

**OR TAMBO DECLARATION ON THE MINIMUM STANDARDS FOR AN EFFECTIVE
OMBUDSMAN INSTITUTION AND COOPERATION WITH THE AFRICAN UNION ON
STRENGTHENING GOOD GOVERNANCE**

PREAMBLE

WHEREAS the delegates at the African Ombudsman Summit representing Ombudsmen/Mediators and other variations of the ombudsman institution, representatives of government, and broader society drawn from 37 countries gathered at OR Tambo International Airport on 25-26 February 2014;

BELIEVING that the ombudsman institution has the potential to play a significant role in strengthening good governance on the African continent provided the institution is strengthened and supported to ensure that it functions optimally;

CONVINCED that the Ombudsman/Mediator provides much needed relief to citizens needing redress against administrative violations in public administration and control over state power and resources;

FURTHER CONVINCED that the Ombudsman/Mediator serves as a safety valve, limiting the need for resorting to violent protest and related measures by communities dissatisfied with the delivery of public services and the conduct of persons entrusted with public power;

NOTING with satisfaction the recognition of the role of the Ombudsman by the United Nations as exemplified in the General Assembly Resolutions UN GA Res: 67/241 at its 67th Session;

ENCOURAGED by the African Union's commitment to good governance as demonstrated through the adoption of the African Charter on Democracy, Elections and Governance, which came into force on 15 February 2012, in which State Parties commit themselves to "promote good governance through the institutionalization of Transparency, Accountability and Participatory Democracy";

ENCOURAGED by the adoption of Article 15 of the African Charter on Democracy, Elections and Governance which enjoins State Parties to:

1. Establish public institutions that promote and support democracy and constitutional order;

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2. Ensure that the independence or autonomy of the said institutions is guaranteed by the constitution;
3. Ensure that these institutions are accountable to competent national organs; and
4. Provide the above-mentioned institutions with resources to perform their assigned missions efficiently and effectively.

APPRECIATING that the African Union Commission (AUC) and the African Ombudsman and Mediators Association (AOMA) entered into the Memorandum of Understanding in Luanda, in June 2012, in order to strengthen Ombudsman institutions in Member States, institutionalize the AU shared values and implement a Joint Operational Implementation Framework of the AUC and AOMA;

NOTING the Joint Operational Implementation Framework with seven strategic objectives, which include "The establishment and strengthening of Ombudsman Institutions in all member states of the African Union".

FURTHER NOTING the by-laws of the International Ombudsman Institute, being the global body of Ombudsman and Mediators, to the extent that the said by-laws stipulate minimum characteristics for a recognized Ombudsman Institution;

TAKING INTO CONSIDERATION the findings of the research report of the African Ombudsman Research Centre (AORC) titled "Comparative Analysis of Legal Systems Governing Ombudsman Institutions in Africa" and the need to harmonize the operational standards for the Ombudsman institution;

CONCERNED over the disparities in the conditions of, and challenges faced by, many of the Ombudsman, Mediators and related offices in African states which undermine the effective functioning of the ombudsman, thereby limiting their contribution to strengthening good governance, through investigating, mediating and redressing maladministration complaints and related injustices, and excesses in the exercise of state power,

CONVINCED that many of these challenges are unduly limiting the ability of the affected ombudsman/mediator offices from functioning optimally to the pursuit of good governance;

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BELIEVING in the necessity of minimum standards for an EFFECTIVE Ombudsman Institution to serve its purpose effectively regardless of its diverse mandate, nature or circumstances thus contributing to good governance;

NOTING that the commitment of the AU to ideals of democracy, good governance, and human rights including the right to development reflected in the adopted Shared Values instruments such as the African Charter on Democracy, Elections and Good Governance, is not always matched by actions taken by respective member states, and entities or organs within such states;

THEREFORE PROPOSE the following standards as the basic minimum conditions that African states should comply with when establishing or reviewing ombudsman/mediator offices in Africa:

A. MINIMUM STANDARDS FOR AN EFFECTIVE OMBUDSMAN OFFICE

1. Independence and Autonomy:

1.1 The independence and autonomy of these institutions must be guaranteed by the Constitution¹.

1.2 The institution should not be subject to the direction or control of any person or authority in the discharge of its duties.

1.3 The discharge of the Ombudsman/Mediator's function is subject to nothing but the law and commands of his and her conscience.

