CORRESPONDENCE

To the Editor,
The Journal of African Law.

Dear Sir,

The Ombudsman and One-Party States in Africa

I should be grateful for the opportunity of putting before your readers some reflections on the possibilities of introducing the Ombudsman system in African countries, especially in those where, *de facto* or *de jure*, a one-party system is in operation.[1]

When, at the beginning of 1958, I asked the Council of JUSTICE to investigate the Scandinavian institution known as the Ombudsman, it seemed too much to hope that within a very few years it might be adopted and passed into legislation by a British Government. For, at that time, scarcely anyone in England had heard of it.

It is estimated that the average time for an agreed legal reform to reach the statute book is 40 years, but if the Labour Government keeps its promise to appoint an Ombudsman or Parliamentary Commissioner in its first programme of legislation, then a major constitutional innovation will have been achieved within the incredibly short space of seven years.

Lawyers who have read the Journal of the International Commission of Jurists will already have a fairly clear idea of what the Ombudsman is and does, but for the layman he is still something of a mystery, probably because of his Scandinavian origin and name.

Very briefly, he is the ordinary citizens' champion or watchdog against unjust and oppressive actions of Government departments and officials. He is appointed by Parliament, is the servant of Parliament and reports to Parliament.

He has no executive powers. He cannot order any Minister or official to do anything, but when a citizen complains that he has not been fairly treated, then the Ombudsman can go into the department concerned, examine the files and question those who were responsible for handling the matter in dispute. He then simply states his opinion and, if it appears that the grievance can still be remedied, he makes a suitable recommendation to the Minister. In nine cases out of ten the advice is accepted.

He does not deal out blame to individuals. He is not out to discredit anyone, and his investigations are confidential and informal. Apart from remedying individual grievances, he plays an important constructive part in the administrative process. For if he discovers that a series of unjust decisions are not the fault of officials but of a stupidly drafted regulation, then he can recommend to Parliament that it be changed.

He cannot deal with grievances that can be remedied by the courts, or where some kind of appeal tribunal already exists, as for example in England for town planning, pensions, and national insurance. But he covers a very wide field of government activity

where the Minister had absolute discretionary power which cannot normally be challenged.

When JUSTICE turned its attention to the problem a few months after its formation, it lacked the resources to organize a full-scale inquiry, and it received no encouragement. At the end of 1958 Prof. Harwitz, the Danish Ombudsman, was invited to England to give a series of lectures, but the Press and politicians ignored him.

Then followed a series of articles by a member of JUSTICE in the *Observer*, and the organizing of questions in Parliament, until at the beginning of 1960 sufficient interest had been aroused for funds to be obtained to hold a full-scale inquiry.

This was carried out by Sir John Whyatt under the guidance of a committee of distinguished lawyers and former civil servants. The Whyatt Report, published in October, 1961 (*The Citizen and the Administration*) recommended an extension of the powers of the Council on Tribunals and the appointment of an Ombudsman or Parliamentary Commissioner to deal with complaints of maladministration.

Among the objections which had been made to importing the Ombudsman idea into England were:

1. That whereas it might work in a small country, the Ombudsman would be swamped with complaints in a country the size of Britain.

2. That it would interfere with the customary right of Members of Parliament to take up grievances on behalf of their constituents.

3. That the right of an M.P. to ask questions in Parliament already provided an adequate remedy.

The answer of the Whyatt Report to (3) was that the M.P. is powerless if the Minister digs in his heels and refuses to disclose documents. Objections (1) and (2) were recognized as valid and met by a recommendation that for an experimental period of five years, grievances should be submitted to the Ombudsman only after an M.P. had failed to obtain redress by usual Parliamentary methods. Far from being deprived of his privileges, he could then be given an additional weapon against an evasive Minister.

Despite the welcome given to the Report by leading newspapers and journals, the Government of the day considered it for a year, and then turned it down. It relied in the main on the argument that the institution would be incompatible with the doctrine of ministerial responsibility, but within a year the New Zealand Government, with the same constitutional tradition, had appointed its own Ombudsman and the idea is now being widely canvassed in Australia, Canada and India.

As, during recent weeks, I have visited the countries of Central and East Africa and discussed with lawyers and politicians the problem of exercising some kind of check on the power of officials who are wielding power for the first time, of making democracy work where it has never been encouraged to work before, I have constantly asked myself if the Ombudsman idea might be the answer.

In some of these countries it has been accepted that effective government can be carried out only by what is actually or effectively

a one-party State. The toleration of an effective opposition which is free to question and at times to ridicule the government is something which has been learned only after many centuries, and could obviously lead to paralysis at a time when years of neglect have to be remedied with all possible speed.

Yet some kind of check is obviously needed, because very few people, even after years of training, are capable of exercising power objectively and fairly. It is probably true to say of any race or country that those who are given power for the first time are the least likely to realize how dangerous it is, and the most likely to resent criticism, particularly if it is aimed at bringing the wielder of power into ridicule and discredit.

The great advantage of the Ombudsman principle is that it provides for an informal and friendly check on abuse of administrative power without the need to discredit the department or the individual concerned, and that it helps to create confidence between the administration and the ordinary humble citizen.

It cannot wholly replace an effective opposition but it can be better than an unenlightened one. In a complex modern State, administrative blunders and injustices are bound to occur, and it is better that these should be dealt with through the informal procedure of the Ombudsman, than by public denigration.

It is worth noting that the Ombudsman originated in Sweden when that nation was an absolute monarchy, which is a close historical parallel to the one-party states now emerging in Africa. It might, therefore, be worthwhile for those who are now moulding the destinies of these states to consider whether this institution, borrowed from a historically neutral nation, could provide at least a transitional answer to Africa's problems of how to reconcile dynamic and purposeful government with respect for administrative justice and the rights of the individual.

Yours faithfully,
Tom Sargant,

Secretary, JUSTICE (British Section,
International Commission of Jurists)

[*The Editor would welcome contributions by readers discussing the feasibility of Mr. Sargant's suggestion.*]

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[1] I have to thank the Editor of the *East African Standard* for his courtesy in allowing me to reproduce the substance of my remarks in that paper of November 6, 1964.