



PUBLIC PROTECTOR  
SOUTH AFRICA

**Adv K GCALEKA**

**Public Protector South Africa**

**12 June 2025**

***Thematic Lecture: Transparency, Fairness and Accountability: The Mandate of the Ombudsman - A South African Perspective***

## Contents

1. Introduction .....	3
2. The Ombudsman as a Champion for the Vulnerable .....	7
3. The Role of the Ombudsman in Promoting Fundamental Rights .....	8
4. Upholding Administrative Justice and the Rule of Law .....	11
5. Implementation and Impact of recommendations/ the Public Protector's remedial action .....	<b>Error! Bookmark not defined.</b>
5.1 Classic" ombudsman institutions without binding powers .....	13
5.1.1 Coordinate Reporting and Public Relations Strategies .....	15
5.2 Hybrid ombudsman- like institutions with binding powers....	<b>Error! Bookmark not defined.</b>
5.2.1 Judicial confirmation of the Public Protector's powers to take binding remedial action .....	15
5.2.2 Effect and impact of the Constitutional Court's ruling on the binding powers of the Public Protector .....	17
5.2.3 Impact of the Public Protector's remedial action .....	17
6. The role of Ombudsmen/ Public Protector in strengthening Accountability in Public Administration .....	17
7. Cross-Border Solidarity Among Ombudsman Institutions .....	19
8. Looking Ahead: The Ombudsman in a Changing World .....	20
9. Conclusion .....	24

## **Acknowledgements**

- The Speaker of the Parliament of Malta: Honourable Dr Anglu Farrugia
- Members of Parliament
- The Parliamentary Ombudsman of Malta: Judge Emeritus Joseph Zammit McKeon
- Distinguished guests
- Ladies and Gentlemen

Good morning, Lodwa it tie-ba

## **1. Introduction**

I stand here this morning truly honoured to share this platform with you to reflect on the critical role of Ombudsman institutions in safeguarding democracy under the theme that brings us together of transparency, fairness, and accountability as cornerstones of good administration: the Mandate of the Ombudsman and will also give the SAn perspective.

Let me congratulate my dear friend and brother, Judge McKeon for having continued with the good work and championed the Parliamentary Ombudsman of Malta into its 30 year existence of holding the government accountable, combating prejudices and changing lives, Proset.

Ombudsman institutions serve as champions for the vulnerable, promote fundamental rights, uphold administrative justice, and strengthen democratic governance.

The opportunity to address such an esteemed gathering of lawmakers and leaders to share the experiences of the Public Protector South Africa, is also a recognition of the important role of the Ombudsman Institution as an integral part of democracy building; democracy consolidation; and national building. It is these types of engagements that collectively build our democracy consciousness and values for society.

In 1995, the office of the Public Protector was established by the South African interim Constitution Act of 1993, replacing the former office of the Ombudsman. This change was

part of the broader transformation of South Africa's political and legal systems post-apartheid shaped amongst others by our renowned 1<sup>st</sup> president of the RSA President Mandela who stated during the conference of the IOI held in SA hosted by the 1<sup>st</sup> PP of SA, Judge Selby Baqwa that “Our Public Protector’s office is not a critical instrument for good governance, it also occupies a central place in the transformation of the public service by, among other means, rooting out arrogance, secrecy and corruption so rampant during the apartheid year”... little did he know that we will continue to experience the same arrogance, secrecy and corruption in the hard earned democracy. Therefore this mandate of the PP remains relevant today.

The Public Protector's role is framed within broader governance and Ombudsman theoretical frameworks, emphasizing good governance and ethical standards, but overall, the institutionalisation of the Public Protector in South Africa represents a significant evolution of the Ombudsman concept, tailored to the country's unique socio-political context. This distinction arises from the Public Protector's enhanced constitutional authority and remedial powers to take corrective remedial action directly, in addition to the power to make recommendations, which embodies a unique approach to democratic oversight that offers important lessons for conceptualizing democracy's institutional requirements.

The Public Protector is accountable to Parliament but operates independently from it. This independence is crucial for maintaining the integrity and impartiality of the office. The Public Protector is accessible to the public, allowing individuals to lodge complaints directly or on own initiative. This accessibility is a key feature that enhances transparency and accountability in government operations.

The Public Protector is a Constitutional Institution established in terms of section 181 of the Constitution with the powers afforded by 182 of the Constitution to support and strengthen constitutional democracy by:

- a) Investigating any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- b) Reporting on that conduct; and

- c) Taking appropriate remedial action.

