

INDEPENDENCE AND ACCOUNTABILITY OF THE OMBUDSMAN INSTITUTION IN AFRICA. A PAPER DELIVERED BY SIR VINCENT YARO, NATIONAL SECRETARY, PUBLIC COMPLAINTS COMMISSION, NIGERIA AT THE AFRICAN OMBUDSMAN ASSOCIATION CONFERENCE HELD IN SOUTH AFRICA BETWEEN 11TH AND 14TH APRIL, 2005

It is both a pleasure and a privilege to speak at the first conference of the African Ombudsman Association (AOA). I like to commend the Executive Secretary of the (AOA) and the Public Protector of South Africa Adv Lawrence Mushwana for the tremendous time and efforts invested in hosting this maiden conference. I bring greetings from the Office of the Ombudsman and the People of Nigeria. The theme of this Conference ***“The Role of the Africa Ombudsman; good governance, democracy and development in the 21st Century”*** is not only relevant but significant in view of contemporary development in the Region.

The Ombudsman offices throughout the world are established with the aim of improving good governance. This is particularly so, in some of the African countries that have had military dictatorship and are now entrenching democratic governments in their countries. Democratic governments as we think, are expected to provide good governance for the citizenry, hence the struggle by the world powers to see that countries that are yet to democratize should do so. However, there are schools of thought that believe that although democracy is spreading all over the world, there is still abuse of man by man for control of power and resources. Even when slavery and colonialism were stemmed, we still find during the reigns of democracy, various forms of power abuse and mental torture, even with the legal structures that are explicit. As a result of the above phenomenon, there is the necessity for African countries not just establishing ombudsman offices, but such offices should be effective and efficient, as well as independent and accountable in performing their functions. The independence and accountability of each Ombudsman office is guided by the enabling law; therefore, the laws should be such that would enhance performance. In presenting this paper, I would

attempt to look at what some ombudsmen have propounded as the role of the ombudsman in improving good governance, as well as the independence and accountability of the ombudsman. These, I would relate to the Nigerian Ombudsman and highlight the issues that thwart his independence in performing his statutory duties.

At the VIIIth International Ombudsman Institute's Conference in Quebec, Canada, the thrusts of most papers presented revolved round the issues of how the ombudsman can improve its service delivery in a way that will enhance democracy. The former International Ombudsman Institute (I.O.I) President and erstwhile Ombudsman of New Zealand, Sir Brian Elwood described the Ombudsman, in his paper, as an institution that is relevant to both the governor and the governed in helping to improve relationship between them and facilitating a resolution of those grievances which cannot be resolved without the intervention of an independent authority.

In another very exciting paper presented by Bruce Barbour, the Ombudsman of New South Wales, Australia, he highlighted the demographic dynamism of his country and itemised some of the functions of the ombudsman in the socio-political setting. The Ombudsman is an officer appointed by the legislature or the President whose responsibility is to investigate complaints or maladministration and to make recommendations to organizations investigated. He is independent of both the legislature and the organisations he investigates and he sends his reports to the legislature, or the president, as the case may be. From the foregoing definitions, it is clear that the citizen's expectation of the Ombudsman is very great. The question therefore is, "Is the Ombudsman well equipped to meet these expectations and still maintain its independence?"

At the VIIIth International Conference of Ombudsmen in Quebec 2004, Emily O' Reilly the Ombudsman of Ireland in her paper "Protecting Rights and Freedom" states that some ombudsmen are concerned solely with maladministration and injustice; others have a wider role in commenting on and recommending improvements in existing

legislation which in the ombudsman's opinion, operates unfairly. This goes to improve good governance. In Nigeria, the ombudsman has had cause to recommend to the government, among others, the abolition of the obnoxious decree 17 of 1984 which stipulates that no court could entertain the cases of sacked government staff, even if such were wrongfully done.

William K Reid, erstwhile United Kingdom Parliamentary Commissioner for Administration and Health Service Commissioner for England, Scotland and Wales, in the paper he presented at the World Conference in Vienna, in October 1992 summarised the basic requirement for the Ombudsman to maintain its independence and accountability; which according to him must be spelt out in the enabling laws. He said, "the Ombudsman must have the expectation of remaining in office for an undisputed tenure. Only in the gravest circumstances should there be any possibility of removal from office before the natural end of that tenure; and the holder of the office must have:

- (i) guarantee of complete independence in investigating complaints of maladministration, subject to any limitations placed by the constitution or enabling Act on his jurisdiction;
- (ii) absolute privilege – that is, freedom from prosecution for defamation in respect of what he writes in his reports;
- (iii) authority to present his reports on investigations to the president or to the legislature;
- (iv) the ability to delegate certain of his powers to his deputies."

The importance of these requirements of the Ombudsman as the basis for its independence and effective performance cannot be controverted or over-emphasized.

