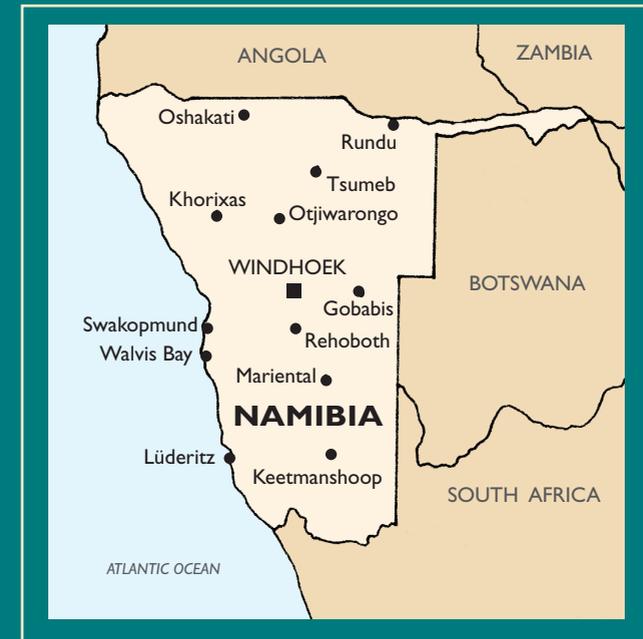


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PROMOTING THE EFFECTIVENESS OF DEMOCRACY PROTECTION INSTITUTIONS IN SOUTHERN AFRICA

THE CASE OF THE OFFICE OF THE OMBUDSMAN IN NAMIBIA



Lesley Blaauw



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EISA is a non-partisan organisation which seeks to promote democratic principles, free and fair elections, a strong civil society and good governance at all levels of Southern African society.



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PREFACE

This research report is the culmination of a project that EISA embarked on over three years, from 2007 to 2009, focusing on 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa'. The project, one of the components of a regional programme guided by the theme 'Consolidating Democratic Governance in the SADC Region: Phase II', has received financial support from the Swedish International Development Cooperation Agency (Sida) regional office in Harare, Zimbabwe, and the Royal Danish Embassy in Pretoria, South Africa. The seven elements of this regional programme are:

- Election quality
- Institutions of governance
- Gender equality and electoral processes
- SADC regional governance architecture
- The EISA annual symposium
- Regional resource centres
- The EISA democracy encyclopaedia

The overarching thrust of the programme is to improve governance architecture in Southern Africa, with a view to nurturing and consolidating democracy and sustaining peace and political stability, which are the key prerequisites for sustainable development and the eradication of poverty. The focus of this regional programme is consistent with EISA's vision of 'an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment'. The primary goal is to enhance the quality of electoral processes, improve the capacity of key national and regional institutions that are central to the achievement of democratic governance in the SADC region, and help to reverse gender imbalances in political participation and representation. The specific objectives of the programme are to:

- improve the quality of elections, with a view to advancing democratic governance;
- enhance the effectiveness of selected governance institutions;

- improve gender equality in the realm of governance;
- promote democratic governance and political integration through the SADC Organ on Politics, Defence and Security and its strategic plan, SIPO;
- expand and deepen the knowledge base in relation to democratic governance in the SADC region.

The aim of this particular project is to contribute to enhancing the institutional effectiveness of governance institutions.

Conventionally, studies of and research relating to the state and governance have tended to focus on the traditional arms of government – the executive, the legislature and the judiciary – and the separation of powers among them, with some attention paid to the bureaucracy or civil service. This focus has reduced the role of the state in governance to these organs of government, to the exclusion of other equally important statutory bodies established by the government itself, namely the democracy protection institutions (DPIs).

Although the establishment of DPIs is one of the more effective methods of promoting democratic governance in the SADC region, these institutions have received little attention in the existing policy and academic discourse on democracy and governance. With this research project EISA aims to fill this lacuna in the democracy and governance debate in Southern Africa by restoring these institutions to their rightful place.

DPIs are those statutory institutions established by governments specifically to protect democratic governance. They may be enshrined in the country's constitution, supported by legislation, or created by legislation. The constitutional provisions and enabling legislation reinforce their significance in governance architecture at the national level.

At the continental level, the African Union (AU) has also come to realise and recognise the importance of DPIs to the promotion of democratic governance. Article 15 of the African Charter on Democracy, Elections and Governance, which was developed with technical assistance from EISA and was ultimately adopted by the AU Heads of State Assembly in Addis

Ababa, Ethiopia, in January 2007, specifically elaborates principles and best practice relating to DPIs.

This article commits AU member states to:

- establish public institutions that promote and support democracy and constitutional order;
- ensure that the independence or autonomy of the said institutions is guaranteed by the constitution;
- ensure that these institutions are accountable to competent national organs;
- provide the above-mentioned institutions with resources to perform their assigned missions efficiently and effectively.

The principles represent a clear commitment by African governments to strengthening the DPIs and promoting their institutional effectiveness. The aims are admirable, but, as the English aphorism goes, the proof of the pudding is in the eating. It is one thing for African governments to make such commitments, it is quite another to translate them into practice. In other words, as this report will illustrate, African governments do not always 'walk the talk'. Put somewhat differently, few African countries practise what the African Charter on Democracy, Elections and Governance preaches.

In 2008 EISA analysed three democracy protection institutions that are central to the achievement of democratic governance in the SADC region. These were: the Office of the Ombudsman, national human rights institutions (NHRIs), and electoral management bodies (EMBs) in 14 SADC member states. The analysis, which was guided by a list of questions, revealed different stages of institutional development in each country and established that the remit of the institutions differs from one country to another.

In 2009 the focus of the project shifted from the normative aspects addressed in the first stage to an assessment of the performance, effectiveness, independence and relationships of these institutions to other arms of government, other democracy protection institutions, and civil society,

within their operating environment. Empirical research was conducted by researchers in each country between March and July 2009 into two institutions – the Office of the Ombudsman and the national human rights commission – in the eight countries: Botswana, Lesotho, Malawi, Mauritius, Namibia, South Africa, Tanzania and Zambia.

Conventionally, the Office of the Ombudsman is established to protect the people against violations of human rights, the abuse of power by public institutions, error, negligence, unfair decisions and maladministration, in order to improve public administration with a view to making governments responsive to people's needs and public servants more accountable to members of the public. This office has emerged as an important avenue for individual complaints against the actions of public authorities.

Typically, national human rights institutions are mandated to protect and promote human rights. A number of countries have established NHRIs which use the Ombudsman concept. The genesis of NHRIs lies in a resolution passed in 1946 by the United Nations Economic and Social Council inviting member states to consider the desirability of establishing local information groups or human rights committees to serve as vehicles for collaboration with the United Nations.

In 1991 delegates to the first International Workshop on National Institutions for the Promotion and Protection of Human Rights agreed on the Paris Principles, which were adopted a year later. The Paris Principles are a set of broad general standards which apply to all NHRIs, regardless of their structure or type. They are adopted by NHRIs and endorsed by the UN Commission on Human Rights and the UN General Assembly. Among the main principles are that the NHRI must:

- be independent and be guaranteed by statute or the constitution;
- be autonomous from government;
- be plural and diverse in its membership;
- have a broad mandate based on universal human rights standards;
- have adequate powers of investigation;
- have sufficient resources to carry out its functions.