1.4 The Ombudsman/Mediator shall be immune from being sued or prosecuted in his or her personal capacity.

2. Establishment:

The establishment of the institution should preferably be guaranteed in the Constitution².

¹ This is already guaranteed by Article 15(2) of the African Charter on Democracy, Elections and Governance.

² This is in line with Article 15(2) of the African Charter on Democracy, Elections and Governance.



3. Appointment and Security of Tenure:

3.1 The Ombudsman should have a fixed term of office, not subject to removal without just cause. The appointment process must be transparent and preferably through a competitive process in the legislature.

3.2 Where the Head of State is the final Appointing Authority, he or she should not have the power to change the decision of the Legislature.

3.3 The process of removal shall be on the basis of just cause, and shall be fair, transparent and regulated by the Constitution, and preferably involve an independent body.

3.4 A person appointed should preferably be a suitably qualified person who understands the Constitution and the law particularly administrative law and justice.

4. Mandate:

4.1 The minimum mandate of the institution should be investigation and mediation of maladministration.

4.2 The term "maladministration" should be given a broad interpretation as possible, covering all public offices, institutions executing public functions and institutions or individuals administering public funds.

5. Resources:

5.1 In terms of Article 15 (4) of the African Charter on Democracy, Elections and Good Governance, the Ombudsman/Mediator office shall be provided with adequate resources to perform its assigned mission efficiently and effectively³.

6. Operations:

6.1 The Ombudsman/Mediators should be free to conduct their operations as they deem fit, subject to the rules of natural justice, and should have adequate powers to secure information, cooperation and to redress maladministration.

6.2 The functions of an Ombudsman/Mediator should be conducted subject to the principle of confidentiality, and where appropriate, the ombudsman/mediator shall carry out the functions of the office in a transparent manner.

³ This is provided for in article 15(4) of the African Charter on Democracy, Elections and Good Governance

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6.3 The approach to functions should be informed by principles of fairness, impartiality, equity, good conscience and integrity.

7. Conditions of Service:

7.1 The minimum rank and remuneration level of an ombudsman/mediator should be commensurate with the responsibility of the office, with minimum rank at the level of a Judge of the High Court.

7.2 Where necessary, adequate security must be provided to the ombudsman/mediator during his/her tenure of office.

8. Accessibility:

8.1 The office should be accessible to the public and the services should be free of charge.

9. Impartiality:

9.1 The Ombudsman/Mediator shall conduct investigations and resolution of relevant disputes in an impartial manner, free from bias and conflict of interest.

9.2 A national legislation or an equivalent instrument should provide for the declaration of assets and financial interest.

9.3 The incumbent to the Ombudsman/Mediator's office should not be holding any party political membership whilst holding office.

10. Accountability and Reporting:

10.1 The Ombudsman/Mediator should report to the legislature at least once annually.

10.2 The Ombudsman/Mediator institutions shall be audited by the national supreme audit institution and the audit report should be open to public scrutiny.

10.3 Investigative reports of the Ombudsman/Mediators shall be made public unless the Ombudsman/Mediator deems it in the interest of justice to keep a report confidential.

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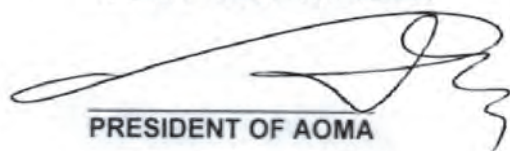
B. CONSOLIDATION OF THE COOPERATION BETWEEN THE AUC AND AOMA

1. Implement measures aimed at accelerating the implementation of the AU Shared Values, giving priority to the AU Charter on Democracy, Elections and Governance and the implementation of the provisions of Article 15 of the same.
2. Actively disseminate provisions of the Charter that relate to governance with special attention given to Article 15 which deals with the establishment, support and ensuring effectiveness of ombudsman institutions and other institutions supporting democracy.
3. Jointly implement capacity building measures including dialogue forums, to facilitate a shared understanding of action required to conform conduct within state affairs with shared values.
4. Identify institutions supporting democracy and organs in civil society with overlapping interest, and agreeing on joint operations where appropriate.

Adopted at the OR Tambo International Airport on 26 February 2014

Signed by

1. DR. PAULO TJIPIICA



PRESIDENT OF AOMA

2. ADV THULI N. MADONSELA



EXECUTIVE SECRETARY OF AOMA

