

Strengthening Implementation – Ensuring Effective Execution of Ombudsman’s Recommendations.

A presentation by J.R. Walters on:

PRACTICAL STRATEGIES TO OVERCOME RESISTANCE TO IMPLEMENT AND DRIVE SYSTEMIC CHANGE. THIS INCLUDES CASE STUDIES WHERE OMBUDSMAN’S RECOMMENDATIONS HAVE LED TO POLICY REFORM OR INSTITUTIONAL SHIFTS.

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1. Introduction

“Ombudsman generally do not issue binding recommendations. This principle is well established in the tradition of the classical Parliamentary Ombudsman. We must achieve results without powers of compulsion, acting as the conscience of an institution by sharing our judgment about whether or not it is acting fairly and reasonably.”

-Andre Marin
Ontario Ombudsman
June 2009

2. The Ombudsman and Parliament

I believe that no Ombudsman can function effectively without a healthy relationship and support from members of Parliament. Such support has to do with issues such as his/her credibility, his/her resources, implementation of his/her recommendations and most importantly his/her effectiveness. The Ombudsman is the investigative arm of Parliament. The Namibian Constitution and Ombudsman Act hold the Ombudsman accountable to the National Assembly by way of having to report to the National Assembly. The Act also empowers the Ombudsman to submit special reports to the National Assembly where institutions fail or are reluctant to implement the Ombudsman’s recommendations.

Unfortunately, the Act is silent on what the National Assembly should do with the reports. However, the Standing Rules of Procedure and Order of the National Assembly provide that the National Assembly must refer the annual report of the Ombudsman to the relevant Select Committee for “*evaluation and examination.*”

It is my belief that the committee must use its powers to subpoena recalcitrant government officials to explain among other things why they have not comply with the Ombudsman’s recommendations. This will ensure that the Ombudsman’s recommendations are taken seriously and provide proof of Parliament’s support for the Ombudsman.

If there is no Parliamentary Select Committee to support the Ombudsman or the committee fails its duty and the Ombudsman’s persuasive powers also failed, What else is left for the Ombudsman to do?

3. Enforcement through legal action

Experience has taught me to use the ultimate enforcement power when all others have failed, sometimes reluctantly, but it was indeed necessary. I could find no Ombudsman legislation that provides expressly for enforcement through legal action. I interpreted the Ombudsman Act broadly and purposefully and used the complainant as co-litigant to establish *locus standi* for legal action. An expensive route to follow but on that yielded the expected results.

3.1 Case Study

The Namibian Cabinet passed a resolution which provided for the appointment of Children of the Liberation Struggle, especially in entry level positions in Government Offices, Ministries and Agencies in reserved positions, without going through the formal recruitment process. On receipt of a complaint by an aggrieved citizen, the Ombudsman wrote and recommended to the Secretary of Cabinet to stop the practice, because it is unlawful, irregular and unfair. He ignored the recommendation and the Ombudsman took the matter to the High Court. The Court ruled in favour of the Ombudsman and set aside the decision of the Cabinet. There after the Children of the Liberation Struggle approached the Ombudsman for assistance to hold government accountable to its promise to provide them

with employment. After consultation with them, the Ombudsman submitted a report to the Prime Minister, in which he inter alia recommended that:

“Government considers amending the Veterans Act, 2008 (Act No. 2 of 2008) to include the Children of the Liberation Struggle under a definition in the Act in order for them to benefit from projects which may be established under the Act and the Veterans Fund also established under the Act.”

The National Assembly recently requested the Ministry of Justice and Ministry of Defence and Veterans Affairs to prepare amendments to the Veterans Act inter alia to include the Children under a definition in order for them to receive the benefits provided for in the Act.

4. Enforcement through a Special Report

The inordinate delay in the preparation of appeal and review records of proceedings and the reconstruction of lost and incomplete record of proceedings by clerks of courts, became a systemic issue which needed to be properly investigated and report on with extensive recommendations for improvements. The Ombudsman carried out this investigation and his Special Report entitled “*Is this Justice?*” was tabled in the National Assembly.

The Report was referred to the Standing Committee on Constitutional and Legal Affairs. The committee’s Report was adopted by the National Assembly and recommended inter alia:

“Office of the Judiciary and Ministry of Justice should report progress to the Standing Committee on Constitutional and Legal Affairs and the Ombudsman on the findings, implementation and enforcement of the recommendations contained in The Special Report.”

The Ombudsman never received such a progress report, but he witnessed improvement, because fewer complaints about the above delays were received.

5. Conclusion

The absence of a Select Committee of Parliament in any country or an ineffective committee is a serious impediment for genuine concerns of the

Ombudsman's Office and appropriate feedback for members of Parliament. Not only is there no mechanism for scrutinizing Ombudsman's reports, but there is also no machinery for ensuring compliance with his/her recommendations. Such absence or ineffectiveness also causes absence of debates on the part of the National Assembly concerning the annual reports of the Ombudsman. In appropriate cases guidance from a strong and competent Parliamentary Select Committee must be more than welcome.