

BEST PRACTICE BRIEF:

THE ROLE OF THE OMBUDSMAN IN

Protecting the Rights of Refugees, Asylum Seekers and Internally Displaced Persons

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INTRODUCTION: A CONTINENT ON THE MOVE

Africa is a continent on the move. Every day, millions of people cross borders – to visit family or to bring their skills into a new market. They move as tourists, migrants and as asylum seekers and refugees in search of freedom from political or religious persecution.

Drawing on research conducted by the African Ombudsman Research Centre (AORC), this best practice brief focuses on refugees, asylum seekers and internally displaced persons (IDPs), looking at the role that the Ombudsman can play in protecting their human rights and in ensuring access to administrative justice for such individuals and communities.

The Ombudsman is an independent, high level or senior public officer appointed to protect members of the public gratuitously against improper actions of government and the public service. The office is provided for by the Constitution or by action of the Legislature or Parliament, and receives complaints from aggrieved persons claiming maladministration. Most Ombudsman also investigate government actions and decisions without waiting for a complaint to be made to them. In addition, they have the power to mediate, conciliate and negotiate with a view to resolving grievances or disputes against the State. When an Ombudsman investigates a complaint, they can either find in favour or against the person who has complained, and can accordingly recommend redress or some form of compensation. A number of African Ombudsman have dual or multiple mandates, meaning that they deal with complaints of corruption and/or human rights abuses too.

Ombudsman are known by a number of different names, for example, Francophone countries tend to use the term Mediator rather than Ombudsman. In South Africa and



The High Commissioner for Refugees, Sadruddin Aga Khan (right) and OAU Secretary-General Mr Diallo Telli at the signing of the OAU Convention in 1969 in Geneva, Switzerland ©UNHCR.

Zambia, the Ombudsman is called the Public Protector, while in Nigeria, the institution is known as the Public Complaints Commission. In some countries, such as Zimbabwe, an Ombudsman function is incorporated into the National Human Rights Commission or similar structure.

The first Ombudsman institution on the African continent, the Permanent Commission of Enquiry (PCE), was established in Tanzania in 1966, a few years after independence. In a rapidly developing country where the government and ruling party held the authority to exercise wide discretionary powers, this institution was established to offer a safeguard for ordinary citizens, by providing a check on potential abuse of power by government officials. Following Tanzania, other countries on the continent soon followed suit. Today, 46 African countries have national Ombudsman institutions across the Continent. There are also a host of sectoral and municipal Ombudsman within countries; Mauritius, for example, has a specific

This Policy brief has been produced by The African Ombudsman Research Centre (AORC), which is an institution of the African Ombudsman and Mediators Association (AOMA). The aim of the Centre is to serve as a focal point for Ombudsman offices in Africa, by coordinating their activities and supporting them with the provision of information, research and training to enhance good governance in Africa. The Centre is located at Howard College Campus (University of KwaZulu-Natal) and welcomes all students and scholars interested in our work to get in touch. AOMA is a body that brings together Ombudsman and Mediators from across the continent to pursue issues of common interest in the area of the rule of law, good governance and integrity in state affairs.



منظمة الموفقين والوسطاء والراقبين الأفارقة
African Ombudsman and Mediators Association
Association des Ombudsman et Mediateurs Africains
Associação dos Ombudsman e Mediadores

Children's Ombudsman, while South Africa has a Banking, Tax and Military Ombudsman, among others.

The role of the Ombudsman is to address the imbalance of power between the individual and the State. One of its most important functions is to protect the vulnerable; those who are unable to speak for themselves. The Continent's growing population of refugees, asylum seekers and IDPs represents one such group.

Definitions

Ethnic unrest and violence, war, natural or man-made disasters, large-scale infrastructure projects like dam building and mining, human rights violations and climate change are all factors that contribute towards the displacement of peoples, both within their countries and beyond.

