

The role of enhanced advocacy and outreach strategies in protecting the vulnerable groups in society.

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Any institution established for the purpose of protecting and promoting of human rights generally and fundamental rights in particular must be one which is known to the people particularly to the vulnerable groups in society, because they are the ones who seek recourse to these institutions due to their inability to resort to legal action for the protection of their rights, due to the high expenses involved in litigation.

It is a basic requirement that if there are institutions for the protection of people's rights, the people should be aware of the fact that such institutions exist. Secondly they must have easy access to such institutions.

The office of the Parliamentary Commissioner or the Ombudsman is an independent authority established for the purpose of providing redress to aggrieved persons in cases of maladministration, where the existing constitutional machinery had been insufficient or ineffective. Complaints had often been made that proper standards of conduct were not observed by public officers. The complaints include those of negligence, inefficiency, bias, unfair discrimination, oppressive behavior, delay and failure to reply to a communication addressed to administrative authorities.

As the Report of 'Justice', the British Section of the International Commission of Jurists (ICJ) has pointed out with reference to Britain, a developed country, such complaints (I quote) "give rise to feelings of frustration and resentment because of the inadequacy of the existing means of seeking redress."¹ It is submitted that in the mixed and heterogeneous polities of the Asian region these complaints of the people assume a more serious character than the countries where the population is homogeneous in nature.

It had been found in practice that in the expanding sphere of state activity and administrative power the traditional, constitutional, legal and administrative remedies had been inadequate and inappropriate to deal with various types of maladministration.

If I may cite an example, in order to institute a regular legal action in a court of law, the grievance should amount to a cause of action recognized by law. Even in cases where an express right of appeal to the courts against administrative decisions is conferred by statutes on specific grounds, the scope of the appeal is strictly confined to the grounds of appeal.

Similarly where a complainant invokes the supervisory jurisdiction of the appropriate court, it will grant relief only when the administrative agency had exceeded its powers and acted in breach of certain

¹ The Citizen and Administration, the Redress of Grievances (UK 1961) p. 61. See also J. A. L. Cooray, Constitutional Government and Human Rights (1969) , Chapter 3 ' An Ombudsman for Ceylon.

principles recognized by law. The court limits its control strictly to 'legal' acts with the result that the citizen is left without any legal remedy in cases of maladministration which stops short of illegality.

It is always the marginalized or otherwise vulnerable groups who are at the receiving end of such acts or omissions committed or omitted by various organs of the administration. It may sometimes be a case of not receiving a reply to a letter written by a citizen in his own language or receiving a reply in a language that he does not understand whilst he is legally entitled to receive a reply in his own language. In my country Sri Lanka, this had been one of the root causes for the armed conflict that engulfed the island nation for many years.

Even in cases where judicial review is available for redress of grievances the parties in Sri Lanka and other developing or (under-developed countries) are either too poor to pursue such remedies or the subject matter of dispute is too small for such remedies to be pursued in courts having regard to the delays and high cost of litigation.

It is a *sene qua non* for any institution dealing with rights of people especially relevant to marginalized and vulnerable groups in society, to make it transparent, and accessible without any hindrance of costs, proximity, formalities and discrimination on whatever grounds. The office of the ombudsman is such an institution. For example the Swedish Ombudsman has great freedom in deciding the direction of his supervisory activity. Every citizen has a right to complain to him. Neither the government nor parliament can stop the investigation of a complaint by the Ombudsman.

The Ombudsman of Denmark can receive complaints from anyone. He can even take up matters on his own initiative. Any person deprived of his liberty is entitled to address written communications in a sealed envelope to the Commissioner. In the process the Commissioner could inspect prisons and other penal institutions and the prisoners are informed that they will have an opportunity of talking to the Commissioner without the presence of any official from the prison.²

The experience of the Ombudsman of Guyana would be of much importance to those of developing countries with societies that are heterogeneous. The Guyanese Ombudsman investigates complaints of injustices in consequence of a 'fault of administration.' Such fault of administration includes discrimination on grounds of race, place of origin, political opinion, colour or creed.³

The Ombudsmen in heterogeneous societies must appraise themselves of the best approaches which ensure protection of vulnerable groups of their societies. The well known **Paris Principles on national human rights protection institutions** promulgated under the auspices of the United Nations would provide a sound beginning.⁴ Principles C (1-7) of the Paris Principle sets out *inter alia*, (I quote) 'freely

² Public law (1958), p. 240. The experience of the Guyanese Ombudsman would be of much importance to those of developing countries with societies that are heterogeneous. The Guyanese ombudsman investigates complaints of injustice in consequence of a fault in administration.' Such faults includes discrimination on grounds of race, place of origin, political opinion, colour, or creed.

