

Fighting Corruption While Safeguarding Human Rights

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This paper looks at how Ombudsman offices can play a role in curbing corruption in government, while safeguarding human rights. The paper draws on the author's experience as national Ombudsman in Australia.¹ That office, in addition to handling complaints against government agencies, has a vibrant program of providing development assistance to Ombudsman offices in the Asia-Pacific region. The paper discusses how that assistance can help those agencies fight corruption in their own systems of government.

1. The Ombudsman role in curbing corruption

Fighting corruption is not the main or even a major function of Ombudsman offices. They do not have the intrusive powers that are needed for that purpose, such as the power to conduct covert surveillance, intercept telephone calls, and arrest suspects for questioning. Those functions are also resource intensive and beyond the capacity of most Ombudsman offices. Rather, the core function of Ombudsman offices is twofold: to handle complaints from members of the public about shortcomings in government decision-making and service delivery; and to conduct occasional own-motion investigations into systemic problems occurring either across government or in specific agencies.

Those complaint and investigation functions nevertheless play a role in curbing corruption in government. The impact is subtle but significant over time. I will mention four ways this occurs.

First, the Ombudsman's role, of dealing annually with thousands of complaints across all areas of government, is a message to public servants that anything they do can be complained about and investigated by an independent office. Any member of the public can make a complaint – informally, without charge, and even anonymously. In conducting an investigation the Ombudsman can demand access to internal documents, take evidence from the public and other public servants, and publish the findings of the investigation. By looking constantly and unpredictably at what government is doing, the Ombudsman can be a constant reminder to government officials of the need to act lawfully and with integrity.

This can help build a culture of integrity in policing agencies that come within the Ombudsman's jurisdiction. A special danger in policing is that minor incidents of misuse of power – bullying suspects, exchanging favours, or falsifying evidence – can take root and become a systemic problem of corruption. An Ombudsman's office can grapple individually with those minor incidents, and work cooperatively with policing agencies to strengthen their systems from the ground up.

¹ Australia has a federal system of government – with a national government, six State (regional) governments, and two Territory governments. An independent Ombudsman office operates in each government system, handling complaints from the public against all government activities, including policing and defence. There is also a growing number of industry ombudsman offices, handling complaints in areas such as telecommunications, banking, energy supply, and health services.

Secondly, most government agencies have matched the Ombudsman's role by establishing internal procedures for handling complaints from members of the public. This provides an added layer of scrutiny and transparency to what occurs within government. It becomes that much harder for any public servant to feel confident about engaging in wrongdoing without arousing suspicion. Many of the internal complaint handling units also have a larger focus, of fostering integrity in government. The titles of some of the internal units in Australia illustrate this point – Taxation Complaints, Defence Fairness and Resolution Branch, and Police Professional Standards.

Thirdly, the sanctions that can follow an adverse finding by an Ombudsman are a realistic worry for most public servants. Foremost is the Ombudsman's power to publish an adverse report, which can bring discomfort and even shame to those at fault. This can damage a person's career prospects, which is usually a more real and practical worry than criminal prosecution or a judicial determination of wrongdoing. The financial loss from a damaged career can be greater than the hard-edged penalties that are the deterrent to corruption in the criminal law.

Fourthly, an abiding concern of Ombudsman offices is to improve government generally, both through individual complaint handling and by promoting systemic reform. Many Ombudsman offices see themselves as a champion of complaint handling principles, freedom of information, and whistleblower protection. Those are part of the fabric of democratic values that can strengthen a system of government and act as a barrier and disincentive to corrupt and damaging practices. The flexibility of the Ombudsman model means that integrity in government can be promoted in numerous ways – in investigations, reports, public speeches, parliamentary submissions, and meetings with senior government managers.

2. Aligning corruption strategies with human rights principles

It is important that those who fight corruption do not themselves become part of the problem. Maintaining the public's trust in the fairness and integrity of the accountability institutions of government is essential. Public trust is more easily won if an accountability agency can demonstrate that it observes standards of good governance and human rights. This is a broad challenge, and the following three practices followed by Ombudsman offices are illustrative.

First, investigations are conducted in private. This limits the damage that can be caused to people's reputations and careers by untested and unsubstantiated allegations that are yet to be investigated. Adverse findings are published only after they have been properly investigated. Further, if there is a good working relationship between government agencies and an Ombudsman's office, it will not usually need to rely on formal investigation powers that can pose a human rights threat, such as forced entry to premises, or compulsorily obtaining evidence on oath.

Secondly, an important ethos of Ombudsman offices is to observe administrative law standards in conducting investigations. An example is that natural justice must be observed, allowing any official who might be criticised in an Ombudsman report to comment on a draft of the report. Another important administrative law standard is that every finding should be based on evidence, not rumour, suspicion or whim.

Thirdly, it is important in the fight against corruption that those responsible for investigating and punishing criminal conduct are not themselves prone to corruption. There are few reported instances of this occurring in Ombudsman offices. Partly that is because they have few favours to trade, as the ultimate Ombudsman remedy is to

make a recommendation or publish a report, not to make a binding determination. Partly too it is because there is a strong international alliance of Ombudsman offices, that cooperate to ensure that any institution calling itself an Ombudsman conforms to an accepted model of independence and integrity.

3. Helping other countries to fight corruption

The national Ombudsman office in Australia has an active program of providing assistance to neighbouring offices in the region – in Indonesia, Thailand, Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu. AusAID, an Australian Government development assistance agency, financially supports this work. It is part of a broader Australian program to assist economic and political development in the region, by reducing corruption through strengthening the capacity of local institutions of government.

The work with other Ombudsman offices is guided by two principles. The first is that the Ombudsman model is regarded as being suitable and adaptable to systems of government with quite different political and cultural traditions. This is because all governments, whatever their history or stage of development, should now be expected to conform to internationally accepted norms of good governance. Fundamental to that expectation is that a government should acknowledge that it derives power from the people, who have a right to complain to an independent agency if they have a grievance against a government agency. The public must be able to complain without fear or recrimination, and complaints must be investigated objectively and on their merits.

The second guiding principle is that the Ombudsman model as it applies in a particular country must nevertheless be tailored to the local context. Ombudsman offices in Australia that have been operating for over thirty years function quite differently to the way they functioned when first established. The assistance provided to an Ombudsman's office that is newly developing should be attuned to this point.

A key focus in our work with other Ombudsman offices is to help them build respect and credibility, both with government agencies and with the public. This is as much a practical as a symbolic challenge. It can be done through helping an Ombudsman office to develop procedures for requiring government agencies to respond to the Ombudsman's questions and to provide documents in a timely fashion. To elicit this cooperation the Ombudsman's office must itself have a reputation within government for being efficient and decisive. This means it must pay close attention to basic investigation skills, such as letter writing, assessing evidence, case management, and strategic planning. Ombudsman offices that have developed those skills can provide practical in-house assistance to those at a different point on the learning curve.

Conclusion

Government is the sum total of countless millions of individual decisions and official actions. The small dots together make up the picture. The larger picture will not be unstained by corruption unless we ensure the purity of the individual dots. That is a challenge taken up by Ombudsman offices.