

EISA gratefully acknowledges the generous financial support for this project from the Swedish International Development Agency (Sida), Harare and the Royal Danish Embassy (DANIDA), Pretoria



PROMOTING THE EFFECTIVENESS OF DEMOCRACY PROTECTION INSTITUTIONS IN SOUTHERN AFRICA

OFFICE OF THE OMBUDSMAN IN BOTSWANA



Dorothy Mpabanga



ISBN 978-1-920446-18-5



Order from: publications@eisa.org.za



EISA RESEARCH REPORT No 44

PROMOTING THE EFFECTIVENESS OF
DEMOCRACY PROTECTION INSTITUTIONS
IN SOUTHERN AFRICA

OFFICE OF THE OMBUDSMAN
IN BOTSWANA

PROMOTING THE EFFECTIVENESS OF
DEMOCRACY PROTECTION INSTITUTIONS
IN SOUTHERN AFRICA

OFFICE OF THE OMBUDSMAN
IN BOTSWANA

BY
DOROTHY MPABANGA



2009

Published by EISA
14 Park Rd, Richmond
Johannesburg
South Africa

P O Box 740
Auckland Park
2006
South Africa
Tel: 27 11 482 5495
Fax: 27 11 482 6163
Email: eisa@eisa.org.za
www.eisa.org.za

ISBN: 978-1-920446-18-5

© EISA

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of EISA.

First published 2009

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.



Cover photograph: Yoruba Beaded Sashes

Reproduced with the kind permission of Hamill Gallery of African Art, Boston, Ma USA

CONTENTS

Preface	vi
About the author	xii
Acknowledgements	xiii
Abbreviations	xiv
Executive summary	xv
1 Introduction	1
2 Methodology	2
3 Contextual background	3
4 Constitutional and legal framework	6
5 Institutional governance and effectiveness	12
6 Interaction with the government	23
7 Interaction with other democracy protection institutions	25
8 Interaction with the public and non-state actors	26
9 Key research findings	29
10 Conclusion	37
11 Policy recommendations	39
References	42
Appendix	44
About EISA	47
Other Research Reports	49

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 Moloi, 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*

ABOUT THE AUTHOR

Dr Dorothy Mpabanga is a Deputy Director in the Centre of Specialisation in Public Administration and Management and Senior Lecturer in Human Resource Management in the Department of Political and Administrative Studies, University of Botswana. She obtained her undergraduate degree in Public Administration and Sociology from the University of Botswana and an MSc in Development Economics and Project Planning and Appraisal from the University of Bradford in the UK. Mpabanga, who holds a PhD in Human Resource Management from the University of Strathclyde in Glasgow, Scotland, lectures at both undergraduate and graduate levels. Before joining the University of Botswana she had worked for 11 years at the Ministry of Commerce and Industry as an Industrial and Senior Industrial Officer (Project Analyst) and for three years at the Central Bank of Botswana as a Research Officer and Acting Senior Economist. Mpabanga has edited a book, written and co-written chapters in eight books and published four journal articles. She has also facilitated workshops, participated in local and international conferences in the areas of human resource management, performance management systems, balance score cards, human resource development, democracy, electoral processes, governance, national development, project management and evaluation, information and communication technology and NGO management.

ACKNOWLEDGEMENTS

I would first like to thank Mr Sam Maletle, public relations officer at the Office of the Ombudsman for facilitating the data collection process in his institution. Mr Maletle was very helpful in ensuring that the survey questionnaires were distributed to the relevant officers in Gaborone and Francistown and ensured that questionnaires were returned within a reasonable time. He also helped with the provision of secondary data in the form of official documents from the Ombudsman's Office. Secondly, I am grateful to the staff of the Office of the Ombudsman, who gave time to completing the questionnaire. My thanks also go to Mr Lawrence Ookeditse, a teaching assistant in the Department of Political and Administrative Studies, for assisting with the data collection. I thank all those who agreed to be interviewed: the academics, the NGO representatives and the members of the public who gave their time and their thoughts about the Office of the Ombudsman. Finally, my gratitude is extended to EISA, particularly Dr Khabele Matlosa and Ms Catherine Musuva, for according me the opportunity to work on this project.

ABBREVIATIONS

ARV	Anti-retroviral therapy
BDF	Botswana Defence Force
BCP	Botswana Congress Party
BDP	Botswana Democratic Party
BNF	Botswana National Front
BoB	Bank of Botswana
CEO	Chief Executive Officer
CSO	Central Statistics Office
DCEC	Directorate of Corruption and Economic Crime
DPSM	Directorate of Public Service Management
ICT	Information communication technology
IEC	Independent Electoral Commission
NDP	National Development Plan
NGO	Non-governmental organisation
PRO	Public relations officer
SADC	Southern Africa Development Community
VAT	Value added tax

EXECUTIVE SUMMARY

This research explores the performance and effectiveness of the Office of the Ombudsman in Botswana, which is one of the country's democracy protection institutions (DPIs). The office was established in 1995 through an Act of Parliament to investigate matters related to maladministration in Botswana.

Botswana does not have a Human Rights Commission but it does have other DPIs in addition to the Office of the Ombudsman, established in order to handle matters outside the jurisdiction of the Ombudsman. There are also non-state actors who attend to matters related to human rights.

The research for this report was conducted using purposeful sampling and qualitative data collection methods. Primary data were collected by means of questionnaires and semi-structured interviews.

The 1995 Act of Parliament establishing the Office of the Ombudsman specifies its functional areas, which include the appointment of the Ombudsman, matters that fall within its ambit, the complaints procedure, investigations processes, evidence gathering, evidence presentation and adjudication and proceedings that follow the completion of an investigation. The Act states that the Ombudsman can investigate matters of maladministration in the public sector, including bias, adversity, neglect, incompetence, rudeness and delays. The Act gives the office the power, for example, to determine whether a case needs investigation, the procedure to be followed, and the power to access government files. In addition, s 7(2) of the Act gives the Ombudsman the power to call witnesses for examination. The Act also sets out a clear investigation process when the Ombudsman has determined that there has been maladministration and injustice.

Respondents from the Office of the Ombudsman stated that the Act sets out a complaints procedure whereby members of the public can lodge their complaints either in person, in writing, or by telephone. Members of the public who were interviewed appeared to be familiar with the complaints procedure.

This research suggests that the constitutional and legal framework establishing the Office of the Ombudsman does not adequately support and empower the office to fulfil its mandate successfully. For example, respondents stated that the office does not have enforceable powers, for instance, to make binding recommendations, especially where government departments fail to implement recommendations for remedial action.

The Act states that the Ombudsman may recommend remedial action but does not have the power to enforce compliance or take further action in cases of non-compliance. The office is also limited in relation to the type of matters it can investigate. For example, the Act provides that the Ombudsman may not investigate matters related to security, the defence forces, police, corruption, crime, the appointment of public officers, private contractual and commercial dealings, and matters before courts.

The findings suggest that, overall, the Office of the Ombudsman is effective. For example, according to the Annual Report 2006/2007, 90 per cent of its recommendations were implemented by the ministries and departments concerned and 216 of 251 cases received in Gaborone were resolved. The Annual Report further states that the office's publicity campaigns have improved the responsiveness of departments to the Ombudsman's queries, and there has been an improvement in the amount of time it takes to resolve a complaint. Respondents supported the view that the Ombudsman's Office was effective.

The success of the office has been enhanced by its efforts to increase accessibility by those residing in remote areas and by education campaigns to create awareness of the role of the Ombudsman and of the public's rights. In addition, the development of a computerised case-management system, the creation of a website, and the building of office blocks in Gaborone and Francistown contributed to the successful resolution of cases.

However, there was a mixed response from interviewees to the question of how effective the office was, particularly in relation to the implementation by some government departments of remedial action or recommendations. While some media reports identified areas of success in reducing cases of maladministration and of increasing compliance by government

departments with recommendations others believed the office was ineffective in forcing government departments to implement or act on the Ombudsman's recommendations.

The existing legal framework is considered to limit the Ombudsman's enforceable powers, thus rendering the work of the office ineffective. This opinion was confirmed by staff in the Office of the Ombudsman. Interviewees also believed that the lack of enforceable powers makes the Ombudsman a 'toothless dog'.

The research findings indicate that the independence of the Office of the Ombudsman is compromised. For example, respondents from the office indicated that although the Act provides that 'the Ombudsman shall not be subject anybody's control or direction', in reality it is not independent as it reports to the president, not to Parliament.

The Public Service Act, Public Service Charter and the General Orders are used to guide the administrative structure and functions of the office, which comprises the Ombudsman, directors to assist the Ombudsman, legal investigators, and support staff. The Ombudsman is funded through the consolidated fund channelled through the Ministry of Finance and Development Planning. The office has technical support systems, for example, a case management system for better record keeping and case processing and a website for public access, and it produces an annual report. However, there are some constraints facing the office, for example, limited financial and human resources, a shortage of mobile and branch offices and a shortage of legal officers. Unattractive pay and working conditions are also said to contribute to the ineffectiveness of the Ombudsman as the office is not able to attract and retain professional staff.

The research has also shown that the Office of the Ombudsman interacts with other democracy protection institutions, the public and non-state sectors such as the Directorate of Corruption and Economic Crime, the judiciary, and the executive. Its interaction with non-state actors did not emerge clearly from the research. Policy recommendations are contained at the end of the report.

