamsberg MacMillan Publishers; 1996, Windhoek, p.239.

level was created in 1986 -- 13 years after the initial legislation -- and was incorporated with a somewhat restricted mandate.

Amendments

The 1973 legislation did not set out in specific terms the mission of the Mediator, rather it intended to create a flexible, pragmatic and dynamic institution. Three acts since creation have expanded and helped clarify the role of the Mediator. In 1976, the original legislation was modified to allow Parliament to approach the Mediator of its own, without a complaint from the public. The 1976 amendments also allowed the Mediator to make recommendations to the administration. The goal was to improve the daily working relations between the administration and the administered.

The 1973 law prohibited the Mediator from intervening in any matters before the courts or relating to a decision of the courts. This later appeared too strict to the French, as it removed any possibility of finding an amicable solution to a matter once in the legal process. The 1976 amendments also temper the 1973 formulations by allowing the Mediator to make recommendations to the administrative organ in question even while a legal action is in process or a legal decision has been rendered. Moreover, the Mediator would be empowered to assist in constraining the organ to comply with any injunction rendered by the courts, and where it has not been adhered to the Mediator may provide a report to that effect to Parliament and the President.

This extension of the Mediator's role resulted in a corollary increase in the Mediator proposing reforms. Under the previous law, the Mediator could propose reforms in administrative matters where he or she felt there was a justifiable complaint and could make proposals as to the improvement of the program. The French then determined that the Mediator's power to recommend changes should apply to administrative matters, and could extend to legislation itself. The theory was that flawed legislation would inevitably result in a problem at the administrative end. With the 1976 amendments, the Mediator was allowed to suggest improvements on legislation.

Australia has a national and sub-national system of ombudsmen as well as a wide range of other complaint resolution bodies including the Industry Ombudsman, Private Health Insurance Complaints Commissioner and Superannuation Complaints Tribunal. It also has other Commonwealth review bodies, such as the Administrative Appeals Tribunal, Social Security Appeals Tribunal, Immigration Review Tribunal, Refugee Review Tribunal, Human Rights and Equal Opportunity Commission.

The Australian Commonwealth Ombudsman operates around these, but with a very broad ambit and structure. The ombudsman investigates complaints about Commonwealth Government departments and agency actions to see if they are unlawful, wrong, unjust or discriminatory. The ombudsman is also the Australian Capital Territory (ACT) Ombudsman. In this capacity, the ombudsman investigates complaints about the actions and decisions of ACT government agencies and government business enterprises such as ACT Electricity and Water.

The Commonwealth Ombudsman is also the Defense Force Ombudsman. The DFO investigates complaints from people serving in the Australian Defense Force. The

DFO also investigates complaints from ex-service personnel and their dependents. The DFO may be asked to investigate any administrative action taken by the Defense Force that has adversely affected a member or his/her family. This applies not only to actions of the Defense Force, but of any service related decisions or actions of any Commonwealth agency. Complaints range from matters of promotion, demotion, discharge, postings, housing, or allowances. In the event of a justified complaint, the DFO may recommend that the Defense Force or other agency reconsider or change the relevant rules, procedures, actions, or decisions. The DFO can also seek the remedy of an apology or compensation for financial loss. The complainant must first seek remedy through the Defense Force internal service redress system and may only approach the DFO in the event of an unreasonable delay in process, the absence of receipt of any information by the complainant from the Defense Force, or an adverse decision by the Defense Force. The DFO will not investigate if the matter is currently under normal consideration by the Defense Force or other Commonwealth agency, or by the Minister, a court, a tribunal or other review body.

Other powers include investigating the way a Commonwealth agency handle a Freedom of Information Act request, or how police handle a case. The ombudsman reviews police internal investigations to ensure they have taken proper and adequate action. Lastly, the ombudsman has established a specialist service to investigate problems between taxpayers and the Australian Taxation Office. Individuals or organizations that feel that they have been disadvantaged by the office's actions can make a complaint to the Ombudsman's Special Advisor on Taxation.

State Ombudsman

Australia has a devolved system for the ombudsman, where individual states establish their own offices. The Office of the Ombudsman of South Australia was created by an act of the South Australian Parliament at the end of 1972. The following figures show the expansion of the staff component for this particular state office:

1972 (7)	1999 (16)
Ombudsman	Ombudsman
Senior Investigating Officer	Deputy Ombudsman
Investigating Officer	6 Investigating Officers
Administrative Officer	Senior Legal Officer
Secretary to the Ombudsman	3 Assessment Officers
2 Typists	Ombudsman's Administrative Assistant
	Research Officer
	2 Clerical Officers
726 complaints	4432 complaints (1996/7)
	65 FOI applications

Pertinent Legislation

Neither the Australian Federal Constitution nor the constitutional acts of the states provide for an Office of the Ombudsman, rather it is established by law. The principle legislation governing activity of the ombudsman remains the Ombudsman Act. However, later legislation expanded the jurisdiction of the ombudsman. Specifically,

in 1992 the Freedom of Information Act gave the ombudsman power to review decisions regarding access to information. A Whistleblowers Protection Act was passed in 1993. Additionally, 1996 amendments to the Local Government Act gave the ombudsman the specific role of reviewing and reporting on decisions by Councils to preclude the public from meetings or to refuse access to minutes of meetings. The pertinence of these statutes lies in the degree to which they have steadily expanded the powers and jurisdiction of the ombudsman.

Argentina uses the same nomenclature for the post in Spanish, *Defensor del Pueblo*, as the South African Public Protector. In the Argentine Constitution, the post is an independent organ with full autonomy and not liable to instruction from any agency. The Defensor is appointed for one renewable 5-year term and installed and removed by a two-thirds majority vote of parliament. Specifically, a bicameral committee of 14, with equal membership from the two chambers (Art.2), can propose one to three individuals for the post. The chambers then vote, with a run-off of the top two in the event of no outright majority. The bicameral committee also designates two Deputy Defensors. The salaries of the deputies are determined by parliament.

The Defensor may investigate, on his own initiative or a complaint, the actions of the Argentine public service that potentially imply an illegitimate, defective, irregular, abusive, arbitrary, discriminatory, or negligent action (Art.14) which may have individual or collective consequences on the public. Importantly, the prescribing legislation states that without prejudice to elements of Article 14, the Defensor must pay particular attention to those actions that "denote a general or systemic failure of public administration, seeking to find mechanisms which can prevent this failure" (Art.15). The Defensor's jurisdiction extends to all state or majority controlled state organs, with the exception of the judicial and legislative branches of government, the municipality of the capital Buenos Aires, and the police and defense forces. Complaints must be made in writing with appropriate details. The Defensor's services are free to the public, but the Defensor may decline to pursue a complaint lacking substance, submitted in bad faith, or with an impending judicial or administrative outcome.