The Public Protector has the following key statutory mandate areas:

- a) **Maladministration Investigations and Dispute Resolution** in terms of the Public Protector Act No 23 of 1994: Investigate and redress maladministration or improper or prejudicial conduct, including abuse of power and abuse of state resources in all state affairs.
- b) **Corruption Investigations**: Investigate allegations of corruption as empowered by Section 6(4) Public Protector Act, as well as improper or dishonest acts, or omissions or offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, with respect to public money.
- c) **Protected Disclosures**: Receive protected disclosures from whistle blowers under the Protected Disclosures Act 26 of 2000; Under the PDA the Public Protector, the Auditor General and others to be determined by proclamation, have the power to receive information from whistle- blowers believing that criminal conduct or impropriety has occurred at their place of work;
- d) **Enforcement of the Executive Members' Ethics Code**: through investigations into complaints lodged in terms of the Executive Members' Ethics Act.

Over three decades, the Public Protector has played a pivotal role in upholding democratic principles, transparency, accountability, and good governance. Throughout its history, the institution has contributed significantly to promoting standards of good governance, ethical conduct and implementing anti-corruption measures, thereby reinforcing accountability in governance at national, provincial and local levels, including local government, state owned enterprises, statutory bodies and public institutions. (Court decisions are excluded).

Several high-profile investigations have shaped the Public Protector since inception, over decades, each shedding light on the institution's strengths, limitations, and evolving role in combating corruption.

- a) The 1996 Sarafina II probe examined the Department of Health's use of a R14.3 million EU donation for an AIDS awareness play.

- b) The Oilgate scandal centered on allegations that PetroSA irregularly paid R15 million to Invume Management, which then diverted R11 million to the ANC's 2004 election campaign.
- c) The Public Protector participated in a multi-agency probe into the R43-billion Arms Deal, initiated in 2000, alongside the Auditor-General, Heath Special Investigating Unit, and National Prosecuting Authority. While the initial joint investigation by the Public Protector and other agencies in 2000 laid the groundwork for criminal probes, actual prosecutions have been limited and delayed. The most notable criminal proceedings involve former President Jacob Zuma and the French company Thales, with ongoing court cases related to corruption charges stemming from the Arms Deal.
- d) The Public Protector's 2011 investigation into the SAPS's R1.1 billion lease for Pretoria's Sanlam Middestad building exposed severe procurement violations. The Public Protector investigated former President Jacob Zuma's use of public funds for upgrades to his private residence in Nkandla. This high-profile case established the Public Protector's role in holding even the highest office accountable for misuse of public resources and confirming the binding nature of the Public Protector's remedial action by the constitutional Court. The Public Protector concluded that the former President and other officials had violated ethical codes and that a reasonable portion of the costs related to non-security upgrades should be repaid, calling on relevant authorities, including the National Treasury and Parliament, to take appropriate action.
- e) The Public Protector's investigation into allegations of state capture was a critical step in uncovering systemic corruption at the highest levels of government – leading to the appointment of the Zondo Commission.
- f) More recently the Public Protector conducted an investigation into the Phala Phala matter, which involved allegations of misconduct and maladministration related to a February 2020 theft of foreign currency from President Cyril Ramaphosa's Phala Phala farm in Limpopo. The investigation focused on whether the President violated the Executive Members' Ethics Act and associated ethical codes.

The above cases illustrate the true meaning of the remarks of our constitutional court, when it described the PP in the Nkandla Judgement as the "embodiment of a biblical David, that

the public is, who fights the most powerful and very well resourced Goliath, that impropriety and corruption by government officials. The PP is one of the true crusaders and champions of anti-corruption and clean governance. Her investigative powers are not supposed to bow down to anybody, not even at the highest chambers of raw state power”.

## 2. The Ombudsman as a Champion for the Vulnerable

The fundamental essence of any Ombudsman institution lies in its unwavering commitment to defending those who lack a voice in society. In South Africa, the Public Protector's constitutional mandate explicitly recognises this responsibility, requiring the institution to investigate complaints and take remedial action to ensure that all state organs are accountable, fair and responsive in the way they treat all persons and deliver services. This mandate extends far beyond mere complaint resolution; it encompasses a duty to actively seek out and address systemic injustices that affect the most marginalised members of society

The Ombudsman's role was eloquently explained by Justice Brian Dickson of the Supreme Court of Canada in 1984. He said:

*The traditional controls over the implementation and administration of governmental policies and programs—namely, the legislature, the executive, and the courts—are neither completely suited nor entirely capable of providing the supervision a burgeoning bureaucracy demands.*

*The Ombudsman represents society's response to these problems of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices...*

*Most importantly, his powers of investigation can bring to light cases of bureaucratic maladministration that would otherwise pass unnoticed. **The Ombudsman “can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds”...***

Of course, the work that ombudsman offices do as democratic institutions is not solely to promote optimal public services and government administration. We know that the *Venice Principles* also emphasise that the Ombudsman is an important element in protecting the rule of law and respect for human rights and fundamental freedoms. In addition, the Ombudsman's role in "the promotion and protection of human rights, good governance and the rule of law" was also recognized by the United Nations in its *Resolution(s) on the Role of Ombudsman and mediators*.