³ Constitution of Guyana, Article 56.

⁴ Paris Principles on National Human Rights Institutions.

considering any question falling within their competence, hearing any person and obtaining any information necessary for assessing situations, addressing public opinion directly through the press-particularly to publicise their opinions and recommendations, maintaining consultations with other bodies responsible for the protection and promotion of human rights and developing relations with NGOs devoted to protecting and promotion of human rights in related fields.’(Unquote)

I propose that national ombudsmen in our region must draw strategic plans based on the above principles to convey their mission to the target groups. Both advocacy and outreach could be used as vehicles in pursuit of this mission.

Sri Lanka is a tri- lingual state where there are two official languages (Sinhala and Tamil) and a link language which is English. It is imperative that due to this heterogeneity my office must reach the marginalized segments through one of the two official languages in that the vulnerable groups only speak the vernacular languages. Otherwise they will never come to know about the jurisdiction of the Ombudsman in Sri Lanka. Although there is a separate Official Languages Commission in Sri Lanka the language problem has not been resolved. This also gives rise to a duty on the part of the Ombudsman to reach out to the said Commission for joint action although the Ombudsman has no specific powers in implementing policies.

Originally the Sri Lankan Ombudsman had the authority only to inquire into complaints filtered through the Public Petitions Committee of Parliament. The first Ombudsman of Sri Lanka in his Annual Report for 1984 voiced that,(I quote) ‘ Sri Lanka is the only country in the world which filters such petitions through so many levels.’ (unquote)⁵ He stated further in his report that, (I quote) “the Indian experience of (epistolary jurisdiction of the Supreme Court could be a major breakthrough in bringing justice to the large mass of people. In parts of Canada a mere telephone call to the office of the ombudsman could be the basis of an investigation. In some countries the ombudsman could commence inquiries on his own (sic) initiative.” (unquote).

His criticism did not fall on deaf ears. In 1994 the new government which came into power amended the 1981 Act which established the office of the Ombudsman enabling the public to submit petitions directly to the Ombudsman.⁶ Although no provisions were introduced empowering the Ombudsman to receive complaints by telephone he was empowered to act on his/ her own initiative. This was an instance how an Ombudsman could use his outreach to make his office more effective and meaningful by taking an initiative within his powers to bring his office very much closer to the ordinary people.

The impact of this procedural change made in 1994 is amply demonstrated by the comparison of the number of matters referred to before 1994 and after. The number of 32 complaints received by the Ombudsman in 1984 ⁷ increased to a massive 5221 in 1995 in addition to the 41 referred by the Public

⁵ Mr. Sam Wijesinghe, in Parliamentary Series No. 76, Report of the Parliamentary Commissioner (Ombudsman) for the Year 1984 (9 July 1984).

⁶ Section 10(2)and (3) of Act No. 17 of 1981.as amended by Act No. 26 of 1994.

⁷ Supra, n, p. 34.

Petitions Committee of Parliament.⁸ This upsurge could be attributed to the liberalising of the petition procedure and the wide publicity given to the amendment made in 1994 to the 1981 Act.

Historically the Ombudsman's office has been a relatively closed institution, with no stakeholder interaction and only peripheral attention paid towards improving advocacy and outreach of its service. Responding and recognizing the need to keep pace with public expectations and as part of a process of representing itself as a more client oriented institution, the Ombudsman should identify steps leading to its transformation into a more open institution becoming more inclusive in its policy making and purposefully engaging with different stake holders to enable third party perspectives to be imbibed in its work.

It must be emphasized that with the opening of direct access to the Ombudsman steps have to be taken to create a greater awareness among the public, the majority of whom belong to vulnerable groups. Consistent and effective communications with stakeholders is a critical aspect of the functioning of any institution whose clients are broad based.

