

Topic : A Human Rights Based Approach to the Ombudsman's work

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Introduction

The Geneva Conference of 1967 on World Peace Through Law recommended that the World Peace Through Law Center “disseminate widely information about the role which an ombudsman can perform in protecting citizens against the violation of their rights by administrative authorities: and seek to assist financially or otherwise projects designed to encourage research on the establishment of ombudsmen.”⁷⁶

Arising out of this recommendation the number of Ombudsmen increased worldwide, and even more significantly, the direct linkage between their mandate and protection against human rights violations became more evident. In order to discuss the way in which the ombudsman can use the rights based approach in their work, there is need to have clarity on the historical development of the office and mandate, as well as the concept of the rights based approach and how it applies broadly and specifically to their work. This paper, is premised on the basis that for ombudsmen to embrace and apply the human rights approach, it is critical that they locate their mandate whether classical or expanded within the human rights framework. While there have been debates on the human rights mandate of the ombudsman, this paper argues that whether classical or termed as hybrid, human rights protection is intrinsic to public administration.

What is the Ombudsman?

Ombudsman has been described and or defined as an independent governmental official who receives complaints against government agencies and officials from aggrieved persons, who investigates, and who if the complaints are justified, makes recommendations to remedy the complaints.

The Ombudsman Committee of the International Bar Association defines the term Ombudsman as;

“An Office provided for by the Constitution or by action of the Legislature or Parliament and headed by an independent high-level public official, who is responsible to the Legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employees, or who acts on [his] own motion and who has the power to investigate, recommend corrective action and issue reports.”

On the hand, the late Professor Donald Rowat, an eminent expert on the Ombudsman in a paper titled "A World-Wide Survey of Ombudsmen" produced for the International Ombudsman Institute has defined the ombudsman as follows:

“First, it is set up by a country's constitution or by a law or by-law of the legislative body, in order to ensure its permanence, neutrality and independence from the administrative organisation being complained against; Second, it receives and investigates complaints from the public against any part of the whole administration at the level of government concerned, though in many schemes it can also start investigations of alleged maladministration on its own initiative; Third, it is an appeal body in the sense that usually it will investigate a complaint only after the complaint has been made to the agency concerned and the complainant is still dissatisfied; Fourth, when it finds a complaint to be justified, it recommends a remedy to the agency and if the recommendation is not accepted it makes its recommendation to the chief executive and in a published report to the legislature - but it does not make binding decisions and this is what distinguishes it from a court, tribunal or arbitrator.”

⁷⁶ World Peace Through Law Center, Programs for Progress Toward Peace Through Law, Future Work Program, Topic 11, Human Rights, 28-29

Key characteristics of the Ombudsman

- most ombudsmen are arms of the legislature.
- They are generally independent even though they report to parliament
- They receive complaints of abuse by government departments, agencies, or officials, generally such complaints are from members of the public directly or from other institutions such as parliament or civil society
- They are required to conduct impartial investigations in the course of which they can call upon all persons for information, require the production of documents and access state records subject to specific limitations in various countries
- In most countries they have no powers to give orders or impose sanctions, unlike Sweden and Finland where this is possible. They cannot quash or reverse the decision or order of any official, they can report, recommend and or suggest. Nonetheless, the ombudsman's opinion is a powerful tool that they often use.
- In the exercise of their functions they are required to use expedient, inexpensive and informal procedures and processes
- They are required or endeavor to be accessible, simple easy and cost free complaints systems, with no requirement for legal representation
- Issues annual and other reports to parliament
- Provides reasons for dismissal of complaints where unfounded or beyond their jurisdiction
- Has power to inspect agencies, institutions or departments as a general or specific power in connection with investigations
- Has the mandate to conduct research and to advise on improvements on administrative procedures, policy or legislation

The kind of grievances addressed by ombudsmen can broadly be described as acts of injustice often inflicted on citizens by those who govern and include, acts or failure to act by officials, simple clerical errors, to oppression, oversight, negligence, inadequate investigations, unfair policy, delays, partiality, discrimination, failure or lack of communication, rudeness, arrogance, inefficiency, improper motivation, violation of laws, regulations, policy, abuse of authority, mistakes, carelessness.