Article 27 allows the Defensor to propose legislative amendments to Parliament. Article 30 clarifies that the bicameral committee is responsible for all parliamentary contact with the Defensor. Under Article 31, all annual and special reports by the Defensor are published in the Argentine version of the Hansard and copies are sent to the executive (Poder Ejecutivo Nacional). The bicameral parliamentary committee must approve the administrative and functional structure of the Defensor's office, along with the basic format for its internal operation.

A Few Cases

The Argentine Defensor is typical of most ombudsman offices internationally in having to address a broad array of policy issues with a wide range of government and public organs. A look at two cases from Argentina illustrates this point.

The Argentine Defensor received a complaint from a citizen regarding the lack of enforcement of an official ban on smoking in the Department of Law and Social Sciences at the University of Buenos Aires. The Defensor acted by requesting information from the University regarding what steps it had taken to protect the health of students in that Department and in the university at large.

In another case, the Defensor approached the Ministry of the Interior regarding steps its Directorate of Road Safety had taken to decrease road accidents in Argentina. The Defensor went as far as to request information regarding safety matters on National Road No.9, between Buenos Aires and Cordoba, with statistics for accidents during the prior 18 months. A request was also made for information on which provinces had complied with National Transit Law No.24.284 and were adhering to the Federal Advisory of the Department. This intervention was significant because civic organizations had presented information demonstrating that road accidents are the leading cause of death in Argentina, and that Argentina ranks 5th in the world in traffic related fatalities. With this information, the Defensor felt the problem was grave enough to warrant intervention and a search for answers to the problem.

The **United Kingdom** has a Parliamentary Commissioner for Administration, who operates at the national level, and a Local Government Ombudsman to investigate complaints of injustice arising from maladministration by local authorities and certain other bodies. There are three in England, each dealing with complaints for their respective third of the country. They investigate complaints about most council matters including housing, education, planning, social services, consumer protection, drainage and council tax. The ombudsman can investigate a complaint about how the council executed policy, but cannot investigate based on a citizen's disagreement with that policy.

A complainant must first afford the local council an opportunity to address the matter. If the complainant is still not satisfied, he or she may address the Local Government Ombudsman. According to the local ombudsman, the objective of the office is to seek satisfactory redress for complainants and improve administration for the authorities. Indeed, since 1989 they have had the power to issue advice on good administrative practice in local government. To date, they have published five "*Guidance on Good Practice Notes*" topics ranging from setting up complaints systems, administrative practice, council housing repairs, members' interests, and disposal of land. In 1997, they published a Digest of Cases for the previous year.

In **Ireland**, the ombudsman is considered to be an investigator of maladministration, rather than of corruption. His purview would fall more within the specific concept of administrative justice. The ombudsman also performs three other roles that amplify his ambit; acting as the Freedom of Information Commissioner, a Referendum Commissioner and Chairman of the Public Offices Commission. As the Freedom of Information Commissioner, the ombudsman is responsible for appeals under the Freedom of Information Act. As a Referendum Commissioner, the ombudsman is to provide impartial information during a referendum.

It is as Chairman of the Public Offices Commission that the Irish ombudsman deals most with corruption. The Commission, created by the 1995 Ethics in Public Office Act, comprises five individuals: the Ombudsman, the Comptroller, and the Speaker and Clerks of the two houses of Parliament. The Commission is a unique creation in that it is an independent committee established with power to investigate unethical behavior by members of the legislature or executive, but its members are sufficiently close to the system to have an understanding of its nuances. However, corruption matters of substantial public concern would be investigated by a specific Tribunal of Inquiry mandated by Parliament. For example, in the mid 1990s when evidence of misconduct by the former Prime Minister Charles Haughey began to mount, the Irish parliament moved to create the McCracken Tribunal, with a wide terms of reference to investigate the allegations.

The Irish experience indicates that major anti-corruption inquiries be directed by Parliament, while the ombudsman (through the Public Offices Commission) may look at monitoring and investigating basic compliance with the regulations on disclosure of financial interests and receipt of gifts.

Norway operates under a system of multiple ombudsmen. In 1952, a Defense Force Ombudsman was created. Four years later, an Ombudsman for Conscientious Objectors was instituted. Creation of an Ombudsman for Public Administration followed in 1962. In the course of the 1970s and early 1980s, three more were added: the Consumer Ombudsman, the Ombudsman for Equal Status, and the Ombudsman for Children.

The legislation creating the Ombudsman for Public Administration culminated more than a decade of debate. Of the many ombudsmen in Norway, this office has the greatest jurisdiction, covering the entire public administration (with the exception of Parliament), decisions of the king in council, and matters of the Law Courts and Auditor General.

A brief examination of the Consumer Ombudsman reveals another interesting aspect of the Norwegian case. The Consumer Ombudsman acts as a watchdog to prevent abuse relative to the Marketing Control Act of 1962. The ombudsman must pay due regard to sexual equality, with special attention to advertising in the media. In contrast to other ombudsmen, the Consumer Ombudsman has the right to issue punitive reactions to violations of rules or prohibitions in connection with the Marketing Control Act. If no agreement is reached, such cases from the Consumer Ombudsman can be appealed before the Market Council, whose judgment is final. In a similar manner, consumers, businesspersons, and wage-earners, can forward cases to the Market Council. The Council, within its own sector, has the same authority as a court of law. It can forbid an action or contract it considers unreasonable, and its decisions may not be appealed. This means that the nine member Market Council functions as a form of appellate court in relation to decisions of the Consumer Ombudsman. [13]

[13] "The Ombudsman - a Democratic Corrective," Helge Seip; Produced for the Ministry of Foreign Affairs by Nyit fra Norge. Forwarded to NDI by the Norwegian Embassy in South Africa

From a global perspective, Norway represents another unique ombudsman formulation, with many ombudsmen devoted to a particular sphere of public support. Additionally, the powers that Norway allows the Consumer Ombudsman to issue punitive sanctions and participate in alternative structures (such as the Market Council) suggest other possibilities for the nature of ombudsman work.

Conclusion

The preceding sections broadly diagram the panoply of ombudsman configurations throughout the world. The selection was intended to highlight the diversity of features in use from country to country.

Amid the many ombudsman offices with differing jurisdictions, powers, and structures, Norway stands out as a unique case. The Irish model is generally more traditional, yet it has the particular feature of giving the ombudsman a specialized role in maintaining proper behavior by government officials. The French and Australian examples demonstrate the organic nature of developing an office, while the Namibian and Argentine reviews highlight the value of leadership in interpreting the role of the ombudsman. These examples, along with the others raised in this paper, demonstrate that each country determines what system best addresses the particular needs of its people. Ontario Ombudsman Jamieson emphasized this at a recent conference for Southern African Ombudsmen. She suggested that:

> *…It would be a great disservice to your country, a great disservice to your people and to Africa, to import from Europe or North America or Australia a style of ombudsman which may be perfectly appropriate there, but which is inappropriate and even irrelevant to your circumstances.*[14]

[14] "Enhancing Human Rights and Strengthening Government Accountability: Redesigning the Ombudsman for the 21st Century," Presentation by Roberta Jamieson, Ombudsman of Ontario, Canada; The Ombudsman in Africa in the New Millenium: Eastern and Southern Africa Regional Ombudsman Conference; Kampala, Uganda, 25 August, 1998.