The mandates of these two DPIs to address administrative and executive impropriety and ensure the respect and promotion of human rights suggest that they play an important role in exercising oversight over the executive and in promoting democracy, human dignity, and the rule of law. The overall objective of this research project, therefore, was to investigate the extent to which they have translated their mandate into action, thereby advancing and protecting democracy. The research examined the performance of the two institutions with regard to the following: legal framework, the effectiveness of institutional governance, independence, resources, and interaction with the other arms of government, the public, and non-state actors.

In July 2009 EISA convened a one-day policy dialogue forum during which senior officials of the 12 DPIs covered in the research, as well as the researchers, came together to deliberate on the findings. Thereafter, the researchers refined their reports, taking into account the input of the DPI officials. The culmination of the research project is eight country reports, in which the political, operational and resource conditions and constraints under which these institutions function are analysed.

The mere presence of offices of the Ombudsman and NHRIs in the SADC region is, in itself, an encouraging step, although not all SADC countries have these institutions in place. Where they do exist they do so in a variety of forms, with different nomenclatures, and each has its own character.

I acknowledge with gratitude all those whose input resulted in the successful implementation of the project. First and foremost, EISA's Executive Director, Denis Kadima, who contributed immeasurably to the conceptualisation of the regional programme on consolidating democratic governance in the SADC region, of which the DPI project is a part. I am grateful too to Ebrahim Fakir, Manager of Governance Institutions and Processes at EISA, for guiding the research process and editing the reports, thereby ensuring their quality. Without the selfless commitment and dedication of the project coordinator, Catherine Musuva, this project would not have seen the light of day. I take my hat off to her for her hard work.

The project would not have succeeded without the dedication of our research associates, based in the eight countries, who conducted the fieldwork. I

am equally indebted to the officials and staff of the democracy protection institutions, who supported the project with information and participated in the policy dialogue, and to the various respondents who willingly supplied the researchers with additional insights.

It would be remiss of me not to extend a special word of thanks to Professor Kader Asmal, former member of the South African Parliament and former Cabinet minister, who is currently a professor of law at the University of the Western Cape and who, despite his busy schedule, graced our multi-stakeholder dialogue workshop with his presence giving a thought-provoking and insightful keynote address on DPIs and setting the scene for what proved to be a lively discussion among the participants. I am pleased to report that some of Professor Asmal's ideas and thoughts have found a place in the reports.

Various other colleagues at EISA played their own distinctive roles in supporting this project and their contributions deserve acknowledgement. They are Kedibone Tyeda, Nkgakong Mokonyane, Maureen Moloji, Jackie Kalley, Alka Larkan, Oliva Fumbuka, Edward Veremu, Dipti Bava, Wallen Chidawanyika and Usha Kala. Our editor, Pat Tucker, and typesetter, Sue Sandrock, have done a marvellous job controlling the quality of our publications, for which we are hugely thankful.

Finally, I am profoundly grateful to our partners, Sida Regional Office in Harare, Zimbabwe, and the Royal Danish Embassy in Pretoria, South Africa, for their generous financial support.

In conclusion, I hope and trust that this research report will assist policy-makers to identify areas of organisational and institutional reform in order to improve the effectiveness, efficiency and responsiveness of DPIs and, in the process, deepen and entrench democratic governance in the SADC region.

*Dr Khabele Matlosa
Programmes Director-EISA, Johannesburg
September 2009*

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ABBREVIATIONS

ACC	Anti-Corruption Commission
DPIs	Democracy protection institutions
EISA	Electoral Institute of Southern Africa
IPPR	Institute for Public Policy Research
LAC	Legal Assistance Centre
NID	Namibia Institute for Democracy
NGOs	Non-governmental organisations
NSHR	National Society for Human Rights
SADC	Southern African Development Community
WAD	Women's Action for Development

EXECUTIVE SUMMARY

One of the lasting imprints of South African rule in Namibia was the introduction of the policy of apartheid. The precepts which underpinned this policy deprived the majority of the citizens of Namibia of their fundamental rights. At the onset of independence the democratically elected government had thus to put in place institutions that would not only provide a modicum of dignity for ordinary citizens but would ensure that citizens had recourse to the law. The establishment of the Office of the Ombudsman was seen as an attempt to broaden access to the law.

The Office of the Ombudsman has, since its inception in 1990, concerned itself with addressing the abuse of fundamental rights and freedoms, and was given the task of investigating practices of corruption. The mandate of the Ombudsman also covers the protection of the environment.

By and large, it could be argued that this broad mandate has made it difficult for the office to fulfil its functions effectively. In order to provide greater focus and to streamline the mandate of the Ombudsman the function of investigating corruption was removed and assigned to the Anti-Corruption Commission (ACC), established in 2006. The establishment of the ACC is significant in that it now serves as an interlocking institution, which could potentially enable the Ombudsman to fulfil its now more focused agenda more effectively. The particular role the Office of the Ombudsman has to fulfil is further entrenched by legal and constitutional provisions. Chapter 10 of the Namibian Constitution ensures the independence of the office and provides guidance on its mandates and powers.

The Constitution and the Ombudsman Act allow the Ombudsman to examine the administrative conduct of government organs and officials of such organs and to investigate complaints about human rights infringements against private persons and institutions. The institutional governance system of the Ombudsman and its effectiveness are measured differently from those of the judiciary.

Unlike the more confrontational style of litigation, prosecution and defence applied in the formal justice system, a less combative approach to the resolution of conflicts between conflicting parties is at the heart of the dispute resolution mechanism applied by the Office of the Ombudsman. It is in part thanks to this process and the perception of the Ombudsman's independence that the office was able to resolve 1 159 of its 1 539 cases in 2008. This means that it is viewed as fairly effective.

Institutional effectiveness is further reinforced by the relationships between the Office of the Ombudsman and both government and other democracy protection institutions (DPIs). With regard to its relationship with government the office is viewed as an integral, yet, independent part of the Ministry of Justice. Moreover, it has the ability to investigate transgressions committed by government officials. Disconcertingly, however, the Permanent Secretary of the Ministry of Justice is a political appointee, whereas the Ombudsman is independent. This makes for a potentially acrimonious relationship between the two.

The Office of the Ombudsman also has working relationships with non-governmental organisations (NGOs) that promote democracy and human rights, such as the Legal Assistance Centre (LAC) and the National Society for Human Rights (NSHR). Its annual outreach programmes are conducted in collaboration with other NGOs.

The biggest obstacle the Office of Ombudsman faces is that of resources. Both financial and human resources continue to be problems and hamper the effective and efficient execution of its mandates, operations and overall functionality.

The Office of the Ombudsman in Namibia is viewed as one of the institutions that provide redress to citizens when they have suffered administrative impropriety at the hands of a public servant or institution. This office, which was established by an Act of Parliament in 1990, is primarily concerned with investigating violations and the abuse of fundamental human rights and freedoms. While the mandate of the Ombudsman at inception was rather broad, the establishment of the Anti-Corruption Commission (ACC) means that the mandate to investigate corrupt practices has now been

assigned to that body, thereby relieving the Ombudsman of the onerous responsibilities that accrued to that office before the establishment of the ACC. The establishment of the ACC has served to tighten and refine the focus of the Ombudsman, making the Office of the Ombudsman relatively more successful in fulfilling its mandate. However, a lack of financial and human resources are some of the major obstacles that the organisation faces.

