

THE OMBUDSMAN INSTITUTIONS IN THE PROCUREMENT OF LEGAL RESPONSIBILITIES IN THE COMMONWEALTH: AN OVERVIEW OF CANADA, SOUTH AFRICA AND UGANDA

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ABSTRACT

As various reviews on the functioning of a modern administrative state continue to highlight the persistent maladies of bureaucratism in the public sector realm. The establishment of ombudsman institutions, the world over, is given credence by the need to foster improved performance in public administration and enhance governmental accountability to the public in ways that nurture the ideals of good governance. This paper examines the role of Ombudsman institutions in the procurement of legal responsibilities and the promotion of good governance, elsewhere in the Commonwealth, but with particular case reference to Canada, South Africa and Uganda. It analyses compelling literature on the Ombudsman institutions' orientation, matters of regulatory and jurisdictional type, appointment. It also interrogates whether there is a standard that guides Ombudsman offices across. It is argued that, despite the varying legislative and jurisdictional mandates, there are common denominators that underpin Ombudsman institutions, punctuated by similar systemic weaknesses. It is further argued that, however thorough, independent and threatening the Ombudsman institution can be, it can never prevent wrongs from public agencies unless there is an adaptive political culture and administrative system that cherishes goodwill. The Ombudsman can thus, only thrive under a democratic dispensation with vibrant civic competence.

INTRODUCTION

The role of the ombudsman¹ in public administration is given vast credence by the persistent maladies inherent in the public sector domain and the increased complexities under which modern public administrative machinery operates. These complexities are exacerbated by the financial constraints that rock most governments and the shrinking levels of public service delivery. The need to streamline public policy management processes calls for a professional and responsive public service, adequate accountability mechanisms, as well as good partnership between government and various stakeholders in the private sector and civil society.

Given that public agencies exercise discretionary powers, which in essence extend to the verge of policy determination that virtually affects society's livelihood across the socio-economic and political spectrum, there are numerous cases where public officials build vantage points that could transform into a kind of public servitude, which undermines the larger citizen interest. It is argued that the manifestations of indifference and excesses of public agencies can effectively be redressed through Ombudsman institutions.

An ombudsman is a commissioner or an officer usually appointed by the legislature to hear and to investigate complaints brought by private citizens against government officials / agencies. The office of the ombudsman is part of the control systems in public administration, which normally derives its jurisdiction from the parliamentary system, where complaints against public officials (appointed and elected representatives) can be reported, investigated and dealt with. Thus, the ombudsman affects performance and accountability in the public realm since it can scrutinise and review departmental actions.

ORIGINS

While the concept that citizens should be entitled to complain against their leaders and the existence of the officials similar to the role of Ombudsman have long existed in different cultures throughout history – especially under the Islamic, Roman, Chinese, and Spanish systems – the modern roots of Ombudsman-like institutions are traceable in the Swedish *Justitieombudsman* (Ombudsman for justice) established in 1809 (Seneviratne, 1994: 2; Reif, 2004: 5). The growing interest in Ombudsman institution over the years is linked to the growth of the welfare state, especially after World War II where there was a renewed concern of protecting human rights and the growth of public education and participation (Seneviratne, 1994: 3). With more welfare-client state orientation, administrative agencies came into direct and more frequent contact with the people. This explains why client servant agencies attract more complaints than non client-oriented, because the latter rarely offends the public.

In some cases, the transition from autocratic and military rule to democratic government elsewhere, suited the introduction of the Ombudsman, while at the same time many developing nations succumb to pressure from the neo-liberal and international

donor agencies to institute the Ombudsman as part of the structural reforms to improve their governance credentials. Similarly, the need to exercise effective control of public agencies has become increasingly acute in the wake of large and complex governmental systems that impinge more and more on the lives and livelihoods of the people (Gregory and Giddings, 2000: 1). Elsewhere in the Commonwealth, an important landmark in the spread of the Ombudsman office was sparked off by the establishment of the Ombudsman in New Zealand in 1962.