IV. DISCUSSION POINTS

Any review of an ombudsman office must take into account a variety of perspectives on its fit into the political operation of a country, its effectiveness, and its interpretation and implementation of constitutional requirements. What follows are glimpses of these discussions in South Africa in the context of international debate.

Independence: Relationship to the Executive

In many cases, ombudsmen say that perceptions of independence and a consistent legal framework are critical to their effective functioning. Yet there are no strict formulas for guaranteeing independence, and assessments of independence often vary among the range of stakeholders in a given country. A survey of international experience suggests that the issue of independence is often subject to heated debate, featuring the specific legislative framework, the nuts and bolts of operational structure, funding arrangements, government intentions, public opinion and other perceptual issues. Each country and its relevant stakeholders often arrive at different conclusions, but typically consensus and precedent determine the way forward.

While there is widespread international discussion by ombudsmen of the importance of independence to their post, there is not a uniform manner in which the issue has been addressed. In some cases, there appears to be direct conflict between an ombudsman's governing legislation itself and independence. For instance, in the example of Ireland, the Ombudsman Act contains a provision requiring the ombudsman to cease an investigation if requested to do so by a Minister. The Ombudsman's Office in Ireland notes that this provision violates the notion of independence, but that it has never been used by a Minister, and that massive public outcry would prevent this sort of executive intervention. In this case, the Office of the Ombudsman has been able to operate very successfully despite statutory provisions that are potentially destructive to its independence. Thus, some ombudsmen say that while legislation may prescribe provisions that seem an assault on their independence, in practical or daily experience it is not compromised. Nonetheless, ombudsmen argue that a legal basis for intervention might allow space for compromising independence, and that this defies the constitutional principle.

Within the South African context, questions of independence have been raised with respect to the appointment of the Deputy Public Protector and the control of the budget of the Office of the Public Protector. Currently, legislation provides for the deputy post to be appointed by the Minister of Justice. In addition, the budget of the Public Protector forms part of the Department of Justice budget and is voted on by Parliament as a component of the department's budget. Those interviewed in the course of this research stated their belief that the Public Protector operates with

complete independence, but some raised concerns that these two issues left the door open to a potential breach of independence.

Deputy Public Protector

With regard to appointment of a Deputy Public Protector, international experience is mixed. In some Southern Africa cases -- Zimbabwe and Namibia are examples -- the executive appoints the deputy, and in fact, even the Ombudsman himself or herself.[15] This is also the case in France, where leaders determined that the public would place greater faith in an Ombudsman selected by the executive. Yet, in Argentina and Costa Rica, the bicameral parliamentary committee appoints the Ombudsman also appoints the deputy, and in Spain, the Defensor Del Pueblo appoints his or her two deputies. South Africa presents a unique case in having the Public Protector appointed by the legislative branch, while the executive appoints the deputy.

Budgets

On budgetary control, opinions vary. In the minds of some, funding for the ombudsman office should be approved directly by Parliament as a matter of principle:

> *Probably, the Ombudsman's dependence on finances from the Minister of Justice (or any Ministry at all) is an inhibiting factor. How impartial is he in practice when he deals with cases from a Ministry he has to depend on?*[16]

The Ombudsman of Namibia has noted that while there may potentially be a perceptual loss of independence in having financing through the office of a Minister, there are benefits to the relationship. Specifically, where a Minister is involved, the ombudsman is free to concentrate on the duties at hand, instead of having to represent himself or herself before Cabinet and Parliament repeatedly to answer questions or fight for greater resources. The ombudsman, through the Minister, may have a more influential voice and a regular channel of communication with these bodies.

As there is no predominance of funding mechanisms internationally, debate over the perceptual and practical aspects of budget arrangements persists. In South Africa, many view the issue of funding within the larger context created by Chapter 9 of the Constitution.

A 1999 Constitutional Court case, the *New National Party of South Africa v. The Government of the Republic of South Africa*, illuminates the issue. While the case centered on another Chapter 9 institution, the Independent Electoral Commission, the Court wrote in its judgment about issues pertaining more broadly to Chapter 9 institutions. In the decision, Judge Pius Langa stated that aspects of the existing funding arrangement were potentially problematic. He wrote that while Chapter 9

[15] Legislation in Botswana, Lesotho and Malawi does not provide for deputy offices.
[16] Hon. A.S. Chigwedere, Member of Parliament, Zimbabwe, at the 1995 conference on the Ombudsman in Southern Africa.

institutions should not be entitled to set their own budgets, they may have certain expectations:

> *It is for Parliament, not the executive arm of government, to provide for funding reasonably sufficient to enable (them) to carry out (their) constitutional mandate. (They) must accordingly be afforded adequate opportunity to defend (their) budgetary requirements before Parliament or its relevant committees."* [17]

Beyond matters of funding, the decision offers additional perspective on the legal framework around Chapter 9 institutions. Judge Langa also stated, for instance, that:

> *The establishment of the Commission and the other institutions under Chapter 9 of the Constitution are a new development on the South African scene. They are the product of the new constitutionalism and their advent inevitably has important implications for other organs of state who must understand and recognize their respective roles in the new constitutional arrangement. The Constitution places a constitutional obligation on those organs of state to assist and protect (these institutions) in order to ensure...independence, impartiality, dignity and effectiveness. If this means that old legislative and policy arrangements, public administration and budgetary conventions must be adjusted to be brought into line with the new constitutional prescripts, so be it.* [18]

Another view on the topic emanates from law scholars at the University of Cape Town, who last year prepared a *Report on Parliamentary Oversight and Accountability* for the Speaker of Parliament. It includes a review on the relationship between the Chapter 9 institutions and Parliament. It argues that aspects of the current set-up in relation to Chapter 9 institutions are problematic, particularly with regard to funding matters. The crux of the issue, the writers say, is that the Constitution sets these institutions apart, warranting some special treatment.

Again, it must be noted with respect to the Office of the Public Protector that the current structure of the funding arrangement is not a practical problem --in fact the budget has continuously increased over the last three years-- but that it is the perception and potential that alarms some.

Dialogue

The issue of ombudsman's independence, complex and specialized within the context of individual countries, must be approached through constructive and lengthy dialogue inside and outside government. This is an important theme in the Constitutional Court case mentioned earlier. Judge Langa wrote:

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[17] Roberta Jamieson..

[18] New National Party v Government of the Republic of South Africa and Others, 1999 (5) BCLR 489 (CC).