INTRODUCTION

It is generally accepted that institutions shape the goals that political actors pursue. As such, political institutions – of both state and civil society – and their effectiveness are largely products of purposive initiatives of goal-oriented actors. These initiatives are geared towards transforming the structural parameters of society in order to achieve long-term developmental and political goals. Institutional effectiveness denotes something different for the public sphere than it does for the private sphere because it accords each a particular role in the governing process. In the case of a government institutional effectiveness refers to its ability to fulfil its functions and responsibilities as stated in, among other instruments, the constitution. Therefore, from a governmental perspective, effectiveness emphasises the checks and balances within government institutions. More specifically, the existence of institutional effectiveness is related to the way different elected and appointed agencies are perceived to have performed or are performing their duties. In simple terms, it alludes to the notion of political trust. Political trust, in this context, is conceptualised as a basic evaluative orientation toward the government founded on how well the government is operating in relation to people's normative expectations.

The measurement of state legitimacy is a crucial consideration for the consolidation of democracy in Namibia. Positive trends in institutional trust will, by and large, result in a positive reception of both elected officials and political institutions. The implications of this are that it gives leaders more scope to govern effectively and provides institutions with enduring support, irrespective of how those who are running the government perform. From this reading, a high degree of legitimate authority derives from the consent of the governed. When, however, there is too little, or too much, trust, the process of consolidating democracy becomes fragile and tedious. Insufficient trust could potentially result in the disintegration of civil society. Excessive trust, on the other hand, promotes political apathy and encourages a loss of citizen control of government (O'Donnell 1999; Schmitter 2004). Needless to say, both

these scenarios have negative consequences, not only for institutional effectiveness but for the consolidation of democracy.

Successive Afrobarometer surveys suggest that there is a negative assessment of institutional performance in Namibia (Alance 2004; Keulder 2002). The performance perspective views political trust as resting: '... upon individual evaluations of the competency with which political institutions provide what they deem to be valuable social, economic and political benefits' (Merkel 2004)⁴. This suggests that individuals are continuously evaluating the foundations of the social contract with the state. Such assessments made by citizens are fundamentally geared to finding different ways of preventing and redressing the abuse of political power.

This paper posits that since Namibia's independence in 1990 a revolution has been gathering force in politics, development economics and international relations. In the public sphere, institutions and people devoted to the advancement of democracy, the fight against corruption and for social justice, poverty alleviation, and international co-operation, have become increasingly vocal against bureaucratic and political corruption and maladministration.

The Namibian Constitution, among the most liberal in the world, makes allowance for press freedom, political pluralism and political openness. This liberal political ethos has promoted greater scrutiny and heightened expectations of the Namibian government. The genesis of this paper is to ascertain whether the Office of the Ombudsman, as a democracy protection institution, is promoting an effective system of democratic governance in Namibia, giving effect to the underlying spirit of the progressive values of the Namibian Constitution and contributing to realising the vision it articulates.

METHODOLOGY

This study on promoting the effectiveness of the Office of the Ombudsman in Namibia is undertaken under the auspices of a Southern African regional research project with the theme 'Promoting the effectiveness of democracy protection institutions in Southern Africa', under the technical and administrative guidance of EISA. The overall objective of the project was to ascertain how the Office of the Ombudsman operates as an institution that acts as an interface between the state and citizens and democratic governance. At the country level the study was conducted and coordinated by a researcher who is accountable to EISA for the whole research process (administrative and technical).

In terms of the agreement with EISA the researcher was required to undertake a country study using two research instruments.

INSTRUMENT A (DESK RESEARCH/LITERATURE SURVEY)

This was one of the key instruments that aided and guided the research team. Various secondary sources were consulted, such as publications, laws, and policies relating to the key focal points of the project. Libraries and websites of government institutions, ministries and non-governmental organisations were visited to procure the information available on the Office of the Ombudsman in Namibia. This included published materials; official documents, including the Constitution and various legal instruments; regulations; annual and other reports; and newspapers, journals and periodicals.

INSTRUMENT B (QUESTIONNAIRE FOR OFFICIALS OF INSTITUTIONS)

The instrument outlined a number of questions that were applied by the researcher in the systematic capturing and analysis of the opinions of staff from the Office of the Ombudsman, using a combination of partly pre-coded as well as partly open platform research instruments in order to accord the experts the opportunity to provide brief comments and/or explanations in their responses.

CONCEPTUALISING POLITICAL ACCOUNTABILITY

Philippe Schmitter (2004, p 47) posits that: ‘... political accountability is a relationship between two sets of persons or (more often) organizations in which the former agree to keep the latter informed, to offer them explanations for decisions made, and to submit to any predetermined sanctions that they may impose’. Simply put, this means that an organisation such as the Ombudsman has the power to demand remedial action from governmental and private institutions if they have committed a transgression that falls within the purview of the Ombudsman’s mandate.

This suggests that a generic conceptualisation of political accountability refers to a symbiotic relationship between political office bearers and citizens, characterised by mutual responsibilities and potential sanctions. An important intervening variable to ensure effective political accountability relates to the free flow of information, which allows citizens the opportunity to make informed decisions about government actions and to pass judgement on such decisions electorally or otherwise. The free flow of information in developing countries like Namibia is often regulated by government.

From the above reading it can be contended that political accountability will only be effective if both rulers and the ruled decide collectively on the ‘rules of the political game’. Thus the proposition here is that: ‘... political accountability must be institutionalized if it is to work effectively. This means that it has to be embedded in a mutually understood and pre-established set of rules’ (Schmitter, p 48). The acceptance of these predetermined ‘rules of the political game’ also has implications for the consolidation of democracy, since it presupposes that both political office bearers and citizens are willing to work within a mutually agreed political framework. Moreover, it ensures that the government can control the governed, and that the governed have the ability to exercise checks and oversight and place institutional limitations on the exercise of power by the ruler.

It is clear from the above that political accountability plays a crucial role in the prevention and redress of the abuse of political power. But how do

we conceptualise political accountability? In this context: '... the notion of political accountability carries two basic connotations: answerability, the obligation of public officials to inform about and to explain what they are doing; and enforcement, the capacity of accounting agencies to impose sanctions on powerholders who have violated their public duties and responsibilities' (Schedler 1999).

In this context the Office of the Ombudsman in Namibia and its structures of accountability serve as an antidote to corruption, the abuse of power and acts of omission and commission. For this office to be effective it requires other agencies that complement, interlock with it and partially overlap in order to ensure horizontal accountability. This does not, however, suggest that the office cannot act on its own. Indeed, it initiated an investigation into conditions in prisons.

Horizontal accountability refers to: '... the existence of state agencies that are legally enabled and empowered, and willing and able, to take actions that span from routine oversight to the imposition of criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful' (O'Donnell 1999). Such actions may stem from the violation by both public and private actors of freedoms and guarantees. The mandate of the Ombudsman in Namibia, however, goes further, as will be illustrated elsewhere. The Office of the Ombudsman was established in 1990 with the task of providing ordinary citizens with recourse to the law.