The South African experience demonstrates that Ombudsmen must often operate beyond their formal legal remit when confronting issues that threaten human dignity and constitutional rights. This broad mandate enables proactive intervention in cases where vulnerable communities face administrative failures, unfair practices, or denial of basic services. The institution's independence, guaranteed by the Constitution, ensures that it can "*exercise its powers and perform its functions without fear, favour or prejudice*", making it a crucial safeguard for those who cannot advocate effectively for themselves.

Practical examples from South Africa illustrate how this advocacy translates into tangible outcomes for vulnerable populations. The Public Protector has consistently intervened in cases involving inadequate housing delivery, denial of social grants, poor healthcare services in rural areas, and educational failures, including problems in higher education, that disproportionately affect disadvantaged communities. These interventions often require the institution to challenge powerful political and administrative interests, demonstrating that effective ombudsman work demands both legal authority and moral courage. The success of such interventions depends not only on the institution's investigative capabilities but also on its ability to mobilize public opinion and hold government accountable through transparent reporting and persistent follow-up on the implementation of the remedial action and or recommendations.

### **3. The Role of the Ombudsman in Promoting Fundamental Rights**



The United Nations and its organisations, the Council of Europe and other regional bodies have supported and stressed the importance of Ombudsman and national institutions as democratic ways to promote and protect human rights. In the document of the Copenhagen Meeting of the Conference of the Human Dimension of the Conference on Security and Co-operation in Europe in June 1990, the participating States affirmed that they “*will . . . facilitate the establishment and strengthening of independent national institutions in the area of Human Rights and the Rule of Law.*”

One of the most important discussions took place in Paris in early October 1991 at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights. Its conclusions have been called the Paris Principles. They affirmed that national institutions are to have competence to promote and protect human rights with as broad a mandate as possible set out clearly in a constitution or legislative act.

The World Conference on Human Rights adopted the Vienna Declaration and Program of Action, in June 1993, which presented an international framework of all relevant documents on human rights. It includes wide range categories of human rights, encompassing from the rights of people with disabilities, refugees, migrant workers, human rights education right to development and the equal status and the human rights of women etc.

Since the adoption of the Paris Principles and the Vienna Declaration many nations have created Ombudsman and human rights protection institutions that receive and investigate complaints about violations of human rights.

At first glance, many Ombudsman institutions and Human Rights Commissions (HRC) may appear indistinguishable. Human Rights Commissions are primarily concerned with protection of nationals against discrimination and with the protection of civil and other human rights, receives and investigate complaints and allegations of human rights abuses committed in violation of existing national laws, and review the Government’s human rights policy in order to detect shortcomings.

Ombudsman offices such as the Public Protector would, however, inevitably deal with a human rights component of the state administration when an investigation into improper and prejudicial government conduct also reveals a violation of a human right. In addition, Ombudsman Offices such as the Public Protector use and apply international and domestic

human rights laws directly or indirectly in the investigation of a complaint as one of the components of the domestic legal system that constitutes the standard by which the Ombudsman/ Public Protector can determine whether administrative conduct is improper or procedurally unfair.

The importance and value of the Ombudsman Institution as a stakeholder in the promotion and protection of human rights were recognised in the following statement by the UN High Commissioner for Human Rights:

*“OHCHR also recognizes the important contribution that ombudsman institutions can make as another element in the national human rights protection system – even without an explicit mandate of human rights protection – **given their role in ensuring government accountability and strengthening the rule of law. Many human rights abuses are indeed connected with maladministration, administrative malfeasance, or a lack of government accountability.** The essential notion of procedural fairness, which underpins the administrative law that ombudsman institutions are mandated to uphold, is thus key to protecting the rights of individuals in their interactions with public authorities”* (Own emphasis)

*(United Nations High Commissioner for Human Rights, H.E. Ms. Navanethem Pillay to the 9th International Ombudsman Institute World Conferenc.)*

Human rights have been a fundamental underpinning from the start and are the clear focus of many Ombudsman offices, especially in Latin America where Ombudsman offices explicitly adopted a human rights role from inception. In a 2020 survey among the wider IOI membership, 75% of the surveyed members indicated that they are multi-mandate institutions, i.e. that they fulfil other mandates in addition to the classical work of investigating maladministration.

