

**THE COMMISSION ON  
ADMINISTRATIVE JUSTICE**



*"Hata mnyonge ana haki"*

**CONCEPT NOTE FOR THE AFRICAN OMBUDSMAN'S COLLOQUIUM**

**CONFERENCE THEME: REPOSITIONING THE OMBUDSMAN: CHALLENGES AND PROSPECTS FOR AFRICAN OMBUDSMAN INSTITUTIONS**

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*"Ombudsman nowadays take many different forms, they work in different ways, and they dwell in variety of habitats..."*

**Abstract**

Africa is rapidly embracing the concept of the Ombudsman as an alternative mechanism for protecting the ordinary citizens against powerful state bureaucracies. While the mandate and scope of these oversight institutions varies from country to country, the Ombudsman is spreading

exponentially across the continent as an instrument for enforcing accountability. Many countries around the world have adopted the Scandinavian model of the ombudsman. However, many countries in Africa have adapted a hybrid of the model to suit their unique political, economic and social particularities. The unique circumstances attract unique experiences, challenges and responses. These provide useful lessons, insights, and prospects for the African Ombudsman.

Appreciating the institution of the ombudsman as a bedrock of good governance and administrative justice, the Commission on Administrative Justice, (Office of the Ombudsman)<sup>1</sup>, Kenya, will convene a Regional Colloquium of African Ombudsmen and oversight institutions to share lessons and insights as well as examine new prospects for administrative justice and human rights in Africa. The three-day Colloquium will be held from **18-21 September 2013** in Nairobi, Kenya. The Colloquium is designed as a platform for ideas; a location for intellectual debate, where knowledge and experience converge to interrogate past, present and the future of Ombudsman institutions in the continent. The Colloquium is intended to help the participants to share experiences and acquire knowledge and skills in order to become more effective catalysts for change within their organizations and in their countries.

The broad objective of the Colloquium is to **enhance oversight institutions' capacity to respond to administrative and political challenges with a view to transform public service in Africa.**

The specific objectives of the Colloquium are:

- (i) Use past lessons to promote a common understanding of the concept of ombudsman, the basic principles and strategies for redressing administrative injustice and provide a concrete framework for action and change strategies for Africa;
- (ii) Re-examine the role and relevance of ombudsman in the African context and their contributions to justice, governance and public services;
- (iii) Enhance the protection of the independence and development of African Ombudsman Institutions by creating a platform for information exchanges and best practices for the advancement of good governance and administrative justice polices, standards and actions in Africa; and
- (iv) Act as launch-pad for an annual knowledge and skills exchange programme tailor-made for African ombudsman institutions.

The Colloquium will use a participant-centered approach to facilitate an exchange of ideas and experiences among African countries in comparison with countries with established and successful Ombudsman institutions; or with benchmarks vital for improvement of administrative justice discourse and practice. It seeks to encourage reciprocal learning through an exchange of ideas and experiences among renowned scholars, current and former ombudsmen, administrative justice experts, government officials and civil society from Africa and beyond. This Colloquium will also function as a cornerstone to pioneering an annual knowledge and skills training/exchange programme tailor-made for African ombudsman institutions.

It is hoped that the colloquium will not only inform current and future administrative justice reform strategies in Africa, but also provide significant insights into legislative regimes, policies and actions that work at the local, national and global levels.

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<sup>1</sup>The Commission on Administrative Justice (Office of the Ombudsman) Kenya, is a Constitutional Commission established under article 59(4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011. The Commission has a mandate, *inter-alia*, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct. Further, the Commission has a quasi-judicial mandate to deal with maladministration through, conciliation mediation and negotiation where appropriate.

### **Background/Justification**

Currently, there are 34 Ombudsman institutions in Africa. The proliferation of Ombudsman institutions across the continent shows a commitment of Governments to embrace (or be seen to embrace) democracy and good governance, and assist citizens who seek redress against maladministration to get some reasonable solution.<sup>2</sup> The ombudsman's interactions should lead to quality service, accountable governance and leadership, general improvement in public institution and integrity in public service.

However, the story of the African Ombudsman is one of significant gains and setbacks. The Ombudsman by its very nature should be a body that wields ultimate power. But the practice of the Ombudsman means different things to different states in Africa. The irreducible minimum characteristics an Ombudsman must have are: independence, impartiality and fairness, integrity, confidentiality, fairness, neutrality, responsiveness and service. A major issue of debate and concern is the extent to which Ombudsman institutions in Africa are set up and facilitated to succeed as well as their positioning within the governmental structures. How does the African Ombudsman fit into the wider arrangements of government, and how should government and citizens act in order to support Ombudsman institutions in fulfilling their role?

A number of African countries have a comprehensive legal framework for the establishment of the office of the Ombudsman and the public service. This framework covers both policy and operational issues. In a few countries in Africa, the institution of the Ombudsman is protected by the constitution in addition to legislation, and are financially enabled and supported by the public thereby guaranteeing their independence and effective functioning. Such arrangements provide the overall framework within which the diversity of African Ombudsman is acknowledged and their common purpose recognized. But it is rare that constitutional guarantees will provide complete answers to every uncertainty that arises in administering laws and policies on administrative justice issues in Africa. Issues will continually arise that require the exercise of discretion, practical judgment and foresight.

