

SPEECH DELIVERED BY HON. GITHU MUIGAI THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA DURING THE 2ND COLLOQUIUM OF AFRICAN OMBUDSMEN AT SAFARI PARK HOTEL ON THE 19TH FEBRUARY 2015

Our Chief guest The Minister for Devolution and Planning Honourable. Anne Waiguru, The President of the East African Court of Justice, Honourable Justice Dr. Emmanuel Ugirashebuja, The President of the International Ombudsman Institute Honourable John Walters, the President of The African Ombudsman & Mediators Association Honourable Mrs. Fozia Amin(Ethiopia), The Chairperson of the Commission on Administrative Justice-Kenya Honourable Dr. Otiende Amollo, The Resident Coordinator of the United Nations Ms. Nardos Bekele-Thomas, Honourable Ombudsmen, Ladies and Gentlemen, it gives me great pleasure to have this opportunity to speak at this 2nd Annual Colloquium for African Ombudsmen.

This is to me a remarkable opportunity for Ombudsman institutions to reflect on their existence and take stock of what has been achieved over the years. I am aware that some of these institutions such as the Kenyan one are still in their infancy years of inception but nonetheless an early assessment has always worked well for an institution. The theme for this colloquium- SECURING THE OMBUDSMAN AS AN INSTRUMENT OF GOVERNANCE IN AFRICA should therefore in my view be looked upon and complimented with the exact needs that are requisite to realize an effective and efficient Ombudsman.

I am not a governance expert but a legal expert and therefore in reflecting on this theme I will do it the best way I know how. So far as I understand governance in Africa, oversight institutions can only and have only worked well in instances where they are equipped statutorily or constitutionally. It is foolhardy in Africa for an oversight institution to be expected to realize its functions and mandate when the authority it has is not based on legal force. It seems to me that government functionaries in Africa would only act if there is legal force behind what has been recommended by oversight institutions.

It has not been known in Africa for oversight institutions such as Ombudsman institutions to be effective where the force behind is based on culture, practice, custom, usage or even good will. I am aware that some Ombudsman institutions in other parts of the world are modeled in a manner that they have their decisions enforced not through legal force but through respect and practice. Considering our unique circumstances in Africa, I highly doubt whether this can be the norm. I guess in this part of the world, oversight institutions can only be effective if firmly rooted or supported by law. It is only then that their decisions can be respected and more importantly implemented.

The upshot of what I am saying is that in order to secure the African Ombudsman in governance the only way of so doing is through legal empowerment. This is not only for

Ombudsman institutions but for other oversight institutions as well. These include Anti-Corruption Agencies, Auditor General Offices, Human Rights Agencies and such other organizations of the same kind. It is this realization that my office is currently spearheading a legal reform process in which we aim at strengthening through statutory empowerment oversight institutions such as the Commission on Administrative Justice and the Ethics and Anti-Corruption Commission. Good governance will only in my considered view be realised as and when these institutions are given what is commonly referred to in the Kenyan manner of speaking as *teeth to bite*.

Government functionaries are known to first inquire on whether oversight agencies such as Ombudsman institutions have teeth to bite. It is the existence of such teeth that usually compel compliance and the opposite none compliance. Once they receive a recommendation the power behind the recommendation before they are compelled to act.

This is a sad reality but one that in Africa is inescapable to confront. Impunity in governance is on the rise and abuse of office and corruption are prevalent elements. Misuse of office, injustice maladministration cost African governments colossal amounts of money every year. It is now almost common to get numerous incidences of disobedience of court orders and supremacy battles between key government departments. In such an atmosphere how does one secure the Ombudsman? That very institution that is established to fight such malaise. It is only, I humbly submit, through legal empowerment.

As you sit here to deliberate kindly look at this theme with frankness and open minds. It is only then that you will be able to come up with solutions and recommendations that offices such as mine will be too willing to help implement in order to firmly secure the African ombudsman in governance.

Thank you.

When I received the invitation to come and give the keynote address, I was at first instance unsure whether I was the appropriate person to have been accorded this honour. However, as I reflected on the role of the Ombudsman in our societies I was marveled at how close the Ombudsman Institutions and Government Ministries in charge of public service share a common vision- that of realizing efficient and timely delivery of public services. I therefore thank the Kenyan Ombudsman for having invited me to be chief guest in this auspicious event.