INTRODUCTION

This project aims to address issues relating to democracy protection institutions (DPIs) in the Southern African Development Community (SADC) region, including the background factors leading to the need to establish such institutions and the roles these institutions play. It also considers whether DPIs perform their roles and functions effectively. Before the commencement of the country-specific research EISA had conducted desk research on DPIs in the SADC region (Musuva 2008).

This research investigates the performance and effectiveness of the Office of the Ombudsman in Botswana. The office was established in 1995 in order to investigate and recommend remedial action in cases of maladministration in public institutions. The research covers the performance and effectiveness of the Office of the Ombudsman in terms of institutional effectiveness, independence, institutional governance, interaction with the public and non-governmental sector, and the resources available to the office to enable it to execute its mandate and to fulfil its functions effectively and efficiently.

The report commences with a brief outline of the methodology applied. This is followed by a contextual background to Botswana and the environment in which the Office of the Ombudsman operates. The next section, which addresses the constitutional and legal framework under which the Office of the Ombudsman operates, is followed by one assessing the institutional governance issues and effectiveness of the Ombudsman as well as the financial, human and other resources available to the Ombudsman and major constraints facing the office. The following section discusses the way the Ombudsman interacts with other government departments and assesses other institutions with which it interacts, including the public and non-state actors. Key research findings are set out next and the report concludes with a set of policy recommendations.

METHODOLOGY

Information was gathered for this report using the purposeful sampling method, in which structured questionnaires and semi-structured interviews were administered to respondents to elicit their insights into the democracy protection institutions in Botswana. Primary data were collected from the offices of the Ombudsman by means of a questionnaire. Semi-structured interviews were conducted with members of the public to ascertain their views. Secondary data were obtained from research reports, academic articles, annual reports, books, and media reports.

The major purpose of the survey was to get an overview of DPIs, particularly the Office of the Ombudsman, in Botswana. The questionnaires were administered to officers in the Ombudsman's headquarters, which are based in the southern part of the country. Another set of questionnaires was administered in the northern part of the country.

A total of 16 questionnaires was administered: 11 in Gaborone (south) and 5 in Francistown (north). The response rate was 50 per cent. The questionnaires were administered through the Office of the Ombudsman's public relations officer, who distributed and collected them from top management, middle managers and junior officers. Follow-up interviews were planned but were not carried out because of time constraints.

It was not possible to interview the Ombudsman as the office was in the process of presenting its 2006/07 Annual Report to Parliament. One questionnaire was administered to the Centre of Human Rights, a non-governmental organisation. Eleven interviews were conducted with four academics, five members of the public and representatives of two non-state bodies. One of the limitations of this study is that the results cannot be generalised to other similar institutions as they are specific to the context of the Office of the Ombudsman.

CONTEXTUAL BACKGROUND

Botswana has enjoyed a stable political and liberal democratic system since 1966, when the country gained independence from British colonial rule (Maundeni, Seleke, Molefe, Balule, Josia, Othata, Mfundisi, Mpabanga, Ntshebe & Hiri-Khudu 2007).

Botswana is a land-locked country located in Southern Africa, sharing borders with South Africa, Namibia, Angola, Zimbabwe, Zambia and Mozambique. The country has had free and fair elections since 1966, characterised by peaceful electoral processes, and fair management. '[E]lection results are generally accepted by all and disputes are satisfactory handled by the courts' (Maundeni Seleke, Molefe, Balule, Josia, Othata, Mfundisi, Mpabanga, Ntshebe & Hiri-Khudu 2007, p 9).

As Matlosa (2008) points out, Botswana is one of the few countries in SADC with the potential to build a democratic and developmental state. The discovery of diamonds in the 1970s had a dramatic impact on economic growth. Between 1966 and 1995 the country's per capita gross domestic product increased from P1 682 to P7 863 (US\$2 850) in 1993/94 constant prices.

The proceeds of this revenue have been prudently used to finance socioeconomic and infrastructural development in the country. There have been notable achievements in the areas of education, for example, the country has a 100 per cent transition rate from primary to secondary education, and tertiary education enrolment increased from 20 000 in 2003/2004 to 31 129 in 2007/2008 (Republic of Botswana 2008).

The government is also striving to increase transition to senior secondary school to 70 per cent (Republic of Botswana 2009). In 2003/04 the adult literacy rate stood at 81.2 per cent as compared to 68.9 per cent in 1993/94 (Central Statistics Office 2008).

HIV and AIDS presents Botswana with a formidable social problem, with the prevalence among expectant women aged 15-49 years at approximately 33.7 per cent, down from 37.4 per cent in 2003 (Republic of Botswana 2009). Policies to combat the HIV / AIDS pandemic include making available free HIV / AIDS testing and counselling, free anti-retroviral therapy, and HIV / AIDS education and awareness campaigns. The government has also developed policies and programmes to address poverty, including a drought relief programme to supplement the income and feeding of the poor. A national gender program aims to integrate gender issues into the development process in the areas of poverty, economic empowerment, decision-making and training for women.

The discovery of diamonds and prudent macro-economic policies gave the country one of the fastest-growing economies in the world in the 1980s – economic growth averaged 13 per cent from 1980 to 1989 (Mpabanga 1997). Owing to revenues earned from diamonds the national reserves have grown over the years to US\$9.2-billion in 2009 (Republic of Botswana 2009). Economic growth was slow, at 3.3 per cent, in 2007 / 2008 compared to 5.3 per cent the previous year (Mpabanga 1997). Inflation has steadied, with year-on-year annual inflation of 7.1 per cent in 2007. This rate increased to 12.6 per cent in 2008 because of changes in the world economy and decreased to 7 per cent in July 2009 (Bank of Botswana 2009). The highest inflation rate – 16.1 per cent – was recorded in 1992 (Bank of Botswana 2002).

As indicated above the government invested in infrastructural and socio-economic development and established structures and institutions in addition to the administrative machinery inherited from British colonial rule. It also invested in education and the training of personnel to take over from the colonial administration. The 1970s and 1980s witnessed the growth of public service structures and personnel (Hope 1999; Somolekae 1999; Mpabanga 2004). The growth of the public service, however, brought many challenges, including increased bureaucracy and a large public service.

According to Modisi (2000) the Botswana civil service has problems co-ordinating its functions, resulting in a failure to work effectively and

leading to frustration and grievances among members of the public. Circumstances and contexts change over time and, with economic growth and development, particularly in the late 1990s, the Botswana public service grew larger, with a concomitant increase in the structures, bureaucracy and hierarchy of government. Economic growth and development also saw corruption and maladministration creeping into the public administration system. According to Modisi (2000) the government-established commission of enquiry, the Directorate of Economic Crime and Corruption, expanded its resources and tasks to include departments like revenue, police and the Auditor-General to tighten oversight and control and curb corruption and maladministration.

Modisi (2000) praises Botswana's policy of openness and transparency, which subjects all government departments to scrutiny, for example, through the Public Accounts Committee. He points out that there are other forums for addressing public complaints, such as the traditional consultative *Kgotla* meetings, arguing that although these do address problems, there is a need for a more focused institution, such as an Ombudsman, to deal with complaints swiftly, fairly and impartially.

He emphasises that the civil service has changed and expanded with the growth of the economy and the public service is no longer as effective and efficient as it once was. Modisi cautions, however, against giving the office too much power, saying the Ombudsman's responsibilities and powers should be set out clearly to protect the public from maladministration and, at the same time, to 'protect public officers from malicious allegations and suspicion from the public' (Modisi, p 11). The office should also be excluded from performing other duties, for example, investigating maladministration in the army and police, as there are other structures to deal with this. The major role of the Ombudsman should be to protect the public.

CONSTITUTIONAL AND LEGAL FRAMEWORK

The Office of the Ombudsman was established in 1995 by an Act of Parliament. The office was founded in terms of s 9(2) of the Ombudsman Act of 1995 (Ombudsman 2006/2007). The major objective of the office is to receive complaints of maladministration from the public and resolve them through an investigative process (Ombudsman 2006/2007). The Ombudsman may investigate issues of maladministration in the public sector. Maladministration is defined to include bias, adversity, ineptitude, inattention, rudeness, neglect, delay, arbitrariness and incompetence (*Ombudsman Booklet*).

Further, the Ombudsman investigates maladministration where public officers 'refuse to answer reasonable questions, knowingly give misleading or inadequate advice, offering no redress, using faulty procedures, disregarding of set guidelines, partiality, as well as rigid, inconsistent, insensitive and undue adherence to the law in such a manner so as to defeat the intent of that law, thus causing injustice' (*Ombudsman Booklet*).

The Ombudsman may investigate these matters in terms of s 3(1)(a) of the 1995 Act, which states that 'the Ombudsman may investigate any action taken by on or behalf of a government department or other authority to which this act applies' (Ombudsman 2007). The Ombudsman may investigate complaints made 'by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken' (Ombudsman 2007). The Act (s 3(1) (b)) further states that a complaint may be forwarded to the Ombudsman, with the consent of the person who laid the complaint, by the president, a minister, or any member of the National Assembly, with a request to investigate.

Should a case of possible maladministration come to the attention of the Ombudsman, he or she may instigate an investigation without receiving

a formal complaint (*Ombudsman Booklet*). Respondents also indicated that the Ombudsman has the right to initiate investigations and inquiries in terms of s 3(1)(c) of the Act.

According to respondents from the office the institution was established 'to protect citizens against unfair administrative decisions and human rights violations through impartial and independent investigations'. One respondent indicated that 'the office accords the public an opportunity to vent their grievances and to have those investigated in a less rigid but effective way' and that it 'investigates maladministration or improper conduct by persons performing a public duty within the public service'.

