

THE OMBUDSMAN IN THE SUDAN IS THE SAFETY VALVE OF HUMAN RIGHTS BEYOND FINALITY OF JUDICIAL DECREES

By: Mohammed Abuzeid Ahmed,
President of Public Grievances and Corrections Board
(OMBUDSMAN. SUDAN)

Vice President of the African Ombudsman & Mediators Association
(A.O.M.A), Director of Board of Directors of the. Int. Ombudsman
Institute (I.O.I.)

The purpose of writing this paper is to explain to the reader that the decisions of the Sudanese Public Grievances and Corrections Board (Ombudsman) do not interfere with or affect the independence of the Judiciary. The premise and legal basis of the functions of the Board is found in Article 130(2) of the Constitution of the Republic of the ~~reenacted~~ Sudan, 1998, which is repealed and reenacted by the new Interim National Constitution of the Republic of the Sudan, 2005. The said text is embodied in details in section 7 of the Public Grievances and Corrections Board Act, 1998, which reads as follows:

"Without prejudice to the jurisdiction of the Judiciary, the Board shall work at the Federal level, to remove away patent iniustice, clear away grievances, assure efficiency and purity in the practices of the State and systems, or the final executive or administrative acts. and also extends to justice after the final decisions of the institutions of justice; and without prejudice to the generality of the foregoing, the Board decides in co-ordination with the various organs of the State in the following:

(a)

(b) Such patent injustice, as may result,. from the final judicial decrees, or may be transcended by such decrees without affecting the finality thereof."

It has to be observed that the legal ground of the concept is akin to the Natural Law theory, the basis of which is explicitly ordained in the holy scriptures; hence specific verses may be cited from the three Holy Books, the Quran, the Old, and the New Testaments:

The Noble Quran, says:

: "O you who believe, stand out firmly for Allah (GOD) as just witnesses; and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety": (Sura5) Al-Maidah-part6, verse 8.

" O you who believe, stand out firmly for justice, as witnesses to Allah (GOD), even though it be against yourselves, or your parents or your kin, be he rich or poor, Allah is a better Protector to both (than you). So follow not the lusts (of your hearts), lest you avoid justice..." Surah 4, An-Nisa- Part 5 verse 135.

The Holy Bible also says the following:

1. Exodus Ch. 23 verse 6- "Do not deny justice to a poor man when he appears in the court".
2. Proverbs Ch. 16 verse 12-13; "Kings cannot tolerate evil because justice is what makes a government strong".
3. Isaiah Ch. 56 verses 1-2. The Lord says to his people, "do what is just and right. For soon I will save you".
4. Zechariah ch.8 verses 16-17 "These are the things you should do: speak the truth to one another. In the courts, give real justice the kind that brings peace. Do not plan ways of harming one another. Do not give false testimony under oath. I hate lying, injustice, violence."

One might also say that even judges do err and that such errors may lead to miscarriage of justice. In such cases the Public Grievances & Corrections Board (The Ombudsman) is bound to interfere only where there is a flagrant and complete patent injustice. And by so doing the Ombudsman does not interfere with the decision of the court, in the sense that the person in whose favour the wrong and unjust decision is passed, is

in no way impaired or affected. Thus the function of the Ombudsman is to redress and compensate the aggrieved person, because, justice and equity so demanded on the principle that for every injury there should be a remedy, which is crystallized in the legal maxim, JUS IBI REMEDIUM.

In this regard I find the English case, Regina V. Bently (1957), a good example to illustrate that miscarriage of justice is by no means confined or limited to one legal system. The facts of this case are simple.

Bently, who was of age, gave his pistol to a certain Chris, a doli incapax. A policeman, who happened to be passing by saw the pistol in the hand of the child, said, "give me that gun". Bently said to Chris, "let him have it, Chris". The child shot the policeman dead. Bently had been indicted for murder and executed. His sister kept on appealing. After the passage of almost twenty years Bently got acquitted.

In a situation like this, our Public Grievances & Corrections Board (Ombudsman) would have certainly redressed Bently's dependants for the wrongful and unjust death of their breadwinner without interfering in or affecting the finality of the judicial decision, and in so doing we would have removed this patent injustice, consequently the ends of justice and the DOCTRINE OF HUMAN RIGHTS are better served.

