

Scrutiny and Accountability of the Public Sector in Middle Eastern Countries: the Case for the Appointment of An Ombudsman

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Abstract. Public accountability of government officials has yet to become the norm in the Middle East. In this paper, the need for the appointment of an ombudsman in the public sector is discussed. He should be given power to question officials as well as other persons and to inspect documents and premises. He will usually make recommendations for remedial action. Emphasis is placed on the role of the ombudsman and its functions in ensuring that government functions in an efficient and just fashion, with due regard to the rights and prerogatives of the citizen. Attention is given to applications to the Middle Eastern situation.

Introduction

The decision-making process in most, if not all, Middle Eastern countries is shielded from public scrutiny. Officers performing tasks of executive government are not considered answerable to the public, while on many occasions members of the public are expected to answer to the administration. To ensure governmental accountability there should be a watchdog whose main function is to ensure that government departments and authorities are responsible, adaptive and sensitive to the needs of citizens. In a number of Western countries this role is played by the ombudsman.

The aim of this paper is to examine the potential role of the ombudsman in ensuring the satisfactory performance of public administration in Middle Eastern countries. The paper is divided into six sections. **Section one** gives a brief background of the establishment of the institution of the ombudsman in the Western world. **Section two** discusses the need for the ombudsman in Middle Eastern countries. **Section three** explains the nature of role of the ombudsman. **Section four** outlines the criteria

for successful ombudsmanship. **Section five** discusses the functions of the ombudsman. Finally, **Section six** summarises the main findings of the paper.

A Historical Background

Newly-appointed ombudsmen usually pay homage to the Swedish origin of their office dating back to 1809 when the Swedish Riksdage created the office of justice-ombudsman. Translated loosely, such a person is representative of the people [1, p.16]. More than a century elapsed before a second country, Finland, appointed an ombudsman in 1919. Denmark followed in 1955 and many other European countries have since appointed ombudsmen. In 1962, New Zealand became the first English-speaking country to appoint an ombudsman. In 1967 the concept spread to some Canadian provinces and American states, legislation being passed in Alberta, New Brunswick and Hawaii. Other provinces and states have since appointed ombudsmen. Countries in the Pacific area which have ombudsmen include Australia, Fiji and Papua New Guinea. Most, if not all, Middle East countries do not have an ombudsman. And where it exists, the office does not play an effective role.

In Sweden the ombudsman is a traditional and essential part of the government system. But, there were other means of attaining the same end with greater antiquity than the office of the ombudsman. In China in the third century B.C., during the Chin Dynasty, the emperor, Shih Huang Ti, built the Great Wall. He also created the office of the Censorate known as the U-Shih-Ta-Fa. Shih Huang Ti built the Great Wall to protect himself from his external enemies. The Censorate on the other hand, was to protect him internally against officials who neglected their duties. In the Han Dynasty, which succeeded the Chin Dynasty, the office of the U-Shih-Ta-Fa was raised to the same rank as that of the Prime Minister, but the salary of the office was only one-fifth of that of the Prime Minister. The high rank-low salary system was thought to make it certain that the U-Shih-Ta-Fa would keep a very close watch on a Prime Minister who received five times his salary. This Chinese institution was still functioning some 2000 years later under the name of the Control Yuan. Historically, Western countries rarely adopted Chinese institutions of government. In any case, it would probably be quite impossible for most countries to import the Censorate, if only because it employed a staff of thousands of persons to carry out the role of watchdogs.

The Need for the Ombudsman In Middle Eastern Countries

The call for establishment of an ombudsman in Middle Eastern countries stems from the desire that there should be a general council of grievances. Besides being authorized to investigate complaints relating to acts of administration with the national public service, such a council should also be entitled to proceed, on behalf

of a complaint, for review of a matter before a proposed administrative court or administrative review tribunal or some other specialized administrative tribunal, [2, p.113].

The ombudsman should be given power to question officials as well as other persons and to inspect documents and premises. If he finds evidence of what might broadly be called maladministration, he would report accordingly to the department or the agency concerned or to the responsible minister. He will usually make recommendations for remedial action. If these recommendations are not accepted or other appropriate remedial action not taken, the ombudsman can inform the head of the state and make a report on the matter to the parliament or the general assembly.

