

**OUR COMMON WORK: FAIRNESS, DIGNITY
AND HUMAN RIGHTS**

by

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It is indeed encouraging to see that we have our common work and common purpose despite living on different continents. The topic I am asked to address is “Our Common Work: Fairness, Dignity and Human Rights”. As you will realize, this topic is very dear to me and it is, therefore, extremely satisfying to be invited to present my address to you. I do not need to overemphasize the importance of the orientation of ourselves and our staff to issues of human rights and an acknowledgement that in our common work, the issues of fairness, dignity and human rights are fundamental.

This concept of administrative fairness is based on the recognition of “natural justice” or procedural fairness to ensure that decisions of administrative bodies are arrived at fairly. For example, a decision may be unfair, unjust, discriminatory or unreasonable where such a decision is not authorized by law, is contrary to any relevant law, in violation of the principles of fairness, equality and equity (to give the person the right to be heard or to give reasons for decisions), is inconsistent with other decisions which involve similar facts, or is in violation of a basic right protected by the Constitution.

Dignity speaks to us through the men, women and children who do not have a voice to be heard, who, on a daily basis, have to confront the mighty and powerful although they too are deserving of equal treatment and dignity, and who come to us to be listened to and to be assisted in resolving their problems. My experience in human rights work and contact with other ombudspersons worldwide has led me in prioritizing the voiceless, the marginalized and the defenceless. The rationale for the existence of our offices is in our ability to bring relief to the helpless in society and give priority to the defence of vulnerable groups—an important factor that we should not lose sight of. They are the pensioners, indigenous people, disabled people, salaried workers, people confined in institutions, minors, prisoners awaiting trial and those convicted and deprived of their liberty, abused women and children, users of public services, and others who are most deserving of the services of the office but who may have little knowledge of its existence.

We, as ombudspersons, are constantly reminded by the words of one of our colleagues, “that the powerful do not need us. The economic power or the political power does not need someone to defend it. On the contrary, the person who, on occasions, becomes the subject of abuse is the one who really needs our help.”

Article 1 of the Universal Declaration of Human Rights would have it that “All human beings are born free and equal in dignity and rights.”¹ Most countries subscribe to this Universal Declaration and in some countries the same principles are also embedded in their respective constitutions.

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Even though we have such declarations, we cannot be oblivious to the fact that we live in a world characterized by conflicts. Conflicts arise as a result of intolerance, injustice and violations of human rights. I daresay, therefore, that respect for human rights is a precondition for peace. To quote Martin Luther King Jr., “Peace is not the absence of... tension but the presence of... justice.”² Justice can be achieved only when there is a recognition that people must have the right to live as human beings and to exercise their choices in an atmosphere of peace and security.

Theoretically, we can argue that all human beings are born free and equal in dignity and rights. But when this myth manifests itself in war, hunger, deprivation, torture—and the list goes on—one stands in awe of the seeming incapability of mankind to bestow upon itself these noble principles. The question that comes to mind is why this is so.

Why is it impossible for people to take these principles and make it their own? Is it perhaps because we “invent” popular terms, while in our hearts and our minds we remain selfish and self-centered? We will venture to think about it; a few brave souls will even write and talk about it. But to apply it remains a distant dream it seems.

Yet, you know as well as I do in the world today, these principles are but phrases in the wind. These noble principles remain words on paper while populations are suffering the consequences of man’s intolerance and unforgiveness towards each other.

The purpose of human rights in general is to establish and guarantee the conditions necessary for a dignified life. Such dignified life is meaningless unless individuals have the means to sustain themselves. Poverty, diseases, unemployment and illiteracy can demean the individual unless social and economic rights are guaranteed. Speaking at the inauguration of the South African Human Rights Commission in 1996, President Thabo Mbeki (at the time Vice President) said, “Freedom of individuals means nothing unless it includes freedom from hunger, poverty and ignorance. The attainment of human dignity cannot be reduced merely to the attainment of civil and political rights.”³

The debate on so-called first, second and third generation human rights confronts us as ombudspersons in our daily work, whether it be in the U.S.A. or Africa. While many would argue that human rights are meaningless unless enforceable in a court of law, we would have to argue that our institutions cannot adopt such a legalistic approach to human rights issues. The complaints which I receive in my office, and I dare say that may be true for most of you, bear testimony of the growing despair faced by our people and the situation requires us to be responsive to the needs of these people. It must also be acknowledged that the relevancy of ombudsman institutions will be measured by the extent to which they are responsive to those who encounter unfairness, deprivation of dignity and violation of their human rights, so eloquently “guaranteed” in an array of documentation.