We feel that it is our primary duty to draw the attention of the reader to the fact that the Public Grievances & Corrections Board (the Ombudsman) according to Article 143(2) of the Interim National Constitution 2005, is an independent body from the judiciary. Thus, when exercising the functions bestowed upon it by the Constitution and law (Section 7 of the Public Grievances & Corrections Board Act 1998), it does not do so as part of the echelons of the judiciary, which is an independent body.

Now, we embark on citing some Sudanese cases, which the Public Grievances & Corrections Board (the Ombudsman) in the Sudan dealt with. Agok Agair Arok V. Development of Jonglie Canal Corp. (Gr. 232/2000: Rev 10/2000).

Applicant's truck collided with a D.A.F. car owned by the defendant in the town of Bor, in Southern Sudan. The car suffered a total damage, while

applicant himself sustained some injuries. Applicant filed a civil suit. The court ruled for him but awarded him a meagre sum of money by way of compensation.

Due to the mistake of his lawyer, who ought to have sued as an *informa pauperis*, applicant failed to pay the fees before the Court of Appeal, which court dismissed the appeal as a consequence.

He brought the matter before the Ombudsman after the lapse of some years. Taking into account the rate of inflation and the fact that he was not mistaken, the Ombudsman increased the compensation to the sum of 1,500,000 Sudanese Dinars. Again, applicant filed before the Ombudsman a successful petition for revision in which the Ombudsman increased the compensation to the sum of 2,000,000 Sudanese Dinars.

The reader's attention should be drawn to the fact that applicant is a Southerner and a Christian. This is indicative that the Ombudsman exercises his functions without discrimination, fear, or favour in compliance with the Constitution, which promulgates, *inter alia*, that all people are equal before the courts of law regardless of their religion, creed, race or sect.

M. H. v. S. E.: Griev R. 22/2000 :

The facts of this case are as follows:

Applicant instituted a suit before the District Court against his appointed attorney, for having sold applicant's house to a third party.

The Court ruled for applicant. The other party kept on appealing until he filed a cassation before the Supreme Court. No decision has been passed for along time. Meanwhile, the purchaser instituted a suit against applicant on the ground that he was a bona fide purchaser for value. the court ruled against applicant, who also kept appealing until he filed a petition be for the Supreme Court, which ruled against him. Dissatisfied with the decision, applicant petitioned to the Ombudsman, *inter alia*, that the complication which had taken place was attributed to the fact that the Supreme Court took so long a time to pronounce its judgment. Had it been that the

Supreme Court passed its decision at a certain juncture of time, all these complications would have been avoided.

Relying on the established principle and legal maxim that 'Justice delayed is justice denied' as some say, or 'Delay of justice is injustice', as some others say, the Ombudsman decided that applicant, in the circumstances attending his case, is an aggrieved person; hence, it naturally follows that he is entitled to some redress.

The Ombudsman found that the man deserves compensation. It is noteworthy that the decision of the judiciary is left as it is, not being impaired or adversely affected.

We genuinely believe that the significance of the concept heretofore mentioned lies in that, it is a step towards realizing and achieving absolute justice. If we go back to the case of M. H. v. SE (supra), we shall find that the case was considered and reviewed in the context that the aggrieved person suffered injustice, not arising out necessarily from the administration of law exercised by a court in its judicial capacity, but the iniustice arose out of maladministration of the court's administrators. i.e. unreasonable delay. which eventually led to injustice.

Since justice is fundamental to human dignity and human rights, we find also in some advanced countries that the Ombudsman interferes to remove patent injustice which may result from judicial decrees and maladministration arising out of the courts' administrative acts. In this context we can give the following examples:

1. The People's Advocate (Ombudsman) of Albania in his annual report of 2000 stated the following :

" In accordance with article 25 of the law of People's Advocate, the law and other legal acts, military orders to the armed forces, and the court's decisions do not fall under the jurisdiction of the People's Advocate. Nevertheless without encroaching upon the independence of the judiciary, the People's Advocate. accepts complaints, requests or notifications of HUMAN RIGHTS, violations arising from the administration of the judiciary and judicial procedures. The investigation of the People's Advocate does not infringe on the independence of the judiciary."

2. Likewise, the Swedish Parliamentary Ombudsman, whose country is the master architect of the modern Ombudsman system in the world, in his annual report dated 1st July 2000 - 30 June 2001 wrote:

" Mr. Eklundh (the Chief Parliamentary Ombudsman in Sweden) has supervised, inter alia, the courts of law, while Mr. Berggren, one of his deputies (commissioner) has been given the responsibility for the supervision of administrative courts.)

