Legal Guarantees for the Establishment and Functionality of Ombudsman Institution: A Case for the Insurance Ombudsman Service of Tanzania

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Abstract
The concept of Ombudsman represents an institution or a person appointed to receive and investigate complaints against maladministration by public servants and resolve disputes amicably between consumers and service providers. This article aims to expound its basic legal guarantees for the establishment and functionality of the Ombudsman institution in line with the fundamental elements of independence, accountability, fairness and effectiveness. Employing doctrinal research approaches and reviewing ombudsman instruments and literature and case laws from other jurisdictions, it identifies legal personality status, independent resources and sustenance structures as well as procedural and substantive terms of reference as cumulative keys in guaranteeing the functionality of the ombudsman institution. In that view, it shows that the Tanzanian Insurance Ombudsman Service legislative framework does not reflect these key guarantees for its functionality. It ultimately recommends legislative and institutional improvement to entrench those legal guarantees and thereby enhance independence, accountability, fairness and effectiveness in the functionality of the insurance ombudsman service.

Keywords: *Ombudsman, legal guarantees, independence, Accountability, Fairness*

1.0 Introduction

The challenges that faced insurance consumers in Tanzania included cumbersome claims procedures, unawareness of the rights and obligations leading to denial of insurance compensation, costly court processes, coupled with delays and technicalities. In such circumstances, an alternative scheme for resolving disputes in a more cost-effective, accessible, and expeditious manner became inevitable. In the year 2009, through the Insurance Act, Tanzania introduced the insurance ombudsman service (the service).[1] This is an institution for resolving insurance disputes between the insurance companies and insurance service consumers. The law states that the service shall be constituted of

[1] The Insurance Act, Cap.394, Act No.9 of 2009 S.122(1).

the insurance ombudsman appointed by the minister and the staff employed by the insurance regulatory authority (the Authority).**[1]** It also provides that the ombudsman's power of award is limited to 15 million for direct losses and its funds are those appropriated by the parliament to the Authority. The law *inter alia,* creates a fused relationship between the Authority and the Service, thereby impairing the latter's independence, fairness, accountability, and effectiveness.

This article explores basic legal guarantees for the establishment and operationalization of the ombudsman institution by making reference to various jurisdictions where this institution is established and developed. The objective is to assess the legislative framework of the insurance ombudsman service to establish lessons for Tanzania in the establishment and operationalization of Ombudsman institutions. Through the scrutiny of such jurisdiction, it is argued that the Tanzanian legislative and institutional frameworks are short of the basic legal guarantees that support the effective operationalization of the insurance ombudsman service. Accordingly, a case for the legislative review to fully incorporate the basic guarantees is made.

The term "ombudsman" is Swedish, with its origin in 1806. In Sweden, it is deemed proper to appoint a "*justitieombudsman*" (civil affairs procurator or a citizens' defender) to receive complaints from the public on allegations of maladministration by public servants.[2] It is defined as "*An official appointed to receive, investigate, and report on private citizens' complaints about the government…A similar appointee in a nongovernmental organization (such as a company or university.*[3] It has also been described as an office constitutionally or legislatively established and manned by an independent, high-level public official accountable to the legislative body. It receives complaints from dissatisfied persons against government agencies, officials, and employees. Also, it may act on its own motion to do so and is empowered to investigate, recommend corrective action, and issue reports.[4] The key

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1 Ibid. S.122(2).

2 S. Rudholm, "The chancellor of justice", in D. C. Rowat (ed.), *The ombudsman: Citizen's defender*, London, George Allen & Unwin, 1968, pp. 17-21. See also British Columbia Development Corporation v. Friedmann (Ombudsman), [1984] 2 S.C.R. 447.

3 B. Garner, *Black's Law Dictionary* (8th ed.) Thomson West,2004, 3451.

4 International Bar Association, *The Ombudsman Committee of the International Bar Association Resolution*, Vancouver: International Bar Association, 1974.

attributes of this Swedish model that make it suitable for Tanzania are that it emphasises independence, impartiality, accountability, transparency, and accessibility of a third-party neutral institution operating outside the court system to handle complaints and resolve disputes. It is established to offer an informal and cost-effective alternative to judicial structures, hence its suitability for adoption.

Independence is a tangential factor as it enables the ombudsman to operate impartially, thereby enhancing public trust. As for accountability and transparency, they apply to ensure that the ombudsman has systems and structures that enable it to account to the public through reports on its performance, both financially and operationally. Therefore, effective discharge of its mandate depends on the cumulative application of attributes.

2.0 Legal Framework of the Tanzania Insurance Ombudsman Service

At the head of the framework is the Constitution of the United Republic of 1977 as amended from time to time. It indirectly recognises the Insurance Ombudsman service in the category of other agencies for the administration of justice.[5] The requirement to promote and enhance dispute resolution among people involved in the dispute.[6] and dispense justice without due regard to technicalities.[7]Encouraging parties for amicable dispute resolution also implies that courts can take cognizance of other state agencies that apply the ADR mechanism in the dispute resolution.