The envisaged communication flow comprises two aspects. Firstly, building awareness amongst the different audiences on the mandate, the plan and the programs of the Ombudsman . Secondly, impetus, building and sustenance of momentum with respect to interaction, culminating in the success of the Ombudsman's strategic plan.

In furtherance of these objectives the ombudsman must formulate a process involving,

- i. The Identification and segmentation of target groups,
- ii. Developing an effective system of communication instruments and media. A number of Instruments and a variety of media would be used to communicate with the different stake holders.

I would list some of them as follows,

- a. **Annual or other Periodic Reports or Thematic Reports:** These Reports that comply with legal provisions in the law or the statute that established the Ombudsman himself would form the principal instrument for public disclosure of the agencies working on the social sector. The Ombudsman should place them on his official web site and publish them in the newspapers in all official and national languages of a given country. He also could propose through his reports to the government to amend the Constitution or the statute which established his office to decentralize the powers of the office of the Ombudsman. Decentralization of the functions of the office of the Ombudsman would further bring his office closer to all citizens in general and the marginalized segments in particular. This was amply demonstrated in Sri Lanka by the immense response shown by the aggrieved people living in the provinces after the National Human Rights Commission (NHRC) opened regional offices. Those offices began to receive hundreds of applications in respect of violations of fundamental rights by executive and administrative organs of the government. Those

⁸ Parliamentary Series No. 15, Report of the Parliamentary Commissioner for Administration (Ombudsman) for the rear 1995 (21st August 1996). p. 59.

applications would never have been submitted had not those regional offices been opened by the Commission which was earlier functioning only in the capital city, Colombo.

- b. **Ombudsman's News Letter:** A news letter which portrays and builds on the existing image of the Ombudsman's office on a responsive and responsible manner published in all official and national languages as the case may be will be a very effective tool in propagating the jurisdiction and the working of the Ombudsman's office.
- c. **Participation and Sponsorship of community events:** Awareness programs and competitions to mobilize communities at various levels to various stakeholders and awareness of issues in administrative justice. The competitions could take the form of posters, essay and other innovative projects in relation to access to justice, freedom of information, public grievance redress and making the Ombudsman's mission more effective and efficient.
- d. **Media Briefings and Press Releases:** Media briefings are very useful to keep the media abreast of the Ombudsman's efforts in public grievance redress and to provide insight and information to specific activities undertaken by the Ombudsman. Establishment of a public *cum* media relations unit in the office of the Ombudsman will facilitate the abovementioned activities with efficiency and continuity.
- e. **Ombudsman's Web Site and Blog:** A web site and a blog are a *sine qua non* for the Office of the Ombudsman in this technologically advanced age to act as a channel for public disclosure on programs, activities and a web based information centre with a continuing update of all administrative justice services that the Ombudsman provides.
- f. **Radio and TV Programs:** Like many organizations, human rights based institutions both public and private utilize these programs to disseminate their message and programs to the general public at large because of its great effectiveness the expansive reach. Both these media reach the remotest hamlets in any country in minutes if not seconds with great impact.
- g. **Workshops and Seminars:** Workshops and seminars are useful means to reach stakeholders on specific policy issues and also to receive feedbacks from them.
- h. **Print and Electronic Media Advertising:** This is another very effective activity to ensure a wide outreach of the message of the Ombudsman, declaring what public grievance redress mechanisms are and how the Ombudsman is hoping to redress the grievances or how his office can help in resolving them and what the role of the stakeholders should be, which may also include a report of the progress achieved so far and the next steps proposed to be taken in the future in that regard.

Let me conclude quoting Stieber: "Common threads run through the conceptual fabric of every ombudsman's office - all aim to humanize administration, to support fairness, accountability, and equity. All ombudsmen can be approached in confidence. No ombudsman has enforcement or disciplinary powers. All depend on the power of persuasion, as well as the credibility of the office, which leads individuals to trust it. Although the process in achieving objectives of fairness may

differ, the product is the same: a chance for ordinary people, those without power or prestige, to be heard and to get fair treatment."⁹

Thank You.

⁹ Stieber, 57, *Varieties*, para.3 pp. 56-567, cited in *The Functions of an Ombudsman: Nathalie Des Rosiers, Annotated Bibliography*, Forum of Canadian Ombudsman, First Annual Conference 2003