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AORC / AOMA Facilitated Discussion (Webinar)

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“Concept of the Ombudsman “

Good afternoon colleagues, friends and family.

Thank you to our hosts at The African Ombudsman Research Centre (AORC), of the African Ombudsman and Mediators’ Association (AOMA) for organising this webinar.

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I bring you warm greetings from your colleagues in Bermuda, and also the Caribbean Ombudsman Association (CAROA). I extend greetings on behalf of the International Ombudsman Institute (IOI) Caribbean and Latin American Region. I acknowledge regional colleagues: the Public Protector of South Africa Busisiwe Mkhwebane, fellow IOI Regional

President for the African region, Public Protector for Zambia, Caroline Sokoni and IOI Regional Director for Africa, Ombudsman for Malawi, Martha Chizuma.

Modern Ombudsmen trace the institution back to the first Swedish Parliamentary Ombudsman in 1809. But it is worth remembering there are much earlier examples in history of redress for individuals with grievances against official action. From ancient times there have been examples of arrangements for bringing complaints against official decisions to the attention of someone with authority to freely and independently intervene and where necessary challenge official actions and decisions to achieve fair outcomes. Africa's ancient Egypt in the time of the pharaohs appointed complaint officers attached to the royal courts to hear grievances. Provision for redress for official actions is neither new nor invented in Europe.

Responsible, responsive, efficient government does not just happen by magic. It is tied to essentials of good governance are important to the work of the ombudsman. Ombudsmen promote good governance as they aim to help it flourish. The rule of law; the public having access to what the government is doing for its people and how it is doing it – transparency; Explanation of Government’s decisions and actions – accountability. Being responsive, Being efficient and effective.

The Office of the Ombudsman for Bermuda is a young office. It opened in August 2005. At the official opening of our office in January 2006, then Premier of Bermuda the Hon. Alex Scott concisely summarized the concept of the Ombudsman and good governance:

“We view your Office as a cornerstone in the great structure that is good governance. By investigating complaints to determine whether the Government is doing things in a fair and proper way, and by learning from what went wrong and translating recommendations into action, you are not only improving

governance, but you are improving people's everyday experience with the Government."

The Ombudsman institution is a means to good governance. It provides oversight which makes good governance more than just words. Good governance is about what happens not what is said. It's how people are actually treated and how they feel in relation to their government. What makes governance good is when people feel valued, protected and respected. This is an acknowledgement that good governance is connected to action by Ombudsmen and others, to help both the public and the public officials to do things right, correctly and fairly, and where things are not right, to help to put it right. Our institution has grown globally in response to the needs of our times, especially over the past six decades. Its inclusion as a part of the supreme laws of our countries acknowledges the need for it due to the expansion of government control in all areas of our daily life.

The notion that an ombudsman only investigates unresolved complaints by the public concerning government agencies is too narrow and is out of date. We are a critical part of the structure providing access to administrative justice. Our institutions promote good governance through overseeing delivery of services and government administration. The resolution of individual disputes is one main contribution. Investigation of complaints is a means of protection of the public from adverse government actions.

The ability for complainants to safely voice complaints under our protection is also a key contribution. Our contribution is that authorities know we are here which serves as an incentive to public officials to improve. Critics have called ombudsman ‘toothless tigers’ because we do not have powers to enforce compliance of our recommendations. However, Professor Victor Ayeni has wisely said, “if you see a tiger you do not wait to see it has teeth or not.”

People can be disadvantaged in obtaining services which may be cut back in difficult times or where there are emergency situations such as this COVID-19 pandemic.

Good working relationships with officials within our jurisdictions are important and it is the Ombudsman's responsibility to seek to build them while jealously guarding their independence and their integrity. These two things cannot be compromised in any way as they go to the heart of the authority we have been given to call out wrong decisions and wrong actions.

An Ombudsman's super power is to be persuasive. Combat and conflict are not the preferred methods of Ombudsmen. Our process is the

opposite of adversarial. If we find ourselves regularly utilizing courts we have lost our home ground.