Our guests from outside the country we welcome you to Kenya. Feel free to relish not only the discussions ahead of you but also the scenery of our country, our tourist attractions and enjoy the warmth and generosity customary of our people.

It is ironical that Ombudsman Institutions in Africa are relatively young compared to those in Europe and other parts of the globe. The irony is that it is in Africa that the Ombudsman Institutions are in dire need due to the multiple governance challenges that we face. Our delivery of public services is still not upto the desired scale in terms of timeliness and efficiency. Maladministration and impunity in governance is still a big challenge in Africa.

We face challenges also arising out of poor budgetary allocations and also wastage in the consumption of national resources. The amount expended on wasteful recurrent expenditure is a common feature in Africa which in turn negatively affects the delivery of public services to our people. These challenges make the need of oversight institutions and particularly Ombudsman Institutions very relevant. There is need to have an independent body always checking on government departments and providing a platform through which citizens can complain against the Government.

Ombudsman Institutions in Africa therefore need to be secured foremost through legal instruments and proper budgetary allocations. To establish Ombudsman institutions that have inadequate constitutional and statutory force is a futile exercise. For an Ombudsman office to properly discharge its functions, it must be backed by constitutional and statutory authority which must enhance its independence. In equal measure resources in terms of infrastrure and operative need to be adequate to enable the Ombudsman reach the lowly in society who as you may agree, often make use of its services.

However, in my view, the first step to securing the place of the African Ombudsman in governance lays in the acceptance of their role by Governments. You will bear me witness that one big challenge faced by Ombudsman Institutions in Africa is acceptance of its oversight role. Acceptance by public servants, public institutions, the executive, legislature and also the

judiciary. It is this non-acceptance that eventually leads to non-enforcement of recommendations made by the Ombudsman in so far as public administration is concerned. I guess that this non acceptance is contributed to by lack of understanding of your role. It is therefore critical for Ombudsman Institutions to entrench themselves and take their rightful place in public administration.

Furthermore partnerships with Ministries that deal with public service are important. In Kenya, my Ministry has in the recent past designed and implemented a programme that aims to transform public service delivery by providing citizens access to various public services and information from one-stop shop Citizen Service Centers called “*Huduma Centres*” and through Integrated Technology Platforms. These centres have been set up in various towns in the country.

Recognizing the role of the Ombudsman, we have invited the Kenya Ombudsman to be part of this process by setting up shop in all our “*Huduma Centres*”. This is a partnership that is of mutual benefit. Whereas the Ombudsman gets a platform on which it can decentralize its services, we on the other hand benefit since by availing the Ombudsman’s services at our door step citizens can so quickly have their complaints addressed on the spot. This enhances the timely delivery of the services we offer at the “*Huduma Centres*” due to the presence of an oversight agency. By the way, for those who don’t speak Swahili, “*Huduma*” means “service”.

Another engagement which my Ministry has partnered with the Ombudsman is the Annual Huduma Ombudsman Awards. These are awards granted to best performing public servants and public institutions. My ministry is a member of the steering committee hosted by the Ombudsman that invites nominations, evaluates and verifies them and finally selects the awardees. The upshot of what I am saying is that partnerships between the government and Ombudsman Institutions are a sure way of realizing excellence in public service. Securing the Ombudsman as an instrument of governance in Africa therefore is a task that will have to take collaborative efforts of both governments and Ombudsman Institutions.

I challenge you as you sit here for the next two days to reflect on this theme to also do a self examination. Are Ombudsmen also victims to the very ills that you are established to correct? Is inefficiency, injustice, unresponsiveness, abuse of power, unfair treatment, wastage of public resources and generally maladministration also prevalent in Ombudsman institutions?

If these ills are also reflected in the Ombudsman institutions then the dream to realize good governance in Africa will face anguish and despair. The Ombudsman has got only one path to tread and that is the path of integrity and excellence. It is only if this path is well trodden by the Ombudsman that it will be visible to the public servants who will then and only then, walk it. It is only integrity that begets integrity and excellence, excellence.

I do not want to tire you with a long speech. I take it that you are raring to go and savor the very interesting topics lined up ahead of you as is evidenced in the Programme. Mine therefore is to wish you fruitful engagements for the next two days.

I now declare the colloquium officially open.

Thank you.