OMBUDSMAN TYPES: SOME COMMONWEALTH REFLECTIONS

Although the concept of Ombudsman institutions has existed for two centuries, its modern equivalent institutions are adapted in terms of operating methods and objectives to suit local constitutional positions. There are classical ombudsman structuring (appointed by legislatures with strong autonomous powers) and other hybrid Ombudsman institutions in various countries. While classical ombudsmen typically only address complaints against government agencies and usually with no jurisdiction over private enterprises, some hybrids human rights Ombudsmen have jurisdictions to deal with complaints from both public and private. (Reif *et al.*, 2004: 3).

Ombudsman institutions can be at various level of government, the central, federal state, provincial and local government. Some countries have a national Ombudsman as well as Ombudsmen in the sub-national levels of government – regional, provincial, state or municipal levels. Countries like Canada, India, Switzerland and the United States have no national Ombudsmen, but have Ombudsmen based in regional, provincial or state levels. Numerous titles and designations are employed by different countries. In the United Kingdom, the office is designated *Parliamentary Commissioner of Administration*, while at the local government levels the office carries the title of *Commissioner for Local Administration*. In other places, the idea of defending and protecting the public against bad administration is reflected in the title. For example in South Africa, the office is called *Public Protector*; in the Canadian state of Quebec it is the *Protecteur du citoyen* (Citizen Protector). In other areas, the notion of human rights is expressed in the title given to the Ombudsman office: Ghana has *Commissioner for Human Rights and Administrative Justice*; Tanzania has *Commissioner for Human Rights*. The facets of inquiry and inspection are also represented: Zambia has *Inspector General*; Uganda with *Inspector General of Government*; Western Australia and Queensland have the *Parliamentary Commissioner for Administrative Investigation* (Gregory and Giddings, 2000).

Whatever the title however, the core functions of the Ombudsman office remain similar, in as far as pursuing the conventional task of scrutinising the administrative operations of governmental agencies, which include (Gregory and Giddings, 2000: 5):

- to investigate complaints from members of the public against public authorities, or initiate own motion investigation;
- to secure or recommend a redress for aggrieved persons, where complaints are found to be justified; and,

- to recommend improvements in systems, working practices and administrative procedures generally; or, if there are no systems, to recommend that there should be, in order to minimise the risk of the same mistakes being repeated.

It should be noted that the Ombudsman term has rather been overused. Apart from the classical public sector and human rights Ombudsman created by legislatures with relatively more independent powers, there are *hybrid* Ombudsman types created by government departments and private sector agencies, largely as dispute resolution mechanisms, whose powers and independence are often limited to terms drawn by an executive authority (Seneviratne, 1994; Reif, 2004). These are mainly *executive* or 'quasi' Ombudsmen. It is argued that these do not meet the definition of a classical Ombudsman, as their independence is questioned by the fact that they are appointed and responsible to the executive arm of government (Gregory and Giddings, 2000: 10).

In some Canadian local authorities for instance, there are local ombudsmen with some executive role to play as aides to a chief executive of a city or municipality, but they do not have the independence that characterises a conventional Ombudsman. What should be noted however is that, formal independence based on the legislative connection, while necessary, is no sufficient guarantee for impartiality and independence of the Ombudsman office (Caiden, 1983; Reif, 2004).

These hybrid Ombudsman types are normally established to deal with matters of a particular industry or service sector, as they resolve complaints made by customers or clients. These cover professional service areas like financial institutions, health, correctional services, media, police, defence and prisons. Likewise, the private sector institutions are increasingly establishing *corporate* Ombudsmen to handle internal complaints from employees in addition to external ones from clients. In case of individual corporations, the Ombudsman is established in accordance with the internal terms of reference governing the company (Reif, 2004: 45).

JURISDICTIONAL ISSUES

The notion of jurisdiction can be subsumed to address a person's or institution's right or authority to act within a legal framework. In exercising their jurisdiction, ombudsmen may compel attendance of witnesses and production of information and records, and can utilise the right to access the premises of an administrative agency. The major jurisdictional boundaries of ombudsmen are contained in particular legislative instruments. Ombudsman acts and statutes normally impose restrictions on investigatory powers of the Ombudsman in form of exclusions and limitations.