Section 4(a)-(i) of the Act specifies matters the Ombudsman may not investigate. These include matters certified by the president or a minister which deal with relations between the government of Botswana and governments of other countries, security related matters, the commencement or conduct by the courts of criminal proceedings, issues related to civil service appointments, matters affecting the defence force and the police, the granting by the president of honours, awards or privileges, contractual and commercial dealings, and actions taken by external officers representing government.

The reason for these limitations is the existence of other government structures specifically designed to deal with such matters. For example, the Directorate on Economic Crime and Corruption (DCEC) handles matters such as the offering or acceptance of a bribe, favour or benefit, and actions that amount to the abuse of an official position. The Directorate of Public Service Management deals with public service personnel issues and the police and the courts deal with criminal and civil cases. The Ombudsman may, after investigation, refer a matter to the relevant institution.

Respondents in the Ombudsman's office stated that the founding legislation does not provide a clear, workable and comprehensive legal framework that supports and empowers the office to fulfil its core mandate successfully. One view was that 'an ideal situation would be to have a parliamentary committee that can track the Ombudsman's office's recommendations'.

One respondent stated that:

The founding legislation provides a clear and comprehensive legal framework to some extent but has very limiting clauses, for example, that human rights violations should only be limited to maladministration in the public sector. The institution cannot investigate issues related to promotion, transfer and issues governed by the Police Act. The legislation needs to be more clear in terms of issues to be investigated and those which fall outside because sometimes the Act gives with one hand and takes with the other hand.

Section 3(4) states that the Ombudsman may refuse to investigate matters, for example, if 'the complaint is frivolous or vexatious or is not made in good faith, if the subject matter of the complaint is trivial, the aggrieved person has no sufficient interest in the subject matter of the complaint' (Ombudsman Act 1995). Government departments excluded from the list of institutions to which the Act applies include the Judicial Service Commission and the Public Service Commission.

The Ombudsman has certain powers, including the power to determine whether there is a need for an investigation, to determine the procedure to be followed, and to access government files and decide from whom to obtain information. In addition, the Ombudsman has a power of subpoena in cases where witnesses fail to appear and 'disregarding the subpoena will result in criminal proceedings against such a person' (*Ombudsman Booklet*).

Complaints to the Ombudsman can be made in writing (s 5(1) of the 1995 Act) and if the matter falls within the Ombudsman's jurisdiction investigations commence. The Ombudsman contacts the government department against which the complaint has been made. This contact can take the form of a telephone call to resolve a simple matter rapidly or a formal letter for more complex matters (*Ombudsman Booklet*). Investigations may include follow-up interviews with the complainant, witnesses and officers in the concerned department (*Ombudsman Booklet*). The Ombudsman is expected to deal with the matter fairly, independently and impartially.

According to the Ombudsman Act (s 7(2)), 'the Ombudsman shall have the same powers as the High Court in respect to attendance and examination of witnesses (excluding the administration of oaths and examination of witnesses abroad) and in production of documents'. Once the investigation has been completed, the Ombudsman sends the results to the principal officer in the department concerned and recommends a way to remedy the injustice. If the department takes no action the Ombudsman may take the matter to the National Assembly as a special report. The functions of the Ombudsman are not subject to the direction or control of any other person or authority and no proceedings of the Ombudsman may be called into question in any court of law (Ombudsman Act 1995, s 9(1)).

Section 9(2) of the 1995 Act requires the Ombudsman to present an Annual Report to the president, which is later presented to the National Assembly. The Annual Report details issues investigated and resolved, recommendations and successes and challenges faced by the office in the discharge of its duties. However, the Act does not specify what the National Assembly should do with the report (Ombudsman 2006/07). As the Ombudsman points out (2006/07, p 9), 'the fact that the report must be laid before the National Assembly necessarily implies that the Ombudsman is a messenger of the National Assembly'.

The Ombudsman Act specifies some penalties, among them:

Any persons who without lawful justification or excuses wilfully obstructs, hinders or resists the Ombudsman, refuses to comply with any lawful requirement of the Ombudsman, wilfully makes false statement to or misleads or attempts to mislead the Ombudsman, influences the decision of the Ombudsman with regard to any complaint is liable to a fine of P2000 or to imprisonment for a term not exceeding one year or both.

s 14(a)-(d)

The Ombudsman's vision is 'to be a leading institution in the promotion of good governance' and the office is guided by 'the values of impartiality,

Botho, which encompasses compassion and integrity, respect, humility, accessibility, independence and transparency' (Ombudsman 2006/2007). The mission of the office is to 'protect the public against maladministration and human rights violation and this will be done through independent and impartial investigations' (Ombudsman 2006/2007).

The theme of the current Annual Report is the enhancement of the transparency and accountability of the office, a theme aligned to the national Vision 2016 objective of an open, democratic and accountable nation.

According to the respondents, the Ombudsman's unique role is to investigate issues relating to the infringement of fundamental human rights enshrined in the Constitution. Other roles identified by respondents are 'monitoring fairly, flexible compliance, upholding the rule that institutions, when complying with rules and regulations, must be fair, consistent and flexible; the right to be heard and the right not to be victimised for raising your concerns'. One respondent said 'the Office of the Ombudsman affords members of the public an opportunity to vent their grievances and to have them investigated in a less rigid and yet effective way'.

In order to realise the constitutional/legal mandate set out above, respondents said, the office strives to achieve good governance, adherence to best administrative practices, effective investigations, quality, quantified output, cost effectiveness, speedy resolution of cases and impartiality.

Academics and members of the public were also interviewed to elicit their views of the Office of the Ombudsman. The 11 people interviewed (four academics, five members of the public and two members of non-state institutions) were all aware of the existence of the office and recognised that it was established to assist members of the public with complaints arising from poor service delivery by government.

While most of these respondents had not used the services of the Ombudsman one said he had approached the Ombudsman's office while he was a journalist to request assistance with regard to the opposition

party's enquiry into the use by the vice-president of army aircraft. He had had a telephonic interview with an official from the office and was satisfied with the answers he received.

In his first Annual Report the first Ombudsman pointed out that the office was established to supplement other government initiatives for effective and efficient service delivery (Maine 2000). The following section outlines institutional governance and effectiveness.

INSTITUTIONAL GOVERNANCE AND EFFECTIVENESS

INSTITUTIONAL EFFECTIVENESS

The office has continued to show impressive results, as is evident from its annual reports. According to the report of 2006/2007, there have been some achievements in terms of overall effectiveness. For example, there have been slight improvements in the length of time it takes to investigate a complaint, with some cases resolved within six months, though the majority still take up to 24 months.

Areas in which there has been an improvement in responsiveness are those in which the Ombudsman has sensitised heads of departments through consultative seminars, but the Ombudsman acknowledges that there is still a high incidence of non-compliance with established public service standards, procedures and practices in government departments and ministries (Ombudsman 2006/2007).

The respondents from the Office of the Ombudsman also indicated that there are outstanding cases, giving reasons for the backlogs ranging from a lack of cooperation from government departments to staff resignations and a low level of investigation skills.

Table 1 shows that 251 complaints were brought to the Office of the Ombudsman in Gaborone and 425 to the office in Francistown between January and December 2006 (Ombudsman 2006/07), most of them lodged in writing.

The Annual Report states that the Gaborone office was able to resolve 216 of 251 complaints and the Francistown office 232 of its 425. A total of 82 of 99 complaints was resolved between January and March 2007. The success rate for the first Ombudsman, in 2000, was also high (Maine 2000).

Table 1
Cases received in Gaborone and Francistown
January-December 2006; January-March 2007

	Gaborone		Francistown	
	January - December 2006	January- March 2007	January - December 2006	January - March 2007
Received	251	87	425	99
Resolved	216	3	232	82
Method of lodging complaint				
In writing	103	38	344	80
In person	145	45	81	19
e-mail	2	1		
Initiated by the office	1	3		

Source: Ombudsman 2006, 2007, pp 31-40

Table 2 indicates areas of success, showing that 4 859 reports were received between 1997 and 2005, of which 3 339 were resolved or referred to relevant authorities (matters outside Ombudsman's jurisdiction), and the matters closed. There were, for example, 118 non-jurisdiction cases received during 2005. The remaining cases were pending, waiting to be resolved.

Sharma (2000) observes that the Ombudsman Office has achieved a great deal since its establishment and has succeeded in fulfilling its mandate to deal with cases of maladministration, including slackness, lack of timely action by government machinery, inconsistent application of policy guidelines, lack of transparency and lack of proper adherence to proposed guidelines. This point was further supported by the first Ombudsman, who stated that about 90 per cent of the office's recommendations for remedial action were complied with, while the rest were either rejected because they were outside the jurisdiction of the office or were not implemented (Maine 2000).

Table 2
Complaints received and cases resolved between 1997 and 2005

Year	No of complaints received	No of cases resolved
1997	6	6
1998	270	51
1999	410	140
2000	665	131
2001	657	399
2002	716	509
2003	542	639
2004	507	626
2005	550 (Gaborone) 536 (Francistown)	655* 183
Total	4 859	3 339

Source: Ombudsman 2004, p 28; Ombudsman 2005, pp 30-31.

*The statistics do not reflect how many of these cases were resolved.