The ombudsman's main concern is to inquire whether the action which is the subject of complaint is defective, *i.e.* where the action:

- 1) appears to be contrary to law
- 2) was unjust, oppressive or improperly discriminatory
- 3) was in accordance with a rule of law, a provision of an enactment or a practice, but the rule, provision or practice is or may be unreasonable, unjust, oppressive or improperly discriminatory.
- 4) was based either wholly or partly on a mistake of law or of fact; or
- 5) was otherwise, in all circumstances, wrong.

It is to be noted that the ombudsman may condemn an official action as being unreasonable. Courts of law have held that where reasonable grounds do not exist for the making of a decision, the decision itself may not be legally valid. In so doing the courts eschew the notion that there inquiry is concerned with the merits of a decision, and as long as reasonable grounds exist on which the decision-maker could exercise his judgement the courts do not query the merits of the decision. The ombudsman is not so restrained in concluding that an administrative action is unreasonable.

The functions of the ombudsman do not end at seeking the resolution of a complaint as an end in itself. Even a single complaint may be a symptom of a defective administrative practice or procedure. A succession of complaints in one area may provide strong evidence. The ombudsman's investigation of a complaint may reveal that, although a specific practice or procedure is not itself defective, there is nevertheless room for improvement, both in the interests of a higher level of departmental efficiency and the avoidance of the recurrence of similar kinds of complaints [3, p.201]. The ombudsman's operations should at all times assist in promoting good management.

The existence of an ombudsman could assist public administration in the following ways:

- 1) The investigation may suggest a re-examination of the procedures with a view to eliminating unnecessary delay.
- 2) The recommendations of the ombudsman's office may form part of an in-depth review to be made of the whole of the government department's policies and procedures.
- 3) The department concerned may find it necessary to implement changed procedures, in the light of the ombudsman's investigations.
- 4) A comprehensive review of practices and procedures may be warranted.
- 5) An amendment of an act may be necessary.
- 6) The ombudsman may direct a tightening of procedures.
- 7) The investigation may reveal that it might be better to handle the work by another area of office where conflict priority did not arise.
- 8) The heads of departments or even ministers may be asked to make more decisions by reason of the existence of the ombudsman.
- 9) The investigations of the ombudsman may reveal that there is an urgent need for introducing follow-up systems.
- 10) The ombudsman will also inquire into the manner in which a department or authority implements a ministerial decision.

Fig. 1 summarizes the potential effects of the ombudsman on the performance of public administration.

The Nature of the Role of the Ombudsman

The ombudsman receives and investigates complaints from persons or organisations about the administrative actions of government departments and prescribed authorities. The ombudsman is concerned with the manner and procedures by which departments and authorities, and their officers, have gone about the matter, as well as any decision which is the subject of complaint.

In conducting an investigation, the ombudsman's office seeks to ascertain all the relevant facts and circumstances on the basis of which the ombudsman may reach his conclusions. If the ombudsman is of the opinion that a particular action is defective he may make a recommendation to the department or authority that some further action be taken. It is within the power of the ombudsman to recommend remedial