POLITICAL AND SOCIO-ECONOMIC BACKGROUND

Since the first democratic elections were held to elect a Constituent Assembly in 1989 Namibia has held regular locally supervised free and fair elections. In addition, the rule of law has been upheld and the rights of individuals have largely been respected. Government has also shown considerable commitment to expanding access to health care and education. The latter has meant that school enrolment and literacy rates have improved since independence.

To overcome gender disparities brought about by decades of German colonialism and apartheid policies instituted by the pre-1994 South African government the government has actively pursued policies which benefit women. Not surprisingly, women now constitute almost 30 per cent of the National Assembly, the highest legislative body in Namibia, and approximately 40 per cent percent of the lower tier of government, the National Council.

Outside the purview of formal politics, the strength and independence of civil society has grown considerably since 1990. In particular, women's groups, churches and human rights organisations have played, and are playing, defining roles in holding government accountable. Independent media, operating alongside government-owned media, have remained vocal and vigilant. Politically, however, there are still a number of challenges. The opposition in Namibia remains weak and fragmented. Consequently, party politics are dominated by a single political party. This makes a compelling case for the establishment of other DPIs to fill the vacuum created by the absence of a strong opposition.

Economically, the country has also made significant strides. With a per capita income of above U\$3000 a year Namibia is considered by the World Bank to be a middle-income country. The Namibian economy is dominated by the primary sector, with mining the major contributor. The tourism sector, which caters for and targets high-end tourists, has seen

steady growth as well. Unemployment, estimated at about 40 per cent, remains a huge challenge for the Namibian government and corruption continues to drain the state of resources. Socially, the challenge of HIV/ AIDS remains daunting.

LEGAL AND CONSTITUTIONAL BACKGROUND

The Office of the Ombudsman was established by Act 7 of 1990, the year of Namibia's independence. The Ombudsman is appointed by presidential proclamation on the recommendation of the Judicial Service Commission. The current Ombudsman is Advocate John Walters. His predecessors were the founding Ombudsman, the late Advocate Fanuel Kozonguizi, and Advocate Bience Gawanas, the first female in Namibia to occupy the position.

According to the Namibian Constitution the functions of the Office of the Ombudsman are defined and prescribed by an Act of Parliament. The most pertinent of its many functions are encapsulated in Article 91(a) and (d) of the Constitution. Article 91(a) states:

... the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society.

See also Article 25(2)

Article 91 states that the Office of the Ombudsman has the responsibility and indeed

the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place.

The independence of the Office of the Ombudsman is enshrined in the Constitution of Namibia, in particular Chapter 10 (Rukow April 2009). Article 89(2) states that:

The Ombudsman shall be independent and subject only to this Constitution and the law.

With a view to ensuring minimal interference from other branches of government and other forms of political interference, Article 89(3) cautions and posits that:

No member of the Cabinet or the Legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and all organs of the State shall accord such assistance as may be needed for the protection of the independence, dignity and effectiveness of the Ombudsman.

The above two provisions endow the Ombudsman with legal autonomy. For this to be effective, however, the institution also needs to conduct its day-to-day affairs autonomously. In other words, it needs operational autonomy and some institutional autonomy from pressure exerted by dominant ruling or governing political parties.

The Ombudsman has a relatively broad mandate and corresponding powers. Article 91 of the Constitution provides guidance, mandating the Ombudsman to investigate and act upon alleged human rights violations and abuses, administrative malpractices, corruption and actions that endanger and imperil conservation and the environment.

Recently, however, the function of investigating corruption has been assigned to the Office of the ACC (*The Namibian* 28 September 2008). This means the Ombudsman will no longer have constitutional powers to deal with corruption. Katharina Ruppel-Schlichting (2008) concludes that: 'The intention behind this proposed amendment might be to avoid a duplication of functions between the Ombudsman and the Anti-Corruption Commission of Namibia.' This does not suggest, however,

that the intention is to ensure that the responsibility of corruption is to be borne by the ACC alone. Guillermo O'Donnell (1999, p 39) reminds us that: 'effective horizontal accountability is not the product of isolated agencies but of networks of agencies...'.

Implicit here is the recognition that the Office of the Ombudsman serves as a guardian of citizens' rights. Consequently, the constitutional provisions referred to conform to an important aspect of political accountability in general: that which requires that political accountability be institutionalised and formalised in documents such as the Constitution. The institutionalisation of accountability suggests a commitment by government to the promotion of the public good, a commitment that is reinforced by the threat of punishment for the violation of public trust.

It is clear from the above that the Constitution provides ways for people to seek redress if their rights are violated. These methods include filing a complaint with the Ombudsman. In essence, the role of the Ombudsman's Office is to guard against corruption and injustice in government and to help to protect the fundamental rights and freedoms of all people. The Office of the Ombudsman thus plays the role of an intermediary, which makes the rules of the institution acceptable to both citizens and rulers.

Beyond the constitutional mandate and the Act, which circumscribe the role of the Ombudsman, the office also has the ability to initiate investigations into infringements of human rights and environmental issues. While neither the Constitution nor the Ombudsman Act gives the Ombudsman's Office the right to act of its own agency the Ombudsman may decide to undertake an own-motion investigation if such an investigation concerns issues and authorities that fall within its defined mandate and if the complaint is brought to him. For example, investigations into the existence and prevalence of racism in Namibia and the conditions prevailing in police cells throughout the country were initiated by the Office of the Ombudsman (Walters 27 April 2009).

The Paris Principles require that the Office of the Ombudsman co-operate and collaborate with other civil society organisations (Walters 27 April 2009). The Office of the Ombudsman works closely with other rights and

democracy promotion and protection institutions such as the Namibia Institute for Democracy, the Electoral Commission of Namibia and non-governmental organisations involved in the field of human rights.

There is currently considerable overlap between the ACC and the Ombudsman when it comes to the investigation of corruption (Rukow 6 April 2009). To resolve this would require amendments to the Constitution or other legislation. Improving governance and controlling corruption require that these two institutions work in tandem to achieve a common purpose and ends. Perceptions of widespread corruption between 2003 and 2008 reinforce the contention that both institutions still have a role to play in combating corruption in the country. An Afrobarometer survey on the perception of corruption amongst national government officials suggests that: '... over the period 2003 to 2008 there has been a slight decline in public perceptions of corruption ... but ...The findings do not offer adequate support to suggest that the ACC has been effective in reducing corruption across government' (Institute for Public Policy Research 2009). These findings do suggest, therefore, that in terms of corruption both institutions have a role to play in improving the quality of governance and democratic performance.

INSTITUTIONAL GOVERNANCE AND EFFECTIVENESS

In terms of both the Namibian Constitution (Article 91a) and the Ombudsman Act, the Ombudsman has the ability to examine the administrative conduct of government organs and officials of such organs. In addition:

... the Ombudsman has the mandate to investigate complaints of human rights infringements by both government officials and private persons or institutions; complaints against administrative organs, the defence force, the police force and the prison service relating to failure to achieve a balanced structuring of services or equal access by all, to the recruitment of personnel, or fair administration in relation to such services; over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia; alleged or suspected corruption and the misappropriation of public moneys and other public property by officials.

