

Office of the Ombudsman of Rwanda

A Review of the Effectiveness of Anti-Corruption Agencies¹ September 2010

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Introduction

Rwanda has seen a major spurt of economic development since emerging from the 1994 genocide which traumatized this small land-locked state. In the ensuing 17 years, Rwanda has made significant progress on reconciliation and laying the foundations for continued growth. However, it remains poor, with 90% of the population relying on subsistence agriculture to some degree and 50% falling below the poverty line. Despite these conditions, the state has managed to record growth rates exceeding 6% annually for more than 10 years. In addition to economic success, the government has stabilized with the adoption of a new constitution in 2003 and the election of a new President at that time. The President is a major force in the governance of the state and was intimately involved in the government throughout the second half of the 1990s.

Rwanda's anti-corruption authority, the Office of the Ombudsman of Rwanda, was created by the adoption of the 2003 Constitution. The Ombudsman's office in Rwanda is a relatively unique institution in that it marries the responsibilities of a traditional ombudsman with those of an independent anti-corruption agency. Its explicit mandate is to reinforce good governance in both public and private institutions by acting as a link between the public and these institutions, preventing injustice and corruption, receiving complaints from citizens, and administering the income and asset disclosure system of the government. It is notable that injustice and corruption are linked by the terminology used by the Ombudsman as well as in the structure and operations of the office. As a result, the office seeks resolution to specific problems citizens experience when interacting with their government, but it also recommends structural policy reform measures to individual agencies of the government. The office then adds an additional layer of responsibility with its role as an investigator and monitor of corruption in agencies.

With the fall of President Pasteur Bizimungu in 2000 after nearly six years of transitional government, then vice-President Paul Kagame assumed the Presidency of the transitional government. In the subsequent three years, Rwanda formulated a new Constitution which included strong anti-corruption policies. This reflected a growing consensus that corruption was growing in Rwanda and afflicting the highest levels of government, including the former administration of President Bizimungu.

The creation of the Office of the Ombudsman was a major first step in the new government's efforts to combat corruption. Initially, however, the Ombudsman's office was structured in a way to have it focus primarily the prevention of corruption through education and training and in-depth auditing of government institutions for the purpose of identifying procedural weaknesses that permitted corruption. This strategy, while still embraced, has been supplemented with a more direct anti-corruption capability housed in the newly formed Fighting Against Corruption Special Unit within the Office of the Ombudsman which

has been granted the power of preliminary investigation to investigate all instances of alleged corruption.

Indeed, the Office of the Ombudsman of Rwanda is responsible for executing the anti-corruption action plan of the government of Rwanda. It also plays a major role in formulating and updating this plan in conjunction with other agencies of the government which play a role in anti-corruption efforts, such as the Auditor General's Office and the National Tender Board.

Organization and Structure of the Office of the Ombudsman

The Office of the Ombudsman was created as an independent body in 2003. The office currently has 47 employees (though is expanding to 65 over the course of 2011) and is headed by a Chief Ombudsman who is nominated by the President and approved by the Senate of Rwanda. He or she is appointed to a four year term that can be renewed only once. By law, the Chief Ombudsman can only be removed by the Parliament. Below the Chief Ombudsman are two deputies who serve three year terms which can be renewed only once.

The Ombudsman's office is organized into six units:

1. Fighting Against Corruption Special Unit
2. Fighting and Preventing Corruption Unit
3. Fighting and Preventing Injustice Unit
4. Declaration of Assets Unit
5. Monitoring of Incompatibilities of Officials Unit
6. Administration and Finance Unit

Fighting Against Corruption Special Unit

This unit is actually the newest unit of the Office of the Ombudsman and is charged with carrying out preliminary investigations (power of Police Judiciare) of cases referred it by "high authorities" or the Ombudsman himself. It is also explicitly responsible for combating economic and financial crimes and is authorized to receive and analyze information and evidence pertaining to reported corruption cases. This power of Police Judiciare which has been granted to the Ombudsman for cases involving corruption firmly shifts the power of the Ombudsman's office toward a more active law enforcement role. Prior to 2010, the Ombudsman's office was primarily focused on prevention and analyzing current problems to recommend structural changes for individual government agencies. In fact, this unit was only created recently and subsequent to Ministerial Order No 67 of 2009 which granted judicial powers to the Office of the Ombudsman. Then, in 2010, Prime Minister's Order No. 18/03 established a new structure for the Ombudsman's Office which created this special unit.

