

AORC Webinar: Ombudsman Day 2022 – UN Resolution on Ombudsman and Mediators, The Venice Principles and the OR Tambo Declaration – Celebrating Ombudsman Day.

A presentation by John R Walters, former Ombudsman of Namibia on the OR Tambo Declaration on the Minimum Standards for an Effective Ombudsman Institution –

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Introduction

I warmly welcome the invitation by our colleagues at the AORC to participate in this very important Webinar. In this brief presentation, I will share with you my understanding of the principles of the OR Tambo Declaration, followed by a discussion on four key principles and conclude with observations. I hope that the discussion of the Declaration will make us aware of the ideals and intention of the drafters. I will also briefly touch on enforcing Ombudsman decisions.

What is the OR Tambo Declaration?

The Declaration did not fall out of the sky; it is the product of many years of consultation among Ombudsmen on the one hand and with the African Union Commission on the other hand. The Declaration contains living principles however they are not self-executing. The Ombudsman and staff need more than just knowledge of the principles. The principles must reside in us, they must be written on our hearts and minds and woven into the fabric of who we are. If these principles remain secluded in the Declaration, (UN Resolution and Venice Principles, they stand little chance of entering the hearts and minds of Ombudsman staff. Keeping these principles 'alive' is firstly the responsibility of the incumbent; he or she must ensure that he or she attains the highest possible standard of performance without bias and with complete integrity. His or her integrity and credibility should be beyond reproach. Secondly it is the responsibility of government for establishing an Ombudsman Institution and continually creating and maintaining the requirements necessary for its effective functioning.

These principle must not be read in isolation but within the context of the UN Resolutions on the role of the Ombudsman and mediator's institutions, the Venice Principles, the country's constitution and enabling legislation of the Ombudsman. They are the guarantees for an effective Ombudsman Institution but they will remain paper dreams if life is not given to them.

Principles of the OR Tambo Declaration.

Time will not allow for a comprehensive discussion of each of the principles, therefore four key principles will be focused on; independence, accessibility, resources, accountability and reporting.

Independence and Autonomy

Independence is perhaps the most important principle. True independence is fundamental to the success of an Ombudsman institution. An institution that cannot operate independently cannot be effective. Independence should be viewed as statutory, financial, organizational and institutional. The institution must not only be independent but it must be seen to be independent. Institutions are only as independent as the incumbent and staff. Whatever structural guarantees exist, the key to and proof of independence lie in the institution's actions and the incumbent's authority. The institution must make its decisions independently without fear or favour.

Accessibility

Andre Marin, former Ombudsman of Ontario used to say "An inaccessible Ombudsman is an ineffective Ombudsman"

Aggrieved persons have a right to complain to the Ombudsman and access to the Ombudsman is a right in itself that every citizen is entitled to in a modern democracy. The premises of the institution should be easy to get to and into; it must be accessible to persons with disabilities.

The sheer size of the country may require the Ombudsman to establish regional or branch offices to bring their services closer to the people.

Resources

To function effectively, the Ombudsman must be provided with an appropriate level of funding to guarantee its independence and its ability to freely determine its priorities and activities. It must also have power to allocate funding according to its priorities.

Accountability and Reporting

Ombudsman institutions discharge their accountability and reporting responsibilities to the State and the public by preparing and presenting annual reports to parliament. Principle 10.1 of the Declaration requires the Ombudsman or Mediator to report to the legislature at least once annually but it is silent on what the legislature should do with the report. The same omission is found in the Ombudsman Act 1990 of Namibia

Concluding Observations

The UN Resolution and the OR Tambo Declaration are not binding documents. The UN Resolution "**strongly encourages** member states to consider or strengthen". The OR Tambo Declaration "**proposes** the following standards....African States should comply with"...

It is the duty of both government and the Ombudsman to keep these principles alive by complying fully with the letter and spirit of these principles.

The principles of the UN Resolutions, the OR Tambo Declaration and Venice Principles are not self-executing; they call on the state to act. Failure to act compromises the effectiveness of the Ombudsman.

Citizens have rights and government must provide. Ombudsmen have the responsibility to constantly review their enabling legislation and recommend the necessary amendments to bring it in line with the principles of the UN Resolution, the OR Tambo Declaration and Venice Principles

A compendium of the UN General Assembly Resolutions on the Ombudsman/Mediators and National Human Rights Institutions; the OR Tambo Declaration, the Venice Principles, Paris Principles, the Memorandum of Understanding between the AU Commission and Africa Ombudsman and Mediators Association etc., can be useful for Ombudsman or Mediators, former Ombudsman, as well as parliamentarians.

Ombudsmen should engage with parliament with a view to duly take into account their annual reports through a public examination, discussion and debate of such reports. The Ombudsman should be invited to participate in such discussions.

Enforcing Ombudsman Decisions/ Recommendations

It is generally accepted that Ombudsman in Africa function without authority to enforce their decisions and that their decisions are not binding. Where the administration does not accept the Ombudsman's decision, he or she is then entitled to publicly submit a special report to parliament. The Ombudsman reports to parliament for the purpose of a decision on and enforcement of their reports and recommendation.

Where Parliament does not act upon the reports of the Ombudsman, then it means there is no support system available in parliament to give effect to those reports and recommendations. Parliament represents the final enforcement power of the Ombudsman since it is established by parliament and held accountable to it.

In case of such failure, the only tool to the Ombudsman disposal is the courts, however it is an expensive route to take but sometimes the only route.

The Constitutional Court in South Africa came to the assistance of the Public Protector in its land mark judgement where it authoritatively interpreted the powers of the Public Protector "to take appropriate remedial action" to have binding effect.

I am not aware of any other Ombudsman in Africa who has the power to make binding decisions. The question whether all Ombudsman should have powers to make binding decisions is a matter for discussion on another occasion.

Conclusion

In conclusion, may I now take the opportunity to wish all Ombudsmen and staff a happy Ombudsman Day and I further wish you Godspeed, hope and strength in all your endeavours to make your country a better place for its citizens.

I thank you.