In a few African countries, the Ombudsman is created by statute or executive decree rendering them vulnerable to manipulation or abolition. In such countries the Ombudsman may face peculiar challenges including government control manifest through lack of security of tenure, limited funding and poor or lack of enforcement of Ombudsman's decisions. In some countries, the checks and balances expected to exist between the various organs of state are weak, the realization of governance is a huge challenge. In others, the rule of law is not often regularly observed and arbitrary exercise of power is rather pervasive, while corruption and maladministration is rampant and institutionalized. Coupled with this is the weak research capacity and technical expertise to handle public complaints, conduct investigations and/or effectively apply other redress mechanisms.

The work of Ombudsman requires skills for effective complaints handling, investigations as well as skills to mediate, persuade, cajole, and otherwise seek to bring about a fair and reasonable solution to an administrative problem. Unfortunately, there is no one known institution in Africa that offers research and skills training courses tailor-made for Africa.

The resultant effect is that many of Ombudsman institutions in Africa, though well intended, face several challenges while providing redress against maladministration hence limiting their effectiveness and impact.<sup>3</sup> The need to have Ombudsman institutions to be empowered and strengthened throughout Africa, therefore, cannot be over-estimated.

This Colloquium is conceived with the belief that ethnic, economic and political crises that face this continent will never be dealt with unless the rule of law, accountable governance and citizen focused service delivery is achieved. This means that the culture and values of the political and administrative classes must undergo profound change. Ombudsman institutions and human rights

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<sup>2</sup><http://unpan1.un.org/intradoc/groups/public/documents/AAPAM/UNPAN029881.pdf>

<sup>3</sup> Ibid

bodies by virtue of their mandates must be empowered and commit themselves to realize this objective.

Ombudsman institutions in Africa should be protected in law, empowered with resources and supported by governments and the public to succeed. These institutions need skills based programmes tailor-made to their specific needs as well as an enabling environment, structures and resources to effectively deliver administrative justice and transform public administration on the continent.

This Colloquium, therefore, provides an opportunity for participants to share experiences and examine complexities of the work of Ombudsman institutions in Africa. Beginning with an analysis of the historical contexts that led to the establishment of these offices, the Colloquium will trace the history and evolution of the concept as well as examine the different operational environments, the legislative frameworks and their contribution (or lack of) to administrative justice. It will also discuss the relationship between policy, action and enforcement of Ombudsman's decisions, and how this translates to access to and quality service delivery. With practical examples, the Colloquium will conclude with a discussion on the emerging frontiers as well as an examination of the specific thematic areas namely: complaints handling, investigations and partnerships.

### **Presentations/Panel Abstracts and Proposed Presenters**

#### **Day 1**

#### **I. The Ombudsman: A Current or Future Reality? Re-examining the Concept of the Ombudsman**

##### **i. Origin and Evolution of the Ombudsman Concept, *Prof. Chaloka Beyani, London School of Economics***

The African Ombudsman is significantly different from the classic Ombudsman institution. The expansion in the role of the Ombudsman from its traditional function, expressed exclusively in terms of administrative justice, to a broader role that explicitly addresses the protection and promotion of human rights, and in some instances, ethics and corruption makes these institutions unique and special. Using the classic Ombudsman as a benchmark, this session will unpackage the concept of the Ombudsman, trace its history and evolution. It will outline the essential characteristics of the Ombudsman; analyze how the traditional Ombudsman works, assess the extent to which hybrid models have embraced the same and the extent to which the traditional model responds to its operational environment. The points for discussion will include the following:

- *How does the traditional Ombudsman work? The case of Sweden*
- *What are the comparative similarities and differences of classical and hybrid institutions?*
- *What are the distinctive or additional features that the hybrid Ombudsman possesses?*
- *To what extent does the hybrid institution embrace the essential characteristics of the Ombudsman and how has this facilitated its work?*
- *To what extent does the hybrid model respond to particularities of the different socio-political environments?*

**iii. Name Style and Categories of Ombudsman.** This presentation will explain origin of the concept and dichotomous usage of the term. It will also explain the various formulations of the concept, that is, classical, industry and organizational Ombudsman, Cmmr Arle Broke, Ombudsman, Bermuda

**ii. The Early Beginnings of the African Ombudsman, the Case of Tanzania, *Justice Amiri Ramadhani Chairperson, Commission for Human Rights and Good Governance***

#### **II. Cushioning the Ombudsman: An Analysis of the Legal Framework and Ombuds Operational**

## Environment in Africa

**i. The African Ombudsman: Framework, Jurisdiction & Operations**, Prof Victor Ayeni, Director, Governance and Management Services International, London

One of the biggest and most common challenges that oversight institutions face in Africa is the challenge of maintaining independence. The job of the Ombudsman, no doubt is a challenge. Ombudsman institutions are tasked with the duty of providing oversight over government with a view to improving the principles of administrative justice. Both the government and organizations become compelled to open up and submit totally to criticisms, complaints and suggestions from those to whom they offer services through the office of the Ombudsman. Drawing from existing experiences and challenges, this session will assess the extent to which the legal framework and operative environment facilitate or hinder effective functioning of oversight institutions.