According to the United Nations High Commissioner for Refugees (UNHCR):

A refugee is someone who has been forced to flee his or her country because of war, persecution or natural disaster and has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.¹

They have crossed national borders to seek safety in a nearby country and become recognised as refugees with access to assistance from states and aid organisations. Refugees are protected by international law.²

An asylum seeker is someone who has fled their home country into another to escape war, persecution, or natural disaster, but who is still waiting for their request for sanctuary in this host country to be processed.³

Internally displaced people (IDPs) are those who have fled their homes to escape war, persecution, or natural disaster, but who remain within their home country in their efforts to find safety. They remain under the protection of its government, even if that government is the reason for their displacement. They have not crossed a national border.⁴

A returnee is someone who has fled into exile as a refugee or asylum seeker and who is now returning or being repatriated to his or her home country.

A stateless person is someone who is not considered as a national by any State under the operation of its law. This means that a stateless person does not have a nationality of any country. Some people are born stateless, but others become stateless.⁵

Migrants choose to move to another country not because of a direct threat or persecution but mainly to improve their lives through finding work, seeking better education and reuniting with family. Unlike refugees who cannot safely return home, migrants can return home if they wish.⁶

MAPPING THE PRESENCE AND MOVEMENT OF REFUGEES, ASYLUM SEEKERS AND IDPS

According to UNHCR statistics, Sub-Saharan Africa hosts more than 26% of the world's refugee population.⁷ In recognition

of this growing concern, 2019 has been declared the African Union's Year of Refugees, Asylum Seekers, Returnees and Internally Displaced Persons.

Over the last seven years, conflicts in Burundi, the Central African Republic (CAR), the Democratic Republic of Congo (DRC), Nigeria, South Sudan and Sudan have led to major displacements of people on the Continent.⁸ A total of 2.3 million refugees come from South Sudan,⁹ for example, the third major country of origin of refugees globally. Somalia, Eritrea and Mali also contribute significantly to this refugee and asylum population. These are all major countries of origin for refugees – meaning countries from which refugees have fled.

In the case of the DRC, South Sudan, Sudan, Somalia and Nigeria, not only are they all significant countries of origin for refugees but they also have substantial populations of internally displaced persons.¹⁰

African countries hosting the largest number of refugees include Uganda with 1.2 million refugees at the end of 2018 (third largest number of refugees globally), Sudan with just over one million (the fourth largest number globally), Ethiopia, the DRC (529 100), Chad (451 200), Kenya (421 200), and Cameroon (380 300).¹¹ The tiny state of Djibouti in the horn of Africa hosts refugees who have come from beyond the Continent, from war-torn Yemen,¹² while the North African country of Egypt hosts a substantial number of Syrian refugees.¹³

As can be seen from these statistics, some countries like Sudan and the DRC are significant countries of origin for refugees, contain substantial populations of IDPs, and are also host countries for refugees coming from neighboring countries.

The DRC has the largest number of Internally Displaced Persons at a staggering 4 516 900. This is followed by Somalia with 2 648 000, and Ethiopia with 2 611 580 IDPs as of the end of December 2018.¹⁴

The Central African Republic and Nigeria have the largest number of returnees and returned IDPs; Côte d'Ivoire is grappling with the largest number of stateless people on the Continent, while South Africa had the largest number of pending cases for asylum seekers on the Continent, at the close of 2018.¹⁵

REGIONAL AND INTERNATIONAL FRAMEWORKS

Following the devastation and catastrophic displacement of populations caused by the Second World War, a number of international and regional frameworks have come into place to protect the rights of asylum seekers, refugees and IDPs.

UN Refugee Convention 1951

This is the premier international law on refugee protection based on Article 14 of the Universal Declaration of Human Rights, which states "Everyone has the right to seek and to

enjoy in other countries asylum from persecution". Article (A) (1) of the Convention defines the term refugee as someone "who has left his home country and has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or a membership in a particular social group." Under the same convention, a refugee can also be a person "in need of protection" whose removal to his home country would subject him personally to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment.

The Convention gives refugees certain basic rights, including:

- Right to seek and enjoy asylum
- Right to adequate standard of living
- Right to life, liberty and security of person
- Freedom from torture, cruel, inhuman or degrading treatment or punishment
- Freedom from slavery or servitude
- Recognition as a person before the law
- Freedom of thought, conscience and religion
- Freedom from arbitrary arrest and detention
- Freedom of opinion and expression
- Right to education
- Right to participate in the cultural life of a community
- Safe asylum: security of life and person
- Access to the same rights as any legal resident, i.e. basic civil rights and economic and social rights

The international community can assist in fulfilling economic and social rights where the host country is incapable. Assistance can take the form of financial grants, food, equipment, sanitation, shelter, schooling or primary healthcare.