In Canada, different provincial Ombudsman statutes bear exclusion clauses that restrict Ombudsman from investigating a number of public bodies. Majority of provincial Ombudsmen for example, are restricted from investigating the acts of Crown Counsel or Crown Solicitors, and actions of executive council or members of cabinet (Bernt and Owen, 2000: 132). Most ombudsmen have no jurisdiction over judicial activities of the courts. In the Canadian Nova Scotia province for example; judges, magistrates,

justice and courts of law are excluded from the purview of the ombudsmen, just like the provincial executive council deliberations (Caiden, 1983: 54). In Uganda the Inspectorate of Government is prohibited from probing any decision, act or omission in respect of a person of the President of Uganda. In other instances the ombudsman is barred from jurisdiction on hearing and investigating cases where other administrative remedies or corrective action do exist and have not been exhausted.

The anti-corruption and leadership code Ombudsmen have differing powers. While in Uganda, Ghana and Namibia the Ombudsman has coercive powers and can prosecute public offenders on corruption and abuse of office, in other states the Ombudsman can only investigate general conditions surrounding corruption, but with no authority to initiate law-suits (Reif, 2004: 10). In countries, like Ghana, Lesotho, Namibia and Tanzania, the Ombudsman has jurisdictional powers to deal with human rights issues; while in others like Uganda, there are separate human rights institutions. While some Ombudsmen have mandates on environmental issues, as the case in Lesotho and Namibia, others like Canada, New Zealand, South Africa and Uganda have special sector commissions to protect the environment (Reif, 2004: 11).

IS THERE A STANDARD FOR OMBUDSMAN INSTITUTIONS?

Whereas Ombudsmen tend to have specific duties laid down in a country's particular statutory instruments, generally in public administration sphere, they tend to have common jurisdictional responsibilities pertaining to investigating any action that, in their wisdom, could have been: taken without proper authority; taken on irrelevant grounds; the result of carelessness or negligence; based on erroneous or incomplete information; improperly discriminatory; based on undesirable administrative practice; or otherwise contrary to fair or sound administration (Daly, 1987: 31).

Despite the varied jurisdictional types and considerable differences in national backgrounds, conventionally Ombudsman offices are prevented from investigating cases where litigation is pending before a court or where judgement on the same facts has already been delivered. Similarly, Ombudsman institutions have a standard with regard to the obligation to decline or drop investigating a case where: the aggrieved has adequate remedy elsewhere; the grievance is frivolous or vexatious; further investigation is unnecessary; the reported grievance is time-barred; the public interest outweighs the complainant's interest; and where the complainant lacks sufficient interest in the case.

It is a classic standard that the efficacy of the ombudsman office thrives strongly under democratic dispensations, given that the ideological roots of the institution are firmly attached to the social climate which favours humanitarian considerations, equality, civic responsibility, constitutionalism, representative governance and genuine concerns for basic human rights (Caiden, 1983). Indeed non democratic regimes would ordinarily find such an institutionalised system of public petition not palatable, as it can potentially embarrass and damage their rather cherished autocratic whims (Caiden, 1983: xvi).

The notions of visibility and accessibility are paramount in the effectiveness of the Ombudsman office. Gregory and Giddings (2000: 5) argue that "a complaint handling

mechanism is likely to be useless if potential complainants are unaware of its existence and ignorant of its functions"; and it can be of equally less value if it is difficult to reach. Similarly, the Ombudsman office must have credibility in the eyes of the public and with administrators in public agencies, if it is to function successfully. A critical requirement in this regard is for the office to strive to be understood and accessible to the citizens if it is to expedite its arbitration role in the public realm.

