Workshop on the role of check and balance institutions, Caserta, Italy, April 28-30, 2014
Elin Bergman
Outline

• The role of the Ombudsman
• Brief history
• Structure and mandate
• Condition for effectiveness and key design issues
• Monitoring effectiveness
The role of the Ombudsman

• “An office provided by the constitution or by action of the legislature or Parliament and headed by an independent high level public official who receives complaints from aggrieved persons against government agencies, officials and employers or who acts on his or her own motion, and has power to investigate, recommend corrective actions and issue reports”.
  - International Bar Association definition (1974)

• Through its unique role as an independent intermediary between the government and the citizen it has the potential of adding significant value to the overall accountability framework of a country.
Governance Framework
Actors, Capacities and Accountability

Outcomes:
Services, Regulations, Corruption

Political Actors & Institutions
- Political Parties
  - Competition, transparency

Executive-Central Govt
- Service Delivery & Regulatory Agencies

Subnational Govt & Communities

Civil Society & Private Sector
- Civil Society Watchdogs
  - Media
  - Business Associations

Formal Oversight Institutions
- Parliament
- Judiciary
- Oversight institutions

Ombudsman

Citizens/Firms
Spread of the Institution

The ombudsman institution has spread rapidly throughout the world as countries have transitioned toward democracy.

**Number of national level ombudsman institutions over time**

1980 (29 Countries)

1990 (45 Countries)

2000 (100 Countries)

2010 (133 Countries)
Evolution in different regions

Africa
• First OI in Tanzania in 1966
• Dramatic increase in OIs during the 1990’s
• In general, OIs in Africa operate under comprehensive mandates including human rights protection, anti-corruption, leadership code enforcement, and/or environmental protection
• The OI goes under the names "ombudsman", "human rights commissions" or “Médiateur”

East Asia and The Pacific
• First OI in New Zealand in 1962 (fourth in the world)
• Most EPA OIs follow the classic model with a mandate restricted to investigating complaints pertaining to practices and decisions taken by public administrations, while others have much broader mandates, including human rights protection.

Europe and Central Asia
• OIs originated in the Nordic countries and spread rapidly throughout Western Europe after the Second World War
• It started to appear in Eastern Europe in the 1990s and recently in Central Asian countries
• The classical model is common in Western Europe, while OIs in Eastern Europe and Central Asia usually have a specific human rights mandate

Latin America and the Caribbean
• First OI in Guatemala in 1985. Since then, almost all other countries in the region have established an OI
• Human rights protection is the primary focus of LAC OIs
• Generally goes under the name "El Defensor del Pueblo"

Middle East and North Africa
• In existence in countries including: Jordan, Algeria, Morocco, and Tunisia
• OIs generally assume the classical role of handling complaints regarding practices and decisions taken by public administration

South Asia
• Only Sri Lanka (1982) and Pakistan (1983) have national level OIs
• Several subnational and specific purpose OI in existence in Pakistan and India
Structure and mandate

• Wide variation in institutional set-up
  • Each country's OI is adapted to local circumstances and integrated into the overall institutional set-up, which has resulted in...
  • ...wide variations in structure, mandate, powers, and functions across countries;

• Dimensions of key differences
  • National vs. Sub-national
  • General purpose vs. specific purpose (one administrative field)
  • Quintessential Powers vs. additional legal powers
  • Parliamentary vs. Executive
  • General mandate vs. authority for specific issues (human rights, anticorruption, or auditing)

• Four categories of OIs
  • Classical OI
  • OIs with a specific human rights mandate
  • OIs with a specific anti-corruption mandate
  • OIs with a specific auditing mandate

The categorization highlight some of the key differences between different types of institutions. In practice, it is rare to find an OI that focuses solely on issues pertaining to one single category.
Classical Ombudsman

- **Function:**
  - Investigate complaints against the public administration, makes recommendations to be taken by the administration, and tries to get these recommendations adopted

- **Features:**
  - Extensive powers to investigate cases submitted to them
  - May work towards mediation of conflicts, but…
  - …if no solution can be reached, they provide recommendations to the relevant administrative unit
  - No power of coercion and can only employ "soft" pressure to get its recommendations adopted
  - Submits an annual activity report to the parliament to draw the latter's attention to unremedied grievances

- **Countries using this version:**
  - Common in Western Europe and some of the Commonwealth countries. Examples include Belgium, Denmark, Ireland, Iceland, Israel, the Netherlands, Norway, the UK, and Australia