In the aftermath of a difficult time when his administrative conduct had been challenged and successfully subjected to judicial scrutiny, President Mandela said the following:

“Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order. An essential part of that constitutional

architecture is those state institutions supporting constitutional democracy. Amongst those are the Public Protector, the Human Rights Commission, the Auditor General, the Independent Electoral Commission, the Commission on Gender Equality, the Constitutional Court and others...It was to me never reason for irritation but rather a source of comfort when these bodies were asked to adjudicate on actions of my government and Office and judged against it. One of the first judgements of our Constitutional Court, for example, found that I, as President, administratively acted in a manner they would not condone. From that judgement my government and I drew reassurance that the ordinary citizens of our country would be protected again abuse, no matter from which quarters it would emanate. Similarly, the Public Protector had on more than one occasion ben required to adjudicate in such matters.”

International Ombudsman Institute Conference in Durban, South Africa
in 2000

The Ombudsman where it is established, declares that a jurisdiction believes in principles of fairness, good governance and the right of the people to be heard and their rights protected. Key principles of good administration are get things right, be customer focused, be open and accountable, act fairly and proportionately, where things have gone wrong put them right and commitment to continuous improvements.

An important aspect what we are reprimanded to do is to ensure that our own offices are practicing what we are preaching. If we are inquiring into complaints of unreasonable delay we must ensure our own offices are handling complaints efficiently. If a complaint before us is about unresponsiveness, complainants should not have to chase our offices to learn of developments. We can lose credibility and damage our own authority when this occurs.

A famous letter giving guidance to a leader states:

“Out of your hours of work fix a time for complaints and for those who want to approach you with their grievances. For this purpose you must arrange public audience for them, and during this audience, for the sake of God, treat them with kindness, courtesy and respect. Do not let your army and police be in the audience hall at such a time so that those who have grievances against your government may speak to you freely, unreservedly and without fear. All this is a necessary factor for your rule because I have often heard the Prophet (Peace of God be upon him) saying: “that a nation or government cannot achieve salvation where the rights of the depressed, destitute and suppressed are not guarded, and where mighty and powerful persons are not forced to accede to these rights.” This was written to the Governor of Egypt in The 7th century the advice for officials is timeless.

When complainants come to our offices or to an authority seeking relief they should feel welcomed and respected. The information they provide is valuable.

Ours is an ever evolving, challenging, demanding assignment, more necessary in this crisis. No matter how difficult it can be there is fulfillment in championing what is right. The need for responsive, responsible, effective and efficient government is critical- many lives are depending on it. We must press for this it is our duty.

Be Safe. Thank you.

References

- British and Irish Ombudsman Association, (2007), Guide to Principles of Good Complaint Handling, <http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>
- Chakraborty, S. (2014). *Ombudsman: A Critical Appraisal*. [Online] Lawctopus. Available at: https://www.lawctopus.com/academike/ombudsman-critical-appraisal/#_edn4 [Accessed 21 Oct. 2019].
- Commonwealth Ombudsman, (2007), Ten Principles for Good Administration, https://www.ombudsman.gov.au/data/assets/pdf_file/0029/35597/Ten-principles-for-good-administration.pdf
- Galatians 6:9, Holy Bible: King James Version.
- Neave, C. (2015) Exploring the Role of the Commonwealth Ombudsman in Relation to Parliament In: *Papers on Parliament No. 63*. [online] Canberra: Commonwealth of Australia. Available at: https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop63/c03 [Accessed 21 Oct. 2019]
- Office of the Ombudsman for Bermuda (2019). *Annual Report 2018*. [online] Hamilton: Office of the Ombudsman for Bermuda. Available at: <http://www.ombudsman.bm/pdf/BermudaOmbudsmanAnnualReport2018.pdf> [Accessed 21 Oct. 2019].
- Ombudsman Western Australia (2017). *Guidelines: Effective handling of complaints made to your organisation - An Overview*. [online] Perth: Ombudsman Western Available at: <http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Effective-handling-of-complaints-made-to-your-organisation.pdf>. [Accessed 21 Oct. 2019]
- Parliamentary and Health Service Ombudsman, (2009), Principles of Good Administration, <https://www.ombudsman.org.uk/about-us/our-principles/principles-good-administration>
- Pearman, V. (2018). The Ombudsman and Administrative Justice. In: *The Fiftieth Anniversary of the Bermuda Constitution: Reflections on its Past and Future*. Hamilton: Centre for Justice, pp.177 - 195.
- Scott, Premier William A. (2006). *Welcome Remarks at the Opening Ceremony for the Office of the Ombudsman for Bermuda*.
- Tosh, P. (1977). *Equal Rights*. New York City: Columbia Records.

