

Address at the General Assembly of the African Ombudsman Association (AOA)

Misty Hills Conference Centre, Muldersdrift, Johannesburg: 11 April 2005

Deputy President of the Association, Ombudsman of Malawi, Enoch Chibwana,
The Executive Secretary of the Association and Public Protector of the Republic of South Africa,
Lawrence Mushwana,
Honourable Ministers,
Honourable Judges,
Executive Mayors of Mogale City, Johannesburg and Tshwane,
Your Excellencies, Ambassadors and High Commissioners,
Distinguished delegates,
Ladies and Gentlemen:

I would like to thank you for affording me this opportunity to address this important General Assembly of the African Ombudsman Association (AOA), the first AOA meeting in South Africa. On behalf of the Government and people of South Africa, I extend a very warm welcome to all the delegates.

We will like to extend our sincere condolences to the Government and people of Burkina Faso as well as the Kafando family on the passing away on March 14 of the first President of the African Ombudsman Association, Mr. Jean-Baptiste Kafando, Ombudsman of Burkina Faso.

As South Africans, we are deeply honoured that this General Assembly of the AOA is being held in our country. We also appreciate that our Public Protector was elected as the Executive Secretary of the AOA at the launch of the Association in Burkina Faso in July 2003.

In line with the newly adopted constitution of the AOA therefore, the interim administrative capital of the AOA is now located in South Africa. Thank you for affording us this privilege. We will do everything possible to support this interim headquarters so that it discharges its responsibilities to the members of the Association.

In dealing with the challenges that you face today, I would like to speak about three stories related by three great writers. The first is by the Russian writer, Fyodor Dostoevsky.

Fyodor Dostoevsky lived in Russia between 1821 and 1881, during the difficult reign of Tsar Nicholas I. In 1849, Dostoevsky was arrested and sentenced to death. As he was facing an open grave in front of a firing squad, an order arrived commuting his sentence. He was then sent to do hard labour in a Siberian prison where he contracted epilepsy. Although he did not regret his opposition to the reign of the Tsar, Dostoevsky felt that he had been unfairly treated both during his trial and in jail. However, as we know, during his time there was no Ombudsperson where he could complain and get a fair hearing.

In one of his most famous novels, "Crime and Punishment", he writes about an interesting story told by a student to an officer about an old lady, Alyona Ivanova, who was a pawnbroker. According to the student, Ivanova was "spiteful and cruel". She "had a sister Lizaveta, whom the wretched little creature was continually beating, and kept in complete bondage like a small child...She worked day and night ... and beside the washing, she did the sewing and worked as a charwoman and gave her sister all she earned."

The student continued and said: "The old woman had already made (a) will (for her servant-sister) where (her sister) would not get a farthing; nothing but the movables, chairs and so on; all the money was left to a monastery..."

Like Dostoevsky in real life, his character, Lizaveta, who had her human rights violated by the old pawnbroker, had no recourse to human rights institutions such as the Office of the Ombudsperson or the Public Protector, as we know it in this country.

With nowhere to turn for justice, the student proposes a radical but wrong way to deal with the cruelty of the old pawnbroker. He said:

"A hundred thousand good deeds could be done and helped, on that old woman's money which will be buried in a monastery! Hundreds, thousands perhaps, might be set on the right path; dozens of families saved from destitution, from ruin from vice, from the Lock hospitals - and all with her money. Kill her, take her money and with the help of it devote oneself to the service of humanity and the good of all. What do you think, would not one tiny crime be wiped out by thousands of good deeds? For one life thousands would be saved from corruption and decay."

Of course, we who are gathered here would have advised the young student that he was wrong to think of killing the old lady because she mistreated her sister. If they had lived during our times we might have advised them to seek assistance from the Office of the Ombudsperson.

We take the second story from William Shakespeare's "Merchant of Venice".

Shylock the Jew expresses the feeling of many people, particularly black people in the face of discrimination and violation of human rights. He says of Antonio:

"He hath disgraced me, and hindered me half a million, laughed at my losses, mocked at my gains, scorned my nation, thwarted my bargains, cooled my friends, heated mine enemies, and what's his reason? - I am a Jew. Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections, passions; fed with same food, hurt with same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a Christian is? If you prick us do we not bleed? If you tickle us do we not laugh? If you poison us do we not die? And if you wrong us shall we not revenge? If we are like you in the rest, we will resemble you in that. If a Jew wrong a Christian, what is his humility? Revenge. If a Christian wrong a Jew, what should his sufferance be by Christian example? Why, revenge. The villainy you teach me I will execute, and it shall go hard but I will better the instruction".