The other standard characteristic for Ombudspersons is the requirement for one and the office to be *independent*. However, this may simply be a definition of the job than what may actually happen in the peculiarities of executing the job. The aura of independence and objectivity becomes a standard requirement for the ombudsman because, just like in the principles of jurisprudence, exercise of justice must not only be done, but must be seen to be done. To protect the independence of the institution, many establishing legislations offer Ombudsman office-bearers the immunity from legal liability on anything that they say or do in discharge of their duties, unless they are found to have acted in bad faith. They may also not be compelled to give evidence in legal proceedings with regard to their knowledge in exercising of their duties. In South Africa, other state institutions are directed to protect the institution of the Public Protector through legislative and other means to ensure its independence, impartiality, dignity and effectiveness (Constitution, 1996: S. 181[3]); and that no person or institution of state may interfere with the functioning of the Public Protector (Constitution, 1996: S. 181[4]). However, as will be discussed later, the attainment of complete independence is held up in some legislative discrepancies and political orientations of many nation-states.

Quite a number of personality characteristics have been attributed to an ombudsman as standard requirements for one to do a good job. Brynard (2000: 311) notes that the Ombudsman is a personality oriented institution and as such, personal qualities and good virtues of a person appointed to that office are essential for successful functioning of that office. The issue of temperament features strongly here. It requires a good listener who is patient to listen to every one irrespective of their social status. While it is not expected of an ombudsman to be a paragon of virtue or to play a saint of some sort, one's character and behaviour in the public eye should be beyond reproach, given that ombudsmen have a general task of ensuring that a community's values, acceptable moral and ethical standards are adhered to. The ombudsman must therefore have a judicious temperament, relating to the qualities of a judge, a person who listens, weighs carefully, makes sure that he/she has all facts, and then reaches a judgement (Anderson *et al.*, 1972: 24).

By character the office of the ombudsman is supposed to be a non-political, non-partisan, judicial-type of office. Scandinavian countries like Norway, Finland, and Sweden have had long history of preferring to appoint judges of long-serving career or civil servants who have attained good career status. In the Scandinavian proto-type, the ombudsman position has segments of one being 'a clerk in court, a subordinate judge, a regular judge, and eventually an appeal judge', and so on (Anderson *et al.*, 1972: 13). The ombudsman must in essence carry the image of non-partisanship and should not be mistaken for any political identity.

OMBUDSMAN AND GOOD GOVERNANCE

An administrative system that is perceived to be just by all is inevitably one critical prerequisite of good governance (Ayeni, 1999). In this case, the role of the Ombudsman in reconfiguring public administration to exhibit public participation, transparency, accountability to the public, justice and fairness is seen as being a contribution towards good governance. In one of the constitutional mandates, the Inspectorate of Government in Uganda (The Constitution, 1995: Article 225 [1]) is established “to promote fair, efficient and good governance in public offices, as well as promoting strict adherence to the rule of law the principles of natural justice in administration”. In South Africa the operations of the Public Protector are provided for under the Constitution, 1996 and the *Public Protector Act*, 1994 (Act 23 of 1994) (amended by Act 113 of 1998), where the Constitution (1996: S. 181[1] [a]) recognises the Public Protector as a crucial institution in strengthening constitutional democracy.

Unlike the private sector where organisational imperatives are tuned by a profit-bottom-line, public sector imperatives are based on responsiveness to citizen needs and delivery of services, attainment of social justice, fairness, equality, law and order and the creation of a conducive environment for private business. Without adequate checks and balances in the public realm, public authorities tend to exhibit discourtesy, intransigency and bias in conducting their business. Contractors could afford to do shoddy work, welfare recipient starved, hospitals can go without medicine, crime can go on unabated, and citizens can suffer if no resource is provided. In South Africa for example, investigation on the integrity of Senior Certificate Examination produced positive recommendations on improvement of human resource management, information provision, communication strategy, logistical practices, long-term planning, and amendments to legislation (Brynard, 2000: 310).

The legitimacy and effectiveness of government relies on how well it engages, represents, and serves its public across the socio-economic and political spectrum. According to Gregory and Giddings (2000: 2), the Ombudsman is seen as a catalyst in redirecting public administration to a more public service oriented culture. By promoting public participation and accountability of public functionaries, the Ombudsman institution becomes an icon in the procurement of good governance. Brynard (2000: 310) points out that the continuous presence of an Ombudsman institution serves to encourage public officials and institutions to keep to the path of administrative righteousness; and that “its mere existence may have an indirect influence on administrative performance, by exerting psychological fear on officials in preventing administrative malfeasance”.