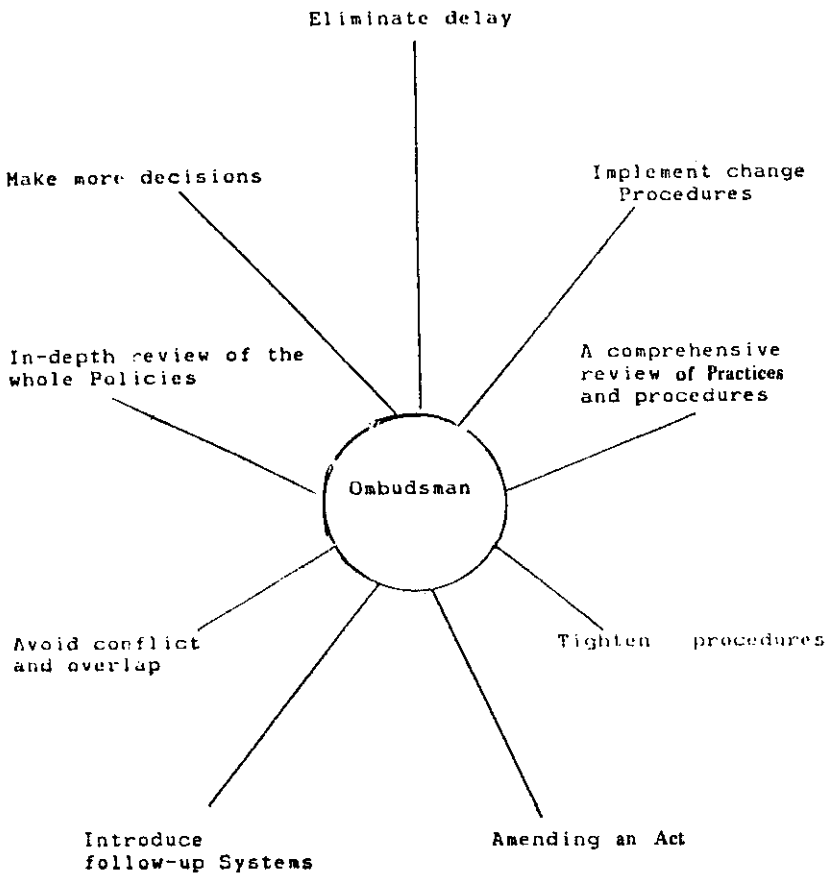


Fig. 1. The potential effects of the ombudsman on the performance of public administration

action, cancellation or variation of a decision, the alternation of a rule of law, statutory provision or practice, the giving of reasons for a decision or some further specific redress such as the payment of compensation to a complainant [1, p.223]. Fig. 2 depicts the relationship between the ombudsman, the citizens, the public service and the top authorities (*i.e.* the head of state and the Parliament or General Assembly).

In undertaking inquiries following the receipt of a complaint, the ombudsman's office is not required to confine itself to formal investigation, followed by a report setting out opinions and recommendations. It is open to the ombudsman to suggest at any stage of inquiry that there should be a compromise between a department and a complainant or a department may itself accede to a request which will specifically satisfy the complainant. Where appropriate action is not taken within a reasonable

time, the ombudsman should report to the head of the state and to the parliament. No further course of action lies beyond the making of a report to the parliament.

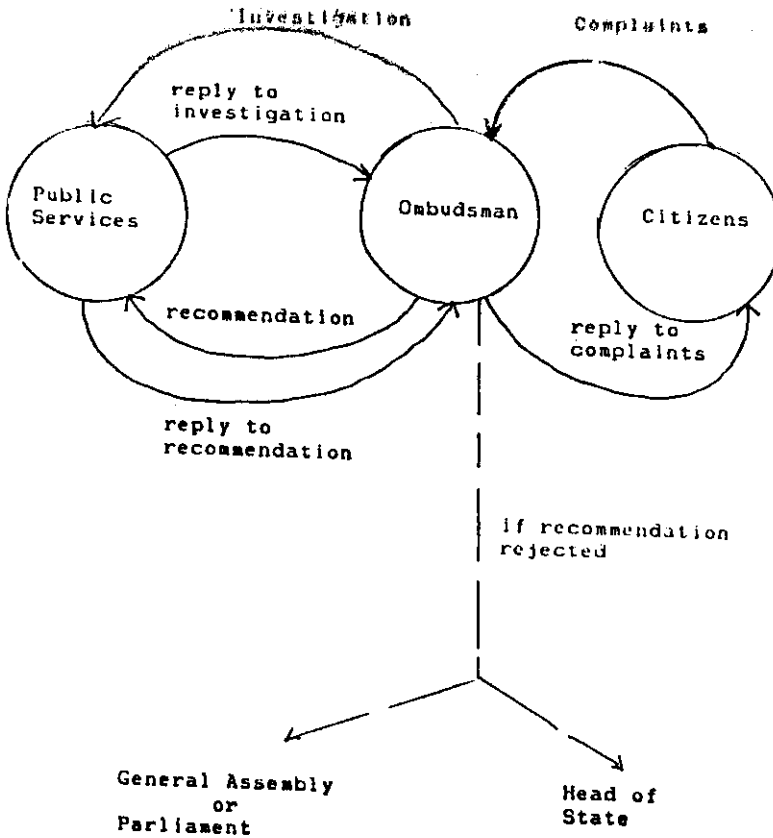


Fig. 2. The relationship between the ombudsman, the citizens, the public service and the top authorities

It is important to know what criteria and approaches the ombudsman will apply in the performance of his functions. Paramountly the ombudsman must be impartial. If he is not, he will impair the standing of the institution [4]. Complainants must feel that they can trust the ombudsman. Equally, a department or authority required to answer for its actions should not have to face a partisan ombudsman or an ombudsman concerned to conduct an investigation relentlessly to show fault somewhere if he can. The judgement which the ombudsman must exercise has to be based on the facts and circumstances fully revealed by a competent investigation.