Organisation of African Unity (OAU) Refugee Convention 1969

Adopted by OAU member states, this Convention, also known as the Convention Governing the Specific Aspects of Refugee Problems in Africa, is the world's first regional refugee protection treaty and the regional complement to the 1951 UN Refugee Convention. It offers a progressive and expanded definition of refugee status, which includes a call for putting procedures in place to intervene when a refugee(s) or asylum seeker(s) are at risk of being sent back to a country in violation of non-refoulement (the practice of not forcing refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution) or are being arbitrarily detained. The convention also urges signatory governments to act on requests for information or urgent appeals issued under the Convention's special procedures.

Since 1969, a number of African states have adopted progressive refugee laws and policies in line with the 1969 OAU Refugee Convention. Others are in the process of revising their refugee laws and policies to align with the Convention, the UN's 2018 Global Compact on Refugees, as well as the changing nature of displacement on the Continent.¹⁶

Banjul Charter (African Charter on Peoples and Human Rights) 1987

The Banjul Charter is an international human rights instrument that is intended to promote and protect human rights and basic freedoms on the African Continent. The Charter commits member States to the protection of asylum seekers in Article 12(3)-(5):

- "Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions."
- "A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law."
- "The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

The Charter also emphasises the right of all peoples to peace, security and freedom from discrimination through Article 23 (1), which declares that "All peoples shall have the right to national and international peace and security, and Article 28: "Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."

UN Guiding Principles on Internal Displacement 1998

These principles declare that States have the primary responsibility to prevent displacement, to protect and assist IDPs and to provide durable solutions to their plight, calling on states to develop and implement IDP policy, law, institutional structures and processes capable of responding to IDPs' needs and vulnerabilities, in order to do so. Although these principles are not a binding legal instrument, they are widely recognised and supported internationally, and many states have domesticated them since their adoption in 1998.

Kampala Convention 2009

The Kampala Convention, formally known as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, is an African Union treaty that addresses internal displacement caused by armed conflict, natural disasters, climate change and large-scale development projects on the Continent. Article 5(4) specifically establishes state responsibilities for the protection and assistance of internally displaced persons. The Convention was adopted in October 2009 and entered into force on 6 December 2012.

THE ROLE OF THE OMBUDSMAN

Statistics show that many African States face a major challenge with refugees, asylum seekers and IDPs. International and pan-African frameworks exist to prevent the circumstances

that lead to displacement and to protect the rights of those displaced. The question now is how to implement these and put them into practice. This is where the institution of the Ombudsman can play an important role.

Promoting Good Governance, Peace and Transitional Justice

Ombudsman institutions generally do not deal directly with situations of civil or military conflict, however, as an institution mandated to promote good governance through their oversight functions, the Ombudsman has an important responsibility in preventing the circumstances that can lead to the humanitarian crisis of displacement. After all, a breakdown of governance structures and widespread corruption, are key factors that contribute to civil unrest and war, forcing citizens to flee their homes in the first place.

Case study – Burundi: The Ombudsman of the Republic of Burundi is an exception in this regard, having a statutory mandate to contribute to reconciliation and peacemaking. This mandate has arisen out of Burundi's turbulent history of civil war. Law No. 1/04 of 24 January 2013 (amending Law No. 1/03 of 25 January 2010) provides that the President of the Republic may ask the Ombudsman to: participate in acts of reconciliation between the public administration and “social and professional forces” (Article 6, para 3); deal with special missions of settlement and reconciliation on general issues concerning relations between “the political and social forces”; and, undertake specific tasks relating to issues of reconciliation and peace internationally.