The Service's establishment and operationalisation are governed by the Insurance Act, Cap. 394 and the Insurance Ombudsman Regulations. Within this Act, the framework is comprised of parts I, II, 1X and XI, which are in respect of preliminary provisions, administrative provisions, establishment of the Service and insurance appeals tribunal and general provisions respectively as they relate to the establishment, The objectives of these provisions are to provide for establishment of the office, its compositions functions and powers, decision of the ombudsman, procedural aspects and related matters.

5 The Constitution of United Republic of Tanzania, 1977, Cap. 2 [R.E 2002]. Art.13(3).
6 The Constitution of the United Republic of Tanzania, Art.107A (2) (d).
7 Id. Art. 107A(2)(e).

An examination of the framework reveals that it suffers from various shortcomings. For the purposes of the present discourse, a general highlight is made. These include the undefined legal personality of the ombudsman, unclear and limited jurisdiction, lack of definition of the terms complaint and dispute, creation of dual staff functionality without the ombudsman's recruitment mandate, lack of independent financial provision for the Service and streamlined procedural terms of reference. Generally, there is a lack of basic legal guarantees that enhance the implementation of its fundamental elements, which justify its identity and existential legitimacy. This article maintains that these legislative defects have a negative bearing on the institutional independence, accountability, fairness, transparency, and effectiveness of the insurance ombudsman service.

3.0 The Basic Legal Guarantees for the Functionality of the Ombudsman Institution

The field of ombudsmen schemes has received both practical and academic attention, albeit the majority from foreign writers. Most of the literature and instruments on the subject, however, focus on the establishment and operationalization of an ombudsman institution. The emphasis tilts on the attainment and implementation of the fundamental elements of an ombudsman, namely independence, fairness, accountability, transparency, and effectiveness. For instance, Gottehrer terms these elements as the essential attributes that are *sine qua non* for effective operation of the ombudsman and, secondly, the "irreducible minimums" that enhance proper functioning of the ombudsman as an ombudsman scheme properly so called, thereby justifying its existential legitimacy.[8] These elements are said to manifest through, *inter alia*, legislative enactments prescribing the legal status of the institution, a transparent appointment of an Ombudsman with secured tenure, clear restrictions on conflict of interests, independent and adequate sources of funding, governance structures and resources.[9] In South Africa and Ireland, they are exhibited through the National Financial Ombudsman and the Financial Services and Pensions Ombudsman, respectively, being legal entities with independent sources of funds, which enhances their

8 Gottehrer, D.M., & Dean, G.M, "Fundamental Elements of An Effective Ombudsman Institution",2009, p.9, available at <https ://www. theioi. org/ downloads/934ch/ Stockholm%20 Conference_15.%20 Plenary%20 Session%20II_Dear% 20Gottehrer.pdf> (accessed 11 May 2023).

9 Kucsko-S., The Legal Structures of Ombudsman-Institutions in Europe-Legal Comparative Analysis, in Kucsko-Stadlmayer (ed.), European Ombudsman-Institutions (2008), 1.

accessibility and maintains independent financial, human, and capital resources and governance boards.[10] As a result, institutional independence, accountability, accessibility, and effectiveness are enhanced.

Such literature notwithstanding, there is a void with regard to the basic legal guarantees that enhance the attainment and manifestation of such fundamental elements in any ombudsman institution. The materials, including books, articles, and reviews, do not present in an organized fashion the basic legal guarantees for the functionality of an ombudsman institution. This article, through a comparative analysis of existing frameworks and a review of cases, seeks to identify and present such basic guarantees that enhance the attainment and implementation of the fundamental elements.

The Ombudsman institution can be categorised depending on the nature of its establishment and functions. However, the major categories fall into either the ombudsman for the public sector or the ombudsman for the private sector. While the former is established for receiving and resolving public grievances by the members of the public against public servants, the latter are established for resolving disputes between service providers and consumers of a particular industry in the private sector.[11] All these have varied conceptual and structural features in terms of establishment, their identity, the appointment of the ombudsman, powers and functions.

Despite the variations in categorization, structure and conceptual features, there are fundamental elements which are deemed irreducible minimums for any institution to be designated as an Ombudsman.[12] These include independence for the guarantee of impartiality, clarity of powers and scope, accessibility, transparency and accountability, effectiveness, and fairness.[13] They are deemed as core fundamentals for the establishment

[10] National Financial Ombud Scheme South Africa, *Memorandum of Incorporation, Clause 9 and Financial Services and Pensions Ombudsman Act, 2017, S.37(1).*

[11] Example the Directorate of Ombudsman affairs of Uganda, the Commission on Administration and Justice of Kenya and the Insurance Ombudsman Service of Tanzania respectively.