These definitions/descriptions reinforce the concept and notion that the office of the ombudsman underlies the core rule of law principles, namely, that those who exercise state power must be held accountable, and that citizens are entitled to institutionalized mechanisms for airing and settling conflicts between them and the state agencies and officials. The historical development of the ombudsman which the audience here are very familiar with came about alongside, parliament and the judiciary the traditionally accepted tripartite of checks and balance in democratic states. So at the very basic level, there is a direct relationship between, the establishment of an ombudsman and the desire or requirement to uphold the rule of law by protecting citizens, from abuse of power, office and maladministration by overzealous state agencies and officials. This paper is founded on the understanding that while there has been a traditional and historical derivation of the office, mandate and functions of the ombudsman, this has evolved over the years beyond maladministration, and has embraced mandates beyond administrative justice to a more holistic inclusive human rights approach. This broadening has not been without challenges and as noted by Emily O'Reilly, (Ombudsman of Ireland 2003-2013);

"It is important to note that maladministration can encompass human rights issues, although it is not always seen in these terms by public servants or, indeed, by ombudsmen and their staff. Ombudsman offices are often not accustomed to analyzing complaints from this wider perspective and, indeed, staff may lack the knowledge and expertise to do so. But ombudsmen and their staff do need to recognize that if [human] rights are not properly or adequately protected, there may be difficulties for them in ensuring that their traditional preserve – sound and fair administration – operates in a proper manner. In essence, this means that ombudsmen should take the broadest possible view of their role and see it as encompassing two principal aims namely, promoting respect for human dignity and protecting individuals who are dependent on public authorities."⁷⁷

⁷⁷ Emily O'Reilly, 'Protecting Rights and Freedoms' (2003) 7 International Ombudsman Yearbook 24, at p 29.

Benny Y. T. Tai⁷⁸ has classified ombudsmen into 6 models, and argues that as the trend for establishing ombudsmen has grown, their mandate has also expanded from the classical maladministration to increasingly either implicitly or explicitly include a human rights oversight mandate. Indeed, the extent to which ombudsmen deal with human rights as specific mandate or as an extension of their traditional mandate is often dictated by the specified mandate, the historical context of its establishment as well as the interpretation given by the individual ombudsman. He notes that; “The human rights situation in a particular jurisdiction, the historical, political, constitutional and cultural environment of the jurisdiction, the institutional design of the ombudsman as well as the self-consciousness and self-perception of the ombudsman will all determine the degree of intensity of human rights issues that the ombudsman will have to encounter and is willing to handle.”⁷⁹ The models discussed range from the classical to the more modern trend where ombudsmen are mandated to act as national human rights institutions established in compliance with Paris Principles as well as models where the Ombudsman exists side by side with an NHRI. Nonetheless, contrary to this notion.⁸⁰

At the core of human rights are obligations and entitlements, claim holders are entitled to rights, while duty bearers are under obligation to promote, protect and respect the rights of claim holders, whether they are citizens or not as long as they come under the purview of the state and or its agents. Hence people are entitled to be treated lawfully and with dignity by the state and its agencies. At the very core of administrative justice are the human rights principles of due process, fairness and natural justice, therefore persons who are likely to be adversely affected by decisions deserve to be informed and given opportunity to engage with the decision maker and of course all persons seeking and or using state services deserve to be treated with decency including through provision of relevant information in a timely manner. Therefore, individuals have the right to be treated lawfully and with dignity and while fundamental freedoms are guaranteed, they can only be taken away or limited with justifiable reasons through a fair and reasonable legal process. Indeed, in most countries limitation of rights must be based on written law setting out the objectives and circumstances under which this may occur. And where the state or its agencies limit or wish to limit these rights through administrative mechanisms, the natural arbiter between the state and affected citizens would be the ombudsman. And to this effectively, one must have a good grasp of the nature, scope and extent of human rights.