An important part of this work is public education. During the course of 2018, the Ombudsman of Burundi visited 13 districts in remote rural areas of the country to talk to citizens about the importance of living together and maintaining peace, and to educate them about the Arusha Accord (2000) and the Constitution of Burundi (2005), both of which promote peace and reconciliation.¹⁷

Case Study – Chad: Another example of the impact that the Ombudsman as mediator can play in resolving conflict is illustrated by the experience of the Mediator of the Republic of Chad. Chad's post-independence history has been marked by instability and violence, stemming mainly from tension between the mainly Arab-Muslim north and the predominantly Christian and animist south. Since its establishment in 2007, the Mediator of the Republic of Chad has focused its attention on resolving politico-military conflicts in order to help bring stability to the country. This included assisting with the mediation process between various Chadian rebel groups and the government of Idriss Deby in 2008-2009, following a Rebel offensive on the capital N'Djamena. This led to a rapprochement in February 2010 between President Deby and his Sudanese counterpart, Omar al-Bashir, whom the Chadian government had accused of supporting rebel forces. Mediation took the form of handling cases that dealt with the rehabilitation and integration of



different rebel movements back into Chadian society and resolving the complaints of rebels regarding the non-delivery of the financial packages promised by the government.¹⁸

Ombudsman Institutions for the Armed Forces: Professionalisation and Adherence to Human Rights

By promoting professionalisation and adherence to human rights in the military, there is also a growing recognition that Ombudsman institutions, which provide intensive and robust oversight of the armed forces in Africa, can help prevent the kind of unrest, violence and war that can lead to international displacement, a refugee crisis and human rights violations.

At present, South Africa is the only country on the Continent that has a specific military Ombudsman institution: the South African Military Ombudsman (SAMO), established in 2012. SAMO tackles maladministration, including unfair labour practices and veteran pensions, but also has a key legislative mandate to promote the observance of fundamental human rights within the military. Following South Africa's example, discussions are underway in other Southern African Development Community (SADC) countries such as Botswana to establish similar bodies. In sub-Saharan Francophone Africa, a number of general Ombudsman institutions have a jurisdiction over the armed forces. These include the Mediators of Burkina Faso, Niger, Côte d'Ivoire and Senegal. In Cameroon and Togo, each

TOP 10 LARGEST REFUGEE HOSTING COUNTRIES

South Africa (East Africa)

Uganda

hosted 1.4 million refugees in 2017

SUDAN/ETHIOPIA

WHICH LARGE NUMBERS OF REFUGEES ARE COMING FROM (COUNTRY OF ORIGIN)

South Sudan, Somalia, Sudan, DRC, Eritrea, Burundi (central & eastern Africa). Also Mali and Nigeria

South Sudan (third major country of origin of refugees)

Somalia

5th largest source of refugees for 2017

Countries tackling the largest number of returnees

NIGERIA

COUNTRIES WITH THE MOST IDPS – DRC

Largest number of asylum seekers pending cases: SA

LESS PEOPLE IN CÔTE D'IVOIRE

20 800 of age constituted about half of the refugee population in 2017

37 100 of age constituted about half of the refugee population in 2017

Major displacements throughout the world over the last five years – Burundi, Central African Republic, the DRC, South Sudan, Sudan, Yemen

- Professionalising armed forces, hence minimising the likelihood of rogue and undisciplined military actions that often spark off civil unrest and conflict in Africa
- Ensuring that members of the armed forces behave according to human rights and international humanitarian law standards
- Promoting dialogue and acting as mediators between security sector members and the civilian population, hence strengthening mutual trust and offering a means for the peaceful settlement of disputes, an essential tool for the prevention of future conflicts¹⁹

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) notes that the “democratic governance of the security sector is becoming one of the key objectives to support and strengthen the functions of a state in post-conflict settings”,²⁰ thereby playing a crucial role in the African Union’s Agenda 2063 flagship project of *Silencing the Guns*.

Ensuring Administrative Justice

Preventing undue delay

Maladministration, the core mandate of the Ombudsman, can have dire consequences for asylum seekers and refugees, leading directly to human rights violations. In the case of asylum seekers and refugees in South Africa, tackling maladministration directly could, therefore, prove a successful means of addressing some of the administrative injustices and human rights violations they face. Maladministration refers to the actions of a government body, which can be seen to cause an injustice. This includes delay, incorrect action or failure to take action, failure to follow the procedures of the law, and failure to reply, failure to provide information, inadequate liaison and broken promises, among others.