The third story to which I would like to refer is told by Chinua Achebe in his book, "Anthills of the Savannah". This book deals with the abuse of power and authority as displayed by a military government. He writes:

"It was a great shock to me then when that army car drove furiously, went into reverse before it had time to stop going forward and backed at high speed into a young man and his clothes who just barely managed to scramble out of the car's vicious path. A cry went up all round. The driver climbed out, pressed down the lock button and slammed the door.

The young trader found his voice and asked timidly: 'Oga, you want kill me?'

"If I kill you I kill a dog', said the soldier with a vehemence I found totally astounding."

In his book, Achebe presents many violations of peoples and human rights in a situation of military dictatorship and how ordinary citizens did not have institutions that can protect them against abuse by those in power.

Chairperson,

Lizaveta, the servant-sister to the old pawnbroker, Shylock, and the young hawkers in Achebe's book had their rights and dignity infringed, one by a powerful business-woman who made her work long hours and made a will in which her money was to be donated to a monastery without her agreement; the other by one infected with racism and prejudice; and the other by a power-drunk soldier.

As we all know, there are many other examples where those in the positions of power - whether in government, business and community - use their high positions to trample on the rights of the weak. While we have courts and other institutions whose mandate is to ensure that justice prevails in society, there are many instances where citizens choose to address their grievances without resort to the courts. The Ombudsperson or Public Protector is therefore better placed to resolve such conflicts and help bring about harmonious relations in society.

This is done so that people would not entertain dangerous and chilling ideas such as killing a wrong-doer, as contemplated by the student in Dostoevsky's novel. Indeed, we have the office of the Ombudsperson to militate against our modern-day Shylocks resorting to revenge, understandably proclaiming that, "The villainy you teach me I will execute, and it shall go hard but I will better the instruction."

In the last few years, Africa has seen some positive developments towards democracy, the rule of law and respect for peoples and human rights. Through the African Union, and specifically the African Human Rights Commission and the Peer Review Mechanism, we continue to strive to ensure that we assist one another, as Africans, to entrench democratic ideals and practice in all our countries and create free and open societies where the energies, talents and creativity of our people can be utilised for the regeneration of our continent.

For us further to entrench democracy, we need institutions such as the Office of the Ombudsperson to be strong, efficient, effective and independent of any control or manipulation by both the public and private sectors.

The Ombud system should be easily within reach of the ordinary citizen.

It is less expensive than the normal justice system, flexible and has a quick process to ensure that those in positions of authority perform their administrative functions in accordance with accepted and fair rules and procedures.

The advantage of the institution of the Ombudsperson is that it is easy to access, cheap to use, and offers an opportunity to settle disputes in an amicable way. In this way, parties to a dispute become joint owners of the end product.

While it is indeed not a court of law, its procedures and processes must be simple, understandable and accessible to all. The Ombudsperson institution must act and be seen as an alternative structure for conflict resolution.

As we work for our renaissance, this institution should see itself as one of the important agents of change on our continent. Because its role is not merely to apportion blame, but rather to protect and promote the rights of citizens, it has the possibility to draw on the wealth of wisdom found in African traditional ways of conflict resolution.

In this regard, it is important that Ombudspersons should display, maintain and enhance African values, while observing the social and cultural diversities of the people they serve. At all times these institutions should strive to use languages that are understood by the people and communities in which they operate.

Chairperson,

I am told that the AOA has resolved that the research institute of the Association that was previously located in Dar-es-Salaam should be established within a South African University and that arrangements are being made with the University of KwaZulu-Natal in this regard.

Because the main object and purpose of this university-based institution is to serve as a resource to the AOA, do research, and conduct the training of staff and personnel of Ombud offices, it is important that all of us give this institution the necessary support.

I have also been told that some of our countries find it hard to keep their subscriptions fees up to date. While it is important to seek other sources of funding for the institution of the Ombudsperson to function properly, we have to be careful that in the process of developing a donor-recipient relationship, we do not deviate from the objectives of serving the interests of the African people, taking into account our African history and reality, and contributing to the renaissance of our continent.

Further, it is common knowledge that not all African countries have an ombudsperson's institution. Accordingly, we share a common task to take all possible steps to assist those countries that are still having difficulties in establishing these important organs.

I think we will all agree that it is critical that we forge closer relations between the AOA and the AU structures such as the Pan African Parliament (PAP), the African Human Rights Commission and the African Peer Review Mechanism. An attempt must be made to synchronise activities of the AU structures with those of the AOA.

I understand that in this assembly there are delegates and observers from other countries such as New Zealand, the UK and the Caribbean Countries. We welcome them to our country and trust that they will find the conference useful, expose us to their own experiences and knowledge, as well as enjoy the hospitality our people will be privileged to extend to them and all other delegates.

I am confident that you will have a successful conference and wish you well during your stay in South Africa.

Thank you.