Experiences on ombudsman institutions indicate that, they are not only capable of resolving individual grievances and forestalling recurrent complaints from citizens, but also offer an opportunity for exonerating public officials of unfounded criticisms (Anderson et al, 1972:xiii). After a supposedly impartial and independent investigation, the Ombudsman may determine whether a government entity or public official acted appropriately or improperly within the precincts of fairness and the law. When the outcome of the ombudsman investigations reveal that no wrong is done by a public

agency, the process still remains important in building public confidence and restoring administrative relations between the state and the citizenry. It helps to reduce prejudice and hostility against the state and its administrative machinery, which promotes social order, stability and cohesion, critical for development.

With regard to human rights the role of the ombudsman remains largely to safeguard the rights of citizens in their dealings with governmental departments. The Ombudsman receives and adjudicates on appeals from the public against harsh or unfair administrative decisions. In so doing, the institution serves as an instrument that protects people from possible governmental abuse of public trust, while at the same time ensuring that power is responsibly exercised and that accountability to the public is adhered to. In this case, the rationale of investigating public complaints against public agencies is such that, if wrong is done, the public agency is expected to make it right or compensate those offended and to ensure that future recurrence is prevented.

A number of Ombudsman institutions in developing nations are increasingly undertaking mandates related to fighting corruption. The Ombudsman in countries like, India, Uganda, Namibia, South Africa, Lesotho, have express anti-corruption mandates, with others having to enforce the leadership code of conduct that binds elected and senior public officials on such matters like misuse of public funds, nepotism and conflict of interest (Reif, 2004: 10). In Uganda the Inspectorate of Government (Act of 2002) vests into the country's Ombudsman institution with anti-corruption and leadership code enforcement powers. The IGG in Uganda is spearheading the prosecution of a former cabinet minister and two state ministers in charge of health, on charges of abuse of office and embezzlement of funds meant for malaria and vaccination (The Daily Monitor October 17th 2007). Others like South Africa, some Canadian provinces and Australian states have mandates to oversee freedom of information and whistleblower protection laws that enhance the fight against corruption.

OMBUDSMAN AND THE COURTS

The traditional legal methods of grievances resolution are well beyond the reach of most citizens due to complexities in the judicial process. The Ombudsman provides a valuable alternative to dispute resolution and expedites the judicial process meticulously than in many circumstances where the court proceedings would, otherwise be associated with elaborate and cumbersome procedures, high expenses and long time periods to resolve disputes. In many poor countries especially those that are emerging from civil wars and military conflict, the judiciary is associated with serious human capacity and expertise deficits, coupled with poor funding and excessive politicisation. In such situations, the Ombudsman becomes a more important avenue in resolving complaints against public administration. As Stephen Owen, a former Canadian British Columbia Ombudsman once remarked (Reif, 2004: 15):

Court proceedings are inappropriate for resolution of high proportion of concerns that arise from simple misunderstandings and errors that invite quick resolution by an independent party, acting informally but with

authority. Further, there is often no legal remedy for the unfair impact of legitimate exercise of discretion in public administration.

Courts of law are primarily concerned with the questions of legality. When public officials act in accordance with the law, it does not mean that they have necessarily complied with the widely acceptable principles of good administration; and thus, “bad administration is not always or necessarily unlawful” (Gregory and Giddings, 2000: 16). Unlike the courts that operate on an adversarial model of grievance redress, which may not necessarily right the wrongs in administration, the ombudsman often utilises a conciliatory approach. Like Seneviratne (1994: 10) argues, the ombudsman nature of office does not aim at antagonising public officials, “but to induce them to internalise fairness and justice values and to accept them as values that legitimately compete with effectiveness and other bureaucratic values for balanced accommodation”. The informal and client-oriented nature of Ombudsman office allows it to negotiate adjustments to administrative decisions, which may not be illegal or *ultra-vires* per se, but can “suggest minor adjustments to overcome bureaucratic rigidity”, help stimulate administrative improvements and to promote good state-citizen relations (Seneviratne, 1994: 10).