Fighting and Preventing Corruption Unit

This unit maintains the primary responsibility for identifying and combating corruption throughout the government by examining state institutions to identify areas for reform and recommending policy changes to reduce opportunities for corruption. Indeed, this unit can be thought of as the unit that tries to limit the supply of possible corruption by recommending safeguards. As such, it created and executes Rwanda's anti-corruption strategy. This strategy involves both an advocacy and a monitoring role.

First, the unit is responsible for lobbying for good governance policies and regulations in the administrative structure of the country. This involves, in part, visiting all government institutions to determine whether the laws governing their organization and operation are sufficient and being followed correctly. In effect, this entails an in-depth audit of the internal controls of each institution. These audits may then result in recommendations for changes to internal regulations for the agency in question, recommendations to the Parliament for new laws or amendments to existing laws, or they may result in a corruption investigation if evidence of criminal misconduct is revealed. Such investigations are handled by the Fighting Against Corruption Special Unit.

Fighting and Preventing Injustice Unit

Unlike the Fighting and Preventing Corruption Unit, this unit is focused on educating the public and public servants about the importance of good governance. This involves creating and administering training sessions for schools, the public, and government employees to promote ethical conduct and reduce corruption. Importantly the unit also receives complaints from the public regarding their experiences with government institutions. Depending on the type of complaint, the unit will either attempt to resolve the dispute at hand to ensure the individual receives the services they deserve, or the Ombudsman's office will use the complaint to formulate recommendations to the relevant institution or Parliament to improve the delivery of government services. As will be seen later in this report, this unit received over 1500 complaints in 2008 and resolved 84% of them within the year.

This unit, in particular, has worked closely with the police and civil society organizations to try to guarantee that the public feels comfortable submitting complaints to the Office of the Ombudsman. In fact, organizations such as Transparency Rwanda now have complaint boxes on their grounds where citizens can submit anonymous complaints which are then provided to the Preventing Injustice and Corruption Unit. Furthermore, this unit conducts yearly meetings in towns across the country where citizens are invited to discuss their concerns about the government and the services they are receiving. In 2008, the latest year for which statistics are available, the office received 455 total complaints at these meetings. These complaints play a major role in shaping the advice the Ombudsman's office provides to government agencies and to the Parliament.

Declaration of Assets Unit

As the name implies, the primary unit responsible for the income and asset declaration system is the Declaration of Assets unit. The requirement for public officials to declare their income and assets is included in the 2003 Constitution and is designed to help promote ethical behavior by public officials and to encourage integrity in the exercise of public functions.

This department created the declaration form, updates the list of individuals required to declare their income and assets, receives and stores declarations from filers, and verifies the accuracy of a sample of the declarations. The unit is also responsible for performing research into the effectiveness of the income and asset declaration system and for issuing requests to line agencies to impose administrative sanctions against individuals found not to be in compliance with the requirement to declare their income and assets. Indeed, this unit handles almost every single aspect of administering and enforcing the IAD system in Rwanda, with the exception of prosecuting criminal behavior which is handled by the Prosecutor General's office.

In 2008, this unit received 4,929 declarations and subsequently verified the accuracy of 5% of those it received using a combination of random and targeted selection to maximize the deterrent effect of verifying these declarations. However, 455 individuals failed to declare their assets as required by law, so the Declaration of Assets Unit requested that the employing agencies of those individuals administer administrative sanctions (which varied in severity depending on the circumstances of the employee's failure). Additionally, of the 5% of declaration that were audited, 12 revealed inconsistencies that could not adequately be explained and which then resulted in the suspension of those 12 individuals from their posts.