- **Classical OI with extended legal powers**
  - Increasingly common with OIs having extended legal powers to get its recommendations adopted
  - The specific legal powers vary, but may include the power to; appeal to courts, participate in court proceedings, file applications in administrative proceedings, propose legislative amendments, and recommend disciplinary or criminal proceedings
  - Can be found in all regions of the world, especially among younger OIs
Human Rights Ombudsman

• Function:
  • Specific mandate to look into the observance of human rights. The OI mandate may be restricted only to human rights issues, or it may be an addition to the classic mandate

• Features:
  • Specific tasks may include:
    • filing of human rights violations
    • educating and informing the public on human rights
    • reporting on the general human rights situation in the country
    • conducting research and analysis in human rights
    • monitoring the implementation of human right laws within the country

• Countries using this version
  • Particularly common in Eastern Europe, Central Asia and Latin America.
  • In Colombia, El Salvador, Venezuela, Bolivia, Azerbaijan, Georgia, Uzbekistan, the OI is restricted to only human rights issues.
Anti-corruption Ombudsman

• **Function:**
  - Specific mandate to curb corruption

• **Features:**
  - Often operating as a combined OI and anti-corruption agency.
  - Specific tasks may include;
    - overseeing the conduct of senior public officials
    - collecting and reviewing assets and income declarations
    - investigating instances of alleged or suspected corruption
    - educating and informing the public regarding issues related to corruption

• **Countries using this version**
  - mostly found in Asia and Africa. Country examples include South Korea, Papua New Guinea, Taipei, China, Vanuatu, Rwanda, Gambia, and Ghana
Auditing Ombudsman

• Function:
  • specific auditing mandate

• Features:
  • Power to oversee government bodies and/or conduct audits of the administrative practices and procedures of government bodies, irrespective of whether they have received an individual complaint

• Countries applying this version:
  • Australian state level OI, Ethiopia
Conditions for effectiveness and key design issues (1)

- **Independence**
  - independence from the executive power to avoid the risk of not being able to resist influence
  - non-subordination to the administrative bodies that it is supposed to investigate
  - independence of the office holder and financial independence

- **Key design issues:**
  - Appointment procedure
    - Collective appointment by parliament, generally considered a prerequisite for independence
    - Accountability usually to parliament in the form of submission of an annual reports
  - Budget procedure
    - Should not depend on the executive
    - One option: the ombudsman to propose an annual budget directly to parliament
Conditions for effectiveness and key design issues (2)

- **Functional competence and adequate resources**
  - in order to be effective in receiving, investigating, and resolving complaints
  - depends on institutional design, administrative capacity, and professional expertise of staff

- **Key design issues:**
  - **Powers**
    - Adequate powers essential for the OI to perform its functions effectively
    - Powers should be stated in the relevant law or administrative issuance
    - Investigative powers should include; (1) the authority to obtain documents, (2) compel the attendance and testimony of witnesses, (3) and conduct inspections of government premises.

- **Relation to other oversight agencies**
  - Essential that the OI fit with existing institutional arrangements, as the…
  - …value of the OI depends on the overall system of administrative regulation
Conditions for effectiveness and key design issues (3)

- Political support
  - from parliament, government, administration, and courts

- Public Awareness
  - critical as its work depends on the complaints it receives
  - the public must be aware of and understand the ombudsman and its functions

- Diplomatic skill
  - to be able to act as an intermediary and to get its recommendations adopted
Monitoring performance (1)

- **Why monitor performance?**
  - ensuring accountability
  - evaluating effectiveness in carrying out its mandate
  - demonstrating the OIs value to the public

- **Performance measures commonly used by OIs:**
  - Number of complaints
    - Not necessarily a measure of performance, but may be an indication of stakeholder’s confidence in and awareness of the OI
    - The more complaints the better?
      - Generally – Yes, but if an OI has resolved a systemic issue, a drop in the number of complaints should be one of the outcomes
  - Time taken for handling complaints and complete investigations
    - A proxy for functional capacity
    - OIs often creates specific target deadlines or standards for resolving complaints within certain timeframes
  - Number of cases resolved informally
    - OIs spend a lot of time attempting to resolve cases informally, as informal resolution can often be far quicker, cheaper, and more effective than a full investigation.
    - A few OIs set specific goals for increasing the number of cases that are resolved informally.
Monitoring performance (2)
Performance measures commonly used by OIs, cont.