The points for discussion will include the following:

- To what extent does the legal framework and operative environment facilitate or hinder the effective functioning of oversight institutions?
  - ✓ What is the status of the ombuds institution in law?
  - ✓ What is the appointment process of the Ombudsman?
  - ✓ Is there a legal guarantee of the institutional budget?
  - ✓ What are the accountability mechanisms?
  - ✓ What is the scope of jurisdiction of the oversight institutions?
  - ✓ Do the institutions have investigative powers that allow them to open substantive investigation on any matter pertaining to services provided by government?
  - ✓ Are there features in the institutional design, particularly in relation to mechanisms of investigation, compliance, monitoring, judicial actions, and certain specific mandates that support administrative justice and human rights?
- What type of relationship exists or should exist between the public and oversight institutions?
- What obstacles and challenges are faced by oversight institutions and how can these obstacles be addressed?

### ii . Case Presentations in Panel Format

a. Ombudsman in Anglophone Africa, Justice Joaquine De Mello, Judge, Judiciary of Tanzania

b. **Ombudsman in Francophone Africa:** Mr Souleiman Ali Miyir  
Mediatuer de la Republic , Djibouti

c. **Ombudsman in the Luxophone Africa**, Mr. Custódio Duma, Chairperson, Mozambique Human Rights Commission

d. **Ombudsman in the Arab Africa**, Adv. Farah Mustafa, Ombudsman, Sudan

e. **Ombudsman in Anglo Dutch Africa:** Themba Mthethwa, Chief Executive Officer, Office the Public Protector, South Africa

## III. In Public Interest: Re-examining the Role and Relevance of Ombudsman and their Contributions to Justice, Governance and Public Services

**1. Enforcement and Impact of Ombuds Institutions**, Judge Mohammed Abuzeid, Rtd Ombudsman, Sudan

The session is a platform for experience sharing with regard to the enforcement and impact regulatory enforcement of Ombuds institutions. This session will examine the enforcement and

impact of Ombuds institutions including the extent to which reports and recommendations influence administrative action, and/or achieved policy and legal impact.

The points for discussion will include the following:

- ✓ What is the relevance of oversight institution in the promotion of good governance and service delivery?
- ✓ What is the impact and regulatory enforcement of Ombuds decisions?
- ✓ To what extent do Ombuds institutions collaborate with other government agencies?
- ✓ To what extent has the Ombudsman been involved public interest litigation?
- ✓ What are the challenges and suggestions for improvement

**ii. Ombudsman, Courts and the Common Law**, Prof Chaloka Beyani, London School of Economics

**iii. Fused or Unfused? Examining the Implications of the Combined Role of Human Rights, Corruption and Administrative Justice in One Body**, Joe Whittal, Deputy Commissioner, Commission On Human Rights And Administrative Justice (CHRAJ), Ghana

**iv. The Challenge of Enforcing Ombudsman Decisions, Ethiopia**, Mekdes Mezgebu Medhane, Programme Officer, Democratic Institutions Programme

#### IV. The Emerging Frontiers

##### The Evolving Ombudsman: Emerging Frontiers (Panel Discussions)

- *The Case of Bermuda*, Ms. Arlene S. Brock, Ombudsman, Bermuda
- *The Case of Kenya*, Adv. Cmmr Otiende Amollo, Chairperson, Commission on Administrative Justice (Office Of The Ombudsman, Kenya)
- *The Case of Zambia*, Cmmr Alfred Kaweza, Commissioner, Commission for Investigations, Zambia
- *Adv. Festinah Bakwena*, Office of The Ombudsman, Botswana
- *Adv. Lawrence Korbandy*, Ombudsman, South Sudan

#### IV. Thematic Issues

- i. **Complaints Handling Lessons from Africa** Adv. Soleman M. Hattea, Ombudsman, AOMA Regional Coordinator: Indian Ocean
- ii. **i. Complaints Handling Lessons from Africa**, Hon. Ombudsman, **Paulo Tjipilica**  
Dr. Provedor de Justicia, President  
The African Ombudsman & Mediators Association (AOMA)

A key objective of any of the Ombudsman's office is to foster public administration that is accountable, lawful, fair, transparent and responsive. The Ombudsman does this through a number of strategies, key among them being complaints handling. In handling complaints or inquiries, the focus of the Ombudsman's institution should be on providing a remedy to the individual complainant and on prompting the agency to prevent similar problems from recurring. This session will involve sharing lessons and insights in complaints handling from established Ombuds institutions.

**iii. The Future of the African Ombudsman**, Prof Victor Ayeni, Director, Governance and Management Services International, London

**iv. The Ombudsman World: Associations, Linkages and Networking**, Adv. Ishara Bodasing African Ombudsman Research Centre, (AORC)

Ends