Monitoring of Incompatibilities of Officials Unit

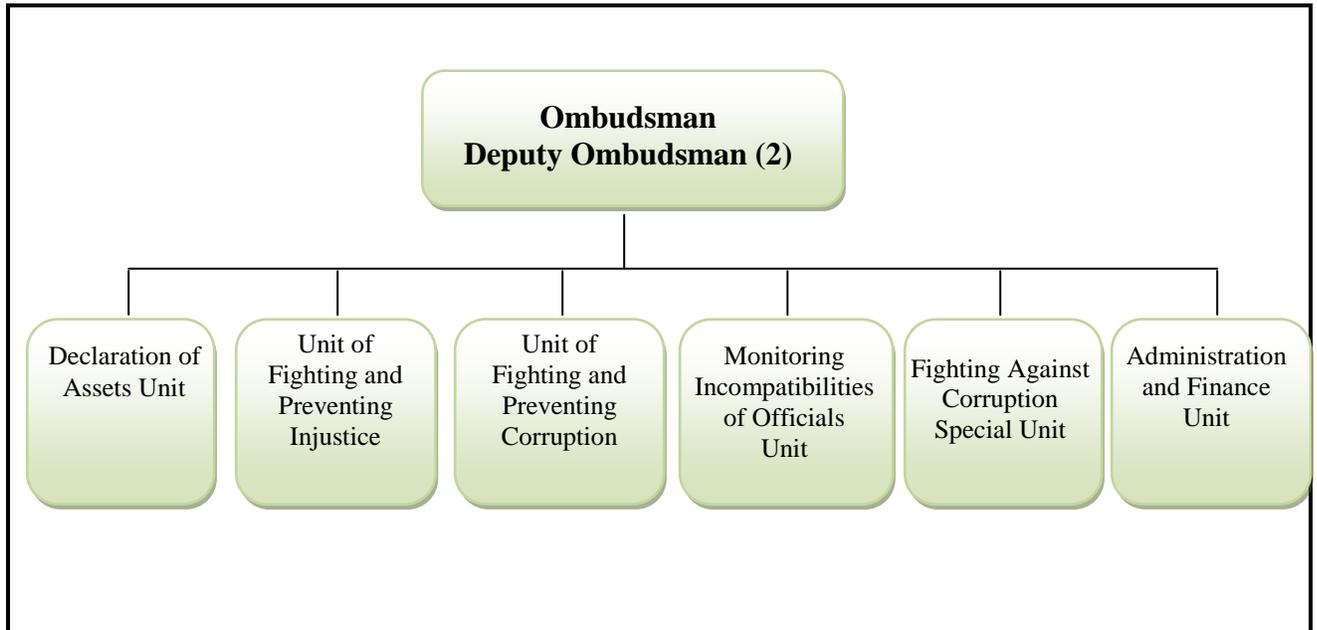
Recently created, this unit is tasked with enforcing the law on conflicts of interest of public officials. That law contains specific prohibitions on the types of outside activities public employees may conduct, such as limiting outside employment and membership on corporate boards. The Ombudsman's office is the primary agency empowered to monitor government employees to ensure they do not violate the conflict of interest law. However, the unit within the office is new and only beginning its work, so it has not yet fully developed its standard operating procedures.

Interestingly, the income and asset declarations of officials are *not* used to help the Monitoring of Incompatibilities of Officials Unit to determine whether an official does, in fact, have a conflict of interest. Instead, the unit focuses on training and individual investigations.

Administration Unit

This unit is responsible for the administration of the Office of the Ombudsman, from budget preparation to facilitating coordination between the other units of the Ombudsman's office. Further, the unit manages the day to day operation of the office.

Figure 1. Organizational chart of the Office of the Ombudsman of Rwanda



Resources and Capacities

The resources and capacities of an anti-corruption agency are essential to the successful achievement of its mandate.