In South Africa, long delays have been identified as a reoccurring problem for asylum seekers applying for refugee status and appealing the rejection of their applications, and for refugees trying to renew their status, or apply for permanent residency by numerous NGOs and institutions, including: the Institute of Security Studies, Amnesty International and Lawyers for Human Rights. This has been in addition to other forms of maladministration, including; failure to provide information, inadequate liaison, failure to reply and broken promises. Maladministration, in turn, enables corruption. If the system is not working fairly and efficiently, it creates both the opportunity and the demand for illegal shortcuts, including bribery. According to Amnesty International, the Department of Home Affairs has a backlog of 400 000 appeals that remain unattended and unresolved. Some of these applicants have waited more than a decade for the documents they need.²¹

Accessing social welfare and other state services

While asylum seekers and refugees are waiting for their applications to be decided and their documentation to be issued, they are left in limbo with temporary permits that

country’s respective National Human Rights Commission has this jurisdiction.

Ombudsman institutions for the armed forces and general Ombudsman with a jurisdiction over the armed forces, play an important role in preventing conflict and ensuring good governance through:

require frequent renewals and are often not recognised by government departments and the public sector.

This makes it difficult to find employment (employers are reluctant to take you on as they don't know how long you will be able to remain in the country) and impossible to open a bank account or apply for a driver's license. Nor can you obtain a passport to travel internationally.

Without a South African ID, asylum seekers and refugees in fact experience great difficulty in accessing a host of essential state services, including public healthcare, schooling, social welfare and education. At schools, the children of asylum seekers and refugees are sometimes turned away because they are seen not to have the correct documentation for enrolment, or because they take too much time off school to renew their permits. At public hospitals and clinics, the moment staff see a Section 22 or Section 24 permit, 'they make you pay', a refugee rights activist informs us. Many, in fact, are completely denied access to healthcare services in public hospitals and clinics on the basis of their nationality or legal status.²²

Denying migrants, asylum seekers and refugees access to healthcare constitutes a violation of the internationally recognised right to access healthcare services, a right that is also enshrined in South Africa's national law. The Bill of Rights in the South African Constitution enshrines equal rights for all persons in the country and affirms values of human dignity, equality and freedom. Migrants, asylum seekers and refugees are covered by these constitutional rights, including the right to life, to dignity, freedom and security, to access information and to just administrative action. Section 27 of the Constitution guarantees everyone the right to basic health care, affirming that "everyone has the right to have access to healthcare services, including reproductive healthcare" and that "no one may be refused emergency medical treatment".²³

Maladministration, in particular unwarranted delay and failure to reply and provide correct information in the processing of asylum seekers and refugee status applications, offers a perfect illustration of how administrative injustice can facilitate human rights violations, including: dehumanising treatment, denial of access to health, education and social welfare services, as well as access to economic livelihoods. Being denied medical treatment because one is an asylum seeker or refugee, could, in fact, be a matter of life or death.

Challenging Unlawful Detention: The Case Study of the Ombudsman of Namibia

Another area where the Ombudsman can play a role in preventing administrative injustice in order to protect the human rights of asylum seekers and refugees is through ensuring due process and adherence to the law.

This is clearly illustrated in the case of unlawful detention – a reality facing many migrants, asylum seekers and refugees in various parts of the world. In 2017, the Ombudsman of

Namibia took the Namibian police and Ministry of Home Affairs and Immigration to court to demand the release of 47 persons who were being detained by the Namibian Police under the instructions of the Chief Immigration Officer on the suspicion of being prohibited immigrants.

The Ombudsman approached the Court on an urgent basis, seeking an order compelling the Station Commanders of four police stations situated in Windhoek where these persons were being detained, to produce these persons to the court in order to enquire into the lawfulness of their detention.

The application by the Ombudsman was prompted by an investigation conducted by his office that revealed that these immigrants were being detained without regard for their constitutionally guaranteed rights: these included failure on the part of immigration officials to conduct the statutory investigations, as required by law, that were necessary to enable them to decide whether a person was in fact an illegal immigrant or not, lack of adherence to timelines stipulated in the Act (e.g. investigations were not conducted, they were not dealt with and disposed of in the set timeframe required by Namibia's 1993 Immigration Act) and detainees were being held without being informed of their rights to legal representation. This stood in violation of the Immigration Act of 1993 and the Namibian Constitution, Article 7 of which ensures Protection of Liberty, and Article 12 that guarantees the Right to a Fair trial. It also infringed on the 1951 UN Refugee Convention that grants refugee and asylum seekers freedom from arbitrary arrest and detention.