Due to its ever evolving nature an exhaustive list of human rights is unnecessary, however, there are categories that have been recognized by international, regional and increasingly national constitutions such as:

- Civil and Political rights – the right of adults to vote in a fair and democratic electoral system; freedom of speech, press, assembly, and association; and freedom of religion and conscience, the right to found a family to marry and raise children, privacy,
- Legal process rights – freedom from arbitrary arrest, detention, search or seizure; the right to a fair and speedy trial; the privilege against self-incrimination; and protection against cruel and unusual punishment, torture etc
- Egalitarian rights (or freedom from discrimination) – underlying these rights is the principle of equality before the law, equal protection of the law for all members of the community; the right not to be discriminated against on the basis of race, colour, sex, age, disability, marital status, pregnancy, creed, language or other status, ethnic background, religious or political beliefs or persuasion;
- Socio-Economic rights – the right to education, housing, health, leisure, and a reasonable standard of living, right to culture the right to own property and not be arbitrarily deprived of it; the right to work, form a labour union and to strike;

⁷⁸ International Journal of Politics and Good Governance Volume 1, No. 1.3 Quarter III 2010 ISSN No. 0976 – 1195

⁷⁹ *ibid* page 1

⁸⁰ B. Von Tigerstrom, “The Role of the Ombudsman in Protecting Economic, Social and Cultural Rights” The International Ombudsman Yearbook, Volume 2, 1998

- Right to development – This right was first recognized in the African Charter for Human and Peoples Rights of 1981 and subsequently adopted as right by the UN in 1986, the preamble to the GA resolutions states that; "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom." While this right has attracted controversy, the reality is that it is at the core of some UN specialized agencies such as UNDP with global goals such as the Millennium Development Goals (MDGs) and their successor the 2016 Sustainable Development Goals (SDGs) dedicated to the greater and broader realization various social and economic rights, in a measurable manner; at the national level, states endeavor to improve livelihoods, to reduce poverty e.t.c. through development interventions, policies, strategies sometimes accompanied by service delivery goals and targeted outputs and outcomes. In effort to be accountable, some agencies even have service charters to guide the public generally and stakeholders specifically on their (state agencies accountabilities).

Some of these elaborate and well drawn plans can fall victim to internal bureaucracies, deliberate and inappropriate actions, omissions and commissions by individuals in the system or to general systemic failure in turn amounting to directly or indirectly violating the various categories of human rights. While all rights have potential for violation by state officials, social and economic rights constitute a large number of complaints that the Ombudsman deals with. The failure to provide licensing or cancellation of licensing could have a direct impact on an individual's livelihood, with serious implications to other rights such as the right to food, education etc. Failure to facilitate proper legal and policy frameworks for third parties who are essential to the enjoyment of rights can result in violation – for example lack of proper legal and policy frameworks for environmental management could lead to pollution and increase in avoidable and preventable diseases afflicting people and thereby infringing on their right to a clean and healthy environment and directly injuring their health.

Having looked the contextual setting, it is imperative to point that while it may seem rather easy and straight forward to expect an ombudsman to naturally embrace a human rights based approach, there can be practical challenges that arise from the historical and institutional understanding and approaches that ombudsmen use to fulfil their mandates.

- Where the human rights mandate is not explicit taking it on may thrust the ombudsman into unfamiliar territory fraught with controversy. In any case, the elastic nature of human rights issues lends itself to controversy while what is good public administration is probably more settled. Engaging in high profile and consistent advocacy requires time and resources and for the ombudsman this may require re-organization without compromising on the complaints handling, research and education; additionally, they would have to conduct public education to avoid public misunderstanding on the rationale and value of engagement with human rights advocacy work.
- At the core of the Ombudsman mandate is complaints handling while human rights work even where complaints are handled gravitate more towards national and international advocacy anchored to the global human rights standard setting and monitoring mechanism. This work traditionally fell to Non-Governmental Organizations (NGOs) that were accredited at the regional and international level to provide alternative information to treaty bodies and special procedures during state reporting. However, the 1993 Vienna World Conference on Human Rights and the setting out of the 1993 Paris Principles set the stage for states to be held accountable to establishing, either constitutional or statutory National Human Rights Institutions whose main mandate was to monitor state compliance with their human rights obligations. The entry of NHRIs added a new public voice to human rights accountability that was closely modelled on that of NGO advocacy groups. While they have mandate to receive and investigate human rights violations, they are more likely to adopt what may seem as controversial advocacy styles including naming and shaming. Often these strategies and or tactics do not endear them to state agencies and for ombudsmen who traditionally work and more often than not enjoy close working relationships with state agencies, taking on human rights advocacy work may cause discomfort and lead to distrust by some agencies. Of course there are exception cases, such the experience of the Bermudan Ombudsman who states in one of their reports "The government's response to most of our investigations and recommendations has been very constructive. There has been a recognition among government leaders

