

UNDERSTANDING OF THE ROLE OF OMBUDSMAN INSTITUTIONS IN PROMOTING HUMAN RIGHTS.

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Research Centre**

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1. Introduction

This paper aims at enlightening discussion on matters relating to the role played by the Ombudsman in promoting human rights. The discussion will consider the importance of human rights, trace the reason for establishment of Ombudsman, its legal framework and mandate. Also, while discussing key principles guiding their work, more focus will be on its advantages against other mechanisms in promoting and protecting human rights. Further, it will venture on actions to be taken by Ombudsmen in order to promote the protection of human rights. Finally, will be the conclusion.

2. Importance of human rights

The Universal Declaration of Human Rights (UDHR) of 1948 which specifies over thirty rights and other international and regional human rights instruments, take cognizance of the fact that the protection of human rights is a common standard to be ultimately achieved by all. Human rights as a component of international law maintains that human rights in the UDHR have the character of the principle of *jus cogens* (a peremptory norm, which states are not allowed to derogate from; a rule which is considered universally valid).

Human rights are important because are needed to protect and preserve every individual's humanity, to ensure that every individual can live a life of dignity and a life that is worthy of a human being.

3. Common principles of human rights

Human Rights are said to be universal; inalienable; indivisible; interdependent and interrelated and they follow the norm of prohibiting discrimination.

They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background. They are inalienable because peoples' rights cannot be taken away. Human rights are indivisible because all human rights have equal status, and cannot be listed in a hierarchical order. Denial of one right impedes enjoyment of other rights. All rights such as civil, political, economic, social and cultural rights are equal in importance and none can be fully enjoyed without the others.

In a further note, each right contributes to the realization of a person's human dignity through satisfaction of his or her developmental, physical and spiritual needs. It is also worth to take note that all individuals are born equal. Nor human being upon berth is superior to another. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.

Following the above-mentioned principles, it should be taken into account that the dignity of a human being is prime and requires protection at any cost. An Ombudsman, being one of the mechanisms entrusted to receive and investigate complaints becomes an important institution in assurance that the dignity of human being is protected.

4. Protection mechanisms

Under international law, all human rights instruments have established treaty bodies with mandate to promote and protect human rights. These are in the form of committees. Each of these bodies deals with specific thematic area based on establishing treaty. Likewise, there are charter-based bodies. These include, the Human Rights Council which is the highest body in the hierarchy, the Special Procedures, the Universal Periodic Review and Independent Investigations. The Office of the High Commissioner for Human Rights supervises the work of the established human rights committees and special mechanisms.

At member states level, governments also have the role of promoting and protecting human rights. The role of governments is to setting policies, enacting laws and establishing judicial and quasi-judicial bodies. However, government through its administrative functions entrusted to ministries, government departments and agencies give birth to some challenges through acts or omissions by its officers.

In order to control government's administrative actions, there are formal bodies established to check these powers. Such bodies are the legislature and the courts. However, the legislature and the courts have been considered to be overwhelmed and insufficient to cope with grievances from individuals. As a result, administrative mechanisms have been established to complement the work of formal institutions. Ombudsman is one of these mechanisms.

5. Disadvantages of formal Protection mechanisms

As mentioned above, the main institutions of the state which deals with among others, human rights are the legislature and the courts of law. Others are the quasi-judicial bodies (sometimes referred as tribunals) established under different legislation.

The legislature plays a key role. It frames the legislative rules that provide the ultimate answers and engage in debating in parliament matters of concern to the public. But it has limited capacity to

administer laws as this is rather a practical issue. Implementation of laws is done by the executive arm of the state.

The judiciary also plays an important role in deciding the legality of actions in its role under administrative justice. But as a practical exercise in human rights protection, its role is limited in scope. Courts cannot choose which issues to examine. Moreover, most areas of government decision-making receive little if no judicial oversight. Courts provide only restricted set of remedies-to declare something invalid, enjoin unlawful behaviour, requires an issue to be reconsidered and occasionally to award damages. Courts are not able to follow through, after having given judgment or decision, to monitor what happens. That becomes the duty of the parties to the matter before the court.

Quasi-judicial bodies are established to decide on various disputes in place of courts of law. They are adjudicative bodies constituted, manned and operated by the executive. Their scope is outside the hierarchy of courts with administrative or judicial functions. They are statutory tribunals with limited powers to determine disputes and pass binding decisions between individuals and officers in government service.

Some of the common quasi judicial bodies include those set to deal with military disputes (Court martial), tax and revenue, environment, fair competition, land and housing; labour and professional organisations established by law like Doctors Medical Boards just to mention a few. Tribunals, are assigned different mandates consonant to the legislation establishing them.

Like courts, quasi judicial bodies which derive their powers from statute have limited powers. They deal with matters that are provided by law. In this regard, they cannot adjudicate matters outside their statutory capacity. However, they make decisions which binds the parties in dispute.