The exact capacity of an ombudsman in handling complaints remains the subject of international debate. Plainly, an ombudsman cannot be the representative or agent of a department or authority, whereas many ombudsmen are concerned to refute the claim that they are the representatives or agents of the people. Other ombudsmen do not acknowledge that they are representatives of their complainants. Some suggest that the office combines the judicial functions of a judge or magistrate and the administrative function of an inquisitor. The essence of the office is that the ombudsman be non-partisan and judicial in his treatment and investigation of facts.

Another group holds the view that the ombudsman is not so much an agent or representative as an independent arbitrator. Other ombudsmen see themselves as umpires in a contest [5].

To the extent that an ombudsman has to form opinions after examining relevant facts and laws presented to him, and should do so only after due deliberations, his activity may be likened to a judge, arbitrator or umpire. However, an ombudsman has to perform the additional function of ascertaining the facts and the law for himself, and in so doing he has to decide, without assistance, what facts are relevant and the extent to which they materially affect the action being investigated. It is a matter of personal judgement as to when sufficient evidence has become available to deal with the complaint satisfactorily. In so doing, the ombudsman has to use his own judgement in pursuing particular lines of inquiry, and, in some cases, he may see fit to develop new areas of inquiry, although it may involve an extension of the issues inherent in the complaint made to him. Almost invariably complainants have to trust the ombudsman to investigate their complaints [6, p. 106]. A complainant has no role in an investigation except to inform the ombudsman of such facts as he is aware of. A complainant may not even realize the existence of material or relevant facts however favourable or unfavourable they may be to his cause, yet there are facts which the ombudsman should locate if he can. A complaint is usually far less likely than a department or authority to understand the nature of the considerations which have determined the course of action which the department or authority has taken. Accordingly, the ombudsman has an obligation to ensure that a complainant's case is fully presented. In this regard, the need to be impartial, objective and reasonable is paramount [7, p. 385].

Criteria for Successful Ombudsmanship

The following criteria must be met if the ombudsman's office is to carry out its functions in a successful manner.

1) Independence of the Ombudsman

It is universally acknowledged that the first of the essential criteria for successful ombudsmanship is that the ombudsman should be independent. He is only responsi-

ble to the parliament or the people's council, and furnishes the prime minister with information of substance to assist him in replying to the questions addressed to him in the parliament about the operations of the ombudsman's office.

2) Accountability

The ombudsman should be appointed by the parliament on the recommendation of the head of state. However, the ombudsman should not be answerable to the government for the manner in which he discharges his statutory functions. No institution, minister or other person may direct the ombudsman as to the matters which he should investigate or the manner in which he should carry out his investigation [8, p. 133].

3) Security of Tenure

The ombudsman and his deputy must have security of tenure, being removable during their terms of office only by a resolution of parliament on the grounds of misbehavior or physical or mental incapacity. Without this degree of independence, it would be impossible to discharge the functions of the office.

4) Disclosure of Information

The ombudsman's office should have access to all information and documents necessary for investigating any particular complaint. If the disclosure of information about a specified matter or the content of any specified document would be, according to the attorney-general, contrary to the public interest, the ombudsman himself should be allowed to have access to this information but not permitted to use it in a manner which would prejudice the security, defence or international relations of the country. However, no constraints should be put upon the ability of the ombudsman to conduct an investigation using a pretext that information cannot be disclosed because of public interest [9, p.84].

5) Geographical Jurisdiction

Since the operations of the ombudsman are essentially personal, it is beyond question, as demonstrated by experience throughout the world, the ombudsman has to be reasonably accessible to members of the public, the institution is to succeed [10, p.86]. Proper arrangements must be made in cities and towns for the receipt of complaints and the interview of complainants. The ombudsman must also be accessible to the departments, authorities and officers whose actions he is called upon to investigate. It is essential that they know the purposes to be served by an investigation and have the opportunity of assisting the investigation by the provision of information and documents [11, p. 48].

6) Communication and Public Relations

Accessibility of the ombudsman does not mean much unless members of the public are aware of what the ombudsman can do for them. Accordingly, all ombudsmen consider it to be either their function or duty to make themselves known, and even in countries where the institution of ombudsman has long been in existence, ombudsmen habitually take advantage of opportunities to publicize their activities. In Middle Eastern countries, which would be importing the institution, programs of public education are essential.