that our work is not about exposing or embarrassing them or making them look bad – although we certainly have exposed some bad things. They recognize that our investigations and recommendations are revealing problems and solutions that are going to benefit millions of people and that by acting on them, they are going to look good”.⁸¹ And this perhaps is the advantage that the Ombudsman could bring to holding states accountable to human rights standards, in that their historical background endears them as a more “genuine” critic in the eyes of state agencies. Having said that it is important to have a closer look at what the so called traditional and or classical role and mandate of the ombudsman has been and how it originated.

- A third challenge arises where there are overlaps between the Ombudsman and the NHRI or other oversight agencies such as Equality Commissions, or even specialized Ombudsmen. It may be argued that since it is now settled that the Ombudsman has a human rights mandate, that states should avoid a multiplicity of institutions that compete for resources and roles, and that is best to merge such institutions. Unfortunately, this is a decision that lies with the either the executive or parliament and therefore. The option and in the interest of the rights based approach which takes a sector wide holistic trajectory; the Ombudsman and other oversight bodies ought to find ways to work in complimentary manner. In discord and disharmony amongst them could be interpreted by detractors as an indicator of the insignificant and or irrelevant role that they play and could be very harmful to the enormous contribution envisaged for all civilian oversight agencies.

Rationale for ombudsmen

While there are accounts in various culture including Europe and Asia of the existence of some sort of Ombudsman; the version as we know it today was founded in 1809 in Sweden and adopted in Finland and today exist in virtually all the regions of the world and as discussed above, there are various models that countries have adopted, with the core responsibility being addressing maladministration, through complaints handling and making recommendations to relevant authorities. At the core was and still is the requirement that it be an individual or group of individuals that inspire public confidence are independent, impartial and objective. In other words, while their mandate requires a close and trusting relationship with state agencies they have to cultivate and ensure a healthy distance, to earn their credibility with both the public and the state agencies.

- After World War II, the Welfare State (loosely defined as the situation where the state takes responsibility either on its own or with other actors to care of the social welfare of citizens such as health, housing, social security benefits amongst others) became stronger and with it came numerous administrative agencies. The assumption of multi functions in welfare, education, medical care, social security and housing resulted in a huge government/state machinery with extensive powers exercised by various agencies. This necessitated citizens’ protection against executive and administrative mistakes and abuse of power.
- More agencies came with increased activities and bureaucracy in the public sphere, raising concerns that violations would similarly rise hence the desire for additional protection of individual rights more so where existing mechanisms were seen or found to be inadequate or limited such as the fact that;
- Parliament’s traditional oversight role had been overburdened with numerous administrative bodies established to exercise delegated authority – the increase and sometimes the complexity and the level of in-depth scrutiny required to keep such bodies accountable was overwhelming. To ensure proper accountability required specialized agencies that were accessible and expedient.
- Additionally, while Parliament had and still has power to receive complaints and inquire into them, dedicating a lot of time to this would detract from their core mandate of legislating, as well as addressing the executive’s shortcomings at the macro level, to the detriment of individual complaints, it could also be argued that in some cases parliamentarians maybe unduly influenced by party considerations and therefore not entirely objective on the hand;

⁸¹ Ombudsman for Bermuda’s Third Annual Report 2008, pp. 38–9

- Courts even though they have the primary mandate for dispute resolution between citizens and the state as well as amongst citizens, litigation is often expensive, protracted, and adversarial hence could be inappropriate and or inaccessible for some members of the public aggrieved by executive action.

It could be argued that the establishment of the ombudsman was a natural progression in democratic governance of increasing complex societies, where lack of accountability and or transparency in state affairs could easily disgruntle citizens. The Ombudsman's role may therefore be seen as the pacifier whose authority did not rest in coercive power but rather on expertise and force of character, thereby ensuring that their recommendations were taken serious and acted upon by the state as a political and social safety valve.