Many Ombudsman institutions have a mandate in facilitating governance processes for the protection of the human rights of vulnerable groups and oversee the implementation of UN conventions such as the Convention on the Rights of the Child (CRC) or the Convention for the Rights of Persons with Disabilities (CRPD). The work and support Ombudsman provide to these vulnerable groups is essential, because they often cannot stand up for themselves and rely on the easy access, support and work of the Ombudsman. Once

again, this focus of work aligns well with the UN's Agenda 2030 and its overarching objective to “leave no one behind”.

Beyond reactive investigation, the promotion of fundamental rights requires Ombudsmen to engage in systemic analysis and proactive advocacy. This involves identifying patterns of rights violations, analysing the root causes of administrative failures, and developing remedial action and recommendations that address structural inequalities. The South African experience shows that effective rights promotion also requires active engagement with civil society, academic institutions, and international human rights bodies to ensure that the institution's work contributes to broader human rights advancement.

On 4 June 2024, the Office of the Public Protector released a report on the investigations into administrative deficiencies relating to the processing of gender-based violence (GBV) related matters within the South African criminal justice system. The report underscores the systemic bias and discrimination that GBV survivors, particularly women and marginalized groups, face within the justice system which violates their right to equal treatment and protection under the law. Administrative deficiencies that result in the mishandling of GBV and the justice system's failure to provide timely and effective support undermines the survivors' sense of worth and respect, severely impacting the dignity of survivors.

## **4. Upholding Administrative Justice and the Rule of Law**

*The transformation of modern administrative governance requires mechanisms that ensure state institutions remain accountable, transparent, and responsive to the public they serve. In this context, ombudsman institutions have gained growing attention as independent oversight bodies that address complaints, scrutinize administrative practices, and defend individuals against potential misuse of public power.*

(Zhyvko, M., Dombrovska, A., & Kiblyk, D. (2025). The Role of Ombudsman Institutions in Administrative Accountability: a Comparative Perspective. *Public Administration and Law Review*, (1(21).)

Scholars generally agree that ombudsman institutions have become valuable, non-judicial channels for redress and oversight—especially well-suited to handling complaints of maladministration and excessive bureaucratic discretion. As independent bodies charged with supervising public administration, ombudsmen play a key role in safeguarding individual rights, enhancing transparency, and fostering good governance. Literature

supports the view that while ombudsman institutions differ in structure and impact, they collectively represent a vital layer of non-judicial oversight that reinforces administrative accountability

International research has found consistently that disadvantaged and vulnerable members of the community experience more barriers to access to justice than others. The capacity of an individual to seek justice through any number of forums will vary, for example, according to their level of literacy, age, level of education, awareness and financial means.

It is in this regard that the Ombudsman plays a critical role in fulfilling its mandate of contributing and supporting a democratic society where social justice prevails, to recognise the need to acknowledge victim suffering as a result of wrongful conduct in state affairs. Its recommendations or remedial action is intended to go beyond restoring the administration, on measures designed for reparation, by providing redress to the individual, but also to promote reconciliation between the citizen and the State to ensure a continuous sound relationship between the citizen and the State, which is one of the most vital requirements of a stable democracy. Through its commitment to addressing victim suffering and advocating for effective remedies, the Ombudsman reinforces the principles of democracy, human rights, and the rule of law, thereby supporting the development of a just and equitable society.

Providing redress for administrative wrongdoing is one of the underpinning principles of public accountability and in the words of the former Irish Ombudsman, Dr Tom Frawley CBE, giving visible meaning to constitutional democracy by ensuring that authorities are *“fair and take responsibility, acknowledge failures and apologise for them, make amends, and use the opportunity to improve their services.”*

Systemic issues in public administration pose persistent challenges that require sustained Ombudsman intervention. In South Africa, these issues include chronic delays in administrative decisions, inadequate access to information, and the frequent absence of reasoned decision-making by public officials. For instance, the Public Protector's jurisdiction over *“undue delay by a person performing a public function”* provides a crucial mechanism for addressing administrative inefficiency that undermines citizens' rights and erodes public trust. These interventions are particularly important in addressing the

cumulative impact of administrative failures on vulnerable communities who depend most heavily on effective public services.

Ombudsman institutions, by their very design, serve as guardians of the rule of law. Their mandate empowers them to ensure that public services operate within the framework of justice and equality. Their oversight fosters sound governance and ensures that fundamental rights and freedoms guide the delivery of those services. Viewed through a rule-of-law lens, an Ombudsman's review of complaints highlights that government must follow established rules and that an independent authority can verify compliance. In this way, the public's right to lodge grievances is inseparable from holding government to account.

Colleagues like the former European Ombudsman, Professor Nikiforos Diamandouros emphasized the role of the Ombudsman as a distinct yet complementary institution to the courts, designed to serve as an additional mechanism of accountability and control. By focusing on the enhancement of the rule of law and the protection of citizens' rights, the Ombudsman's emergence proved both easier and more effective than relying solely on judicial remedies. This innovation broadened the spectrum of available redress, enabling individuals to select from a broader range of choices when seeking solutions to grievances and determining the most appropriate means to assert their rights.