Respondents from the Office of the Ombudsman stated that the mechanisms in place to deal with public complaints and to follow through and successfully resolve them included enquiries (written, oral and meetings), the use of persuasion and negotiation, cooperation from departments being investigated, and subpoenas. Other avenues developed to deal with complaints include educational campaigns and the location of offices in the southern and northern parts of the country.

Asked to indicate the instruments used to measure and assess the effectiveness of the Ombudsman's Office respondents stated that effectiveness is measured through the Annual Report and briefing of the minister, using a corporate balance score card. Other review methods include performance development plans and quarterly performance reviews. Benchmarking with similar local, regional and international institutions is also used to evaluate effectiveness.

According to the respondents an external evaluation process is in place, using a customer satisfaction survey and public perception ratings. In addition, benchmarking exercises are carried out within and outside the country, particularly in relation to critical cases, and the Office of the Ombudsman was ranked number 3. Respondents also stated that a customer satisfaction survey was carried out by a consultant in 2005 and another was currently underway. The Ombudsman's Annual Report indicates that the customer awareness survey was carried out in seven villages and the results showed a 40 to 69.9 per cent level of awareness (Ombudsman 2006/07).

The Annual Report produced by the office is presented to the president and to Parliament and the report is made available to members of the public, obtainable from the offices of the Ombudsman and on its website.

Table 3 depicts maladministration complaints reported by members of the public and affecting government ministries and departments. The table shows that the highest number of complaints concerned the Department of Administration of Justice, located in the Ministry of the State President. The Ombudsman commented during his presentation to Parliament of the 2006/07 Annual Report that he was surprised that a huge percentage of cases emanated from the Department of Administration of Justice. He pointed out that complaints usually related to appeals delayed because of a backlog of cases. The ministry with the next highest number of complaints reported to the Ombudsman was the Ministry of Education, followed by Local Government.

Most of the academics and members of the public interviewed about the effectiveness of the Office of the Ombudsman believed the office was fairly effective, as the Ombudsman seemed to have done well in investigating issues such as those relating to the current president.

The opposition party had complained to the Ombudsman that the then vice-president (now the president), a retired soldier, was continuing to pilot military aircraft (*Mmegi* 8 August 2004; 26 July 2006; 15 March 2007). Although the Ombudsman recommended that this practice should stop, the recommendation has not been implemented (*Mmegi* 2009).

Some respondents felt the Ombudsman should be given more freedom to follow up on such non-compliance.

Table 3
Cases received by the Office of the Ombudsman, categorised by
government ministry
January 2006-March 2007

Gaborone				Francistown			
January - December 2006		January-March 2006		January - December 2006		January - March 2007	
Administration of Justice	29	Prisons	16	Administration of Justice Police	109 37	Administration of Justice	33
Local Government	25	Ministry of Education Head-quarters	10	Local Government Head-quarters Tribal Administration	18 62	Tribal Administration	13
Ministry of Home Affairs: Prisons	33	Ministry of Health Headquarters	6	Ministry of Health Headquarters	10	Prisons	9
Ministry of Labour Head-quarters	11			Prisons	66		
Ministry of Education Head-quarters Teaching Service Management	24 9			Ministry of Education Student Placement	26		
Ministry of Health: Headquarters	14						

Source: Ombudsman Annual Report (2006/2007), pp 41-50.

The following assessment of reports in the media reflects some of the major issues raised about the effectiveness and performance of the Office of the Ombudsman. The media mainly reported on matters relating to the failure of Parliament to debate the Ombudsman report and on the fact that some government departments did not act on the Ombudsman's recommendations.

FAILURE TO DEBATE THE OMBUDSMAN'S ANNUAL REPORT

Mmegi reported (16 April 2009) the Ombudsman's concern that reports presented to Parliament have not been debated since the office was established. The Ombudsman raised this issue during his presentation to Parliament in April 2009 of the Annual Report for 2006/2007, suggesting that if Parliament did debate the reports and if recommendations were acted on this would reduce 'fears that his office is a toothless bulldog'. He further alluded to the suggestion that a Parliamentary Select Committee should be established to deal with the reports. Such a committee, which would deal with recommendations from his office and assume a watchdog role over the office's performance, would enhance public confidence in the Ombudsman.

The idea of establishing a parliamentary select committee was supported by the then Speaker of the National Assembly, who said 'the office must be supported and nurtured by Parliament through an appropriate structure such as the select committee' (*Mmegi* 2 August 2004).

FAILURE TO ACT ON THE OMBUDSMAN'S RECOMMENDATIONS

The media reported that the Ombudsman was also concerned about the failure of government officials to act on the office's recommendations (*Mmegi* 16 April 2009). The failure to implement the recommendation by the Ombudsman that the then-vice-president cease using military aircraft for political duties was raised over the years and the subsequent non-action by the concerned ministry was also highlighted in media reports (*Mmegi* 16 April 2009; 15 March 2007; 26 July 2006; 19 September 2004; 8 August 2004; 23 March 2004).

The tendency not to implement sound findings and recommendations made by the Ombudsman rendered the office less effective and efficient

in discharging its functions, said the Ombudsman during a talk to heads of departments on the issue of service delivery and the need to respond to requests from his office and comply with its recommendations. He added that although it took about six months to resolve the majority of cases others might take up to two years (*Botswana Daily News* 18 June 2007).

However, the fact that the responsiveness of government departments to queries from the Ombudsman's Office is improving (*Botswana Daily News* 18 September 2007) means that the office's achievements far outweigh its failures and challenges. Departments comply with about 98 per cent of recommendations. The major constraint, the Ombudsman said, was the fact that he could not investigate some cases, for example, those in the private sector and those dealing with issues of national security, defence and external relations. The public needs to understand and be educated about this limitation. The Ombudsman also reported (25 April 2007) that the number of maladministration cases was declining.

FALSE ALLEGATIONS

Not all complaints that reach the Ombudsman's Office are founded on fact. One example was that of a complainant who reported an assault by a police officer, an allegation that was found to be false (*Mmegi* 17 April 2009).

CONSTRAINTS

The above information indicates that, in the main, the Office of the Ombudsman is effective in resolving maladministration cases and having its recommendations implemented. However, there are areas where this is not the case, one of them being the case of the former vice-president cited above. The research findings indicate that a variety of factors affect the effectiveness of the office. Among these are limitations in the founding and supporting legislative framework, institutional factors, and limited human and financial resources.

Respondents in the Office of the Ombudsman identified several constraints facing the office, including a shortage of professionals, the lack of regional offices, and limited outreach programmes in remote

areas. Other major constraints are the failure of departments to respond to enquiries, and poor salaries. Some respondents believed the relationship of the Office of the Ombudsman with the executive compromised its independence.

Limited resources were viewed as a major impediment. The Ombudsman's Annual Report for 2006/07 identified a variety of constraints in addition to those identified by employees during the data collection. While employees emphasised unattractive pay and conditions of service as major constraints, the Annual Report concentrated on legislative and administrative issues that must be improved in order to make the office effective.

The major constraints identified in the Annual Report include limits on the accessibility of the Ombudsman created by the fact that there are only two offices to cater for the whole nation and there is a shortage of staff. Some moves have been made to increase accessibility, for example, by establishing circuit investigations to cater for those in remote areas (Ombudsman 2006/07). Despite the shortage of staff to man the circuit/mobile offices, there are plans to build additional offices as well as satellite offices to enhance accessibility.

Other challenges include the low level of awareness (Ombudsman 2006/07), the inability of government departments to respond swiftly to enquiries, and the fact that the delays in resolving complaints render the Ombudsman ineffective in the eyes of the public. Non-compliance with and adherence to public standards, processes, procedures and practices is another major constraint, which has led to negative perceptions and a reduction in the level of public confidence in the public administration machinery.

The Ombudsman (2006/07) recommends that stringent measures be put in place. Among these would be a naming and shaming and/or applauding strategy to encourage compliance with public administration standards and procedures. In his report the Ombudsman suggests the development of a strategy to measure and evaluate the effectiveness of public administration.

INDEPENDENCE

The majority of respondents believe that the Ombudsman's Act ensures and strengthens the institution's independence, citing s 9(1) as the basis for this contention. However, others believe this is not the case, one stating that 'legal and other mechanisms are not adequate to ensure and strengthen independence, where non-compliance imposes a fine or jail sentence that is laughable'.

On the issue of accountability, the majority of respondents from the Ombudsman's Office stated that the institution is accountable to the president through the annual reports presented to him. Respondents generally felt the institution's relationship with the executive and Parliament was unsatisfactory, with one expressing the view that although it was 'good in that there is no interference in a manner of conducting investigations, however, Parliament does not fully debate recommendations as envisaged by the Ombudsman's Act'.

The issue of the office's independence was raised early on in its existence. Lebotse (2000) highlighted the shortcomings of the Ombudsman Act of 1995, pointing out that the Act was flawed in many areas, including the fact the Ombudsman is appointed by the president, which affects his or her independence. He suggested that the Ombudsman should be appointed and answerable to Parliament and not to the executive. He further pointed out that the Act does not specify what Parliament should do with the Ombudsman's report once it has been presented. The fact that the Ombudsman's recommendations are not binding on government or departments also renders the office ineffective. Lebotse argued further that the Ombudsman's Office has no teeth, as its investigations exclude personnel matters relating to civil servants such as, for example, promotion and transfers. He pointed out that even the Ombudsman was dissatisfied with this aspect of the Act and 'it makes him helpless and frustrated'.

Some respondents from the Office of the Ombudsman believe the office is protected from political encroachment by s 9 of the Ombudsman Act and a legislative mandate of jurisdictional limitation. Others felt that this is insufficient.