From the discussion above, it is manifestly evident that the mandate of the ombudsman is founded on the principles of the rule of law, and protection of citizens from oppressive or inordinately bureaucratic state machinery, which often results in the violations of citizens' rights. Secondly, there is no doubt, that increasingly ombudsman is directly mandated to protect human rights and ensure state compliance with international, regional and national standards. Given such direct mandate and as service providers it is imperative that they embrace the human rights based approach for standard setting, implementing and monitoring state agencies and other actors under their purview as well as for their own internal purposes.

What is the human rights based approach and how does it relate to human rights standards and obligations?

"A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress."⁸² The approach boldly focuses on development as it is the mandate of the state to develop policies and strategies for the development of citizens, and it recognizes that human development is at the center of respect, promotion and protection of human rights. The enormous powers given to the state to collect, distribute and allocate revenue, to set priorities, to pass laws and policies to realize these goals are the very reason why they must be required to carry out these obligations from a human rights prism. To do otherwise would be to allow anarchy and promote impunity.

The human rights based approach is anchored to the understanding that human rights determine the relationship between individuals and groups with valid claims as rights holders and the state as well as non-state actors with correlative obligations as duty bearers. The approach identifies rights holders and their entitlements and the corresponding duty bearers and their obligations, and works towards strengthening the capacity of claims holders to obtain their rights, and with duty bearers to deliver their obligations. Ultimately, the idea is to empower both so as to decrease the divide between legal provisions and actual realization of rights. To achieve and or work towards this requires clarity on what human rights obligations exist.

What kinds of human rights obligations are there?

There are 3 main obligations, namely, to respect, to protect and to fulfil human rights:

- To respect human rights means simply not to interfere with their enjoyment. Considering that rights are inherent, the state must desist from actions that curtail rights for example unlawfully detaining critics thereby restricting freedom of speech, association amongst others. Ombudsmen are critical for these rights as they ensure that state agents do not use their powers to curtail such rights, either through their actions or omissions,
- To protect human rights means to take steps to ensure that third parties do not interfere with their enjoyment. The state must respect the right to work, by setting standards such as minimum wages and ensuring that employers comply with labour standards; ombudsmen can receive complaints from state and other employees where labour laws are either ineffective or are disregarded to the detriment of workers.

⁸² <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

- To fulfil human rights means to take steps progressively to realize the right in question and is closely associated with socio-economic rights. The state is therefore required to engage in and facilitate activities that enhance people's ability to realize their rights; it may also require that the state provides directly if the right concerned cannot be realized e.g. providing housing and financial support to the elderly or other vulnerable groups. This obligation requires the state to come up with policies and strategies to address socio-economic rights. A critical role that the ombudsman could play is in ensuring the participation and inclusion of citizens in these processes, analysis national priorities and resource allocation to point any eschewed allocations and propose equitable distribution as well as protection of the most vulnerable populations and causes (many countries for example allocate and spend a lot on security which is often shrouded in secrecy and therefore prone to misappropriation as opposed to social goals such as health, education e.t.c. The Ombudsman, using data analyzed from their complaints mechanisms could have compelling conclusions to recommend for better social, economic priorities.
- Unlike civil and political rights which require immediate state compliance, social and economic rights almost always have financial implications, which states may not always have available immediately. Therefore, the state core obligation is to satisfy the minimum essential level of each right through clear national and local level policies and strategies founded on human rights principles. Where significant segments of society cannot access socio economic rights, the state has an obligation to demonstrate that it is directly all available resources including seeking humanitarian aid where appropriate from international partners to fulfill these rights.

Notwithstanding the general progressive nature of these rights the state has the immediate obligation to:

- Ensure non-discriminate and equal treatment between different groups of people in the realization of the rights in question;
- deliberately take steps, devise strategies and programmes towards the full realization of these rights
- monitor progress in the realization of human rights.

Lastly the state has in all instances whether immediate or progressive realization the obligation to provide and facilitate mechanisms for remedy where rights are violated.

Why the Human Rights Based Approach?