On the basis of this argument, the Government Attorney, acting on behalf of all respondents, conceded that the arrests and detention were not in compliance with the Immigration Control Act or any law, and ordered the release of the 47 detainees, as well as ordering the immigration officials involved to show cause as to why they should not be held personally liable for the costs of litigation.

It was found that the immigration officials had not acted in bad faith but rather that the system was at fault due to 'institutional incompetence'. The Court's judgement therefore called for remedial action within the Ministry of Home Affairs and Immigration to address the underlying causes that had allowed for this unlawful detention in the first place, namely:

- Training for all immigration officers and others in the Ministry of Home Affairs and Immigration who are responsible for the implementation of the Immigration Control Act of 1993.
- The implementation of a proper record keeping system in the Directorate of Immigration and Border Control to enable Immigration officers to keep track of all immigrants detained and how long they have been detained.

Such remedial action is significant because once implemented it will change the landscape for all future asylum seekers and refugees in Namibia.²⁴

Monitoring Refugee Camps and Asylum Detention Centres

Research conducted by the African Ombudsman Research Centre (AORC) and the International Ombudsman Institute (IOI), shows that a number of Ombudsmen on the African continent already have the authority to visit facilities where the freedom of movement of persons is restricted. This includes refugee camps and places of detention where asylum seekers and other undocumented migrants might be held. The Ombudsman can use this power to monitor conditions in such institutions, and to make recommendations to governments for necessary changes to ensure that the treatment of refugees and asylum seekers accords to international human rights standards.

In 2017 and 2018, for example, the Ombudsman of Sudan visited major refugee camps to monitor conditions. These visits revealed poor services for refugees in terms of sanitation, medical care and education, which the Ombudsman reported back to the Ministry of the Interior – the responsible Department. The visits also indicated that the government was not collecting accurate statistics, making it impossible to monitor the number of refugees in the camps and the conditions they faced. The Ombudsman of Sudan recommended that the Ministry of the Interior put in place systems for the collection of accurate statistics and document management, which have subsequently been implemented by the government.

BEST PRACTICE RECOMMENDATIONS

1. Ensuring the accessibility of the Ombudsman to asylum seekers, refugees and IDPs

A major challenge that refugees and asylum seekers often face is mobility. It may be because of lack of money for transportation, or due to restricted movement in camps and detention centres. Alternatively, it could be a language issue. It is, therefore, important that the Ombudsman makes itself accessible to these communities. This could be done through:

- Ensuring that refugee and asylum-seeking communities are included in the Ombudsman's outreach and education activities
- Regular visits to refugee camps and other places of detention
- Setting up local offices in camps or organising outreach activities in camps
- Building relationships with other human rights organisations that work with these communities to set up referral systems

2. Tackling delay and other forms of maladministration as systemic failures in the processing of the paperwork of asylum seekers, refugees and IDPs

The case study of South Africa shows how undue delay and other forms of maladministration can have devastating consequences for refugees and asylum seekers. By tackling such forms of maladministration through systemic investigation, followed by recommendations on how such failures in the system could be addressed, and ongoing pressure on Government to ensure implementation of these, the Ombudsman could have a real impact. The sooner refugees and asylum seekers are issued with their documentation and given clarity about their status in the country, the sooner they will be able to get on with their lives: find employment and access social services. Regular monitoring of departments would also be required to ensure that the recommended changes are implemented and sustained.

3. Supporting governments and other human rights institutions by monitoring the condition of asylum seekers, refugees and IDPs

As the work of the Ombudsman of Sudan demonstrates, the institution can play a vital role supporting governments and other human rights organisations through monitoring the conditions of refugees and asylum seekers and making recommendations for changes in line with best practices that meet international human rights standards.

4. Supporting the establishment of Ombudsman institutions with oversight over the armed forces, and strengthening existing institutions

This also includes lobbying for existing Ombudsman to be mandated with oversight over the military. It is, however, important to remember that the expansion of the Ombudsman's mandate should always be accompanied by an additional budgetary allocation, to enable the institution to carry out the enlarged scope of its work.