Gawanas 2002

The investigative mechanisms also have limitations. For instance,

Excluded from the Ombudsman's powers is that of enquiring into any decision taken by a court of law. However, he/she can inquire into the administrative function and conduct of members of the judiciary in instances of corruption, negligence or outright incompetence, and so on.

Kasuto 1999, p 118

In addition to the investigative powers and limitations placed on his/her office, the Ombudsman has certain remedial powers.

The Office of the Ombudsman, unlike the formal justice system, does not have coercive powers. After the conclusion of an investigation the Ombudsman attempts to resolve disputes by alternative means: an informal process in which conflicting parties revert to the assistance of a third party that helps them resolve their dispute in a less formal and often consensual way than would be the case in court. This peaceful resolution of disputes between conflicting parties involves:

- Notifying the complainant of the outcome of the inquiry or investigation in such manner and form as the Ombudsman may deem necessary in the public interest or that the matter will not be inquired into or investigated.
- Taking appropriate action or steps to call for the remedying, correction and reversal of matters brought to the office through such means as are fair, proper and effective.
- Recommending correction or remedying of the matter investigated.

Gowanas 2002, p 106

The above methods for dealing with grievances contribute significantly to the independence of the Office of the Ombudsman. Moreover, an array of remedial methods vested in the Ombudsman suggests that there is a broad variety of options available for conflict resolution. The Ombudsman may, on the one hand, bring proceedings before a competent court if that is deemed necessary and, on the other hand, may find alternative methods of resolving a dispute (Constitution Article 91(e)). There are advantages for ordinary citizens in the alternative forms of resolving conflicts. Firstly, they are less expensive and faster and secondly they are '... believed to increase people's satisfaction with the outcomes, as well as their compliance with the agreements reached' (Ruppel-Schligting 2008, pp 284-5).

RESOURCES

It is essential for the impartiality of the Office of the Ombudsman that the office receive sufficient funding to enable it to perform the functions set out in its mandate and for such funding to enable it to contribute effectively to the promotion of human rights and democracy in the country. The absence of adequate funding may have serious implications for the office's efforts to promote and protect individual liberties, to promote democracy and to act as an autonomous body.

Moreover, it has practical effects – it limits the number of cases the office can pursue, constrains its initiative to investigate matters it considers important and forces it to choose only those matters its limited resources will sustain. In such a situation it is easier to justify not taking on cases which might involve high-profile and important politicians and people deployed by ruling parties or which have links to them.

The budget of the Office of the Ombudsman is presented by the Ombudsman and tabled in Parliament. Ultimately, government provides the funding for the office through the budget of its parent ministry, the Ministry of Justice (Cline 16 April 2009).

While the Office of the Ombudsman does not participate directly in the budgeting process it is instructive to note that: '... available funds can be spent by the Ombudsman at his/her discretion without approval from any higher authority' (Ruppel-Schligting 2008, p 280).

The figures in Table 1 indicate a gradual increase in funding received from government. The formula used to determine the funding is normally established through a budgetary process outlined by the Ministry of Finance in conjunction with the Ministry of Justice, a budgetary and administrative arrangement that is problematic for the Office of the Ombudsman. Elizabeth Cline, Deputy Director for Central Administration, puts the problem as follows:

... the fact that the Office is linked to the Ministry of Justice becomes problematic when the Ministry of Finance refuses requests for additional funding based on the fact that the Ministry of Justice could not spend their entire budget in a given year; the Ombudsman is not singled out as an entity on its own, but is “punished” as a result of the Ministry of Justice’s global performance.

Cline 16 April 2009

The remuneration packages for all staff are in line with the terms and conditions of service for civil servants determined by the Public Service Commission of Namibia. These remuneration packages generally ensure that Namibian civil servants are amongst the best paid in the Southern African region (Lodge 1998). However, the Ombudsman’s Office faces considerable resource constraints.

Cline (16 April 2009) points out that:

During 2006, the Office was accredited as the National Human Rights Institution by the International Coordinating Committee of National Institutions for the Protection of Human Rights. As such, it is incumbent upon the Office to ensure that human rights and adherence to international human rights instruments ratified by Namibia are observed throughout the country. Over and above human rights violation investigations, we thus have to engage in special projects which would include broad scale human rights public education campaigns, public hearings, etc, while a human rights expert is required to keep abreast of national and international human rights developments and attend human rights conferences and workshops. Additional funding is naturally required to fund all the activities. Constraints are thus lack of adequate funding and human resources to support the Office’s role as National Human Rights Institution.

As a result of the above the Ombudsman cannot properly carry out his or her human rights mandate, which requires that the office monitor

Namibia's performance in relation to its ratification of international human rights instruments (Cline 16 April 2009). Table 1 lists both government funding and funding received from external sources. As regards the latter, financial support was granted by, among others, the embassies of Finland and France, and the Konrad Adenauer Stiftung. The French Embassy supported human rights education and the training of prison wardens (Office of the Ombudsman 2007).

Table1
Funding received by the Office of the Ombudsman

Year	Government funding	External funding
2004/5	N\$ 4 570 000	
2005/6	N\$ 4 570 000	N\$ 50 000
2006/7	N\$ 4 590 000	N\$ 45 000
2007/8	N\$ 4 700 000	
2008/9	N\$ 6 150 000	N\$160 000
Total Funding	N\$24 580 000	N\$255 000

Source: Office of the Ombudsman 2007

INTERACTION WITH THE GOVERNMENT

Generally, the history of political institutions in the Southern African Development Community (SADC) region suggests that there is little tolerance for them. To ensure complete political autonomy and respect for the rule of law it was necessary that institutions of horizontal accountability, such as the Office of the Ombudsman in Namibia, be empowered to be effective promoters of democracy. A United Nations Development Programme report (2006) notes that:

The underlying rationale for independence in this context is that an Ombudsman has to be capable of conducting fair and impartial investigations, credible to both complainants and the authorities that may be reviewed by the Office of the Ombudsman.

One of the preconditions for the effectiveness of the Ombudsman is the appointment of a person who can act independently of political and other influences, qualities that depend on the method and procedure of appointment and removal from office. The effectiveness and impartiality of the person occupying the Office of the Ombudsman can only be guaranteed if such a person is appointed or confirmed by an independent body.

In Namibia, the Ombudsman is appointed by the president on the recommendation of the Judicial Service Commission (JSC) (Constitution Article 90(1)). The JSC comprises the chief justice, a judge appointed by the president, the attorney-general, and two members of the legal profession (Constitution Article 85(1)). Procedurally, the JSC makes the recommendation to the President, who, in turn, formally accepts or rejects it.

This drawn-out process has two advantages. Firstly, it ensures that: '... the appointed incumbent is widely respected by diverse political groups

as fair and impartial, and secondly, that the appointment is not the responsibility of one particular institution (Ruppel-Schlichting 2008, p 278). More important for the role of this institution as an effective promoter of democracy is that: '... the two-stage appointment process intends to make sure that the Ombudsman is independent of any agency under the office's jurisdiction' (Ruppel-Schlichting 2008, p 278).