#### **4.1 Classic" ombudsman institutions without binding powers**

"Classic" ombudsman institutions typically have the power to investigate complaints, make recommendations, and report findings, but they do not possess binding enforcement powers. Their recommendations are not legally binding and rely on persuasion and public pressure for compliance rather than formal authority to enforce decisions.

This approach is based on the notion that an ombudsman office that has undertaken a comprehensive investigation of a case, and has done so in an impartial and neutral manner, generally has the persuasive authority to elicit compliance with the recommended course of action. Instead of coercive enforcement, Classic ombudsmen engage in dialogue

and mediation, fostering a collaborative environment where issues can be resolved constructively, which strengthens trust between citizens and public institutions

However, even though most ombudsman offices, have no determinative or binding powers and can only make recommendations, nevertheless, compliance with ombudsman recommendations tends to be high. The former Queensland Ombudsman summed up the point as follows:

*“ Nearly all my recommendations in recent times have been implemented either totally, or following negotiation and further consultations, partially and satisfactorily. Indeed, in most cases it is not necessary to make an official recommendation to achieve a successful outcome, and that is my preferred outcome.”* And I must congratulate the Maltees government for implementint at leasts 80% of the Ombudsman's recommendations, this shows the government's commitment to make amends and comply.

The National Democratic Institute (NDI) conducted a survey and study on *The Role and Effectiveness of the Ombudsman Institution* in 2005 and reported a high rate of voluntary compliance. In response to an NDI survey on government acceptance of ombudsman office findings, most office respondents reported that their recommendations are acted upon most of the time while some respondents said their suggestions are nearly always followed.

According to the National Ombudsman of the Netherlands there are two crucial factors that influence compliance with recommendations: the personal authority of the Ombudsman and the practical feasibility of implementing the recommendation. To guarantee the latter, there needs to be close communication between the National Ombudsman and the administrative authorities concerned. This is an important difference between a court and an ombudsman. A court speaks to the outside world only via its judgments, whereas an ombudsman has far more means of communication at his disposal. Effective use of them helps to ensure regular observance of the principles of proper administration in the routine practice of government.

Further best practice options and strategies to secure compliance with and enforcement of ombudsman recommendations include:

#### **4.1.1 Coordinate Reporting and Public Relations Strategies**

Without traditional enforcement mechanisms, ombudsman offices typically rely on the power of public scrutiny through increased transparency to enforce their recommendations. This requires offices to incorporate reports and reporting into their public relations strategy, including the following:.

*4.1.1.1 Public Reports to Parliament.*

*4.1.1.2 Make Reports Accessible to the Public.*

*4.1.1.3 Cultivate a Relationship with the Media.*

*4.1.1.4 Maintain Good Working Relationships with Government Institutions*

*4.1.1.5 Parliamentary support*

Clearly, there is an expectation that the ombudsman's recommendations are not meant to be ignored, and if that were to happen s/he is required to mobilise the authority of the legislature (National Assembly) to secure the remedy recommended. However, in practice, the collaborative relationship implied here between the ombudsman and the legislature has not always been well established. At any rate, for a number of reasons, it has proved challenging in many countries to build an effective collaborative relationship with the legislature in line with the fundamental conception of the ombudsman. I am informed Mr Speaker that the legislature in this country is an active supporter of the work of the Ombudsman.

#### **4.1.2 Judicial confirmation of the Public Protector's powers to take binding remedial action**

Developments in South Africa have provided significant jurisprudential evidence to how the ombudsman's binding authority could be given effect. The Public Protector represents a significant innovation that departs from traditional democratic oversight models, conceptualizing democracy's meaning in contemporary contexts. Unlike the classical Ombudsman that originated in Sweden in 1809 and subsequently spread globally, the South African model represents what some scholars characterize as an Ombudsman of a special hybrid type. The Public Protector shares the basic function of investigating complaints against government agencies with traditional Ombudsman Institutions, but its constitutional positioning and enforcement capabilities create a distinctly South African approach to democratic accountability.

When the issue came before the South African Constitutional Court, the Court's discussion of the mandate and powers of the Public Protector confirms that even though the Public Protector is modelled on the Ombudsman, its existence, and its founding legal provisions, have been shaped up by political events in South Africa. It therefore has a unique character influenced by the fact that, *inter alia* –

- a) South Africa, unlike many other countries, is a constitutional democracy in which the principle of constitutional supremacy prevails.
- b) Ombudsman Institutions largely only has the power to make recommendations, while the Public Protector is specifically mandated in terms of section 182(1)(c) of the Constitution to “take remedial action”.
- c) In many countries with an Office of the Ombudsman, only the findings of the Ombudsman are binding and compliance with recommendations generally takes place as a natural consequence of showing courtesy to the Ombudsman institution itself.