• Public awareness of the existence of the OI
  • Common to use the number of outreach activities conducted as an indicator
  • But, to measure if the outreach activities have been effective, indicators such as; increases in website traffic, the number of calls or in the frequency of citations and references to the OI by the media or legislature, may be more accurate

• Number of investigations dealing with systemic issues
  • Systemic investigations of particular importance, as they allow OIs to provide long-term value.
  • Some OIs set targets for the number of systemic investigations to be conducted in a given year, while other uses the number of resolved systemic investigations as an indicator

• Acceptance of recommendations
  • Critical indicator of an OI's effectiveness
  • Often (but not always) an indication of the strength of the investigative process, the ability to provide practical recommendations based on solid evidence, and the overall credibility of the OI
  • OIs often record the percentage of recommendations accepted as a measure of overall OI performance
Ombudsmen in the MENA region (1)

**Tunisia**
The Administration Ombudsman (Médiateur Administratif)
- Operates under the classical mandate: receives and investigates complaints from citizens, and makes recommendations to the appropriate agencies.
- National office as well as regional branches across the Tunisian territory.
- Submits an annual report to the president of the republic detailing the result of the work, the procedures likely to improve the functioning of the administration, and the changes to be introduced in the legislation to put these procedures in place.

**Algeria**
National Commission for the Promotion and Protection of Human Rights
- The National Ombudsman (Médiateur de la République) was established in 1996, but was abolished in 1999. In 2001, a National Commission for the Promotion and Protection of Human Rights were put in place.
- Mission: to “undertake mediation activities in the context of its mandate to improve the relationship between the administration and the citizens.”
Jordan
Ombudsman
- Mandate: examines complaints from individuals relating to any decree, procedure, practice or any act of refusal by public administration.
- Has been successful in promoting citizen access to information:
  - Following the refusal by the Social Security Corporation (SSC) to provide a copy of the executive directives relating to social security benefits, a Jordanian lawyer filed a complaint with the Ombudsman Bureau.
  - The Ombudsman Bureau ordered the SSC to publicize those directives in accordance with the ATI law.
  - The SSC followed the order and the directives were published in the Official Gazette in 2011.

Morocco
Ombudsman “al-Waseet”
- Established by law in 2001 (modernized in 2011)
- Role:
  - Citizens may lodge a complaint with the OI against any public agency. The OI conducts research and investigation. The Office makes recommendations, to the relevant agency, which is obligated to take the necessary measures to examine the complaint and inform the OI afterwards of the decision and measures taken.
- Powers:
  - Public agencies are obligated to provide the necessary support for the OI through supplying documents and information relating the complaint under investigation
  - Submits an annual report to his Majesty the King. The report is published afterward in the official Gazette and publicized at a large scale.
  - The OI mainly handles complaints related to human rights violations.
World Bank engagement

World Bank Engagement

**World Bank Engagement.xlsx**

**Styled by Status**
- Closed (5)
- Active (3)
- Pipeline (2)

**Base map**

**Ombudsman Capacity-Building Support**
- **Project ID:** P122070
- **Country:** Jordan
- **Years:** 2011-2014
- **Status:** Active
- **Team Leader:** Emmanuel F. Cuvillier
- **Theme:** Administrative and civil service reform
- **Description:** The development objective is to build the capacity of the ombudsman bureau to deliver its mandate effectively, by achieving the following:
  1. Strengthening its service delivery and management systems.
  2. Establishing a complaints administration processes that resolve complaints in a fair manner and in timely fashion.
  3. Ensuring that its recommendations to public bodies are accepted and implemented.
Fighting Corruption: What have Ombudsmen got to do with it?

What do Simeon Marcos of the Philippines, Santosh Magge of India, KPK of Indonesia, ACC of Bhutan and ACRC of South Korea have in common? Read the blog about the role of Ombudsmen in fighting corruption. Read more >>

Worldbank.org/publicsector/ombudsman
Learn more!

شكرا لك!
Merci!
Thank you!
Discussion

1. In your country, how are grievances resolved? Is there an ombudsman institution in place or do you rely on other practices?

2. What do you think could be the main contribution of an ombudsman in terms of improving service delivery?

3. What do you think could be the main challenges that ombudsman institutions face to carry out its mandate? How do you think these challenges could be addressed?

4. What tools could ombudsman institution use for citizen engagement?