The researcher interviewed 11 members of the public to establish their perceptions of the independence of the office. In response one interviewee said the office was independent 'as they are allowed to receive complaints against anyone, including the president'. The other interviewees felt that the independence of the Ombudsman was limited by, for example, too much reliance on Parliament and not having powers to prosecute. The interviewees commented that the effectiveness of the Ombudsman's office could be strengthened by allowing the office to investigate complaints effectively and to prosecute without reliance on Parliament.

INSTITUTIONAL GOVERNANCE

Institutional governance arrangements in the Office of the Ombudsman centre on the organisational complement of the office and include the posts of director, chief legal investigators, principal legal investigators, senior legal investigators, legal investigators, assistant legal investigators and support staff.

Thus far Botswana has had two ombudsmen; the first served from 1995 to 2006, the current one was appointed in August 2006 (Mpabanga 2008). Other officers, for example, directors, legal investigation officers and support staff, are appointed according to guidelines contained in the Public Service General Orders, where positions are advertised, interviews carried out and appointments based on qualifications.

In relation to mechanisms to deal with internal conflict, respondents indicated that a governance policy was being developed and discussed with staff. In addition, conflict resolution mechanisms had recently been introduced. The office embraces gender equality and there is a gender focal officer responsible for mainstreaming gender issues in the workplace.

According to Mpabanga (2008) the mechanisms in place to deal with conflicts of interest include the use of structures and guidelines contained in the Public Service Charter, the Public Service Act and General Orders. This research has revealed that the existing structures do not adequately support the Ombudsman's functions. For example, respondents stated that there is a shortage of professional staff such as legal investigation officers. Other constraints identified by respondents include poor and unattractive

pay, resulting in an inability to attract and retain professional staff, a factor that has a negative impact on the Ombudsman's investigative capacity.

In order to facilitate case processing and improve record keeping the office has invested in an information and communication technology system. It has also developed a website where the public can access the Annual Report and other documentation and post questions about the office.

RESOURCES

Respondents in the Office of the Ombudsman stated that, in terms of the Ombudsman Act, the office is funded by the Ministry of Presidential Affairs and Public Administration through the consolidated fund process and that the Ombudsman's budget is voted on separately. Respondents stated that almost all the resources allocated to the Ombudsman are directly spent on meeting its key responsibilities.

Regarding the administrative expenses of the Office of the Ombudsman, the Ombudsman Act (s 13) provides that the office is financed from the consolidated fund and the amount may be sanctioned by Parliament. The budget allocation process followed by the Office of the Ombudsman is similar to the normal government budgeting procedure, which is submitted through the budget cycle. The budget estimates are presented to the Ministry of Finance and Development Planning and thereafter presented to Parliament for debate (Mpabanga 2008).

Information obtained from respondents from the Ombudsman's Office about remuneration packages for office bearers and commissioners revealed that the Ombudsman is placed at the highest public service salary scale. The recently introduced Scarce Skills Allowance is paid to investigators in an attempt to retain professional staff. The resource constraints faced by the Office of the Ombudsman include uncompetitive wages and human and financial resource constraints that affect the work of the office, including its public outreach programmes and accessibility.

INTERACTION WITH THE GOVERNMENT

LEGISLATURE

Respondents from the Ombudsman's Office stated that the relationship between the office and the executive and Parliament was good in that there was no intervention in the conduct of investigations. However, they indicated that Parliament does not fully debate recommendations. Although, as stated above, s 9(2) of the Ombudsman Act provides that the office is required to present an Annual Report to the president for debate in the National Assembly there is no clarity as to what the National Assembly must do with the report (Ombudsman 2006/07).

The Ombudsman complains that the National Assembly has never debated any of the issues raised in the annual reports, a factor viewed as a shortcoming, since the Act implies that the Ombudsman is a messenger of the National Assembly and the general functions of the National Assembly include debating the report and addressing matters raised. Furthermore, the Ombudsman has no further role once the report has been presented to Parliament. The failure to debate the report raises questions about the effective interaction between the Ombudsman and Parliament, particularly in relation to the failure of government departments to act on the recommendations and remedies proposed by the Ombudsman, which renders the Ombudsman ineffective. Media reports have also pointed out the unsupportive relationship between Parliament and the Ombudsman.

EXECUTIVE

The Office of the Ombudsman interacts with the executive when enquiring into and investigating maladministration cases. There is also interaction during the budgetary process, when the Ombudsman presents development and recurrent budgetary estimates to the Ministry of Finance and Development Planning. There is further communication between the Ombudsman and the executive when the Ombudsman accounts to the office of the Auditor- and Accountant-General for allocated funds.

JUDICIARY

Respondents from the Ombudsman's Office stated that the office relates to the courts when, for example, investigating delays in the processing of court cases. However, the courts differ in that they have more enforceable powers. For example, s 14 of the Ombudsman Act states that a person who refuses or wilfully fails to comply with any lawful requirement of the Ombudsman is liable to a fine of not more than P200 or to imprisonment not exceeding one year. The interaction with the courts appears to be good, as all cases that do not fall within the Ombudsman's jurisdiction are passed on to the courts.

INTERACTION WITH OTHER DEMOCRACY PROTECTION INSTITUTIONS

ANTI-CORRUPTION AGENCIES

The respondents in the Ombudsman's Office identified other DPIs as including the courts of law, the Independent Electoral Commission (IEC) and the Directorate on Corruption and Economic Crime (DCEC). The Ombudsman's office interacts with the DCEC when it refers to it matters that are outside its jurisdiction, for example, corruption cases. The Ombudsman does not follow up on cases that have already been reported to the DCEC. Respondents further stated that the Ombudsman's Office interacts with the DCEC to organise joint education campaigns.

There are some overlaps in function, for instance, when the Ombudsman is handling a complaint the DCEC is investigating, in which case it closes the case and advises the complainant to deal with the DCEC.

OTHER DPIS

There were indications that there is a degree of collaboration and coordination between the Ombudsman and other institutions through occasional consultative meetings. The Office of the Ombudsman collaborates with DPIs such as the DCEC, the IEC and the Auditor-General. In addition, the DPIs interact with non-governmental human rights institutions, referring cases to them and accepting cases that they refer to the Ombudsman. According to one respondent overlaps do occur, for example, 'where in some cases the Ombudsman will be handling a complaint which the DCEC is interested in', while another stated that there were overlaps in cases that affected both the DCEC and the human rights body.

INTERACTION WITH THE PUBLIC AND NON-STATE ACTORS

Respondents from the Office of the Ombudsman stated that the office collaborates and coordinates its work with similar/related work carried out by non-state actors, holding seminars with all stakeholders, NGOs and others. Furthermore, consultative meetings are held to deal with overlapping cases and to build synergy between stakeholders.

Although the Office of the Ombudsman interacts with NGOs such as Ditshwanelo, the Botswana human rights NGO, the relationship does not appear to be close. One respondent stated that 'My personal observation is that the collaboration is very minimal and can be strengthened through trust- building with non-state actors especially in relation to human rights monitoring.'

Staff of Ditshwanelo indicated in an interview that they work closely with other human rights institutions, including the IEC and the Office of the Ombudsman, referring to them matters they cannot resolve.

Asked whether its responsibilities overlapped with those of the Ombudsman, the Centre for Human Rights indicated that there is some overlap as the two institutions both deal with issues of human rights.

However, Ditshwanelo resolves matters relating to the violation of human rights, such as the rights of marginalised groups (the Basarwa, an indigenous group; gays and lesbians) and debates issues of principle and, where applicable, the use of the death penalty.

Any matters that extend beyond the realm of democracy and human rights protection are passed on to the Ombudsman. Respondents from the Office of the Ombudsman stated that there are some overlaps between what they do and the work of the Centre for Human Rights, for example, in areas of the promotion and protection of individual rights and freedoms.

INTERACTION WITH THE PUBLIC

The relationship between the Office of the Ombudsman and the public was described by staff in the Ombudsman's Office as one of 'mutual trust, though the independence of the office is still being questioned'. The Ombudsman's Office also informs the public of its right to be heard speedily and empowers the public with knowledge and understanding of its role and function.

According to one respondent, 'about 55 per cent of the country's population is aware of the existence of the Office of the Ombudsman, though more still needs to be done to enhance/increase public awareness'.

According to the Annual Report, a survey in 2007 of 277 people in seven villages and towns rated the level of awareness as ranging from 40.4 per cent to 69.6 per cent. Efforts to intensify and increase awareness include the employment of a public relations officer to increase the number of public education campaigns (Ombudsman 2006/07).

Members of the public who wish to complain about work done by the Ombudsman must go through the hierarchy within the office. Depending on the complexity of the complaint, it is either passed on to the senior officer or delegated to a junior officer. In addition, there is a customer feedback system in place. According to respondents from the Ombudsman's Office the public has access both to the head office in Gaborone and to a branch office in Francistown. There is also a mobile office and, they said, 'the Office of the Ombudsman is friendly to disabled persons.

A huge variety of complaints is brought to the Office of the Ombudsman. Among these are non-jurisdictional employment issues, land disputes, and delayed court claims. 'The office receives any kind of complaints, which are thereafter analysed to determine jurisdiction and rejected where the Ombudsman's jurisdiction is limited.' When asked to indicate whether the public has sufficient appreciation of the role and mandate of the Ombudsman, the respondents' view was that 'the public has serious concerns about the Ombudsman's Office'.