> *It is to be expected that between government and/or Parliament and any independent constitutional institution, that there will be areas of tension concerning the reasonableness of any amount of money required by a particular institution to enable it to fulfill its functions effectively. It is however incumbent upon the parties to make every effort to resolve that tension and reach agreement by negotiation in good faith. This would no doubt entail considerable meaningful discussion, exchange of relevant information, a genuine attempt by each party to understand the needs and constraints of the other and the mutual desire to reach a reasonable conclusion.* [19]

Accountability: Relationship with Parliament

Ombudsmen almost universally write or comment on the importance of their relationship with Parliament. The Commissioner for Administration (the Ombudsman) of Cyprus at a recent European Conference explained very simply the importance of a relationship with Parliament:

> *I attach great importance to the effort of maintaining close relations with the House of Representatives. One of the measures that have already been taken for achieving this, was the setting up by the House of Representatives, following my recommendation, of the Parliamentary Committee in the summer of 1991.*[20]

In his 3rd Annual Report, the Ombudsman of Malawi makes detailed reference to his lack of satisfaction with his relationship with Parliament. He said:

> *A probably more worrying attitude is that shown by the Honorable Members of the National Assembly…It is most discouraging to note that members of the august house have not debated the Ombudsman's two previous annual reports even though, for all intents and purposes, the Ombudsman is an extension of the House, and that under the Constitution, the Ombudsman is indeed their own "baby."* [21]

Many ombudsmen point to the benefits of a direct relationship and frequent contact with Parliament. Common channels are through committees, debates of reports and staff liaisons to Parliament. As a start, tensions regarding the question of independence can be eased. In addition, the combined powers of the institutions may ensure that people receive better service. In this vein, Chapter 9 institutions are a benefit and resource to Parliament in fulfilling its own constitutional oversight responsibilities. The Public Protector's reports, inclusive of their recommendations

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[19] Ibid.

[20] Report of the Proceedings of the 5th Round Table with European Ombudsman, Limasol, Cyprus, 8-10 May, 1996; Council of Europe; Council of Europe Publishing, p.99.

[21] 3rd Annual Report of the Ombudsman, Republic of Malawi, 1 April 1997- 31 March 1998, p.17.

on improving government operations and policy, can be a great benefit to a variety of parliamentary committees, both in the national Parliament and provincial legislatures.

The Public Protector Act says that Parliament "shall…appoint a committee for the purposes of considering matters referred to it" by the Public Protector. Debate exists over whether the committee must be specifically dedicated to the Public Protector, or whether, as under the current arrangement, the responsibility can be covered by a portfolio committee, such as Justice and Constitutional Development. The University of Cape Town report suggests another option: creating a standing committee to oversee all Chapter 9 institutions.

Whether a specific committee is established in Parliament to attend to the Office of the Public Protector is ultimately a matter and decision internal to Parliament. Issues of staffing, Member time, and the fairness to other potentially deserving institutions or policy areas will feature. Some suggest that by keeping the Public Protector within the Justice Committee, a core group of parliamentarians are developing more expertise on issues relevant to the Public Protector. Given the prominence of the committee itself, members could become effective champions of the Public Protector.

One specific issue of mutual consideration to Parliament and the Public Protector is that of a clear routing and debate format for the reports submitted by the Public Protector. The UCT report states that representatives of Chapter 9 institutions generally complained about the absence of a format for consideration and debate of their reports. Justice Committee Chairman Johnny de Lange has also stated that this is a concern. The evolution of an effective system for routing these reports might have a beneficial effect on the overall debate and strengthen relations.

In some countries the involvement of Parliament is even more direct. This occurs, for instance, in the case of an "MP filter" as in the United Kingdom, where the ombudsman is specifically called the Parliamentary Commissioner for Administration. The elected Members of the House of Commons are indispensable to the work of the Parliamentary Ombudsman, because the ombudsman may not be approached directly by a member of the public. A complaint must be submitted through an MP; and while this is normally the complainant's constituency MP, it need not be so. The United Kingdom has worked through the problem this way as one commentator has written because, for that country, the ombudsman is:

> *…designed to supplement, not to replace, the work of MPs in investigating complaints and taking up injustices on behalf of their constituents ... The benefits of the MP filter are that it enables MPs to keep in touch with the day-to-day problems and concerns of their constituents; in addition, the ombudsman is asked to investigate only those complaints which MPs know they cannot settle themselves. One of an MP's most important jobs is to scrutinize the actions of government, and the impact administrative decisions have on individual people, helps this work.*[22]

[22] "The Ombudsman in Britain," by Christopher Pick, produced and published by the Foreign & Commonwealth Office, June 1994, p.6

There are many different kinds of relationships that can be maintained between the ombudsman and Parliament. These may be through a specific committee as in the Argentine case, the MP filter as in the United Kingdom, or any other device determined by a country to satisfy that necessary linkage. Apart from these formalized answers, some highlight the need to promote cooperation and understanding through less formal channels, such as including MPs in ombudsman association meetings, as has occurred in southern Africa.

Co-ordination: Relationship to Other Agencies

Questions relating to co-ordination in South Africa stem from the particular case of having numerous government agencies or institutions to investigate corruption. International study suggests that most countries do not deploy as many agencies or operations. However, only Botswana and Hong Kong can be cited as locations where a single agency combines investigation and prosecution, along with features more traditional of an ombudsman.

South Africa has debated the value of one national anti-corruption agency. Key members of the anti-corruption effort, such as Director Stephan Grobler of the South African Police Service Anti-Corruption Unit, have publicly written and argued that a single agency would be the best approach for the country. This may or may not be what government decides to pursue.

With impetus from the November 1998 Public Sector Summit, agencies with an anti-corruption jurisdiction have an established forum in which they meet to discuss co-ordination efforts. Following the first meeting in January 1999 in East London, the group has been drafting a booklet outlining strategies for curbing corruption. The Office of the Public Protector, in its contribution "Suggestions Regarding Guidelines to be Included in the Intended Manual on Curbing Corruption, Maladminstration and Fraud," offered that:

> *It is argued that there are overlaps in the powers and functions of such institutions and that the funding of all these institutions should be questioned, especially in light of the current difficult financial situation we find ourselves in. However, to the properly informed, it should be clear that this criticism is unfounded. The institutions involved, such as the Public Protector, the Heath Special Investigating Unit, the South African Police Service, the Auditor General, and the Office for Serious Economic Offenses all have their specific functions and mandates. Although it might appear in theory as if there are overlaps, practice has proven this seldom to be the case. It must, however, be conceded that where overlaps do occur, it is as a result of inadequate contact and communication amongst the institutions involved. This is an issue that should be addressed as a matter of priority.* [23]

[23] "Suggestions Regarding Guidelines to be Included in the Intended Manual on Curbing Corruption, Maladminstration and Fraud" from the Office of the Public Protector.

In the nearly 18-months since the forum began meeting, some formal measures have been put in place to advance co-operation, and natural collaboration has unfolded around specific cases. The formal measures include designating contact persons among the agencies, drafting a co-operation agreement and issuing joint press releases. Advocate Gerhard Visagie of the Heath Special Investigating Unit, who chaired the forum meetings, says more can be done. Yet recent collaboration between the Office of the Public Protector, the Auditor General's Office and the Heath Special Investigating Unit in a recent Gauteng provincial government investigation, has provided positive experience for future interaction. The suggestion by these agencies is that co-ordination maximizes their individual strengths.