In the Constitutional Court, Chief Justice Mogoeng stated the following, when confirming the powers the Public Protector:

*Taking appropriate remedial action is much more significant than making a mere endeavor to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, **she is constitutionally empowered to take action** that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);*

*The legal effect of these remedial measures may simply be that those to whom they are directed **are to consider them properly**, with due regard to their nature, context and language, to determine what course to follow. (Para 69);*

*Implicit in the words “take action” is that the **Public Protector is herself empowered to decide on and determine the appropriate remedial measure**. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the*



*exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence; (para 71(a)); (emphasis added)*

The Constitutional Court therefore confirmed that the remedial action taken by the Public Protector has a binding effect,

*“When remedial action is binding, compliance is not optional, and whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”*

Both the Supreme Court of Appeal and the Constitutional Court therefore did not only confirm the binding effect of the remedial action of the Public Protector, but more importantly, made it clear that if they are not challenged in a court of law, any disregard thereof by any party obliged to take action in pursuance of such remedial action, is unlawful and have legal consequences for the party concerned.

#### **4.1.3 Effect and impact of the Constitutional Court’s ruling on the binding powers of the Public Protector**

The Public Protector went through a taxing cycle of the development of these powers where it severely hamstrung by a costly litigious response by state institutions and low levels of compliance (2%). Through a conscientious effort of dedicated quality assurance and meaningful and early engagement with these institutions, the level of compliance has improved significantly to its current level of 39%. Whilst the recommendations are highly implemented also at abt 80% rate.

#### **4.1.4 Impact of the Public Protector’s remedial action**

### **5. The role of Ombudsmen/ Public Protector in strengthening Accountability in Public Administration**

For public administration, accountability is about the securing and maintenance of integrity in government, as part of what is now called 'good governance', a term that is used to carry accountability and other measures across both the public and private sectors.

These principles of accountability, transparency are essential for ensuring that public officials act in the best interests of citizens, thereby enhancing trust in government institutions and supporting democratic values. By prioritising ethical conduct, governments can better combat corruption and foster a culture of accountability and transparency, ultimately leading to improved service delivery and governance.

Public accountability is the hallmark of modern democratic governance. Democracy *"remains a paper procedure if those in power cannot be held accountable in public for their acts and omissions, for their decisions, their policies, and their expenditures."*

(Public Accountability, Mark Bovens Professor of Public Administration Utrecht School of Governance E. Ferlie, L. Lynne & C. Pollitt (eds.), *The Oxford Handbook of Public Management*, Oxford: Oxford University Press 2005 )

The notion of accountability holds government and society together like glue and it is at the heart of modern democratic processes to address the misuse of power and other forms of inappropriate behavior.

Scholarly literature recognises the ombudsman as an intermediary actor that complements judicial oversight and strengthens the rule of law. The ombudsman institution has over time, evolved into a vital mechanism for administrative accountability and rights protection, particularly within democratic governance systems. Its adaptability, independence, and accessibility have made it a vital pillar in the architecture of democratic accountability.

The ombudsman office, by the nature of its functions, plays a significant role in ensuring accountability and transparency—two key elements of good governance. Accountability is imperative, as public officials should be answerable for their behaviour to the entity from which they derive their authority. Transparency in government decision making and public policy implementation reduces uncertainty and can help inhibit corruption among public officials.

Effective accountability requires more than individual case resolution; it demands systemic analysis of administrative failures and advocacy for structural reforms that prevent recurring problems. The institution's annual reporting requirements provide crucial

opportunities to highlight systemic accountability failures and advocate for legislative and policy reforms.

Ombudsmen institutions and Institutions such as the Public Protector have an important role to play in assisting Parliament in its oversight function over the Executive.

### Cross-Border Solidarity Among Ombudsman Institutions

The global nature of contemporary governance challenges requires enhanced cooperation and solidarity among Ombudsman institutions across national boundaries. International cooperation among Ombudsman institutions also provides crucial support for maintaining independence and effectiveness in challenging political environments. When individual institutions face threats to their independence or attempts to undermine their authority, international solidarity can provide both moral support and practical assistance. The development of international standards for Ombudsman institutions, supported by peer review and mutual accountability mechanisms, strengthens the global movement for democratic governance and human rights protection.

The invitation from Malta's Ombudsman to the Public Protector exemplifies the valuable dialogue and shared learning that can strengthen these institutions' effectiveness in promoting democratic governance. Malta and South Africa, despite their different contexts and constitutional frameworks, share common challenges in ensuring administrative accountability, protecting vulnerable populations, and maintaining institutional independence in the face of political pressures. The exchange of experiences between these institutions can inform best practices in investigation methodologies, recommendation enforcement, public engagement, and institutional capacity building.