Some respondents indicated that the public's response depends on the way complaints are resolved. For example, if the complaint is resolved in favour of a member of public that person will have a positive perception. However, if the decision goes against the member of the public the response will be a negative perception that the office is not effective. Some expectations are said to be unrealistic, in view of the fact that the Ombudsman's Office derives its mandate from an Act of Parliament, which restricts its area of operation.

PUBLIC OUTREACH

The Office of the Ombudsman produces an Annual Report which is made available first to the National Assembly then to the public. The report is also posted on the Ombudsman's website (Mpabanga 2008; Ombudsman 2006/07). Respondents from the Office of the Ombudsman indicated that among the office's strategies for public outreach are circuit investigations and *Kgotla* meetings. Target groups are reached through the local media, public education campaigns, seminars and workshops. Other ways of reaching the public include addressing gatherings such as trade union meetings. During these gatherings the public is informed about the Ombudsman's mandate, its achievements, limitations and challenges.

KEY RESEARCH FINDINGS

The purpose of the research was to assess the performance of the Office of the Ombudsman in Botswana in the areas of institutional effectiveness, independence, institutional governance and interaction with other democracy protection institutions, the public and non-state actors.

The following are the key findings.

CONSTITUTIONAL AND LEGAL FRAMEWORK

The findings of this research indicate that the Ombudsman's Act provides the office with the power to determine whether a case requires investigation and to determine the procedure to be followed and the power to access government files. In addition, s 7(2) of the Act gives the Ombudsman powers similar to those of the High Court to call witnesses for examination.

Section 6 of the Act provides for a clear investigation process once the Ombudsman has determined that there has been maladministration and injustice. Respondents from the Office of the Ombudsman stated that the Act provides for a procedure by which members of the public may lodge their complaints either in person, in writing or by telephone.

Members of the public who were interviewed were familiar with the complaints procedure. The survey revealed that the constitutional and legal framework does not adequately support and empower the Ombudsman's office to fulfil its mandate successfully. For example, respondents from the office stated that the Ombudsman, unlike the courts, does not have enforceable powers when government departments do not implement recommendations for remedial action.

The Act states that the Ombudsman may recommend remedial action or take further action on non-compliance up to a maximum of P200 or imprisonment of up to one year.

The research revealed that the types of matters the Office of the Ombudsman may investigate are limited. For example, it may not investigate matters related to security, the defence forces, police, corruption, crime, contractual and commercial dealings, or matters that are before the courts. In addition, the Ombudsman may not handle cases related to matters such as the promotion of public officers. The reason is that there are other structures and facilities in government to handle these matters. One of these is the DCEC. The functions of the Ombudsman are limited to matters specifically related to issues of maladministration in government offices.

Some of the above facts emerged from documentation relating to the 1995 National Assembly debate over the Bill establishing the Ombudsman's office and from the debate in 2007 when the Ombudsman's Annual Report was tabled. Information about the debates in 2009 was gleaned from media reports, as information on parliamentary debates was not yet available.

Most Members of Parliament supported the establishment of the Office of the Ombudsman (Botswana Government 1995), a move intended to enhance government's efforts to create a responsive public service that is impartial, efficient and delivers prompt and quality service. The Ombudsman's office would promote transparency and good governance in the public service and form part of the existing social, administrative and judicial framework (Botswana Government 1995).

The concept of an Ombudsman was first mooted in 1974 in the ruling party's election manifesto. The idea re-emerged in 1982, when it was recommended by the Presidential Commission on Economic Opportunities that an office be created to deal with public complaints, to be a public watchdog against maladministration and to resolve disputes.

There was general support from Parliament for the establishment and the work of the Office of the Ombudsman, although some concerns were expressed. Among these were the question of an overlap between the duties of the Ombudsman and those of the DCEC and of the extent of the Ombudsman's powers.

It was explained that the Constitution does not allow any institution of state to have too much power and that all Bills, including the statute creating the Office of the Ombudsman, would have to comply with the Constitution and the principle of the separation of powers. It was indicated that the Ombudsman's Office would be given powers through s 9 of the 1995 Act, which states that the Ombudsman shall not be subject to the direction or control of any other person or authority and the office's proceedings may not be questioned in any court of law.

The Ombudsman's formal powers include the power to determine whether a complaint warrants investigation, the right to access to government files, and the power to call witnesses and to subpoena them if they do not appear voluntarily. Disregarding a subpoena constitutes contempt and may result in a fine of up to P200 or one year in prison (s 14(9)(d)).

The potential overlapping of duties with the DCEC is addressed by limiting the Ombudsman to investigating complaints of mal-administration, while the DCEC deals with issues of corruption.

INSTITUTIONAL EFFECTIVENESS

The findings suggest that, in the main, the Office of the Ombudsman is effective. The 2006/07 report recorded a 90 per cent success rate in the implementation by ministries and departments of the office's recommendations. The report revealed that 216 of the 251 cases received were resolved. Furthermore, publicity campaigns aimed at senior government officials have resulted in an improvement in the responsiveness of departments to queries from the office and thus in the length of time it takes to resolve a complaint. Respondents attested to the effectiveness of the Ombudsman's office, stating that it is able to resolve the majority of the cases that come before it.

In his 2005/06 report the Ombudsman recorded a total of 1 341 complaints, of which 1 287 (84%) were resolved. The office has made considerable progress since its establishment, by, among other things, its efforts to make itself more accessible to people in remote areas; education campaigns aimed at creating awareness of the Ombudsman's role; the development

of a computerised case-management system; the creation of a website and the building of an office block in Gaborone.

The media have also reported on the performance and effectiveness of the Office of the Ombudsman, noting that maladministration cases are said to be on the decline and that departments are increasingly complying with the Ombudsman's recommendations (*Daily News* 25 April and 18 September 2007). On the other hand, the media also note the limited supporting legal framework, which renders the Ombudsman ineffective, and the lack of action by the president on the Ombudsman's recommendations. There have also been calls for a private Ombudsman (*Mmegi* 3 March, 19 August 2004; 7 July 2006; 16 April 2009).

INDEPENDENCE

The research findings indicate that the independence of the Office of the Ombudsman is compromised. Respondents from the office indicated that although the Act provides that the Ombudsman shall not be subject to control or direction, in reality it is not independent as it reports to the president.

Lebotse (2000), too, raises the issue of independence. The majority of members of the public who were interviewed felt the Ombudsman was independent in relation to the investigation of cases but that the powers of the office were limited with regard to, for example, prosecution.

The academics interviewed felt that independence was limited by the method of appointment and that the office should be given both investigative and prosecution powers. Currently the office must obtain permission to prosecute from the very transgressors it is investigating. The academic further said that 'politicians, especially in a one-party-dominant country are not going to prosecute each other as there is very little motivation to do that'.

INSTITUTIONAL GOVERNANCE

The governance structures of the Office of the Ombudsman are guided by the Public Service Charter, General Orders, and other public service employment policies and regulations. The institutional structures are

also supported by professional and support staff. Staff salaries fall under the government departments that handle legal matters, for example, the Department of Administration of Justice and the Attorney General's Chambers. The Ombudsman's office is funded through the consolidated fund, following normal government budgetary processes, with budgetary estimates channelled through the Ministry of Presidential Affairs and the Ministry of Finance and Development Planning and debated in Parliament.

INTERACTION WITH OTHER DPIS

The research has revealed that the Office of the Ombudsman interacts with other democracy protection institutions. Among these is the DCEC, with which it has dealings in relation to matters relating to corruption; and the judiciary, which includes the police, the courts and prisons, in matters relating to crime and punishment. It interacts with the executive when dealing with matters relating to the investigation of maladministration.

The Ombudsman interacts with the executive arm of government when dealing with financial or budgetary issues, for example, submitting budget estimates to the Ministry of Finance and Development Planning for recurrent and development funding. The Ombudsman also communicates with the Office of the Auditor-General when accounting for budgets allocated to the Ombudsman's Office and with the IEC in democracy and election matters.

The interaction, overall, is based on cooperation, for example, when there is an overlap the appropriate institution is approached to attend to the matter. Conflict only arises when the Ombudsman has presented an annual report to the president and it has been tabled for debate by the legislature.

The Ombudsman has complained that Parliament has never debated any of the reports and the Act does not specify what Parliament is supposed to do with the reports. The Ombudsman's role ends once the report is tabled before Parliament apart from being called on to clarify certain sections of the report. This renders the Ombudsman ineffective in the eyes of the public in relation to unresolved cases where recommendations are not

implemented by affected government departments. The conflict is usually reported in the media and by the Ombudsman in his annual reports.

INTERACTION WITH THE PUBLIC AND NON-STATE ACTORS

The office interacts with the public when they report cases of maladministration and through education campaigns designed to promote awareness by means of workshops, seminars and public addresses at village *Kgotlas*.

Relations with the public are improving as a result of a variety of activities, including circuit courts, public education campaigns, and a website. The office has a public relations officer who promotes its activities and creates awareness and public awareness of the existence of the Office of the Ombudsman is improving, for example, in 2007 the level of awareness in seven villages surveyed ranged from about 40 to 70 per cent (Ombudsman 2006/07). The Office of the Ombudsman also interacts with human rights NGOs through seminars and workshops.

HUMAN RIGHTS COMMISSION

Few of the respondents felt it was necessary to establish a human rights commission in Botswana. Three members of the public believed there are few human rights violations in the country, that the government respects human rights, and that human rights issues are generally of little concern as the people of Botswana are free. One interviewee felt a human rights commission might be a good idea as it could be used to prosecute violations of human rights and one felt the country needed a human rights commission to guard against and monitor human rights violations.