The process has as its aim the positioning of the Ombudsman in such a manner that extraneous interests do not interfere with the independence of the office. Functional and political autonomy, in this instance, would thus require that the Ombudsman remain independent of the institutions it reviews and insulated from undue political pressure.

The independence of the office is demonstrated by its reluctance in late 2000 to embrace a decision taken by government. The stand related to a government decision to withdraw all government advertising from the privately-owned newspaper, *The Namibian*, because of the newspaper's allegedly 'critical and unpatriotic' reporting (Media Institute of Southern Africa 2006). The Office of the Ombudsman has failed to follow the directive and still advertises in the newspaper (Walters 27 April 2009).

The determination of the salary of the Ombudsman ensures that the remuneration he or she receives is of such a nature that conflicts of interest created by the desire to pursue private interests are avoided and expressly prohibited. In the case of Namibia, the Constitution determines that the remuneration of the Ombudsman is in line with that of ministers and judges. Currently, the Ombudsman has the same conditions of service as a High Court judge. The Constitution also stipulates that the remuneration package of the Ombudsman cannot be reduced arbitrarily. This is provided in the contract between the president of Namibia and the Ombudsman (Walters 27 April 2009).

In view of the fact that the Ombudsman must guard against corruption, '... an Ombudsman is not allowed to generate income other than the remuneration which is granted in his/her functions as Ombudsman'. (Ruppel-Schlichting 2008, p 281). The appointment of other office bearers in the Office of the Ombudsman is guided by rules of the Public Service

Commission (PSC). These office bearers are appointed by the government on the recommendation of the PSC (s 7.1 Ombudsman Act 1992).

The operational autonomy of the Office of the Ombudsman derives from the fact that: 'the Ombudsman determines the rules and procedures for the handling of complaints and accordingly has developed a complaints procedure manual. The Ombudsman has the discretion to determine the nature and extent of any enquiry and investigation conducted by the office' (Gawanas 2002, p 102). In addition to these factors a number of considerations which inform the degree of autonomy and independence of the Ombudsman are considered here. These are:

- the positioning of the institution within the legal framework;
- the method of appointing and removing an incumbent from office;
- accountability;
- funding and personnel issues;
- enforcement mechanisms;
- the investigation process.

Ruppel-Schlichting 2008, p 277

The variety of cases recorded in Table 2 shows that this alternative form of conflict resolution is proving popular. More importantly, cases brought before the Ombudsman normally come from people whose precarious financial situation would not have allowed them access to redress in the absence of such a body. Moreover, the elderly, and those in prison, who are considered two vulnerable groups in Namibia, know which office they can consult to resolve disputes with those in power.

In the period January to December 2008 the Ombudsman received 1 539 complaints, only 380 of which were not resolved. Table 2 provides a breakdown of complaints received about government institutions, parastatals and other institutions. Given the diversity of complainants it is fair to contend that the Office of the Ombudsman provides recourse as an institution of accountability to ordinary citizens who might not otherwise have had the opportunity to ensure that their rights are respected and protected.

Table 2
Cases by category

Category	Number of complaints
Administration of justice	234
Civic affairs	28
Compensation	103
Consumer	8
Corrupt practices	50
Court decisions	88
Disputes involving private persons or institutions	144
Employment matters	137
Health services	19
Housing	31
Human rights violations	73
Legal fees/services	22
Licences/permits	5
Medical aid	4
Ministry/institution conduct	246
Pension	62
Police conduct	128
Prison conduct	80
Request for information	55
Tax	17
Traditional authority	5
Total number of cases listed	1 539

Source: Director of Investigations 6 April 2009

The political accountability of the office endows all citizens with the same rights and obligations, thus ensuring that democratic guarantees and legal norms are not violated or ignored. From the above reading, therefore, the Office of the Ombudsman, through its intervention to ensure compliance with the public good, reinforces the perception that the principle of political equality is connected with the principle of democracy.

Katharina Ruppel-Schlichting (2008) notes that:

The broad mandate of the Ombudsman gives the citizens an expert, an impartial agent in a wide variety of matters, without personal cost or bureaucratic hurdles to the complainant, without time delay, without the tension of adversary litigation, and without the requirements of professional legal representation.

Remedial action in the event of a violation of individual human rights includes: '... attempting a compromise between parties concerned, bringing the matter to the attention of the authorities, referring the matter to the courts, or seeking judicial review' (Ruppel-Schlichting 2008). The effectiveness of the Office of the Ombudsman, therefore, resides in its ability to play a crucial role in the prevention and redress of the abuse of political and administrative power.

The effectiveness of the office is evaluated and monitored by means of internal instruments. It is a two-pronged process: evaluation is done by the Director of Investigations and conclusions reached by her office are referred to the Ombudsman, who acts upon the decisions (Rukow 6 April 2009).

To raise the level of awareness among ordinary citizens and to ensure that the activities of the Office of the Ombudsman are viewed as legitimate and transparent the office produces annual reports that are tabled in Parliament. These reports contain information about the scope of activities, complaints, investigations, management services and administration, as well as details of outreach and public education programmes.

The Ombudsman has a five-year revolving strategic plan, which it designs in consultation with the Ministry of Justice. The focus of earlier strategic plans was on maladministration and corruption, but, since the current Ombudsman has taken office, there has been a shift towards a concern with the promotion of human rights. This shift in focus ostensibly resulted from the fact that the Ombudsman is the only human rights office in Namibia accredited by the United Nations (Rukow 6 April 2009).

However, there are obstacles which hinder the Office of the Ombudsman in the performance of its duties. The Director of Investigations asserts that the biggest of these is financial. This problem relates to the relationship between the Ministry of Justice and the Office of the Ombudsman. When money allocated to the ministry decreases, the portion assigned to the Ombudsman is also reduced (Rukow 6 April 2009).

The problem between these two entities is more profound. The Ombudsman is appointed by an independent panel, whereas the minister and the accounting officer in the Ministry of Justice, the permanent secretary, is a political appointee, directly appointed by the ruling party. As a result, the permanent secretary has the ability to overrule any decision made by the Ombudsman which may be deemed to be politically inappropriate. Thus the relationship between the Ombudsman and the permanent secretary may not only have financial implications, it may also have an impact on accountability and oversight – of the ministry over the Ombudsman. This simply means that the ‘power’ the ministry has over the Ombudsman may result in the investigative powers of the Ombudsman being circumscribed, specifically in cases where the investigation is deemed politically risky.

Notwithstanding these difficulties, the Office of the Ombudsman has been able to extend its reach through the establishment of two regional offices, one in Keetmanshoop, in the south of the country, and one in Oshakati, in northern Namibia.

Finally, staff from the office travel throughout the country to carry out public outreach programmes at such functions as trade fairs. The Ombudsman has conducted prison visits to look into complaints about conditions, has given public lectures about human rights education, and has launched investigations into racism in the country (Office of the Ombudsman 2007; *The Namibian*).

INTERACTION WITH OTHER DEMOCRACY PROTECTION INSTITUTIONS

Collaboration and co-ordination among institutions engaged in similar work in a small country like Namibia is imperative. For this to happen, however, requires agencies that interlock and partially overlap. The broad mandate of the Office of the Ombudsman as well as the particular financial and human resource constraints it faces necessitate that it interact with other institutions engaged in work of a similar nature.