Facilities

The Office of the Ombudsman is located in a large house in the administrative region of Kigali. The office did not have exact specifications for the building, but it comfortably accommodates a staff of 47. Importantly, the building has constant electricity service, but also maintains a back-up generator to ensure an un-interrupted supply of electricity in case of service disruptions caused by inclement weather or other problems with the external electricity supply.

Technology

The Office of the Ombudsman uses a secure intranet system for managing files and workflow across all its departments. As such, all personnel have dedicated computers for their use along with dedicated sign-on credentials that provide access only to their individual unit's files to ensure security and the confidentiality of reports. This security is advanced and particularly important for protecting the confidentiality of complaints it receives and

ongoing investigations. In fact, the office uses a proprietary software system but one that is maintained by external Information Technology experts from the government's technology office.

Human Resources

The Ombudsman's office uses competitive recruitment to hire new staff for the agency which involves a civil service exam, a background check, and thorough vetting. All non-administrative staff has four years of post-secondary education and receives ongoing training. Further, the agency conducts yearly performance reviews for all staff to monitor and promote employee performance.

Financial Capacity

The budget for the Office of the Ombudsman is ultimately determined and allocated by the Parliament of Rwanda. However, the Ministry of Finance and Economic Planning plays an important role in determining the yearly allotment for the office. Every year the Ombudsman's office submits a budget request to the Ministry, detailing its requirements and the functions to be supported by the requested budget. The Ministry then determines the office's budget in the context of government-wide spending priorities and prepares a budget allocation. Then, the Parliament makes the final decision and appropriates funds. As such, the budget of the Office of the Ombudsman is subject to the same budgetary and political pressures as the majority of government agencies.

In 2009, the Ombudsman's office had a budget of 1.4 billion Rwandan Francs (US \$2.4 million). This represents significant growth since the creation of the office in 2003, when it had an operating budget of 600 million Rwandan Francs (US \$1.02 million). This reflects robust Presidential and Parliamentary support for the office, as well as strong donor community support. In fact, the donor community provides approximately 15% of the funding for the office. However, it is important to note that almost half of the government's entire budget comes from the international community, some of which is used in the government's budget allotment for the Ombudsman's office. As such, donor involvement is significant in the office, but consistent with overall donor support to the government.

Importantly, while the salaries of its staff were lower than other government agencies for a few years, the office has managed to equalize pay with peer government institutions such as the Ministry of Finance and Economic Planning. This has significantly reduced loss of staff to other government agencies and facilitated the retention of knowledgeable and capable staff. Unfortunately, the office did not have exact retention and turn-over figures but this was believed to be as high as in other public sector institutions according to a survey conducted in 2007 which concluded that the leaving rates captured by the survey were not sufficiently high to indicate a serious problem overall in the Rwandan public service.

The average cost of handling a corruption case from preliminary investigation to the point when it is referred to the Prosecutor General's office is currently in the range of 300,000

Rwandan Francs to 1 million Rwandan Francs (US \$500 to \$1700), with most costs coming in the form of the salaries of the individuals who handle the case.

Administrative Capacity

The Office of the Ombudsman has developed clear organizing principles, detailed job descriptions for its staff, and operating manuals that provide guidance for administrative procedures, although a detailed organigram of the agency does not yet exist. The Office is audited by the Auditor General's Office of Rwanda every year to ensure its activities and expenditures are properly accounted for. Furthermore, the Ombudsman's office produces a comprehensive yearly report of its activities which it submits to Parliament and makes publicly available. The office also plays an active role in the formulation of new anti corruption policies, with staff proposing draft legal language for possible new laws and amendments.

Regulatory Capacity

The Office of the Ombudsman has clear regulatory authority within its policy remit. The office plays an active role in the formulation of new policies regarding corruption, with staff proposing draft legal language for possible new laws and amendments. The office issues numerous regulations across the spectrum of its activities, though in the areas of asset disclosure and the monitoring of incompatibilities, the Office has issued fewer regulations in recent years as those systems have matured.