Fairness, dignity and human rights should not have to be enforced by the courts only. We should base our understanding of human rights on their normative value against which we can measure the performance of governments. As such, although social and economic rights may not directly be enforceable, we can make a case for government to create an environment

for the realization of these rights. After all, rights issues are as much legal as they are political.

In allowing people to reclaim their human dignity, we must call on the political conscience of government to be responsive to the plight of the poor and marginalized who visit our offices and that serve as daily reminders that we have forgotten that human rights is not just a rights issue but that it is fundamentally a human issue.

It is fair to say that a necessary precondition for the enjoyment of our diversity is the ability to make choices. Societies are composed of individuals who are unique. My uniqueness lies in the fact that at any given point in time, a particular aspect of my life becomes important in terms of my affiliation and the values that I share with a particular group. As a woman deeply involved in the women's rights movement, gender becomes important to me. Equally, as a black person, race takes on a different dimension and therefore within me I have several identities and belong to diverse groups. I also subscribe to values that appreciate and celebrate the dignity of the human person.

By sharing my uniqueness as an individual, I am forced to recognize that I also share the common values of justice, freedom, dignity and equality. I deal with my inner self by finding a way of treating others as humans and in doing so I also become human. This I try to achieve by cultivating the capacity for openness and constructive engagement on the personal, institutional and societal levels.

The challenge for us is to design institutions capable of representing individuals and groups with varied and divergent values and ideals. These institutions must be reinforced by policies and programs that promote intercultural knowledge, understanding and action. The common standards to use as a yardstick in ensuring equal enjoyment of rights are those positive values of dignity, honesty, integrity, compassion, tolerance and freedom. The enabling environment which we are called upon to create is tolerance which is, after all, about freedom of expression and the right to peace and security.

Many of us have emerged from a colonial past that has resulted in intolerance and division. We are eager to establish a new society that is tolerant and mindful of others' rights, and in the process we establish offices such as the ombudsman institution to ensure that the devils of the past do not come back to haunt us. But if we choose to remain distant and sometimes silent onlookers, we will not make the difference that is within our power to make. This will, however, require us as ombudspersons to look anew at how we deal with complaints in our respective offices. Do we adopt an aloof attitude and endeavour to find grounds on which we can rule against the complainant? Do we perhaps take our "mediation" role to new dimensions because we unknowingly want to turn the blind eye to the prevalent injustices in our societies? We cannot and should not sweep problems under the carpet and wish them away.

We have to continuously remind ourselves that all things are in fact not equal and we should deal with complaints from that perspective. Complainants may be viewed as small, unimportant people, as just another statistic in our annual reports to show that our existence is still justified. But let us constantly remind ourselves that these people are human beings who deserve to be treated with dignity and respect.

In a democracy, where due process of the law has been secured by separating three different branches of government, government is required to act according to law and to uphold the rule of law. What this means in the context of government operations is that government actions must be reasonable, fair and just. The ombudsperson is there to ensure that the rule of law is implemented on the basis of protecting the rights of people set out in the constitution and according to the mandate given by the ombudsman act and international standards. But as much as we acknowledge the universality of human rights, we must be able to put human rights in context. Human rights do not operate in a vacuum or in isolation from each other, despite attempts to dichotomize them into first, second and third generation rights.