Regional and international cooperation through organizations like the International Ombudsman Institute (IOI) and the African Ombudsman and Mediators Association (AOMA) provides essential platforms for sharing experiences, developing common standards, and coordinating responses to transnational challenges. Through the IOI, the Public Protector participates in international training, conferences, and support international standards such as the UN resolutions and the Venice Principles on ombudsman independence and good governance.

The role of the Ombudsman has been recognised by international organisations including the United Nations. The United Nations Resolution on Ombudsman and Mediator institutions was adopted by the UN General Assembly on 16 December 2020. It represents a strong endorsement of the key principles of Ombudsman institutions and it is an important further step in securing worldwide recognition for the work of Ombudsman institutions in promoting good administration, human rights, good governance and the rule of law.

At a more global level, especially on the African continent, the Public Protector, as the part of the ombudsman family as well as in her capacity as Chairperson of the African Ombudsman Research Centre (AORC), is involved in the coordination and advocacy activities, facilitating research, training, and networking among African ombudsman offices. At the continental level AOMA was accredited with the African Union (AU) on 14 September 2011 as an observer body with a permanent representative in the AU. An agreement of cooperation between AOMA and the AU was signed on October 21, which defined the role of AOMA in the AU, including intervention in areas connected to peace and security, good governance, mediation of conflicts, observation of elections, among other sectors.

Through AOMA and AORC, the Public Protector engages in capacity building and regional cooperation amongst African Ombudsmen and Human rights Institutions aimed at the strengthening of governance, social, economic and human/people's rights and the development of working relationships and synergy with instruments such as the African Charter on Democracy, Elections and Governance, decisions of the African Commission on Human and Peoples' Rights and recent developments within PAP and NEPAD, as well as the UN system.

At international level, collaborations and partnerships between the Public Protector and global bodies have shaped its independence, investigative powers, and operational effectiveness in line with international norms and standards.

## **6. Looking Ahead: The Ombudsman in a Changing World**

The rapidly evolving landscape of governance presents new challenges and opportunities for Ombudsman institutions that require innovative approaches and expanded capabilities. Digital governance, artificial intelligence, climate justice, and migration create complex

administrative challenges that traditional Ombudsman models may struggle to address effectively. These emerging issues require Ombudsman institutions to develop new expertise, forge new partnerships, and advocate for governance frameworks that protect human rights in rapidly changing contexts.

The major challenges facing any Ombudsman, as outlined in the IOI paper “*The Art of the Ombudsman: leadership through international crisis*” (2021) reflected that in many instances the Ombudsman would experience that ‘being an effective manager of change’ was the most difficult to deliver in their organisations. This is an emphatic sign of the turbulent times Ombudsman live in. The reasons given for this could be political, cultural, and/or resource related.

Ombudsman institutions need to be agile and adapt constantly to societal developments and the needs of citizens in order to remain relevant. To do this there has to be acceptance that ‘change is a constant and is often resisted by staff’. There also has to be acceptance of the importance of investment in skilled, adept management capable of articulating a vision of what the Ombudsman service wants to be, and a realistic plan for delivery. I realised this early on in my journey at PPSA and have made the investment in the training and upskilling of our staff a highest priority – I have ensured that human resource management becomes a critical dynamic area that is responsive to the many demands that our investigation and support staff face.

With democratic values and governance becoming increasingly more and more under threat, the role of the Ombudsman and other democratic institutions is critical for in strengthening and upholding democracy by contributing to the building of a resilient and capable State that supports sustainable development and good governance. Targets 16.5 and 16.6 of the Sustainable Development Goals 2030 envisions effective, accountable and inclusive institutions such as ombudsmen institutions and public protectors, to reform administrative and governance systemic failures to reduce corruption and bribery in all forms and support the development of effective, accountable and transparent institutions at all levels.

Independence is therefore the sine qua non of Ombudsman practice. In a 2021 study by the Glasgow University in collaboration with the UK Parliamentary and Health Services

Ombudsman ((PPHSO), amongst 52 Ombudsman Institutions, respondents highlighted “independence” as the value most difficult to deliver. There is often an uneasy co-existence between being independent in terms of constitutional rules on the one hand and not being financially or politically independent on the other. The fact is that while Ombudsman Institutions, including the Public Protector are state institutions, they must be independent and act independently from all other institutions and organisations, governmental and non-governmental. Independence has five dimensions required by the Paris Principles and a sixth that is the most important of all:

- legal independence – establishment by the constitution or a legislative act
- operational independence – independence to determine their own priorities, programmes and projects, that is, all aspects of their operations, subject to the law and available resources
- policy independence – independence to determine their policies and their findings, conclusions and recommendations in the course of their work
- financial independence – independence to control their budgets once they are allocated and to allocate financial and other resources as they see appropriate and according to their own priorities
- independent members – independence ensured through a process of open, transparent, competitive selection and appointment
- independent thinking – a personal quality, the attitude, mindset, orientation and determination of the Ombudsman/ Public Protector and staff to be free from influence by government and others, to be free from a sense of being defenders of the current government or the current political system, or of being under some form of obligation to the government or of owing their loyalty to the government.