Beyond its independent regulatory authority, the Office of the Ombudsman has played an active role in proposing new laws to the Parliament which would either clarify the office's responsibilities or expand the powers available to it. Indeed, a key area of concern has been the investigatory powers of the office, which is discussed below.

Investigatory Capacity

Currently, the Office of the Ombudsman has the power of police judiciaire, which is derived from the French justice system. This power has been extended to numerous government agencies in recent years and enables them to perform preliminary criminal investigations of suspected breaches of the law in their specific policy remit. This means that the Office of the Ombudsman has the power to request subpoenas to obtain information in cases of suspected corruption, which includes investigating the accuracy of income and asset declarations and the sources of the assets listed on those declarations.

If a preliminary investigation produces sufficient evidence of a possible crime, the Office of the Ombudsman will then forward the case to the Prosecutor General's office to prosecute. Recently, the Ombudsman's office has requested that the Parliament grant it the power to prosecute corruption cases itself, rather than have to rely upon the Prosecutor General. This argument derives from the belief of the Ombudsman's office that the Prosecutor General has neither the specialized expertise in corruption necessary for these cases, nor the interest in pursuing cases not derived through normal police channels. However, it is worth noting that the Prosecutor General's office has pointed out that the Ombudsman's office has only

referred an average of one case per year, thereby raising questions about the Ombudsman's arguments that the Prosecutor General's office is unwilling or unable to prosecute these types of cases.

The debate regarding the wisdom and efficacy of granting prosecutorial powers to the Ombudsman's office is significant. On the one hand, the Office of the Ombudsman wishes to remain as independent as possible and to have as many tools at its disposal to fight corruption as possible. On the other hand, granting prosecutorial powers to the Ombudsman's office may prompt other agencies to seek similar powers. The granting of the power of police judiciaire to many agencies followed a similar pattern, so concerns were raised during numerous interviews for this study that providing prosecutorial powers to the Ombudsman's office could lead to a proliferation of prosecuting bodies and therefore undermine the Prosecutor General's office, which in turn could undermine development of the judicial system.

Enforcement Capacity

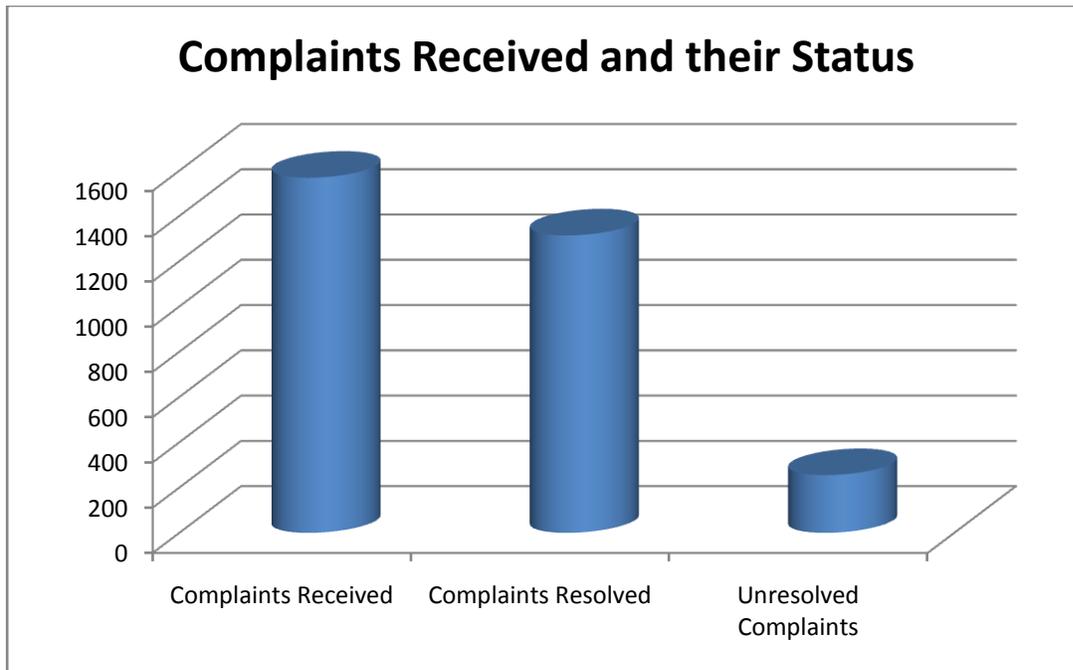
Although the Office of the Ombudsman has been granted the power of Police Judiciaire, it does not currently have the power to prosecute individuals for breaches of its regulations or for corruption related offenses. Furthermore, in instances where administrative sanctions would be the appropriate enforcement action (such as for failure to submit an asset declaration), the Ombudsman's Office only has the power to recommend a sanction. The responsibility for actually enforcing the recommended sanction is left solely in the hands of the employing authority of the civil servant or public official in question, which may choose to ignore the Ombudsman's recommendation.