In a time when financial constraints impose severe limitations on the operations of all DPIs, issue-specific co-operation among them is indeed prudent. More crucially, this 'dialogue' between and among DPIs is necessary because it engenders social capital for these institutions. In Namibia, collaboration among the various DPIs is said to be healthy.

The Office of the Ombudsman works particularly closely with the Electoral Commission of Namibia on election-related issues, but the relationship between the Ombudsman and the ACC is vague. Eileen Rukow (6 April 2009) maintains that this blurring of the relationship between the two institutions is a result of conceptual confusion. She points out that:

... the biggest difference ... is that the corruption commission is tasked with investigating corruption and we are tasked, in addition, to investigate misappropriation of public money by officials. What makes it very difficult, purely in a legal sense, is applying the principle of legality to the functions of the ACC because, currently, the constitutional obligation rests with us to investigate corruption while an Act of parliament, which should in fact be in line with the determinations of the Constitution, gives it to somebody else. The ACC further refers complaints to us on a weekly basis. Things that they feel fall outside their mandate. We do not have any formal agreement with them, but the Ombudsman and their director

get along very well and on both sides we experience an open-door policy.

Those institutions that complement and reinforce institutions such as the Office of the Ombudsman are established to ensure horizontal accountability. In the domain of human rights promotion and protection, the Ombudsman works closely with the National Society for Human Rights and the Legal Assistance Centre (Rukow 6 April 2009).

INTERACTION WITH THE PUBLIC AND NON-STATE ACTORS

The Office of the Ombudsman conducts outreach programmes and specific human rights education to enhance public education. For instance, with a view to enhancing human rights awareness and education the office initiated the establishment of the Ombudsman Human Rights Advisory Committee, established in collaboration with NGOs, civil society organisations and the Council of Churches in Namibia (Walters 2008). One of the most notable achievements of this committee was the organisation of the 16 Days of Activism Against Gender Violence campaign (Walters 2008). Other campaigns undertaken by the Ombudsman, which put the office in the forefront of promoting democracy in Namibia and highlighted its role as the custodian and guardian of individual liberty, were those to ascertain the existence of racism in Namibia and to highlight conditions in the country's prisons.

The investigation into prison conditions was prompted by a suspicion that the fundamental rights and freedoms of prisoners were being violated. The outcome of the investigation is contained in a special report. To ensure accountability and compliance with this report, the Office of the Ombudsman intends to conduct: '... follow-up visits to Police holding cells to determine whether and how the Ministry of Safety and Security has complied with the recommendations contained in the Special Report' (Walters 2008). Such routine oversight is critical to the enhancement of horizontal accountability in Namibia. However, horizontal accountability can only be achieved if the Ombudsman has the means and capacity to impose sanctions on power-holders in ministries who have violated their public duties. Simply put, the Ombudsman must be able to hold government agencies politically accountable.

Those NGOs working in the field of human rights serve on the HRAC, chaired by the Ombudsman. The advisory committee is a structured mode of crafting a relationship between the Ombudsman and non-state actors,

its purpose being to serve as a forum for dialogue and the exchange of ideas and activities related to all areas of human rights (Walters 27 April 2009). The Office of the Ombudsman, in collaboration with the LAC and the Namibia Institute for Democracy (NID), also plays an important role in voter education at election time. While most of the activities in which the Ombudsman is normally engaged are not structured and institutionalised, they do take place on a regular basis.

KEY RESEARCH FINDINGS

Institutions and people devoted to the advancement of democracy, the fight against corruption and for social justice, poverty alleviation, and international co-operation, have become increasingly vocal about bureaucratic and political corruption, maladministration and the abuse of political and economic power.

The establishment of the Office of the Ombudsman soon after independence suggests a commitment by government to broaden recourse to redress for all citizens, with a special focus on the previously disenfranchised, in an attempt to institutionalise accountability. The task of the office in Namibia is made easier by legal and constitutional provisions.

The most important of these provisions is the constitutional recognition that the office must serve as a guardian of citizens' rights. To this end, the Constitution provides for people to seek restitution if their rights are violated and the Ombudsman plays the role of intermediary, which makes the rules of the institution acceptable to both citizens and rulers.

The Constitution not only provides for the mandate of the Ombudsman, more crucially, it guarantees its institutional autonomy, an autonomy that was clearly illustrated by the decision of the Ombudsman to defy the government directive in 2000 compelling all state-sponsored institutions to cease advertising in *The Namibian*.

The Ombudsman is normally appointed by the president for a five-year term. In its daily operation the Office of the Ombudsman works closely with the Ministry of Justice and is, indeed, regarded as part of that ministry. This not only has a bearing on the functioning of the office but places severe limitations on its financial autonomy. To illustrate, the permanent secretary of the Ministry of Justice, who is the focal point of the ministry and who is normally a political appointee, may disagree with and even

punish the work of the Ombudsman. Not only could this potentially hamper the independence of the Ombudsman, it could serve as a potent cocktail of personality-based or political clashes.

The effectiveness of the Ombudsman in Namibia is discernable from its success rate. For instance, in 2008, the office resolved more than 80 per cent of the cases brought before it. Moreover, the many remedial methods available for conflict resolution mean that citizens have access to justice that is both cheaper and faster. In addition, the high number of cases resolved amicably points to increased satisfaction among ordinary people as well as their compliance with the agreements reached.

The Office of the Ombudsman interacts with other DPIs in a number of instances where there is a convergence of interest. In the domain of human rights, for instance, it works closely with the LAC. In other instances, and especially during elections, it collaborates on voter education with institutions such as the NID and the NSHR. These forms of co-operation are prudent for both financial and human resource reasons.

One of the biggest challenges facing the Office of the Ombudsman relates to resources. Currently, its budget comes from the Ministry of Justice. This places severe limitations on its operational efficiency. Resource limitations also have an impact on human resources, which mean that the office is constantly short of staff. Thus far, the office, and particularly its research capacity, is heavily affected by the lack of financial autonomy.

While the office receives the same budget as the ACC, its mandate is much broader than that of the commission. Fortunately for the Ombudsman, it receives substantial contributions from other donors, which enable it to carry out public outreach programmes and to engage in public education programmes.

Finally, while the establishment of regional offices in Keetmanshoop in the south of Namibia and Oshakati in the north is in line with government's policy of decentralisation, the continued lack of adequate financial and human resources remains one of the biggest challenges it faces.

CONCLUSION

This paper has argued that constitutional provisions underpin the independence of the Office of the Ombudsman in Namibia, an independence reinforced by the Ombudsman Act. Thus, both the Constitution and the Act can be regarded as appropriate tools for safeguarding the Ombudsman's independence and locate the Ombudsman centrally to contribute significantly to the effective promotion of democracy. In particular, the office is well positioned to play a crucial role in the promotion of a central democratic tenet, the protection of human rights.

Thus far, the Office of the Ombudsman has, through its investigations and resolution of complaints, played a defining role in the promotion of human rights and democracy. Its increasing interaction with other institutions also contributes to the promotion of democracy and human rights.