For the human rights practitioner, the human rights based approach is intrinsically the right thing to do both morally and legally, secondly, it is seen as the best way to achieve better and sustainable human development solutions. Further, viewed from the perspective that it is anchored on the principles of non-discrimination, equality, accountability and inclusion, it makes sense that this approach not only respects the governed by giving them opportunity to meaningfully participate in their destiny, but that it results in community owned solutions which are more likely to succeed than those imposed from above by government and other functionaries. The approach is underlined by principles of universality, inalienability, indivisibility, interdependence and interrelatedness of human rights therefore more holistic in practice.

Consequently, this approach incorporates existing good practice and lessons, while advocating for continuous learning and consistency in implementation of state policies and strategies. Indeed, it is based on the understanding that development is critical to realization of most if not all human rights, more specifically, the approach focusses the marginalized and excluded individuals and communities in the belief that sustainable development cannot be achieved where some voices and interests particularly of the vulnerable are ignored. As already indicated the Millennium Development Goals (MDGs) upon which the 2016 Sustainable Development Goals (SDGs) build on as universal development goals are primarily concerned that no one especially the vulnerable should not be left behind in the quest for better life, services and resources. The SDGs, are founded and based on the international human rights framework and principles and according the Office of the High Commissioner for Human Rights (OHCHR)⁸³

⁸³ <http://www.ohchr.org/Documents/Issues/MDGs/Post2015/HRAndPost2015.pdf>

“The 2030 Agenda is unequivocally anchored in human rights: The new Agenda is explicitly “grounded in the UN Charter, the Universal Declaration of Human Rights, international human rights treaties” and other instruments, including the Declaration on the Right to Development (para 10). It states that the SDGs aim to “realize the human rights of all” (preamble) and emphasises “the responsibilities of all States... to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status” (para 19). Importantly, the new Agenda is “to be implemented in a manner that is consistent with the... obligations of states under international law.”(para 18). This means that any gaps or ambiguities should be resolved in accordance with the requirements of international human rights law.”

This presentation presumes that considering the centrality of the SDGs, to the broad human rights mandate as well as the obligation of the state to deliver on them, the Ombudsman, will be a key national, international and regional institution, to hold the state accountable to these goals, as well as to work with the various state agencies on proper and good public administration standards that will be required to facilitate delivery. The best tool to do this as can be seen from this discussion would be the human rights based approach.

What value does a human rights-based approach add to the work of the ombudsman?

1. Participatory process

From the previous discussion, doubtlessly, the ombudsman mandate is to hold the state and its agencies accountable specifically on maladministration and broadly to ensure that the interactions between the public and state agencies and officials are governed by human rights standards. The rights based approach requires that both the duty bearers and claim holders participate in the decision making and implementation processes of actions that affect claimholders. This means that policies, legislation and actions taken by duty bearers must be made through a consultative process. For the Ombudsmen this can be achieved in two ways, one they ought to engage the public in their own strategies and policies by holding general public forums where individuals and groups can make their views known; they can also hold focused and targeted discussions with special groups. The objectives of these consultations would be to create awareness on the mandate of the ombudsman and secondly, to seek and identify, the concerns of their stakeholders viz a viz their mandate with a view to streamlining these into their strategies and processes. On the flip side, the ombudsman will need to hold the state accountable to the same standards, and might entertain complaints where the state and or its agents have not been inclusive and or have not embraced meaningful participation. In view of the various levels of bureaucracy that is state machinery – it maybe useful for the ombudsman to develop agreed service and other codes with stakeholders on inclusion and participation and acceptable standards of provision and delivery taking into account the principles discussed in this paper. Additionally, the ombudsman would be required to monitor and evaluate their own internal and the external duty bearers’ compliance with the agreed templates. Resulting in the institutionalization participatory and democratic processes within the agencies that the ombudsman has oversight. And culminating into capacity building of both claim holders and duty bearers towards a more transparent and accountable public sector. These measures should be aimed at closing the gap between public expectation and what could be delivered by the state within agreed and known time frames and resource lines. A reading of reports by ombudsmen often indicate that lack of response, and engagement are some of the common complaints from the public, a more sensitized and human rights conscious could reduce this types of complaint and free time for the ombudsman to engage in useful in-depth research dedicated to new frontiers of good public administration.