Performance

Public Outreach and Receiving Complaints from the Public

In addition to direct anti-corruption efforts, the Ombudsman's Office also receives complaints directly from citizens regarding a range of concerns from poor service delivery to complaints regarding the local judicial courts (Gacaca Courts) that are primarily responsible for resolving outstanding genocide claims. This reflects the office's role as both an ombudsman and an anti-corruption agency. The complaints reported below are non-corruption related complaints that the office tries to resolve on its own or that it refers to relevant agencies which it then monitors to ensure a proper response is provided to the complainant.

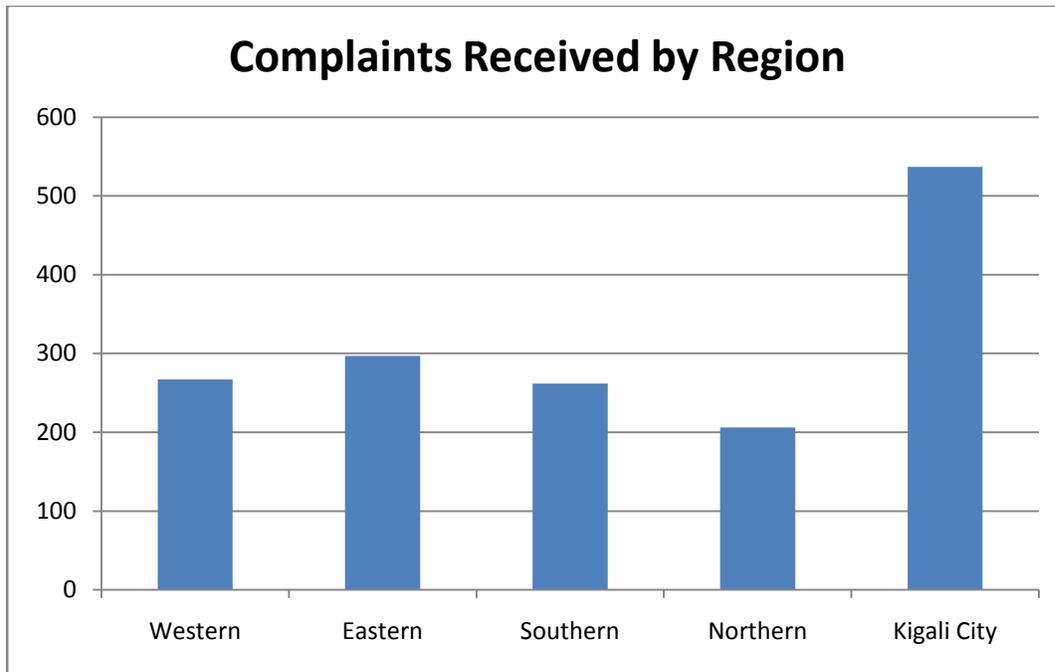
Figure 1 Complaints Received by Ombudsman's Office