7) Community awareness of the Ombudsman

It is vital that various sectors of the population become aware of the existence of the ombudsman and be able to take advantage of his services [12, p. 604]. This may require heavy publicity in the press, television, and radio, in addition to addresses to gatherings. A pamphlet describing the activities of the office and how and where complaints could be made should be available to the public at large.

Functions of the Ombudsman

The ombudsman's primary function is to investigate complaints received alleging a defective administrative action on the part of a department or prescribed authority. Any citizen may complain to the ombudsman. A company, an institution, association or any other body, including a government department or instrumentality, may also be a complainant. In general, the ombudsman has an obligation to investigate a complaint unless it is his view that the complainant does not have a sufficient interest in the subject matter of the complaint. The office of ombudsman does not require a complainant to be personally involved in the official action which forms the subject of complaints made at large about matters of official administration.

The ombudsman may initiate an investigation on his own without waiting to receive a complaint [13, p. 228]. This power is one of considerable potential and it should be expected that the ombudsman will initiate inquiries concerning administrative actions of departments and prescribed authorities coming to notice independently of a complaint [14, p. 523]. For example, departments and authorities every year make a multitude of decisions affecting persons in high character has been treated as being relevant to the decision. Inquiries into some complaints may reveal a probable lack of consistency in official attitudes toward the assessment of character and the weight which should be accorded specific factors [15, p. 779].

If it is to be investigated, a complaint has to be in writing and it may not be anonymous. Besides being identified, a complainant must have sufficient interest in the subject of the complaint. This does not mean that a complainant must be personally involved in the official action complained about. The ombudsman may decline

to investigate a complaint he considers to be frivolous, vexatious or not made in good faith.

One practice is that a person who has a complaint against a department or authority should seek a remedy by direct approach rather than comes immediately to the ombudsman, and he should almost invariably do so where the institution has made adequate provision for the review of the action causing dissatisfaction.

Obviously, the ombudsman is primarily concerned with administrative processes, and in this respect his jurisdiction clearly differs from that of such bodies as the taxation boards of review, pensions, entitlement appeal tribunals and the administrative appeal tribunals.

The office of the ombudsman may handle complaints in three basic ways:

- 1) Inquiries or complaints made by telephone or across the counter may be disposed of by a telephone call or a discussion with an officer of the department or authority concerned.
- 2) Where a complaint is in writing, the ombudsman may make informal inquiries both written and oral, which render a formal investigation unnecessary and a written answer can then be provided to the complainant.
- 3) Some written complaints are of such a nature that the ombudsman must conduct a formal investigation.

When the ombudsman received a complaint in writing which is within his jurisdiction and which he feels he should investigate, he should conduct an investigation. To do this, the ombudsman has to inform the responsible minister and the principal officer of the department or authority of his intention to investigate a complaint as follows:

- i) An investigation must be conducted in private in the manner the ombudsman thinks fit.
- ii) If the ombudsman wishes to make a report setting out opinions which either express or imply criticism of a department, authority or person, he must allow each an opportunity to appear before him and to make oral or written submissions.
- iii) The ombudsman may discuss any matter relevant to the investigation with the minister.
- iv) On request of the minister the ombudsman may consult him before forming a final opinion.
- v) If the ombudsman considers that there is evidence showing that an officer has been guilty of a breach of duty or misconduct and that the evidence is

of sufficient force to justify his doing so, he must bring the evidence to the notice of the principal officer or, if that officer is the principal officer, to the responsible minister.

There are many types of remedial action available to the ombudsman. He may suggest that:

- i) The defective action should be referred to the appropriate authority for further consideration.
- ii) Some action should be taken to rectify or vary the effects of the defective action.
- iii) A decision should be cancelled or varied.
- iv) A rule of law, provision of an enactment or a practice should be altered.
- v) Reasons should be given for a decision.

Though, the ombudsman may find fault, it is not always possible to recommend corrective action which will compensate a complainant adequately. For example, where an article of sentimental value only is irretrievably lost in the post or information can no longer be supplied to the complainant because records have been destroyed. The authority may, of course, apologize but in these kinds of cases the ombudsman's role must be primarily to make recommendations which could result in improved administrative practices [16, p. 107].