Quasi-judicial bodies were established to compliment the work of the courts which with time have complex and formalistic procedures, much time is needed to adjudicate disputes and are too costly. The quasi-judicial bodies curtail floodgate of cases in courts of law, reduce court workload and congestion of cases.

6. Functions of Ombudsman

The concept of ombudsman as an institution, as presented before, came out in response to shortcomings in the traditional mechanisms (The legislature, Judiciary and tribunals) to addressing the multiplicity and complexity of problems that people now encounter in dealing with government administrative functions which in the end raises complaints on violation of human rights and other good governance issues in all areas of Government including human rights. Under normal circumstances it is difficult to distinguish which type of complaints do not touch human right as human rights are part and parcel of human life. Moreover, no human right violation can take place without breach of principles of good governance. Therefore, in most cases in no way can an Ombudsman work on a complaint without the same being connected to a human right violation.

In this context, while other administrative law review mechanisms apply only to a decision made under an enactment, the Ombudsman is not hampered in the same way. It is an only independent oversight agency that can review the exercise of non-statutory power. The Ombudsman work with options that can be an effective and practical way of resolving human rights disputes to ensure state agents do not abuse their powers to curtail human rights either through their actions or omissions. To protect human rights means to take steps to ensure that third parties do not interfere with their enjoyment. Therefore, Ombudsmen have to take action whenever a complaint is reported or is noticed.

Another advantage for an Ombudsman is that it helps to resolve issues between parties through various types of informal mediation. Can use all the available means without being engaged into technicalities to resolve the disputes. The aim is to protect individuals from violation of their rights by the government, abuse of power, errors negligence, unfair decisions and maladministration.

In the process of implementing its functions, the ombudsman follows certain specific principles. It embraces principles of legality, flexibility, transparency and fairness. In some other occasions may follow the principles of equity. In his speech the then Commissioner of Human Rights of the Council of Europe Speaker P. Nikiforos Diamandouros, stated,

“Through their independence, flexibility and non-conflictual approach to the relations between individuals and the public administration, ombudsmen have the key role to play in the protection of individual rights”

He further said,

“It transpires ... that ombudsmen can play an important role in the protection of fundamental rights as a mechanism that is complimentary to the courts.”

7. Promoting and protecting human rights

At this juncture, the Ombudsman is advantaged over the other mechanisms in dealing with complaints. Being an independent oversight agency that can review the exercise of non-statutory power, without being hampered by technicalities in form and procedure, its ability to use fast, inexpensive and informal procedures, being easily accessible and entertaining complaints without costs to the complainant, it is better placed to deal with human rights complaints. Thus, in order to promote and protect human rights, the Ombudsman must do the following:

- 7.1 Continue to take action against violation of human rights, unfairness or any injustice by providers of public service through investigation including conducting enquiries;
- 7.2 Propose both administrative and legislative reforms aimed at improving the operation of public service;
- 7.3 Submit reports to relevant authorities about human rights violations and recommendations to responsible authorities on effective means to curtail violations;
- 7.4 Cooperate with human rights structures such as human rights institutions in states where possible through joint organised activities;
- 7.5 Engage public institutions through conferences, meetings round tables and forums to discuss challenges and ways to overcome them to minimize human rights violations;
- 7.6 Engage the public through contests and exhibitions; and
- 7.7 Conduct analytical research on source of human rights violations for the purposes of influencing their improvement;
- 7.8 Advising government to adopt or ratify international and regional human rights codes; and
 - Advocating for domesticating international human rights codes.

8. Conclusion

Human rights protection and promotion is ultimately a practical exercise. Human rights coded by international instruments; enshrined in states' constitutions and domesticated in states' laws are important and needs to be implemented. The Ombudsman should take the forefront role to ensure that government institutions abide to human rights principles to make people enjoy the rights. Where breaches take place, they should not leave the violations without remedy. That is the only way to remind government officials to abide to good governance principles. That is the only way which the Ombudsman office will hold its honour.

References

1. The Legislature and Human Rights; Speech by Speaker P. Nikiforos Diamandouros, Vienna, Austria 06th May 2010 from Alvaro Gil Robles the former Commissioner for Human Rights of the Council of Europe.
2. National Strategies-Human Rights Commissions, Ombudsmen, and National Action Plans: Human Development Report 2000 Background Paper, by Paulo Sergio Pinheiro and David Carlos Baluarte hdr.undp.org/system/files/documents/
3. The Ombudsman and Human Rights; by Bernard Frank; jstor.org/stable/40708708

4. European Ombudsman
Ombudsman.europa.eu/en/speech/en/4926
5. Administrative Tribunals in Tanzania, Lecture by Dr. Jaba Shedrack, School of Law University of Dar es Salaam,
<https://jabashadrack.blogspot.com/2011/05/administrative-tribunals-in-tanzania.html>
6. Importance of human Rights *coe.international*
7. Promoting Human Rights *peacekeeping.un.go*