According to the Ombudsman's Office, 84% of the complaints it received in 2008 were resolved that year. The majority of the remaining 16% were in the process of being resolved; however, there remained a subset of complaints to which the Ombudsman was unable to secure a response from the relevant agency. The greatest number of non-responses to inquiries by the Ombudsman's office to national governmental agencies came from the Ministry of Defense (9), the Ministry of Justice (6), and the Ministry of Trade (4), while Kigali City failed to respond to eleven inquiries. The Ombudsman's inability to compel responses from these agencies reflects the advisory nature of much of the Ombudsman's work and demonstrates the need for both political support and general acceptance of the role of the Ombudsman in Rwanda's government.

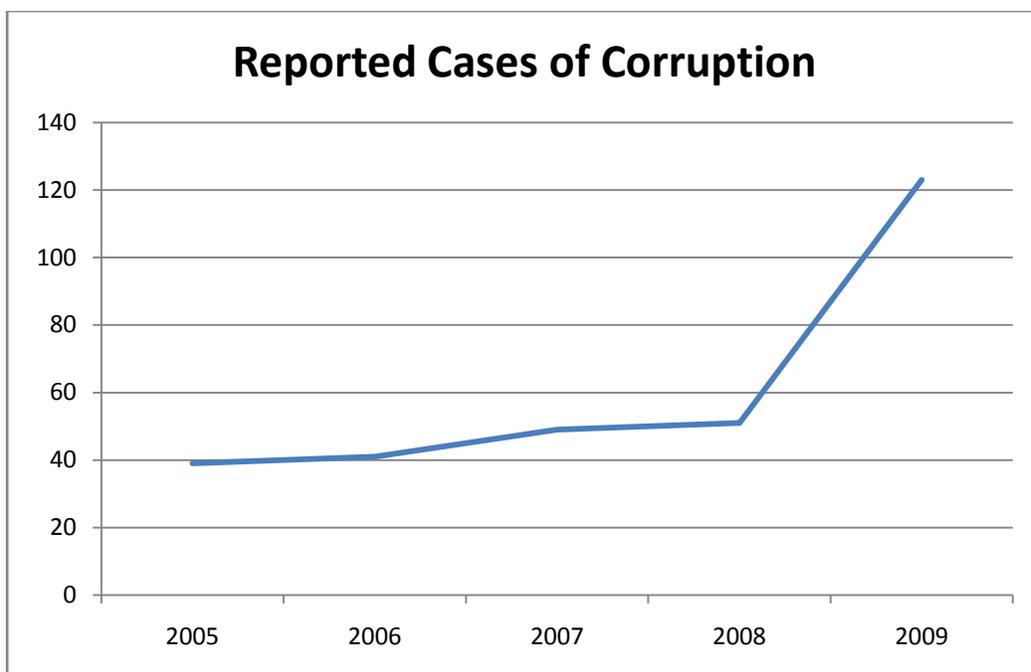
As seen in the figure below, complaints were spread across all regions of the country, though the strong majority of complaints originated within the capital city of Kigali which has the largest concentration of population in the country. The broad spread of complaints across regions reflects the concerted efforts of the Ombudsman's Office to perform outreach programs and conduct in-person meetings in all districts to solicit feedback and complaints from citizens.

Figure 2 Complaints Received by Region



In addition to receiving complaints in its role as an Ombudsman, the Office of the Ombudsman also handles cases of corruption and receives complaints from the public regarding possible corruption. The incidence of reported corruption increased dramatically in 2009, perhaps reflecting the greater outreach of the Ombudsman’s office to civil society and the public more generally. As noted in the discussion of the Fighting and Preventing Injustice Unit, the office has begun to work closely with civil society organizations to encourage both their participation and feedback on the Ombudsman’s work, but also to facilitate ever greater involvement and communication by citizens.