In contrast, three members of a non-state organisation felt there was a need to establish a human rights commission because, while Botswana has a stable democracy, the establishment of such a commission would enhance the country's record on human rights and, they felt, the country needs mechanisms to protect human rights.

Presenting his office's annual report to the National Assembly, the current Ombudsman recommended the establishment of a human rights commission, a call prompted by an increasing number of complaints about

human rights violations (*Mmegi* 17 April 2009; *Botswana Gazette* 22 April 2009). Such a commission would be responsible for dealing specifically with cases of human rights violations and would educate the public about their rights and the need to have them protected.

In addition, the commission would provide a cheaper mechanism for resolving such issues and, at the same time, play an essential role in assessing, monitoring and reviewing human rights issues in Botswana. The Ombudsman urged the government to establish such a commission, stating it was the responsibility of any government to adhere to the Universal Declaration of Human Rights and to ensure the protection of these rights and freedoms.

Botswana has not joined the countries that have signed and ratified the African Charter on Democracy, Elections and Governance (African Union 2007), one of the AU's attempts to instil good governance, popular participation, the rule of law and human rights. Of the 53 African states nine have signed the charter, but only two SADC countries, Namibia and Mauritius, have ratified it (African Union 2007). Botswana could enhance its existing DPIs by signing and ratifying the charter, whose objects include access to information, freedom of the press, promotion of gender equality in governance and democracy, and respect for democracy and human rights (AU 2007).

Human rights are generally respected in Botswana and are provided for in the country's Constitution, which calls for the protection of fundamental rights and freedoms, including freedom of expression and freedom of assembly and association, including the right to form a trade union, and protects citizens from inhuman treatment (Republic of Botswana 2002, chap II).

Public servants, apart from those considered to be in essential services, for example, the armed forces, police and the medical profession, may form unions and strike (Employment Act 2002). Any persons who feel their rights and freedoms have been encroached upon or violated may approach the police, the human rights NGO, or any other appropriate institution to be heard and to request remedial action.

THE RIGHT TO INFORMATION

The current Ombudsman advocates legislation to ensure that the public has the right to access information from public institutions in order to make informed decisions about and take advantage of government policies, schemes and programmes (*Mmegi* 17 April 2009). The Ombudsman pointed out that public servants, as custodians of this information, should make it available to the public. He further suggested that legislation should be put in place to guard this right.

CONCLUSION

The performance of the Ombudsman was assessed in terms of its institutional effectiveness, independence, governance, interaction and resources. The research revealed that it has performed well in terms of resolving cases of maladministration. However, there are some problem areas, which affect the office's performance and effectiveness.

The research revealed that the constitutional and legal framework does not adequately support and empower the office – for instance, it is unable to enforce compliance with its recommendations.

The Ombudsman's success is evident from the fact that 90 per cent of recommendations have been implemented by the ministries and departments involved. The success is attributed to increased education campaigns and to workshops and seminars organised for senior public officers, which have improved the responsiveness of government institutions. Efforts to educate the public about the role of the Ombudsman and to promote awareness of their human rights are also paying off, as is evident from the increase in public awareness from 40 per cent to 70 per cent.

The governance structures of the Office of the Ombudsman emanate from and are guided by the Public Service Charter, General Orders, and other public service employment policies and regulations. The structures guide, for example, the appointment of the Ombudsman, which is made by the president in consultation with the leader of the opposition. The Ombudsman's office is manned by professional and support staff, including directors, legal investigation officers, cleaners and drivers. The Ombudsman's Office is funded through the consolidated fund, following the normal government budgetary process whereby budgetary estimates are channelled through the Ministry of Presidential Affairs and the Ministry of Finance and Development Planning and are debated in Parliament.

The major issue which emerged from this research was the question of the independence of the Office of the Ombudsman. Responses to the questionnaire and information gleaned from interviews and the literature reveal that the Act has a negative impact on this independence. Major factors affecting it are the fact that the Ombudsman is appointed by the president, not by an independent body; the legislative framework which does not, for example, support the ability of the office to enforce non-compliance; and the fact that Parliament does not debate the recommendations and reports of the Ombudsman.

The Office of the Ombudsman interacts with other democracy protection institutions such as the Directorate of Corruption and Economic Crime, the courts, the Independent Electoral Commission, the Attorney-General's chambers, the Auditor-General and non-state human rights organisations. There were some indications of overlapping functions, for instance, on occasion the courts and the DCEC will handle similar cases. However, it emerged that once such an overlap is recognised the cases are passed on to the correct institutions.

The Office of the Ombudsman also interacts with the public through public education campaigns and consultative meetings. The office has a website through which the public can pose questions, access information and lodge complaints. The public may also lodge complaints telephonically, in writing or verbally. The complaints-handling procedure is set out clearly in the Ombudsman's Act of 1995. The Ombudsman may also initiate its own investigations.

Limitations on the work and the independence of the Ombudsman's Office include the fact that its jurisdiction is limited to maladministration cases, that it lacks the power to enforce its findings and that it is responsible to the president. However, it must be given credit for being able to resolve 90 per cent of the cases it receives. Despite its limitations the Office of the Ombudsman has, overall, been successful and effective in terms of resolving cases of maladministration in government departments.

POLICY RECOMMENDATIONS

- It is recommended that a parliamentary select committee be established to follow up the implementation by government departments of recommendations made by the Ombudsman. This should be the responsibility of the Ministry of the State President, under which the Office of the Ombudsman falls. The establishment of such a select committee has been raised over the years in the media and other published sources (Brynard 2000; Maine 2000; Ayeni 2000; Sharma 2000; Lebotse 2000). Sharma (2000) has suggested that the Office of the Ombudsman could be made more independent if the Act were amended to make it a juristic institution. Brynard (2000) argues that a parliamentary select committee plays a significant role in the United Kingdom system by persuading departments to accept the Ombudsman's recommendations, reviewing its reports, and following up on improvements in administrative systems as a result of recommendations made through this process, which result in more effective changes in policies, laws and procedures to address maladministration and injustice. The select committee could also review issues relating to the power of the Ombudsman and recommend changes in the Ombudsman's Act to enhance its effectiveness. Mpabanga (2008) suggests that a select committee should be created to deal with non-compliance, pointing out that such a committee works well in South Africa.
- Parliament should debate the Ombudsman's report. The need to have an active Parliament, as per s 9(2) of the Ombudsman Act, to review, discuss and comment on the Annual Report has been raised over the years. According to the Ombudsman Report of 2006/07, the Act does not elaborate on what Parliament is supposed to do with the report and Parliament has never debated the report or the recommendations (Ombudsman 2006/07).

- The primary responsibility lies with the Ombudsman to brief Parliament continuously on his office's performance, effectiveness, achievements, strategic plans and challenges. In addition, the Ombudsman and the executive should educate members of the National Assembly and create awareness of the role, functions and operations of the Ombudsman, as well as about complaints of maladministration and investigation procedures. This will facilitate among parliamentarians an appreciation of the role the office plays and how citizens can benefit from its work.
- Removing the responsibility for the appointment of the Ombudsman from the president would enhance the independence of the office. An independent body should be established to make the appointment. This suggestion was made by the first Ombudsman (Maine 2000) and by Lebotse (2000).
- The Office of the Ombudsman requires additional financial and human resources to enhance its effectiveness. Public education campaigns should be intensified to increase awareness of the benefits of the office. In addition, induction courses should be conducted for public servants, to familiarise them with their role, functions, mandate, practices, standards, procedures and processes, in order to enhance the quality of service delivery. Such courses would also increase sensitivity to the Ombudsman's findings and promote compliance with his rulings. Increased financial resources would enhance the effectiveness of the office and its ability to attract and retain trained professional staff and develop its infrastructure. This is the responsibility of the Ministry of Finance and Development Planning (Executive) with the support of the legislature (Parliament).
- Re-engineering the processes within the Ombudsman's office, including the complaints procedures, would enhance the effectiveness of the office. This is the responsibility of the Office of the Ombudsman, with the support of the executive, especially the Ministry of Finance and Development Planning.

- The establishment of a human rights commission within the Ombudsman's structures would strengthen Botswana's human rights record. This would be the responsibility of the Ministry of the State President and the Ombudsman, with support from Parliament. The Ombudsman's most recent report indicates that the office continues to receive reports of human rights violations (Ombudsman 2006/07). Such a commission would educate individuals and organisations to comply with national and international human rights conventions, prevent violations, and act as a human rights watchdog.
- Botswana should sign and ratify the African Charter on Democracy, Elections and Governance in order to take its place in the community of Africa and strengthen and support its role in advocating democratic and developmental government in the region and on the continent.