In the absence of a single agency, co-ordination is critical. Better co-ordination can also help clarify the individual activities of each agency vis-a-vis the others and this can, in turn, assist public understanding of their roles and thus a sense of greater public confidence in government. According to anti-corruption agency officials, there is far greater emphasis on co-operation than existed previously. Staff in the Public Protector's office, in particular, cite the benefits of co-operative efforts and the spirit of trust and goodwill between the relevant agencies. They have a firmly held conception that, afforded the time to develop methods of collaboration, they will be well conducted and yield the maximum results.

Non-Governmental Support

Adv. Gawanas, Ombudsman of Namibia, wrote in a recent annual report about the benefits of good coordinating efforts by an ombudsman office. She writes that:

> *We have developed a good working relationship with some institutions by enlisting their assistance in dealing with complaints which either fall outside our jurisdiction or which I believe may be appropriately handled by such institutions. To that end, I want to commend in particular the Office of the Labour Commissioner and the Legal Assistance Centre as our partner agencies. Likewise, we have dealt with complainants who were referred to us by their offices. This collaborative effort is most welcome as it complements our limited resources in dealing with the increase in complaints.*[24]

Civil society collaboration is also important, and efforts are underway to promote dialogue among stakeholders in government, the private sector and civil society. A national anti-corruption cross-sectoral task team, formed after the April 1999 national anti-corruption summit, has been meeting to finalize a constitution for a national anti-corruption forum. The body is to be constituted in September 2000 as an independent, non-statutory body. With its diverse representation, the forum will play a central role in driving the national anti-corruption strategy

[24] Annual Report of the Ombudsman of Namibia, 1 January - 31 December, 1998; p.1.

Some commentators suggested that media coverage of the agencies has been uneven, with some units garnering more attention. This may cause a speculation that those units are either a more effective or more essential bulwark against misconduct. This has the potentially damaging effect of undermining the credibility and power of the Public Protector's work. Co-ordination, perhaps through joint media releases and broader outreach efforts, might help clarify the uniqueness of the Public Protector. The current public awareness campaign run jointly by the Office of the Public Protector and Lawyers for Human Rights might be an effective tool in addressing this.

Accessibility: Relationship to the People

The ombudsman's relationship with the people is considered, both in written and verbal examples, to be the most important relationship for the ombudsman. In effect, the other relationships, with the executive, Parliament, or other government agencies are to a certain extent relevant to the ombudsman to the degree in which they facilitate or hinder his or her service to the people. The basis for this idea lies in the fact that most national constitutions create the Office of the Ombudsman as a measure to protect and support the citizen.

Most ombudsmen either have or seek methods of providing the people with access to enable them to exercise those rights afforded to them. In certain cases, such as those reflected earlier, provincial offices or independent ombudsman offices operate at sub-national level. There is, however, no particular unifying factor in the cases of countries that deploy a system of either provincial offices or sub-national independent Ombudsman offices. The countries that choose these methods differ in physical size, population and infrastructure. Nor is there any hemispheric similarity. South Africa is larger than some and smaller than others in land mass, more or less populous depending on the case. It is a decision that each country makes for its own reasons.

Where these do not exist, many ombudsman, such as the Ombudsman of Namibia, will frequently use travel clinics or make visits to locations to allow the a direct contact which facilitates the people's participation.

In the South African case, the Constitution mandates accessibility. Section 182 (4) states that: *"the Public Protector must be accessible to all persons and communities."* To that end, the Public Protector has sought to establish regional offices in order to be closer to the people.

Regional Offices: *North West*

The North West Regional office was officially opened on 1 April 1999. It is consistent with the pattern of development of provincial offices sought by the Public Protector. Specifically, its budget is provided through the national Pretoria office and it operates on lines of accountability designed by and directed by Pretoria.

Prior to being absorbed the office was known as the Bophuthatswana Ombudsman Office, with a jurisdiction limited to the former homeland. Thereafter, it was administered by the North West Provincial Government, based on the expectation set

by the interim constitution that Provincial Public Protectors would be created. However, the 1996 Constitution did not make this provision.[25] Currently, the office is managed centrally by a head office in Mafikeng and five district offices. Clinics are also held periodically in particularly remote areas to provide access to the services of the Public Protector. There are currently 37 staff members serving in North West Province. Regional Representative Mike D'Enis reports that he will have fielded 5,000 complaints in 1999, and feels the need for more investigators.

In discussing issues of accessibility, D'Enis spoke about some of the difficulties in communication experienced in many cases by residents of the North West. Telecommunications facilities, for instance, are not always or immediately accessible and many residents are unable to write. To this extent, D'Enis argues that a regional representative and district offices allow citizens to utilize the protections and benefits of the Public Protector.

Regional Offices: Eastern Cape

According to Pretoria staff, the establishment of in the Eastern Cape province has always been considered a priority. An office for the Eastern Cape was officially designated and opened on 22 June 1999.

The Office of the Premier of the Eastern Cape has extended substantial assistance. The national office of the Public Protector also provided infrastructure, such as a fax machine and photocopier maintenance support. Currently the staff comprises eight investigators and two full-time support staff. Adv. Nomsa Thomas, senior investigator for the regional office, indicates that while staff members work enormously hard, extended training in legal matters and investigation techniques will improve their efficiency.

Thomas indicates that the relationship with the provincial executive is strong. The Public Protector has also stated that the "assistance is showing the commitment of the Eastern Cape Provincial Government to promote good governance in that Province and recognize the role of the Public Protector in this regard."[26]

Thomas suggests that the current arrangement seems to reflect genuine effort on all sides to try to meet constitutional obligations – the Public Protector to be accessible, the provincial executive to support the work of this Chapter 9 institution. Both are seeking to serve the people.

Although established with the assistance of the Eastern Cape provincial Government, it will continue as a Regional Office and be funded by the National Office during the course of the current financial year. The Office of the Public Protector emphasizes that it did not incorporate or absorb the office of the former Transkei Ombudsman, as happened in the case of the North West Regional Office. They stress that the Eastern

[25] Letter to NDI from Adv. C H Fourie.

[26] Written testimony of the Public Protector submitted for the 19 March, 1999, hearing of the Portfolio Committee on Justice.

Cape office is a new establishment that has nothing to do with the former Transkei. The office of the former Transkei Ombudsman is currently in a process of rationalization, being attended to by the Department of Justice and the Eastern Cape Provincial Government. [27]

Department of Public Service and Administration Report on Blueprint for Organization and Post Establishment

On 11 November 1998, former Director General of Public Service and Administration P. Ncholo directed a letter to Public Protector Baqwa on behalf of the Department. The purpose of the letter (Subject: Blue Print for Organization and Post Establishment of the Office of the Public Protector) was to concur with the expansion of the Office of the Public Protector as set out in an annex of the report for which the letter served as cover. The report concluded a detailed investigation of the Office of the Public Protector conducted by the Department of Public Service and Administration (DPSA) with supervision by its Chief Directorate: Organizational Matters.