Figure 2 Reported Cases of Corruption to Ombudsman's Office



Challenges and Factors for Success

Leadership and Political Support

A key element in the performance of the Office of the Ombudsman to date has been the consistent leadership since its inception which has been backed strongly by the President of Rwanda. Indeed, leadership and political support within the government have been essential for the functioning of the office due to the office's lack of legal authority to administer sanctions against individuals who breach conduct requirements (such as declaring their income and assets). As such, it must rely on individual agencies to levying the recommended sanctions against individuals, thereby raising questions about the ability of the Ombudsman's office to adequately enforce regulations where it is in a position to recommend specific sanctions. In fact, in one instance, the Ombudsman's office had to appeal to the Prime Minister's office to compel the Ministry of Finance to apply administrative sanctions against an employee of that ministry for his failure to comply with the income and asset regulations of the Office of the Ombudsman, demonstrating the need for continued political support within the government for the office's mission.

Resources

Since its inception in 2003, the Office of the Ombudsman's budget has increased from 600 million Rwandan Francs (US \$1.02 million) to 1.4 billion Rwandan Francs (US \$2.4 million) in

2009. This has allowed the office to increase the salaries of its staff so that it can compete with the most highly paid and prestigious ministries in the government for top personnel while also providing them with increased training. Further, this increase in funding has enabled gradual enhancements to the office’s technological solutions, including the creation of an entirely electronic submission system for the income and asset disclosure system beginning in 2011. Despite these improvements, the Ombudsman’s office continues to face capacity constraints for investigations. As seen in the figure below, Rwanda’s budgeting, as measured on a per capita and percentage of GDP basis is above Ethiopia, comparable to Uganda, and well below Kenya.

Figure 3: Macroeconomic comparisons

	Population	GDP	ACA Staff	ACA Budget	Per capita expenditure	Expenditure as % of GDP
Slovenia	2 million	\$48.48 billion	28	\$2 million	\$ 1.00	0.04%
Ethiopia	88 million	\$77.47 billion	272	\$2.2 million	\$ 0.03	0.003%
Kenya	39 million	\$62.56 billion	273	\$24.6 million	\$ 1.59	0.04%
Rwanda	9.7 million	\$11.17 billion	47	\$2.4 million	\$ 0.25	0.02%
Singapore	4.7 million	\$243 billion	88	\$17 million	\$ 3.63	0.70%
Uganda	33.4 million	\$43.22 billion	320	\$9 million	\$ 0.27	0.02%

Conclusion

The Office of the Ombudsman of Rwanda is a unique institution that combines the traditional powers of an ombudsman with the anti-corruption activities of an independent anti-corruption authority. Although it was only created seven years ago, the office has already made significant progress in building its institutional capacity and enforcing the nation’s anti-corruption laws. Because it is also an ombudsman, it serves as a vital link between the citizens and the rest of the government, thereby strengthening its political authority when it makes recommendations for policy changes at individual agencies and for new laws to the Parliament.

The Office of the Ombudsman has gradually implemented its multi-pronged approach to combating corruption by slowly increasing the number of training programs it offers to individual agencies, the public, and civil society. It has also slowly increased the comprehensiveness of the corruption audits it performs on individual agencies to improve its ability to identify weaknesses in the institutional structures of these agencies. Further, it phased in its implementation of the income and asset declaration system by merely issuing warnings to non-compliant filers for the first two years, then gradually sought greater and greater sanctions against individuals who fail to submit their declarations.

Despite the gradual strengthening of the office and its initial successes, the Ombudsman’s office has had more limited success when investigating specific corruption cases and getting

them prosecuted by the Prosecutor General's office. There have been a few high profile cases that resulted in convictions, one of which involved a minister, but the fact that the Ombudsman is seeking the independent power to prosecute demonstrates the office's belief that too few cases are being prosecuted.

On the whole, however, the Office of the Ombudsman has been a successful addition to the government of Rwanda. With continued support in the Parliament and from the President, it will play an important role in shaping the governance structure of the Republic of Rwanda and reforming the manner in which the government monitors itself and guarantees the proper delivery of services to the public.