5. Building effective systems of referral and partnership between the Ombudsman and other government departments and NGOs working with refugees, asylum seekers and IDPs

This means that the complaints of refugees and asylum seekers and violations of their rights, are less likely to fall between the cracks. If they do not align with the Ombudsman's mandate, they can be referred onwards, and vice versa. This will also help the Ombudsman to keep a finger on the pulse of the status of refugees, asylum seekers and IDPs in the country and the particular challenges they face, which could be used to guide future systemic investigations.

REFERENCES

1. United Nations High Commission for Refugees (UNHCR), <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>, Accessed 7 October 2019.
2. UNHCR, <https://www.habitatforhumanity.org.uk/blog/2016/09/refugees-asylum-seekers-migrants-crucial-difference/>, Accessed 7 October 2019.
3. UNHCR, <https://www.unhcr.org/asylum-seekers.html>, Accessed 7 October 2019
4. UNHCR, <https://www.unhcr.org/internally-displaced-people.html>, Accessed 7 October 2019
5. UNHCR, <https://www.unhcr.org/stateless-people.html> Accessed 7 October 2019
6. Habitat for Humanity, <https://www.habitatforhumanity.org.uk/blog/2016/09/refugees-asylum-seekers-migrants-crucial-difference/>, Accessed 7 October
7. UNHCR, Africa Profile, <https://www.unhcr.org/africa.html>, Accessed 7 October 2019
8. UNHCR Global Trends Forced Displacement in 2017, <https://www.unhcr.org/globaltrends2017/>, p. 4, Accessed 7 October 2019.
9. UNCHR Figures at a Glance, <https://www.unhcr.org/afr/figures-at-a-glance.html>, Accessed 28 Jan 2019.
10. UNHCR Global Trends: Forced Displacement in 2018, p. 7, <https://www.unhcr.org/globaltrends2018/>, Accessed 7 October 2017.
11. UNHCR, Global Trends 2018, p. 17.
12. UNHCR, Djibouti profile, <https://www.unhcr.org/djibouti.html>, Accessed 6th October 2019.
13. UNHCR, Global Trends 2018, p. 14.
14. UNHCR Global Trends 2018 Report, p. 36.
15. UNHCR Global Trends 2018 Report, p. 11, 47.
16. Michuzi blog, 'African Refugee Convention Turns 50 to Warm Welcome', 11 September 2019 <https://issamichuzi.blogspot.com/2019/09/african-refugee-convention-turns-50-to.html>, Accessed 7 October 2019.
17. Ombudsman of Burundi, Annual Report 2018, Section 3.2, Prevention of Conflict and Education of Citizens about their responsibilities, pp. 42-74.
18. BBC News, Chad Profile Timeline, 8 May 2018, <https://www.bbc.com/news/world-africa-13164686>, Accessed 9 October 2010; APAnews, 'Chad: Ombudsman Takes Stock as Institution Closes Ten', 5 August 2017, <http://apanews.net/en/pays/tchad/news/chad-Ombudsman-takes-stock-as-institution-closes-ten>, Accessed 9 October 2010.
19. Geneva Centre for the Democratic Control of Armed Forces (DCAF), Ombudsman Institutions for the Armed Forces in Francophone Countries of Sub-Saharan Africa, 2015, p. v, <https://www.dcaf.ch/mapping-study-ombuds-institutions-armed-forces-francophone-countries-sub-saharan-africa>, Accessed 5 October 2019
20. (DCAF), Ombudsman Institutions for the Armed Forces in Francophone Countries, p. v.
21. New Frame, Jan Bornman, 'Dying in Johannesburg', 6 March 2019, <https://www.newframe.com/dying-johannesburg/> Accessed 6 October 2019.
22. Equinet Africa, Ncumisa Willie (South African Human Rights Commission), 'Ensuring Health and Access to Health Care for Migrants: A Right and Good Public Health Practice', 1 July 2018, <https://www.sahrc.org.za/index.php/sahrc-media/opinion-pieces/item/1422-ensuring-health-and-access-to-health-care-for-migrants-a-right-and-good-public-health-practice>, Accessed 4 March 2019.
23. Equinet Africa, 'Ensuring health and access to health care for migrants'
24. *Office of the Ombudsman of the Republic of Namibia v The Station Commander, Katutura Police Station Windhoek* HC-MD-CIV-MOT-GEN-2017/00042 [2017] NAHCMD 366 (8 December 2017).

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