REFERENCES

- African Union. 2007. List of countries that have signed, ratified/acceded to the African Charter on Democracy, Elections and Governance, 30 January. Addis Ababa, Ethiopia.
- African Union Commission. 2007. The African Charter on Democracy, Elections and Governance. Addis Ababa, Ethiopia.
- Ayei, V. 2000. 'An Ombudsman for Botswana'. In V Ayei & K C Sharma. *Ombudsman in Botswana: Public Protector/Mosirelets*. London: Commonwealth Secretariat.
- & K C Sharma. 2000. *Ombudsman in Botswana: Public Protector/Mosirelets*. London: Commonwealth Secretariat.
- Benza, B. 2009 'Inflation eases to 10-month low'. *Mmegi* 18 March.
- Brynard, D J. 2000. 'Complement of a Successful Ombudsman Office: The Administrative System'. In V Ayei & K C Sharma. *Ombudsman in Botswana: Public Protector/Mosirelets*. London: Commonwealth Secretariat.
- Central Statistics Office. 2008. Stats update, December. Gaborone.
- Ditshwanelo, the Centre for Human Rights. 2006. Annual Report. Gaborone.
- Lebotse, K K. 2000. 'Relations between the Ombudsman, Parliament and the Executive'. In V Ayei & K C Sharma. *Ombudsman in Botswana: Public Protector/Mosirelets*. London: Commonwealth Secretariat.
- Lekorwe, M & D Mpabanga. 2006. 'Management of NGOs in Botswana'. *The Innovative Journal* 12(3).
- Maine, T. 2000. 'The Institution of the Ombudsman in Botswana: An Overview'. In V Ayei & K C Sharma. *Ombudsman in Botswana: Public Protector/Mosirelets*. London: Commonwealth Secretariat.
- Matlosa, K. 2008. 'The Feasibility of a Democratic State in Southern Africa'. In K Matlosa, K K Prah, B Chiroro & L Toulou (eds). *The State, Democracy and Poverty Alleviation in Africa*. Johannesburg: EISA.
- Maudeni, Z, T Seleke, K Molefe, T Balule, J Josia, O Othata, A Mfundisi, D Mpabanga, O Ntshebe & K Hiri-Khudu. 2007. 'National Integrity System in Botswana'. Available at: www.transparency.org/download/28010/422211/file/NIS_Botswanan_report_2007.pdf
- Musuva, C. 2008. *Democracy Protection Institutions in the Southern Africa Development Community: A Situational Analysis*. Johannesburg: EISA.
- Modisi, M. 2000. 'Maladministration in the Botswana Civil Service'. In V Ayei & K C Sharma. *Ombudsman in Botswana: Public Protector/Mosirelets*. London: Commonwealth Secretariat.

- Mpabanga, D. 1997. 'Constraints to Industrial Development'. In J S Salkin, D Mpabanga, D Cowan, J Selwe & M Wright (eds). *Aspects of the Botswana Economy: Selected Papers*. Gaborone: Lentswe La Lesedi.
- . 2008. 'Office of the Ombudsman'. In Z Maundeni (ed). *Transparency, Accountability and Corruption in Botswana*. South Africa: Made Plain Publications.
- Republic of Botswana. 1995. National Assembly: Weekly Parliamentary Debates. Official Report, *Hansard* 116(8), 11 March. Seventh Parliament, Gaborone.
- . 1995. The Ombudsman Act. Gaborone.
- . 2001/02 Annual Report of the Ombudsman Protector/Mosireletsi. Gaborone.
- . 2002. Constitution of Botswana Chapter 1. Gaborone.
- . 2003/04 Annual Report of the Ombudsman Protector/Mosireletsi. Gaborone.
- . 2005/06 Annual Report of the Ombudsman Protector/Mosireletsi. Gaborone.
- . 2006/07. Annual Report of the Ombudsman Protector/Mosireletsi. Gaborone.
- . 2007. National Assembly: Weekly Parliamentary Debates. Official Report. *Hansard* 153(4), 26 February-2 March. Ninth Parliament, Gaborone.
- . 2009. 'Budget Speech' by Honourable Minister of Finance and Development Planning delivered to the National Assembly on 2 February. Gaborone.
- Sharma, K C. 2000. 'The Performance Of The Ombudsman Office: The Review Of The First Annual Report'. In V Ayei & K C Sharma. *Ombudsman in Botswana: Public Protector/Mosireletsi*. London: Commonwealth Secretariat.

Newspapers

Botswana Gazette

Mmegi

Respondents

Office of the Ombudsman: 4 from head office; 3 from the branch office in Francistown.

Members of the public: 1 professor, 1 senior lecturer, 2 lecturers and 1 student from the University of Botswana; 1 photographer, 1 entrepreneur, 1 human resources manager (from Air Liquid), 1 public servant, 1 member of Ditshwanelo and 1 member of Emang Basadi (Women's Association).

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

OTHER RESEARCH REPORTS IN THIS SERIES

- No. 1: Electoral System Reform, Democracy and Stability in the SADC Region: A Comparative Analysis
Khabela Matlosa
- No 2: From Military Rule to Multiparty Democracy: Political Reforms and Challenges in Lesotho.
Edited by Claude Kabemba
- No 3: Swaziland's Struggle with Political Liberalisation.
Edited by Claude Kabemba
- No 4: Gender and Elections in Lesotho: Perspectives on the 2002 Elections.
Puleng Letuka, Mats'eliso Mapetla, Keiso Matashane-Marite
- No 5: Governance Quality and Government Commitment to the NEPAD African Peer Review Mechanism.
Grant Edward Thomas Masterson
- No 6: Elections and Democracy in Zambia.
Edited by Claude Kabemba
- No 7: Dilemmas of Political Transition: Towards Institutionalisation of Multiparty Democracy in Tanzania.
Edited by Shumbana Karume
- No 8: Gender, Women, and Electoral Politics in Zimbabwe.
Rudo Gaidzanwa
- No 9: Negotiating the Impasse: Challenges and Prospects for Democratisation in Zimbabwe.
Edited by Wole Olaleye
- No 10: Elections and Democratisation in Malawi: An Uncertain Process.
Edited by Nixon S. Khembo
- No 11: Democratic Consolidation in SADC Botswana's 2004 Elections.
David Sebudubudu and Bertha Z. Osei-Hwedie
- No 12: South Africa's 2004 Election: The Quest for Democratic Consolidation.
Edited by Laurence Piper
- No 13: Multiparty Democracy and Elections in Namibia.
Debie LeBeau and Edith Dima

- No 14: Multiparty Democracy in Mozambique: Strengths, Weaknesses and Challenges
Edited By Adriano Nuvunga
- No 15: Political Parties and Democratisation in the Southern African Development Community Region: The Weakest Link?
Khabele Matlosa
- No 16: Political Parties and the Democratisation Process in Zimbabwe
Lloyd M. Sachikonye
- No 17: Political Parties and the Quest for Democratic Consolidation in Zambia
Jotham Momba
- No 18: Political Movements and the Challenges for Democracy in Swaziland
Joshua Bheki Mzizi
- No 19: Political Parties and Democracy in Mauritius
Sheila Bunwaree and Roukaya Kasenally
- No 20: Parties and Political Transition in the Democratic Republic of Congo
H Kabungulu Ngoy-Kangoy
- No 21: Political Parties: Development and Change in Malawi
Nandini Patel
- No 22: Parties and Political Development in Mozambique
Eduardo J. Siteo, Zefanias Matsimbe, Amilcar F. Pereira
- No 23: Parties and Political Development in Lesotho
Khabele Matlosa
- No 24: Parties and Political Development in Tanzania
Rose Shayo
- No 25: Political Parties and Democratic Governance in South Africa
Tom Lodge
- No 26: Parties and Political Development in Namibia
Victor L. Tonchi and Albertina N. Shifotoka
- No 27: Political Parties in Botswana
Gloria Somolekae
- No 28: Political Parties and Political Evolution in Angola / *Os Partidos e a evolução política em angola*
Augusto Santana

-
- No. 29: Enhancing the Effectiveness of Political Parties in the SADC Region Through Public Outreach Programmes
Denis Kadima, Khabele Matlosa & Victor Shale
- No. 30: Consolidating Democratic Governance in Southern Africa: Zimbabwe,
Lloyd M. Sachikonye with Shingi Chawatama, Charles Mangongera, Norbert Musekiwa & Choice Ndoro
- No. 31: Consolidating Democratic Governance in Southern Africa: Botswana,
Zibani Maundeni with Dorothy Mpabanga, Adam Mfundisi & David Sebudubudu
- No. 32: Consolidating Democratic Governance in Southern Africa: Lesotho,
Tumelo Tsikoane, Tefetso H. Mothibe, 'Mamoeketsi E. N. Ntho & David Maleleka
- No. 33: Consolidating Democratic Governance in Southern Africa: Malawi,
Nandini Patel, Richard Tambulasi, Bright Molande & Andrew Mpesi
- No. 34: Consolidating Democratic Governance in Southern Africa: Namibia,
Phanuel Kaapama, Lesley Blaauw, Bernie Zaaruka, Esau Kaakunga
- No. 35: Inter-party Relations and Democracy in Botswana
Onalenna Doo Selolwane and Victor Shale
- No. 36: Consolidating Democratic Governance in the SADC Region: Transitions and Prospects for Consolidation
Khabele Matlosa
- No. 37: Consolidating Democratic Governance in the SADC Region: Mauritius,
StraConsult
- No. 38: Consolidating Democratic Governance in the SADC Region: Swaziland,
Patricia Joubert, Zwelibanzi Masilela & Maxine Langwenya
- No. 39: Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Office of the Ombudsman in Lesotho
Motlamelle Anthony Kapa
- No. 40: Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: Tanzania's Commission For Human Rights and Good Governance
Ernest T Mallya
- No. 41: Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: South Africa's Public Protector and Human Rights Commission
Catherine Musuva

No. 42: Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Case of the Office of the Ombudsman in Namibia

Lesley Blaauw

No. 43: Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Commission for Investigations and the Permanent Human Rights Commission in Zambia

Annie Chew-Chanda