It is also observed that the Sudanese Judiciary neither resented, nor made a complaint about the existence of the Public Grievances & Corrections Board (Ombudsman) as an organ of justice, simply because the honourable judges are well aware of the objectives and functions of the Board. Even more, they know that their decisions are not affected by any means or in any way.

We go further to cite a decision of the Constitutional Court of the Sudan in the case of Hashim Salih. . v. Sudan Government and Saied Mohammed Ahmed. Con.ICasel 50/29/1999.which speaks of itself, and which we find illuminating and enlightening to the reader. The facts may be stated thus:

One, Saied Mohammed Ahmed raised a case in Saudi Arabia against a certain Hashim Salih for having giving him a dishonoured cheque. Both parties came to the Sudan. Saied filed a petition before a Sudanese court praying for executing the foreign decree issued by a Saudi Arabian court. Hashim, in his argument relied on the legal defence, that the Sudanese Courts have no jurisdiction to entertain the matter, because there is no reciprocity of judgements between the two countries, since Saudi Arabia is not a signatory to the Treaty of Rihyad, having refrained from ratifying the said Treaty. The court in rejecting the defence, passed judgement in favour of Saied and ordered Hashim to pay the money, or otherwise go to jail. Actually "Hashim went to jail.

He unsuccessfully petitioned to the Court of Appeal. He then brought a cassation and then a revision before the Supreme Court. Both petitions met the same fate. He stayed in jail for about nine months before petitioning the Ombudsman who passed a decision, that it referred to the President of the Republic, thereby recommending that the State pays the

sum of D.S.25, 000 (twenty five thousand American dollars) on behalf of Hashim. The Board was of the opinion that despite the finality of the decision of the courts, that decision was very clearly and flagrantly erroneous and unjust. It is worth noticing that before the matter became final, Hashim instituted a suit before the Constitutional Court. Having dismissed the application brought before it, the said Court opined as follows:

(That when its members started deliberating over the case, they discovered by mere accident that the same matter had already been decided upon by the Ombudsman. They dismissed the case on the ground that the applicant, on his own volition had submitted to the jurisdiction of the Ombudsman who is empowered to deal with the matter by virtue of section (7) of the Public Grievances & Corrections Board Act, 1998 read with Article 130 (2) of the Sudan Constitution 1998.

The Constitutional Court argued that applicant ought to have waited until the result of a revision before the Ombudsman is reached. The Constitutional Court passed an order thereby dismissing the case under Section 16 (b) of the Constitutional Court Act, 1998, on the ground that, in this event, the application does not reveal a Constitutional issue to be entertained and to be decided upon.)

We briskly comment that all courts in the Sudan are aware of the concept behind establishing the Public Grievances and Corrections Board (the Ombudsman). Hence, the existence of the Ombudsman neither stirs jealousies, nor gives rise to problems with the other organs of justice in the Sudan as can be seen from the authorities heretofore indicated. It is also evidently clear that the Ombudsman is empowered to extend redress, of course, depending on the merits of each case, even after a decision is passed by the Constitutional Court, since the aim is to ensure that justice and equity should prevail and HUMAN RIGHTS are preserved.

We have to ascertain that the reader has to keep in mind that the Ombudsman in the Sudan can only invoke his powers in situations where there is either a flagrant violation of the law, or where there is patent injustice, which two situations are the legal litmus paper for testing the validity of the acts of the Ombudsman (Public Grievances & Corrections Board) in the Sudan .

Extending Justice After the Final Decisions Of The Institutions of Justice:

Those who advocate the view that interfering in the judicial pronouncements passed by the highest courts of the land is essentially an encroachment prohibited by the theory of the "Doctrine of Separation of Powers" as speculated by the learned jurist Montesquieu, have in our humble view, failed to convince our minds with the conclusion reached, and that is for the following reasons:

- (1) When surmising over the three organs of government, (The Legislature, the Executive and the Judiciary) and their functions and the roles they play in the affairs of the State, it becomes clear that they are in fact not separate and in isolated islands. Indeed, they overlap and over shadow, a situation which necessitates their coordination.
- (2) On the other hand, the doctrine of Separation of Powers cannot in practice, be divorced from the theory of "Checks and Balances," examples of which are:
 - (a) In England, we find the Lord Chancellor is holding all the three different powers of government; for he is the President of the House of Lords in its capacity as part of the legislature; he is also the Chief Judge of the House of Lords in being the highest judicial body in England, while he is also a cabinet minister.
 - (b) Another example to generally be quoted, is the power of clemency, which is vested in the presidents of the republics in many countries including the Sudan, whereby although the president of the republic is the head of the executive, he is again vested with the power not only of reprieving the sanctions passed by the courts, but also quashing the very conviction. This is clearly indicative that there is no concept of absolute separation of powers.
 - (c) Another similitude to be put forth from the other side of the Atlantic, is the power of the President of the United States of America (who is the Head of the Executive) of sharing the process of legislation with the Congress. Not only that, but also one would go further to consider that the President of the U.S.A. has the power to overrule

the laws and resolutions passed by the Congress and that by using his "Veto Power", which was used some time ago (to quote an example) by President Roosevelt during his tenure of office to annul and consequently abort more than six hundred (600) Laws, Orders and Resolutions passed by the Congress.

I humbly submit that, it clearly appears to the reader, after citing the above mentioned examples, that the so called Doctrine of Separation of Powers is an ideal fallacious academic myth that has no place in practical life .

In conclusion, it is inevitable to bring into play a dictum from an eminent judge, namely the learned Lord Denning, who said,:

" The only final judgment is the right judgment."

We have nothing to add, and we agree with Lord Denning because judges as human beings are viable to err and no one is infallible .Thus, looking behind the so called final judgments to correct patent injustice with the view of relieving the grievances and preserving Human Rights, when they occur is in fact attaining the zenith and peak of Equity, Justice and Good Conscience; hence this conforms with the message of all RELIGIONS, MORALS, and NATURAL LAW, that aim at combating injustice and realizing justice, which is prayed for in the Third Millennium as an integral part of saving HUMAN RIGHTS and dignity practically, not the critically.

(Judge) Mohammed Abuzeid Ahmed,
African Ombudsman & Mediators Association (A.O.M.A.)
Tripoli- Aljamahirya
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N.B.: *e*

Herwin below is the full text of the appreciating and commending report that was issued by the United Nations Mission Rule of Law to the Sudan, in the matter of the Public Grievances and Corrections Board (OMBUDSMAN) in Sudan.

Public Grievances and Corrections Board (OMBUDSMAN)

" The Public Grievances and Corrections: Board was created by the Public. Grievances and Corrections Board Act of 1998, the legal basis of this commission is found in Article 130(2) of the Constitution of Sudan, which is repealed and re-enacted in substance in Article 143(2) of the new Interim National Constitution of the Republic of the Sudan, 2005.

According to the Interim Constitution and the Public Grievances and Corrections Board Act 1998, this Public Grievances Chamber is an independent body.

Without prejudice to the finality of judgments, the Public Grievances Chamber shall consider complaints relating grievances suffered by citizens in relation to State Institutions.

This Public Grievances Chamber shall consider complaints only after exhausting all means and stages of litigation by the complainant. .

According to the law of 1998, and Article 143 of the Interim National Constitution of the Republic of the Sudan 2005, we can affirm that this Public Grievances Chamber doesn't interfere in the domain of the Judiciary; it is an organ that permits to repair the prejudices undergone by the citizens following a ministerial or administration act and without prejudice to the jurisdiction of the Judiciary.

The Public grievances Chamber works at the National Level to remove away patent injustice, clear away grievances and assure efficiency and purity in the practices of the State and systems or the final executive or administrative acts and also extends to justice after the final decisions of the institutions of justice, and without prejudice to the generality of the foregoing.

This system that finds its source in the Moslem culture is used in a lot of European countries.

In fact this Public Grievances Chamber acts on the responsibility and liability of the State because of a bad working of its administrative or judicial services. The State is responsible for the mistakes committed by its employees; a mistake, for example, must be repaired by the State without prejudice of the judicial decision that remains enforceable.

We think that this Public Grievances Chamber could be an efficient means to reinforce the rule of law and justice in Sudan and to establish fairness. It is an organ that it is necessary to support by the organization of training sessions and by the supplying of equipment material especially of the computers that will facilitate the mission of this Organ and will permit to reinforce the rule of law."

**UNMIS Rule of law
Pr. Habib DAHDOUH**