Moreover, it is argued that public officials often resent court action and recommendations because of a common belief that the judiciary is ill-motivated and that the judges do not fully understand, let alone appreciate the nature and complexities under which public administrators operate (Gregory and Giddings, 2000: 16). As a result, public officials would ordinarily find the Ombudsman approach of a negotiated and conciliatory intervention more appealing. Just like the Mauritian Ombudsman, once put it, “it is easier to catch flies with honey than with vinegar” (Gregory and Giddings, 2000: 16), some practical improvements in administration can easily be procured through the unthreatening and relatively mutual approach employed by most Ombudsmen.

By addressing administrative problems that courts, legislatures and other administrative tribunals cannot easily resolve, the informal and accessible nature of Ombudsman institutions enhances transparency in government and democratic accountability, which are cornerstones of good governance.

CHALLENGES

Jurisdictional limitations

While the Ombudsman can investigate and comment on the quality of administration, in several jurisdictions the institution has no power to overturn the results of poor administration (Seneviratne, 1994: 3). Even cases from highly acclaimed Western democracies like Canada indicate that, for example, the provincial ombudsmen can only afford a wide range of remedial recommendations, but with relatively weak mechanisms to enforce them (Bernt and Owen, 2000: 138). At best, they can only forward reports to higher authorities within the governmental jurisdiction. This means that the enforcement of ombudsman

recommendations lies with the voluntary will and mercy of other governmental structures, such that if they chose to ignore them, they can as well be of no meaningful consequence.

Ombudsman institutions remain predominantly dependant on bodies that appropriate their funds (executive or legislature) and other auxiliary agencies that they need to network with in the handling of public complaints. These agencies unfortunately, may not easily be compelled to comply in ways that suit the needs of the ombudsman. In Uganda, some agencies that are supposed to partner with the Inspectorate of Government (IG) deliberately or inadvertently ignore to pursue further, the cases investigated and recommended to them. While the reports and recommendations of the IG are regularly laid before Parliament, it has on many occasions exhibited a rather, lukewarm enthusiasm in securing their implementation, which demoralises the reporting institutions and squanders opportunity to improve public sector governance (IG-Report, 2007: 76). Other agencies that sometimes renege on giving support to the IG include the Police's CID and the DPP – that sometimes foil further investigation and prosecution of seemingly clear cases of criminal nature; the courts – where problems of delays are encountered; and local government authorities – that often take unnecessarily long to respond to queries and to discipline defiant officials (IG-Report, 2007).

Resentment by governmental agencies

The other challenge has to do with resentment of the Ombudsman by government agencies which culminate in conflicts and confrontation that weakens the Ombudsman institution. There are often law cases and suits that constantly challenge the powers and jurisdiction of ombudsmen in all systems. In Canada, provincial Ombudsmen in Alberta, Manitoba, Nova Scotia and Quebec have been embroiled in bitter contests with their respective provincial and municipal government authorities arising out of the verdicts handed down by Ombudsmen in favour of appellants against the government agencies (Caiden, 1983: 29). While several cases finally end up in provincial supreme courts to determine the jurisdiction and legality of Ombudsmen decisions and recommendations, the warring parties remain bruised with remaining animosity. In Uganda the state's President and the Attorney General have supported court cases of individual government agencies contesting verdicts of the IG

Undemocratic orientations

Some despotic regimes establish ombudsman institutions, only for a cosmetic show and propaganda value, so as to hoodwink the population and the international human rights advocates that they are on course for good governance. As Caiden (1983: xvi) indicates, it can be used as a device to enable society criticise low-level bureaucracy without implying wrong doing at higher levels of government. In this way such regimes can afford to direct attention away from the need for genuine democratic reforms. While democratic ethos is necessary, it is not sufficient in itself. As Caiden (1983: xvi) argues; "the regime must feel

sufficiently confident to allow public criticism of public administration and to discount official opposition to complaint handling agencies". Otherwise where government is too potent or too insecure to permit scrutiny, or where the civil society is disintegrated and not vibrant, the rationale for establishing the Ombudsman office is simply lost in the wilderness.