2. Transparency and accountability

A human rights-based approach requires that policy, legislation and regulation formulation and budget allocations are specific to issues to be addressed, including by whom to what standards, the capacities required to implement. This approach simplifies, monitoring, evaluation and holding agencies accountable. The Ombudsman as a body that offers remedies, for those wronged by state agencies, would be a in a better position to identify responsibility as well as pinpointing areas for improvement if processes and lines of accountability are transparent. An open and transparent system makes it easier for ordinary citizens to claim their rights and challenge unaccountable officials.

3. Holistic view

The rights based approach is guided by a holistic and inclusive view that takes into account all stakeholders, such as communities, civil society, state agencies, families, as well, the political, social, and legal context. It avoids a segmented approach, but looks at the interrelations, interlinkages and the dynamics that may contribute to the challenges and or to the proposed solutions and remedies. For the ombudsman dealing with various agencies at the national and local level, a holistic approach provides the big picture without compromising on the specifics, it also enables identification of cross cutting issues and best practices.

4. International instruments and Mechanisms

The human rights framework at the national level is directly linked to the international and regional mechanisms. State as members of the UN and having ratified a number of human rights treaties and conventions, and similarly as members of regional bodies governed by human rights conventions and treaties, are under obligation to comply with these global standards and subject themselves to period reviews and commit to devoting resources and other efforts to fulfilling attendant obligations. Ombudsman like any other oversight bodies that monitor compliance with human rights standards must be well acquainted with the regional and international standards. Secondly some of the mechanisms such as treaty bodies often issue significant opinions and recommendations that could enhance the monitoring and evaluation role of the ombudsman. The standards, principles, norms and goals, set at the international and regional level benefit greatly from the human rights based in the course of implementation at the national level.

5. Monitoring

Inbuilt into the human rights based approach, is monitoring and evaluation of state compliance with it's obligations, commitment to national, regional and international human rights standards, principles and values.

The Ombudsman can therefore find great value in using the human rights based approach, both internally and externally. If applied properly the approach can reinforce the independence of the Ombudsman, in particular some have argued that the office is unnecessary and because of its historical positioning, there are those who may view it as an extension of the executive or parliamentary arm of government. Using an objective standard such as the rights based approach, would provide clarity to the mandate and standing of the Ombudsman. Using the rights based approach would reflect transparency and accountability on the office and thereby enhance it's credibility. Obviously, the Ombudsman, as an oversight body has to be compliant with the very standards that it requires state agencies to adopt, therefore if the ombudsman falls into the same pitfalls, such as abuse of office, misuse of resources, inaccessibility, it would lose the moral authority to hold others accountable, and as was argued elsewhere, the rights based approach is not just the right and legal thing to do it is also the moral one. While legal standards and requirements are important, an Ombudsman getting tangled up in the very wrongs they are mandated to investigate, not only presents a legal dilemma it raises a serious moral crisis that may haunt the institution for years.

Conclusion

The discussion has demonstrated that direct link that the Ombudsman's mandate and role in society contributes towards the human rights agenda, discourse and realization. Further that the ever increasing national, regional and international commitments that states are making for various rights including SDGs, climate change, refugee and migration, which require deployment of state machinery thrusts the notion of public administration into the a fundamental state obligation through which rights will be enhanced and violations reduced. For this reason the Ombudsman, will similar to its rapid expansion in the Welfare state, will do the same in the quest for a human rights state, which is inescapable the next frontier of democratic governance.

The rights based approach, and the mandate, role and functions of the ombudsman will be central to balancing the power wielded by the state and the increased demand for it quickly evolve and adopt to the desired human rights state. But first the Ombudsman must be willing to use the same yardstick internally and be willing to be judged, measured and monitored by the same standards doing so will certainly,

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endear the office to the public, which ultimately, is the beneficiary but also the only genuine defender that the ombudsman can have in what can be a lonely and misunderstood mission. And so while they are invariably called public defenders, in the world of power politics, the public that fully comprehend and believe in their ombudsman can defend the office against the attacks that are likely to come from systems that establish the office without intending them to be fully independent. The human rights based approach, can insulate the ombudsman from accusations of bias, will clarify and solidify their human rights mandate against naysayers.