What has also crystallised is that its continued subordination to and interaction with the Ministry of Justice prevents it from achieving the financial independence so crucial for an institution of this nature. The ability of the office to make decisions independently of influence from government or other interests will ultimately determine the effectiveness of its role as a democracy protection and rights enhancing entity.

POLICY RECOMMENDATIONS

- It is suggested that the Office of the Ombudsman be detached from the Ministry of Justice and that it be given complete financial and operational autonomy, similar to that of the ACC.
- The issue of human resources, particularly the shortage of administrators and investigators, which could potentially incapacitate the institution, should be seriously considered as a matter of urgency, to ensure a higher rate of success.
- The research capacity of the office should be improved.
- The government of the Republic of Namibia should ratify the African Charter on Democracy, Elections and Governance that it signed on 10 May 2007. This would not only increase the already high standing the country enjoys as a democracy in the eyes of the international community, it would signal the government's seriousness about electoral politics.
- There is a need for an independent evaluation of the Ombudsman's Office – operations, and effectiveness, impact and outcomes
- Mechanisms should be put in place to strengthen compliance with the findings and recommendations of the Office of the Ombudsman.

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John Walters, Ombudsman of Namibia, 27 April 2009.

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APPENDIX

Questionnaire

A. General	
1.	How long has your institution been in existence? How and why was it established?
2.	Please provide a description of your understanding of your institution's constitutional/legal mandate. Does it include a right of initiative?
3.	What role or function does your institution perform that is not carried out by other institutions, whether in government or civil society?
4.	What other democracy protection institutions exist in your country? How does your institution relate to them?
5.	In what way, if any, does the role and function of your institution overlap with or potentially overlap with that of the other democracy protection institutions?
6.	Does the founding legislation provide a clear, workable and comprehensive legal framework that supports and empowers the institution to successfully fulfil its core mandate?
7.	What outcomes do you strive for in order to realise the constitutional/legal mandate set out in 1 above? How often do you engage in strategic planning?
8.	What have been /are the major constraints facing your institution and how have these impacted on its ability to achieve its mandate?
B. Institutional effectiveness	
9.	What mechanisms are in place to deal with public complaints, to follow through on such complaints and to successfully resolve them?
10.	How many cases/ complaints have been brought to you over the last year?
11.	How many of these were resolved? How many are outstanding and what are the reasons for this?
12.	How do you measure and assess your own effectiveness? What instruments do you use for monitoring and evaluation purposes?
13.	Have you carried out any external evaluation looking at the successes or otherwise of your functions?
14.	Do you produce annual reports? If so, are they publicly available?
15.	What strategies do you employ in carrying out public outreach and ensuring public trust of your institution?

C. Independence
16. How do you view your relationship with the executive and parliament?
17. How do you view your relationship with political parties (both ruling and opposition)?
18. What legal and other mechanisms are in place to ensure and strengthen the institution's independence?
19. Who is your institution accountable to?
20. What is the extent of collaboration and coordination of the work carried out by your institution and similar/ related work carried out by other institutions of a similar nature?
21. What safeguards exist to protect your institution from political encroachment?
D. Institutional governance
22. What are the institutional governance arrangements in your institution? Are these arrangements clearly set out and do they allow for a smooth running of the institution? Do you embrace gender issues? What suggestions do you have to improve institutional governance arrangements?
23. Is there a clear, logical and workable division between the members of your institution appointed by President (on advice of the National Assembly) and the Secretariat?
24. Does your institution have mechanisms in place to deal with internal conflict in your institution? If yes, what are these mechanisms and are they effective?
25. What mechanisms are in place for Chief Executive Officers, Chairpersons and Commissioners to disclose and /or seek permission for private / commercial / financial interests or involvement as well as membership in any organisation? Are such mechanisms effective or sufficient to ensure transparency and avoid conflict of interest?
E. Interaction with the public and non-state actors
26. What is the extent of collaboration and coordination of the work carried out by your institution and similar/ related work carried out by non-state actors?
27. What was the intended relationship between your institution and the public? To what extent has this relationship been realised?
28. Does your institution have mechanisms in place to deal with complaints by the public about the work done by your institution or the failure to attend to issues?
29. How accessible are the offices of your institution to the public?
30. What kind of complaints do the public bring to you?

31. Do the public have a sufficient appreciation of your role and mandate?
32. Are public expectations of your institution realistic/ unrealistic?
F. Resources
33. Is your institution funded through a designated ministry/ government department or through the consolidated fund voted directly by parliament?
34. Please give an indication of your budget allocation, additional funding and expenditure over the past five years.
35. Please illustrate the budget process followed by your institution, including the process of allocation of funds.
36. Please provide detailed information of the remuneration packages for office-bearers and Commissioners.
37. Are the current budgetary and administrative arrangements sufficient to ensure autonomy of democracy protection institutions?
38. To what extent are the resources allocated to your institution directly spent on meeting its key responsibilities?
39. What are the resource constraints faced by your institution?
40. How does this hamper the work of your institution?

ABOUT EISA



EISA is a not-for-profit and non-partisan non-governmental organisation which was established in 1996. Its core business is to provide technical assistance for capacity building of relevant government departments, electoral management bodies, political parties and civil society organisations operating in the democracy and governance fields throughout the SADC region and beyond. Inspired by the various positive developments towards democratic governance in Africa as a whole and the SADC region in particular since the early 1990s, EISA aims to advance democratic values and practices and to enhance the credibility of electoral processes. The ultimate goal is to assist countries in Africa and the SADC region to nurture and consolidate democratic governance. SADC countries have received enormous technical assistance and advice from EISA in building solid institutional foundations for democracy. This includes: electoral system reforms; election monitoring and observation; constructive conflict management; strengthening of parliament and other democratic institutions; strengthening of political parties; capacity building for civil society organisations; deepening democratic local governance; and enhancing the institutional capacity of the election management bodies. EISA was formerly the secretariat of the Electoral Commissions Forum (ECF) composed of electoral commissions in the SADC region and established in 1998. EISA is currently the secretariat of the SADC Election Support Network (ESN) comprising election-related civil society organisations established in 1997.

VISION

An African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment

MISSION

EISA strives for excellence in the promotion of credible elections, participatory democracy, human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa

VALUES AND PRINCIPLES

Key values and principles of governance that EISA believes in include:

- Regular free and fair elections
- Promoting democratic values
- Respect for fundamental human rights
- Due process of law / rule of law
- Constructive management of conflict
- Political tolerance
- Inclusive multiparty democracy
- Popular participation
- Transparency
- Gender equality
- Accountability
- Promoting electoral norms and standards

OBJECTIVES

- To enhance electoral processes to ensure their inclusiveness and legitimacy
- To promote effective citizen participation in democratic processes to strengthen institutional accountability and responsiveness
- To strengthen governance institutions to ensure effective, accessible and sustainable democratic processes
- To promote principles, values and practices that lead to a culture of democracy and human rights
- To create a culture of excellence that leads to consistently high quality products and services
- To position EISA as a leader that consistently influences policy and practice in the sector

CORE ACTIVITIES

- Research
- Policy Dialogue
- Publications and Documentation
- Capacity Building
- Election Observation
- Technical Assistance
- Balloting

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