The goal of the DPSA review was summarized as follows:

> *… it was decided, in collaboration with the budget program manager of State Expenditure and with the concurrence of the Public Protector that a proposed BLUE PRINT organizational structure and post establishment be provided to be phased in over a period of three to five years subject to availability of funds. Subsequently, based on statistics some projections were made (which, as agreed by all stakeholders would be reviewed in 12 to 18 months time) and a structure and post establishment for financial year 2000/2001 was established.*[28]

The DPSA report focused very clearly on the internal operations of the Office of the Public Protector, analyzing each branch and post, with the respective subdivisions and sub-categories of each. The report is impressive in its level of detail, determining, for example: average caseloads (Sec. 30), specific case backlog numbers, and average and expected inflow of complaints (Secs. 31-32).

In discussion of a projected Branch: Regional Investigations and Services, the examiners from the DPSA were able to conclude about current operations that:

> *Complaints lodged at the office of the Public Protector are received from all over the country. Many of the complaints deal with the conduct of provincial or local authorities or regional offices of national departments. The workload in the office at present can only be efficiently dealt with should the office be enabled to decentralize into regional offices. This will improve the communication and accessibility between the agencies involved, the public, and the Public Protector,*

[27] Letter to NDI from Adv. C H Fourie.

[28] Report on the Proposed Blueprint: Organisation and Post Establishment of the Public Protector, 26 October, 1998; Department of Public Service and Administration, para. 8, p.3.

> *which will lead to more effective investigations, remedial actions and administration.*[29]

To this extent, the Office of the Public Protector has the support of the Department of Public Administration in helping decentralize staffing operations to ensure the fullest accessibility to the people.

On a more general level, staff in the Office of the Public Protector state that they take the constitutional mandate of accessibility very seriously. It is clear they could reduce their caseload by insisting that complainants exhaust other avenues before the Public Protector takes on the case. In Ireland, complaints can only be made to the Ombudsman Office once all reasonable attempts to solve the problem have been exhausted by the complainant. In most other countries, the same applies, or the complainant must at least exhaust all avenues of action relative to the internal operations of the department in question. The complainant must first use the internal complaints and redress system of the department that is the source of the complaint. Staff in South Africa note however, that while the South African Public Protector should also be used as a last resort, they perceive citizens to have a greater sense of confidence by dealing through the Public Protector in pursuing a possibly legitimate case. There may be too much awe or fear working directly with a given department.

Some argue that the process of devolution has been fittingly incremental. They say it is too soon for the Public Protector to argue for massive new staffing and a complete structure of regional offices, and that a gradual roll-out, with detailed training plans is would be more prudent. The sense is that the Office of the Public Protector should consolidate what it has, strengthen these arrangements, demonstrate the successes of the current deconcentration, and then argue for more.

Nonetheless, many suggest that the devolution of the Office of the Public Protector is good for South Africa and a common goal of the Public Protector's office, the executive, and Parliament. The process may be particularly important in the context of ongoing local government transformation and government's emphasis on service delivery at local level.

[29] Ibid, para.19, p.5.

V. OTHER ISSUES

Attempted Politicization of the Office

In the South African context, an important aspect of the Public Protector's role is anti-corruption. To a large extent, many unofficially say this emphasis is created by opposition parties who seek to use the Office of the Public Protector to inflict damage on other parties, particularly the governing party. Senior staff indicated a frustration that political parties will seek media attention when requesting an investigation of possible corruption, but not seek media attention when the Public Protector finds in the same case that there was no malfeasance. This can jeopardize the role of the Public Protector.

The Value of the Ombudsman's Recommendations

In line with provisions of Section 182 (1) of the Constitution and under sections 8 (1) and (2) of the Public Protector Act of 1994, the Public Protector is authorized to make recommendations to Parliament regarding ways to improve public administration based upon discoveries or insights resulting from investigations. This power is consistent with the Office of the Ombudsman in most countries internationally and is considered to be one of the most vital and beneficial components of the ombudsman role in society. For instance, in recalling the example of the Mediateur de la Republique, the French system evolved to the point where leaders wanted the input of the Ombudsman on legislation. The belief was that his recommendations, based on the experience of the office, would help prevent future statute-related problems.

Because of its objectivity and independence, the Public Protector has a unique opportunity to play a positive role in shaping public behavior and guiding administrative action. As a reflection of this point, it is instructive to note that in a recent meeting of the Public Protector with the Deputy Director of the United States Office of Government Ethics (OGE), an important part of the discussion related to the OGE practice of providing "informal advisory opinions" on administrative questions and cataloguing them for collective memory and use.

Along with the United Kingdom's "Guidance on Good Practice Notes" by the Local Government Ombudsman, these French and American examples suggest that the ombudsman can play an important part in improving state administration and ethical behavior through his or her reflections on cases based on experience and systemic investigations.[30]

[30] It has been noted that the Ombudsman can also play a vital role in preventing problems, not only with the hindsight of investigation, but also in its general relationship to the question of ethics. Adv. Pienaar also notes in the previous memorandum to Professor Lodge that the ombudsman:

At a higher level, consideration of the role of the recommendations of the ombudsman with regard to administrative functioning may be placed within the context of parliamentary oversight of the executive. This is raised as both the National Assembly and the National Council of Provinces examine means to amplify and improve their oversight activities.

Maladministration and Service Delivery

The Namibian Ombudsman has stated "*Our ultimate goal should be to bring about improvements in the performance and integrity of administrative process*."

The performance and integrity of the administrative process would seem to be critical particularly in the South African context. President Mbeki and the South African government have set goals for the transformation of South African society to address the inequalities created under the apartheid system. Specifically because these goals are broad and challenging, they will require the state administrative apparatus to work as efficiently as possible in order to guarantee service delivery. Maladministration, in this context, is destructive to that achievement. Indeed, senior staff at the Office of the Public Protector have noted that they wish to see their role, at least in part, as related to effective service delivery.

It is worth underscoring that a consistent view of the ombudsman office, seen for instance in the French perspective, is one which highlights the ombudsman's role is assisting better public administration by seeing where it is failing through maladministration. The investigation, detection, and prevention of maladministration, which can often be a result not of corrupt intent but misunderstanding or lack of clarity of legislative intent, can result in better administration.

"… can investigate matters that fall into the frequently grey and ill-defined area of ethics, where a law may not have been transgressed but where the community's sense of right and wrong is offended. Because of this characteristic responsibility of the ombudsman, the institution is able to operate as an early warning system, with the narrow responsibility to monitor *inter alia* the standards of ethical conduct that fall short of the narrow definition of criminal corruption. He may, thus, be compared to the caged canary carried down coal mines to detect noxious gases, or to frogs that serve as indicators of the presence of toxic pollutants in water sources. In this sense, the ombudsman is uniquely placed to report on what Transparency International has termed "integrity slippage," which is often a precursor to or is otherwise associated with further forms of misconduct and corruption."