Visibility and awareness

The low visibility and user awareness of the role of the Ombudsman in many developing countries precludes many potential claimants. In Uganda for example, cases of low civic competence accentuated by widespread illiteracy, poor communication infrastructure, and limited resource capacity of Ombudsman offices impedes the successful pursuit of their mandates (IG-Report, 2007). Limited budget outlays as well as poor human resource motivation, inadequate personnel frustrate the effort to extend services to many local communities in poor countries. In Canada, confusion in society is created by the existence of a large number of other provincial officers with quasi-Ombudsman roles, who often make it difficult for the members of the public to know who should handle their complaints effectively, and for the various offices that find difficulty in their interrelationships (Bernt and Owen, 2000: 129).

Danger of initial success

A challenge is that, whenever successes are recorded by the ombudsman in handling particular sets of complaints, that success does not diminish the overall volume of complaints. On the contrary, as Anderson *et al.*, (1972: xiii) argue, "it may generate additional complaints from those who earlier saw no reason to register their grievances". Such episodes become cyclical, especially in the short-middle term run and if capacity for additional support is not rendered to the ombudsman office, it can run the risk of degenerating in performance after having registered success.

Spoiling tactics

Guaranteeing the public's right to complain against a public official's action has its own drawbacks that sometimes undermine the role of the ombudsman institution. Caiden (1983: xvii) indicates that it can encourage "cranks, paranoiacs, professional agitators, non conformists of every shade, and trouble makers, and reinforces their spoiling tactics". Such complaints are initially taken seriously and given due consideration, only to find out later, that they are malicious, distorted or trivial. This robs the due process of justice of vital time and resources. In South Africa, for example, the opposition Democratic Alliance (DA) demanded that the Public Protector investigate president Mbeki over allegation that he directed a hospital to perform a kidney transplant to the former Minister of Health Manto Tshabalala, which was construed as favouritism (SABC News: 20/8/2007); only to find out a few weeks later that the allegation was simply not made in good faith.

Character of resignation

A drawback in the system is the aftermath effect that complaints tend to have on public officials. When their actions are constantly challenged, their decision denounced, and their imperfections continuously displayed in the public arena, they tend to revert back to conservative precedents in fear of making mistakes. As a result, creative and innovative administrative performance, which tends to thrive under good autonomous latitude, is impaired; and in the end, improved administrative performance can be turned down for the sake of *doing things right* and following rules to the latter.

CONCLUSION

By virtue of the particular strengths and weaknesses articulated in the foregoing discussion, it can be strongly averred that the Ombudsman institution has the potential to enhance constitutional democracy and good governance across the political and socioeconomic spectrum of many countries' developmental agenda. It is evident that the challenges of the institution point more to the low resource capacity in terms of finances and human resource, than to the will and commitment of various stakeholders required to support the institution's success. In the words of Dirk Brynard, the question remains, "whether a fair price could be placed on the principles of justice and democracy in (procuring effective) public administration". In developed democracies like Canada, where issues of resource capacity are not much of a problem, there is lack of a standard for provincial ombudsmen as different provinces bear different jurisdictional facets for the institution. This lack of national cohesion of the ombudsman institution creates equity problems to the citizens.

What can be emphasised is that the Ombudsman is more of a form of redress than a prevention of wrongs. It can only address matters that come to its attention and direct possible remedial action, usually when the wrong is done and the aggrieved party has taken some initiative. The institution can only thrive under a democratic dispensation with good political will and a vibrant civil society. Otherwise, however thorough, independent and threatening the Ombudsman institution can be, it can never prevent wrongs from public agencies unless there is an adaptive political and administrative system, civic competence and strong legislative support.

NOTE

- 1 The word Ombudsman is used as a generic term and title of the institution, which is considered to be gender neutral, as both men and women can hold the office. In other terminologies, it can be referred to as the "OMBUDS".

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