Constitutionalism has as its basis the limiting of governmental powers to protect the individual within society and to ensure democratic government. Rights must not only be recognized and guaranteed in constitutions but they must be protected in word and deed. Thus, as we look towards constitutions for standards against which to measure and assess government conduct, it is also to the extra legal practices that we must turn to. Effective protection and enjoyment of human rights requires the development of a culture of democratic practice within a country's political and constitutional institutions. People will identify with democratic governance only if they are involved in shaping the democratic culture. People must adhere to a democratic culture based upon a common standard in ensuring equal enjoyment of rights and recognizing the values of dignity, honesty, integrity, compassion, tolerance and freedom. It is those values that must distinguish humanity from brutality.

Values and Skills

Closer to home, that is our ombudsman home, I think that the issue today is how we, as ombudspersons, can play a role in realizing this dream. Most of us have statutory backing to provide the framework within which to function and most of our acts include one or more of the mandates relating to fairness, dignity and human rights. Whilst the constitution establishes the framework for the protection and promotion of human rights, it is within our common work to breathe life into it.

Translating the human rights discourse into practical realities and relevance to the everyday lives of people remains an important challenge for our institutions. We should not only uphold and respect the constitutions but live according to the fundamental values they establish. We have to constructively create ways of being living embodiments of these core values.

Given the above, what then are the values and skills we, as ombudspersons, must have to fulfil our missions of fairness, dignity and human rights? I believe that it is essential that we adopt the values and skills as outlined below.

Values

a) Human Dignity

We must develop a sense of human life and the need for peace.

b) Justice and Fairness

We must value democracy as a basis for fairness and justice and be prepared to work for peace. We must have the ability to do what is morally correct.

c) Tolerance

In accepting and respecting differences and developing a sense that no one culture is inferior to another, we can hope to promote tolerance and empathy through our work.

d) Self-respect and Respect for Others

Learning to value and accept our own heritage and respect the beliefs of others.

e) Open-mindedness

Accepting that others may have different views.

f) Equity

Always working on the basis of equitable principles in our dealings with staff and complainants alike.

Skills

a) Enquiry

Much of our work involves finding and recording information.

b) Communication

Learning how to influence decisions, how to negotiate, assert ourselves, critically assess information in different situations and communicate effectively.

Active listening.

c) Conflict resolution

Learning to appreciate peaceful settlements of disputes and methods that are used. Learning how to analyze and resolve conflicts.

d) Problem solving

Developing tools to manage, prevent and resolve conflicts constructively.

e) Mediation

f) Critical thinking

Approaching issues related to equality and challenging ideas and stereotypes.
Making moral choices based on information supplied.

g) Decision-making

Learning to weigh the options and make correct choices.

My pledge to you today would therefore be: Let us constructively and vividly live up to our ombudsman mission if we are to play our part in eradicating the inequalities still prevalent in our respective societies, be it in respect of minority groups, gender, religion or on any other grounds. In the final analysis it is fair to say that a precondition for the enjoyment of fairness, dignity and human rights is the ability to tolerate human choices where there is diversity. And it is our duty as ombudspersons to promote tolerance with all the weapons at our disposal.

Today, as we have entered a new millennium, we should ask ourselves what our vision is and what our shared values are as ombudspersons, irrespective of where we may find ourselves. We cannot dispense with human rights, fairness and justice unless we subscribe to them and live them in our daily lives. I believe that our shared values must be based above all on compassion, integrity, tolerance, dignity and honesty because it is these values that will distinguish humanity from brutality.

As I stand here now, I am reminded of the silence of many people the world over who choose to be silent because they dare not challenge the powerful and the mighty. Let us no longer be silent; let us take a leadership role and show that we have the courage of our convictions to stand up and be counted and in the process let us empower others to stand up and be counted also. Only then will we pave the way for future generations to taste the sweet promise of fairness, equality, dignity and justice for all and come closer to fulfilling our common work.

Endnotes

1. GA Res. 217 (111), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948).
2. "When Peace Becomes Obnoxious." (Address delivered in Louisville, Kentucky, March 19, 1956.) C. Carson *et al*, eds., *The Papers of Martin Luther King, Jr., Volume III – Birth of a New Age* (Berkeley: University of California Press, 1997).
3. Johannesburg Metropolitan Centre, Johannesburg, South Africa, March 21, 1996.