Explaining Administrative Action/Public Education

By helping correct maladministration, the Public Protector serves to help government effectively meet it policy goals by finding administrative malfunction and helping to cease or correct it. Often, however, complaints are directed to the ombudsman from a lack of understanding of relevant law or regulation. It has thus also been argued that the ombudsman serves another role more explicitly positive. That is, to help clarify government action to a citizenry that may not understand it. Through the ombudsman, the citizenry becomes better informed about government policies and regulation.

At the proceedings of the 5th Roundtable with European Ombudsman held in Cyprus in 1996, a representative from Belgium offered that:

> *It is clear that the ombudsman's duty is to alleviate the malfunctioning of regional administrations and to make good any wrongful decisions, it is also his task to explain and justify administrative action in cases where it is correct, to remind citizens that certain principles are not subject to exceptions, and that on occasion complaints are wrongly brought, in all good faith, against public services.*[31]

This phenomenon surfaced, for instance, in discussions with the Regional Representative of the North West Regional Office who agreed that this is a prevalent part of the Public Protector's work when dealing directly with citizens in the province. Individuals approach the office with incomprehension and, often, anger. A result of interaction with the Office of the Public Protector is a better understanding by the citizens of the exact nature of the applicable regulations and, hopefully, a better relationship with government.

The ombudsman to this degree humanizes the government for the people. Alternatively, many observers note the need to correspondingly remind administrative structures of the need to remember the citizen's humanity. This sense of making government more approachable is echoed in the following commentary regarding the Irish system:

> *Certainly changes in the 1980s have improved the working and mind set of public bodies such as the civil service and state utilities. Many members of the public, especially those living outside the capital still feel that the machinery of the state remains distant, cold, and decidedly bureaucratic in terms of unnecessary rules and regulations. The introduction earlier this year of a Freedom of Information Act will further assist the public in dealing with the bureaucracy and should result in more openness and transparency in their workings...*[32]

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[31] Comments by Mrs.Marie-Jose Chidiac, Premier Conseiller du Mediateur de la Region Wallone; Report of the Proceedings of the 5th Round Table with European Ombudsman, Limasol, Cyprus, 8-10 May, 1996; Council of Europe; Council of Europe Publishing, p.110.

[32] "The Ombudsman: Unwelcome Competition or a Helping Hand for Irish Parliamentarians," by Shane Martin; Law & Government Group, Dublin City University Business School. A paper presented

Staff in the Office of the Public Protector have suggested this same role in relation to their comment about accessibility – that they find citizens are afraid of approaching a impersonal bureaucracy or large administrative structure.

The former Ombudsman of Poland Ewa Letowska, referred to earlier in the context of the relationship of ombudsmanship and democracy, in fact notes both of these as important aspect of ombudsman work. She has written that:

> *Aside from defending individuals and their rights, the ombudsman's other function is to educate the public and state officials. For example, the ombudsman offers instruction to the public on the rule of law and runs a workshop on the principles of civil society…The ombudsman also tries to teach the principles of rule of law and human rights to government administrators.* [33]

Letowska's comments draw out a central point of ombudsman work – the dual role of working both with and for government *and* with and for the people. The ombudsman's principal benefit, recalling the French example, is to work as a *mediator*.

Thus, the ombudsman serves as an approachable go-between, assisting both the people and government through the unique mandates and methods of its work. As the Commissioner observed, the work can be seen as helping produce social harmony.

The Ombudsman as an Alternative to Legal Recourse and the Court System

Invariably, disputes between citizens and government can end up in the judicial process in order to seek remedy or clarification. However, courts often have lengthy processes that can cost both the complainant and government large sums. It has been argued that the ombudsman is one way to alleviate this stress on resources. The same European Ombudsman summit referred to earlier also reported, for instance, that:

> *At the culmination of proceedings, reference was made to the views of a former French Minister that " the ombudsman had provided the citizen with a faster, cheaper, and less formal resolution of his complaints than the courts could deliver. To stop society from becoming as he said "over-juridicized" the ombudsman institution was a proven mechanism for making it unnecessary for every dispute between the citizen and the State to end up in court."* [34]

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at the Third Workshop of Parliamentary Scholars and Parliamentarians, Wroxton, United Kingdom; August 8-9, 1998.

[33] "The Ombudsman and Basic Rights," by Ewa Letowska; East European Constitutional Review, Winter 1995.

[34] Report of the Proceedings of the 5th Round Table with European Ombudsman, Limasol, Cyprus, 8-10 May, 1996; Council of Europe; Council of Europe Publishing, p.110, p.177.

The potential benefit of the ombudsman's work in lowering strain on the court system was also noted earlier in comments by the Investigator General from Zambia.

Additionally, the consideration of ombudsman work being an alternative to strictly legal means of redress was part of the formulations of the Australian state of New South Wales, referred to earlier, in its adoption of an ombudsman. It was noted as part of the deliberations of members of the New South Wales Law Reform Commission that:

> *The Ombudsman is an appropriate official to deal with cases that are unfit for the more elaborate methods and legal sanctions of the courts or existing appellate bodies. He is a proper recipient of complaints about, among other things, rudeness, delay, impartiality, failure to give reasons. It is open for him to investigate in cases where there are other means of redress. He might do so, for example, where the complainant does not want to incur the trouble and expense of a formal appeal, but wishes to be satisfied that the public authority has given a fair consideration of his representations and has not misconceived the relevant law.*[35]

Pertinent Legislation -- Freedom of Information & Whistleblower Protection

As is the case in Australia and a number of countries, the work of the ombudsman is greatly facilitated by pertinent legislation that can affect aspects of information gathering for investigative purposes. The two foremost pieces of legislation in this regard would be freedom of information and whistleblowers provisions.

Resolution No.3, as listed in the Implementation Plan of the Resolutions of the National Anti-Corruption Summit 14-15 April, 1999, commits participants to "develop, encourage, and implement whistle blowing mechanisms and include measures to protect persons who expose and report corrupt and unethical practices."

More broadly, the South African Constitution states in section 32 that "everyone has the right of access to any information held by the state [32(1)(a)] and any information that is held by another person and that is required for the exercise or protection of any rights [32(1)(b)]. Subsection 32(2) requires national legislation providing for this access.

Parliament passed the Promotion of Access to Information Act on 2 February 2000, is now considering the Protected Disclosures bill, intended to protect so-called "whistleblowers." The Office of the Public Protector's support for this legislation is

[35] World Encyclopedia of Parliaments and Legislatures; Sponsored by Research Committee of Legislative Specialists, International Political Science Association and Commonwealth Parliamentary Association, edited by George Thomas Kurian, Volume II; Congressional Quarterly Inc.; Washington, DC,1998, p.831

consistent with that of counterparts in countries with advanced systems for fraud detection and corruption prevention.

The relevance of these measures to the Office of the Public Protector is their direct impact on the number of complaints and the ease of investigation. Specifically, with the Open Democracy law, individuals will have greater access to information that could lead to fault-finding, thus increasing complaints. Whistleblower protection has also been demonstrated internationally to amplify the number of complaints submitted because individuals are safeguarded from reprisals. Additionally, a whistleblower provision, by providing protection, allows the investigative process to proceed more effectively. It also allows an Ombudsman office to obtain information more quickly and more completely because complainants tend to reveal more information.