Full compliance with the formal requirements of the Venice and Paris Principles is essential but not enough to guarantee the independence of an Ombudsman Institution. Only independent thinking throughout the institution will ensure true independence.

The 4th Industrial Revolution (4IR) is rapidly transforming the world, though its full impact remains uncertain due to its vast scale and complexity. It is imperative that Ombudsman

Institutions proactively adapt to the significant influences of smart industry and advanced technology. Experts like Dr. Nguyen Thanh Giang and Dr. Nguyen Minh Tri highlight that 4IR offers tools for enhancing human rights, such as improved access to information through the internet and big data, which aids in monitoring and addressing discrimination and human rights violations.

New technologies, especially in health and education, can significantly boost socio-economic development, enabling citizens to better enjoy rights like healthcare, education, and entertainment. Digital technology enhances freedom of expression via digital media and social networks. For vulnerable groups, such as persons with disabilities, technology increases accessibility to services and reduces support costs, thereby improving their quality of life.

Adapting to the digital age requires Ombudsman offices to embrace technology for case management, data analysis, and communication. Transitioning from manual processes to digital systems can be challenging but is essential for effectiveness. As Ombudsman offices handle sensitive information, robust cybersecurity measures are vital. Protecting data, maintaining privacy, and safeguarding against cyber threats are ongoing challenges.

The intersection of technology, human rights, and privacy is a crucial area where Ombudsman Institutions can collaborate effectively. Digital governance presents both opportunities and risks for democratic accountability that Ombudsman institutions must actively address. While digital technologies can improve administrative efficiency and transparency, they also create new possibilities for discrimination, privacy violations, and exclusion of vulnerable populations. Ombudsman institutions must develop the technical expertise and investigative capabilities necessary to understand and address these challenges while advocating for digital governance frameworks that prioritize human rights and democratic accountability.

Climate change and migration represent emerging challenges that require Ombudsman institutions to expand their traditional focus on administrative justice to encompass broader questions of social justice and human rights. These issues often involve complex interactions between different levels of government, multiple administrative jurisdictions, and international legal frameworks that challenge traditional Ombudsman approaches.

Effective responses require enhanced cooperation among Ombudsman institutions, development of specialized expertise, and advocacy for governance frameworks that address the root causes of these challenges while protecting the rights of affected populations.

The future relevance and credibility of Ombudsman institutions depend on their ability to remain proactive and adaptive while maintaining their core commitment to independence, fairness, and accountability. This requires continuous institutional learning, strategic planning that anticipates emerging challenges, and sustained engagement with civil society, academic institutions, and international partners. Most importantly, it requires unwavering commitment to the fundamental values of human dignity, equality, and democratic governance that justify the existence and authority of these crucial institutions.

## **7. Conclusion**

The themes of transparency, fairness, and accountability that unite Ombudsman institutions globally provide a foundation for addressing contemporary governance challenges while maintaining focus on the fundamental purpose of these institutions: protecting and promoting human dignity in all interactions between citizens and the state. The success of this mission requires not only legal authority and institutional capacity but also moral courage, strategic vision, and unwavering commitment to the values of constitutional democracy.

As we look toward the future, the solidarity between institutions like Malta's Ombudsman and South Africa's Public Protector represents a crucial foundation for strengthening democratic governance globally. Through continued cooperation, shared learning, and mutual support, Ombudsman institutions can continue to evolve and adapt while maintaining their essential role as guardians of accountability, fairness, and transparency in public administration. The challenges ahead are significant, but the fundamental importance of these institutions to democratic governance ensures that their work remains as relevant and necessary today as it was at their inception.



Lets bare in mind that the effectiveness of any Ombudsman institution ultimately depends on the implementation of its recommendations and the broader systemic changes that result from its interventions.

When recommendations are ignored or inadequately implemented, the consequences extend far beyond individual cases to affect public trust in democratic institutions and the rule of law. The underlying objective in the provision of redress either by remedial action or recommendation, is to ensure that organs of state restore the complainants' legal rights or otherwise put them in the position that they would have been in if the maladministration or poor service had not occurred.

Thank you

Nizzik hajr