An ombudsman whose tenure of office has not been properly defined, or if defined, is made so flexible that he can be removed or replaced easily, cannot achieve any meaningful results in the short time he would be in office. Security of tenure is therefore a very important factor in ensuring the independence of the Ombudsman. In Nigeria, the act stipulates that both the state and national ombudsmen are appointed by the National Assembly for a term of three (3) years; renewable once. His removal from office can only be done by the National Assembly, if only gross misconduct is established against him. Instead of renewing the Ombudsman for the second term, I recommend that the two terms be merged into one. This, I believe, will free the Ombudsman to discharge his responsibilities without the usual fear of losing the renewal of his appointment for the second term. Most of the Ombudsmen in Latin America were usually denied renewal of their second tenure because of their radical posture. In Nigeria we have had a case of one national ombudsman whose second tenure was not renewed, while many state ombudsmen had lost the renewal for the second term.

In the same vein the Ombudsman ought to enjoy the privilege of immunity from prosecution in order to enhance its independence. In Nigeria the law guarantees immunity to the Ombudsman and its staff in the performance of their duties. In other words no Ombudsman or its staff shall be liable to be sued in any court of law for any act done or omitted to be done in the exercise of their duties.

The other element that strengthens the independence of the ombudsman is free access to information. One of the key investigatory powers enjoyed by the Ombudsman in Nigeria in the exercise of its investigatory duties, includes the power to call for and obtain information and classified documents from public office holders and or any government or private company/department in Nigeria. To ensure that the Commission is not obstructed in the performance of its duties, the law stipulates that if any person required to furnish information under this decree (now act) fails to do so, or in purported compliance with such requirement, knowingly or recklessly makes any statement which

is false, he shall be guilty of an offence and liable on conviction to a fine of ₦500.00 or imprisonment for six months or to both such fine and imprisonment. Similarly, any person who wilfully obstructs, interferes with, assaults or resists any Commissioner or any other officer or servant of the Commission in the execution of his duty under this decree or who aids, invites, induces or abets any other person to obstruct, interfere with, assault or resist any such Commissioner, officer or servant, shall be guilty of an offence.

The jurisdiction of the Ombudsman is directly related to its independence. In Nigeria the jurisdiction of the Ombudsman cuts across public and the private sectors; that is, Federal, State, Local Government, public institutions and the private limited liability companies. It may interest you to know that although the Ombudsman does not have appellate jurisdiction, it has the power to investigate the administrative procedure of any court of law in Nigeria.

The Ombudsman should enjoy functional independence; that is, its modus operandi should not be subject to any hierarchical institutions. He should be free to use his power of investigation and formulate his decisions/recommendations. He must also be free to determine whether or not to go public with the cases investigated without the fear of intimidation. The Nigerian Ombudsman, in addition to enjoying the above privileges, also has the power to initiate complaints free from the control of any other institution.

In conclusion, what are the factors that impinge on the independence of the ombudsman? Most of the obstacles that tend to undermine the independence of the Ombudsman are directly or remotely related to funding. Two important factors in the independence of the Ombudsman are the location of the ombudsman offices and recruitment of the ombudsman staff. It is gratifying to note that the law empowers the ombudsman in Nigeria to hire and fire its staff. It is a fact that in many countries the ombudsman does not have the power to recruit and discharge his staff as many ombudsman staff were sometimes employed and seconded to the ombudsman by the mainstream civil service. Such staff may owe their allegiance to their main employer.

Owing to poor funding many ombudsman institutions are compelled to share office accommodation with the organisations they were set up to investigate. In Nigeria, for example the ombudsman at the national level was able to build separate office accommodation away from the Federal Secretariat which housed all the various ministries and parastatals. In furtherance of this autonomy, at the State or regional level, we embarked on the building of separate state ombudsman offices but the project was aborted owing to paucity of funds. The Commission therefore had to resort to sharing offices with the various departments at some of the State Secretariat Complexes. To further worsen the situation, in some cases the Commission had to solicit and obtained assistance from some state governments for office equipment, motor vehicles, accommodation or rent subsidy, thus tying itself to the apron strings of some government departments it was set up to investigate. The story at the area or zonal offices is similar. The Commission's offices at the local government levels depend largely on the generosity of the local government chairman for office accommodation. These challenges in some instances put the ombudsman in a tight corner when cases of maladministration or administrative injustices are lodged with it against the governor at the state level or the local government chairman at the zonal level, i.e., those that have assisted the Ombudsman in one way or the other. In situations as highlighted above, how independent can the ombudsman be; bearing in mind that he may not be firm in investigating someone that has assisted him in the past? Can the ombudsman bite the finger that feeds him ? Finally, a well funded ombudsman is most likely to be an independent and strong ombudsman.

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