Training

At a recent international workshop on Strengthening the Ombudsman Office in Africa, a presentation was delivered by Dr. Victor O Ayeni of the Management and Training Services Division, at the Commonwealth Secretariat. His concern was the: "Contemporary Environment of Ombudsman Investigative Work in Africa: Implications and Strategies." In his paper, Ayeni notes what he sees as the critical future issue for ombudsman:

> *Ombudsmanship is a combination of several specialties, notably investigation, legal services, public relations, and general administration. But of all of these, the investigative function is the most critical…To cope effectively with these functions, an investigating officer must be versatile and well-informed, highly analytical yet patient and thorough, humble and tactical, and skilled in communication and interpersonal relations.*[36]

This concern about adequately trained staff has been raised in other countries. Within a South African context, Adv. Thomas of the Public Protector's office in the Eastern Cape spoke about the issue. Hon de Lange also highlighted the importance of training in relation to devolution of the Public Protector's work to provincial level.

Ayeni continued in his paper to note his concerns about the lack of suitable emphasis on the matter:

> *The most disappointing part of all of these is the lack of established arrangements exclusively for providing the training needs of the ombudsman as defined … Interventions in the area have been largely erratic, ad hoc, and unsystematized. In consequence not only is the identified centrality of the*

[36] Dr. Victor O Ayeni, Management and Training Services Division, Commonwealth Secretariat.; "Contemporary Environment of Ombudsman Investigative Work in Africa: Implications and Strategies" Paper presented at the International Workshop on Strengthening the Ombudsman Office in Africa, Pretoria, South Africa, August 1996, p.12

> *investigative function often lost, but the training provided is divorced from the institution's wider context. As said, this situation has to change.*[37]

The Office of the Public Protector has involved its staff in a variety of training courses in South Africa and internationally, and has prioritized annual training for all its staff. In addition, it has offered training to international sources, particularly within the Southern African region.

[37] Ibid.

VI. ADAPTABILITY

As firmly as he maintains training is vital to ombudsman work, Ayeni concedes that there is a larger context in which his concerns must be placed. He states:

> *But there are also certain background works that will be required of the institutions concerned. Most important, perhaps, they will need to plan for the future. They must strategically locate themselves in the governance process and work actively to promote this.*[38]

These remarks by this noted scholar lead into what might be the essential factor for an Ombudsman office as it seeks to maximize its efficiency and delivery in the new millenium – adaptability.

At the Eastern and Southern Africa Regional Ombudsman Conference in Kampala, Uganda in August 1998, Roberta Jamieson, the Ontario Ombudsman, outlined the way forward for ombudsman. The theme of the conference was "The Ombudsman in Africa in the New Millenium" and Ombudsman Jamieson remarks were in her paper "*Enhancing Human Rights and Strengthening Government Accountability: Redesigning the Ombudsman for the 21st Century*." Talking about the growing recognition and appreciation by Canadians of the non-adversarial path of conflict resolution embodied in ombudsman work, she offered that:

> *I believe it is our responsibility as Ombudsman to make our institutions relevant to the realities of our times, to be responsive to the situation, which we encounter. And I do not believe we can do that if we take an Ombudsman model off the shelf and try to make it work in our very different environment. I do not believe we can be relevant and responsive if we leave our offices as they were a decade ago, stagnant and unrenewed, given the rapid changes which are taking place around us at every turn.*[39]

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[38] Ibid

[39] "Enhancing Human Rights and Strengthening Government Accountability: Redesigning the Ombudsman for the 21st Century," Presentation by Roberta Jamieson, Ombudsman of Ontario, Canada; The Ombudsman in Africa in the New Millenium: Eastern and Southern Africa Regional Ombudsman Conference; Kampala, Uganda, 25 August, 1998. Jamieson adds in the same paper a brief example of what she means, stating:

> Traditionally, Ombudsman receive complaints from individuals, but when we are in First Nation communities, we often find many of the complaints about government are presented by a community as collective complaints or by an elder on behalf of others. Often the complaints relate to systemic problems. Consequently, we have adopted our Ombudsmanship to deal with the challenges which arise when complaints do not fit the individual mould. This means

The ambit and powers of an ombudsman are often limiting, ombudsman note. Indeed, they remind themselves of the most basic of limitations:

> *I have repeatedly stressed in my reports that the Ombudsman…has to examine whether such discretion was properly exercised and whether in the circumstances of a particular case it was reasonably open to the authority concerned to take its decision. The Ombudsman is not to substitute his discretion to that of the appropriate authority. The test is whether the decision was justified in the circumstances of the case, even though it may not be the decision that the Ombudsman would have taken.*[40]

As such, the point of Ombudsman Jamieson takes on greater resonance. She acknowledges both the limitations in terms of scarce financial resources and the often strict parameters of the statutes under which they function. She notes that:

> *Of course I have the Ombudsman Act which is my mandate. I operate strictly within it. But at the same time, I apply all the creativity I can muster in exercising my mandate in a manner that makes Ombudsmanship relevant to the people -- that is my responsibility both to the people and the Legislature …*[41]

Indeed, her charge is this: that ombudsman must "dedicate themselves to adapting our institution to the real needs of our people today and to the political situation in which we operate." This same basic concept was captured in the remarks by the Ombudsman of Peru at the Ninth International Anti-Corruption Conference in Durban. As if to underscore the precision of Ombudsman Jamieson's remarks, Namibia Ombudsman Gawanas included them in her last annual report to Parliament.

In essence, then, it is ombudsman themselves who lay out the fundamental challenge to the office: adaptability. And, as this report has sought to note, there is no formula for that. The Office of the Public Protector in South Africa will seek to adapt as it sees the challenges in front. As Ombudsman Jamieson also noted in concluding her remarks on the subject: "We are, by definition, optimists."

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operating very differently than we have in the past and very differently from many institutions around us. Also, many of the complaints are presented orally, as one would expect from a people with a strong oral tradition -- we have adopted mechanisms to deal with the fact that the Ombudsman Act requires complaints to be made in writing. We have accommodated complaints which are presented in the form of stories and anecdotes, since tradition may make it discourteous to present complaints about the behaviour of others.

[40] Report of the Proceedings of the 5th Round Table with European Ombudsman, Limasol, Cyprus, 8-10 May, 1996; Council of Europe; Council of Europe Publishing, p.98.

[41] Jamieson

Appendices

From the Office of the Public Protector:

"Examples of Official Visits to the Office of the Public Protector of South Africa" and "Participation of the Office of the Public Protector in Training Workshops"

"Implementation of Recommendations"

"Suggestions Regarding Guidelines to be included in the Intended Manual on Curbing Corruption, Maladministration, and Fraud"

Report on the Office of the Public Protector:1998/1999 – Submitted to the Justice Portfolio Committee on 16 March 1999

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