Some forms of redress recommended to or accepted by departments or authorities in respect of official actions which have been the subject of complaints are common to different subject matters. For example, a department may make available a full statement of reasons for decision, be willing to apologize for an error, take steps to expedite action in case of delay or consider the making of an exgratia payment. Other of redress depend, however, on the nature of the subject matter of the complaint and redress may take many forms.

Conclusions

The main findings of this paper may be summarised in what follows:

- 1) The image of public administration in Middle Eastern countries would change significantly with the establishment of an office of ombudsman.
- 2) The ombudsman's main concern is to inquire whether an administrative action is defective, *i.e.* appears to be contrary to law, unjust, oppressive, improperly discriminatory, unreasonable or simply wrong.
- 3) The existence of an ombudsman could assist public administration in many ways including the elimination of unnecessary delays, in-depth

review of policies and procedures, amendments of acts, tightening of procedures, removal of sources of conflict and introduction of follow-up systems.

- 4) The ombudsman should be given power to question officials and other persons and to inspect documents and premises. If he finds evidence of what might broadly be called maladministration, he reports accordingly to the department or the agency concerned or to the responsible minister. He will usually make recommendations for remedial action.
- 5) If the recommendations of the ombudsman are not accepted or other appropriate remedial action not taken, the ombudsman can inform the head of state and submit a report on the matter to the parliament or the general assembly.
- 6) A number of criteria must be met if the ombudsman's office is to carry out its functions in a successful manner. The paper discussed the independence of the ombudsman, accountability, security of tenure, disclosure of informaltion, geographical jurisdiction, communication and public relations and community awareness of his existence.
- 7) The ombudsman may investigate an official action of his own motion without having to receive a complaint. This power is one of considerable potential and it should be expected that the ombudsman will initiate inquiries concerning administrative actions of departments and prescribed authorities coming to notice independently of a complaint.
- 8) There are many types of remedial action available to the ombudsman. These were discussed in details in the paper. Some forms of redress recommended to or accepted by departments or authorities in respect of official actions which have been the subject of a complaint are common to different subject matters. Other forms of redress depend, however, on the nature of the subject matter of the complaint and redress may take many forms.

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تدقيق ومساءلة العاملين في القطاع العام في بعض دول الشرق الأوسط الحاجة لتعيين «رقيب إداري»

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ملخص البحث . لاتزال الحاجة ماسة في بعض دول الشرق الأوسط، إلى وجود نظام رقابي دقيق على عمال الدولة وموظفيها، ولحسابتهم ومساءلتهم إذا حادوا عن طريق العدل والإنصاف . . إذ لا يمكن تصور نظام إداري ناجح دون نظام رقابي فعال . ومن ثم يتناول هذا البحث الحاجة لتعيين رقيب إداري (Ombudsman) يباشر سلطاته الرقابية على عمال الدولة وموظفيها، ويحول إليه حق استجواب العاملين ومساءلتهم، وفحص الوثائق وتدقيقها، وتمحيص أعمال المنشآت العامة وتقويم أداؤها، والتقدم للجهات العليا باقتراحات في مجالات الإصلاح المختلفة، إدارية أو اقتصادية أو اجتماعية .

ويتبع جهاز «الرقيب الإداري» مستوى الإدارة العليا في الدولة، مما يعطيه مكانة مرموقة، وقوة دفع عالية، واستقلالاً يمكنه من حرية العمل، ويبعده عن تدخل الأجهزة التنفيذية في أعماله أو محاولة التأثير في اتجاهاته .

يركز البحث على وظائف «الرقيب الإداري» ودوره في حماية حقوق الأفراد وحيرياتهم، ورفع ما يقع عليهم من عُبن، وفي معالجة أسباب الانحراف في مجال العمل الحكومي واقتراح وسائل علاجها وتداركها، والقيام بواجبه في الرقابة والتقويم بما لا يتعارض مع القيم والمبادئ .

إن الممارسة العملية للرقابة الإدارية والقضائية والتأكد من أن ما يجري عليه العمل في أنحاء الدولة كافة يسير في مساره الطبيعي إنما يمثل قمة الإدراك الإداري السليم لمسؤولية الإدارة العليا في الرقابة والتقويم، والتي لا تقتصر فعاليتها على حسن اختيار العاملين وتوجيههم وتدريبهم على العمل فحسب، وإنما تتعدى ذلك إلى المتابعة الإيجابية والمراقبة الدقيقة ضماناً لحسن التنفيذ وكفاية الأداء .