[12] D.M Gottehrer, & G.M Dean, 'Fundamental Elements of An Effective Ombudsman Institution',2009, .9, available at <https ://www. theioi.org/ downloads/934ch/ Stockholm%20 Conference_15.%20 Plenary%20 Session% 20II_Dear% 20GottehAderickson H. Njunwa rer.pdf> (last accessed 11 May 2023).

[13] INFO Network, 'Effective approaches to fundamental principles',2014,1. Available at https://www. Network f so. org › resources › INFO-NETWORK, (last accessed 22 February 2023).

and operationalization of an ombudsman institution. Arguably, these elements are crucial for determining the propriety or otherwise of an ombudsman institution in its design, purpose, and functions. This is because, for instance, while independence is core to the impartiality and fairness of the decisions, accountability, transparency, and effectiveness build the public trust and enhance the ombudsman's existential legitimacy. In order for these elements to be practically realized, there are basic legal guarantees that must be in place for the established ombudsman institution or must be legislatively catered for in the planning and designing for its establishment. In practice, they appear more of a centre pole whereupon the ombudsman's institutional functionality is hinged.

The implementation of the ombudsman's fundamental elements into their practicality requires some factors and common denominators that must be entrenched within the legislative framework of an ombudsman institution. As posed earlier, the literature available does not depict in clear terms such common denominators. This article, through a thorough analysis of other jurisdictions with established and operational ombudsmen institutions that reflect the basic legal guarantees, including South Africa, Cyprus, New Zealand, and India, and other similar institutions, organizes and presents the legal guarantees that ensure the ombudsman institution delivers on its statutory mandate independently, fairly, accountably, and effectively, thereby promoting and maintaining its existential legitimacy.

It is the view of this article that where any of the fundamental elements, such as independence, are lacking in an institution, it cannot be fit for designation as an ombudsman. Thusly, inappropriate description of bodies that do not follow the established paradigm as Ombudsman offices puts the public's respect for the independence, integrity, and impartiality of Ombudsman offices in jeopardy[14]. Therefore, whether it is a public sector ombudsman or a private sector ombudsman, it must be created and operationalized on the footing of such fundamental elements, which can only be realized by being legislatively guaranteed through the basic legal guarantees. This is due to the underlying role played by the ombudsman

[14] ANZOA Executive Committee, 'Essential Criteria for Describing a Body as an Ombudsman' Endorsed on 5 February 2020,1. Available at https://www.ombudsman.gov.au › assets › pdf_file (last accessed 14 May 2024).
ANZOA is the professional Association of Ombudsman in Australia and New Zealand. It does not resolve complaints but rather its members.

institution in social, economic, and political spheres for consumer protection, particularly through providing easy, cost-free access to justice and awareness of rights and obligations as consumers, promotion of the rule of law, and democratic governance. In this regard, the fundamental elements operate cumulatively in such a way that, where independence is lacking, it bears negatively on the rest of the elements and ultimately the effectiveness of the institution will be impaired. For instance, in the Philippines, an Ombudsman is said to have been impeached on grounds of lack of public trust for being partial in corruption investigations against the president.[15] The subsequent part expounds on the basic legal guarantees while critically analysing the Tanzanian legislative framework on the establishment and operationalization of the insurance ombudsman service.

As stated at the outset, upon extensive study of literature, legislative documents and case laws as discussed herein, this article identifies and puts forward four basic legal guarantees for the functionality of the ombudsman institution, namely, legal personality status, independent resources and sustenance structures, independent governance structure, and terms of reference usually contained in the governing rules.[16] Briefly, legal personality for an organization entails its identity that guarantees the exercise of rights and powers as enablers for the discharge of its mandate. Resources entail both human and capital, including equipment, tools, and infrastructure that enable its effective operations. Adequate funding enhances the possibility of maintaining independent resources, which in turn ensures the operational independence of the institution. Governance structure entails the existence of an oversight body for purposes of enhancing accountability, independence and effectiveness. The terms of reference entail substantive and procedural rules that govern the operations of the office. In this part, a description of those guarantees is made, with focus on the private sector ombudsman or industry-based dispute resolution scheme. It should be borne in mind that these are common to any ombudsman institution worth the designation.

[15] Ma. Merceditas N. Gutierrez Petitioner, vs. The House of Representatives Committee on Justice and Others, [G.R. No. 193459, March 08, 2011] available at https://elibrary. judiciary. gov. ph/ the bookshelf /showdocs/1/60572 (accessed 12 July 2025).
[16] T. Robert, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Oxford & Portland, Oregon 2011, 52.

3.1 Legal Personality Status

Legal personality refers to a particular approach by which a law establishes or acknowledges entities to which it grants certain powers and capabilities[17]. It generally recognizes two categories of persons, namely natural and artificial. The former is limited to humans alone, whereas the latter generally refers to any non-human entity that has been recognized by the law as having obligations and rights. As such, an organization is one of the most well-known artificial individuals with legal personality status. This concept was elaborated by the House of Lords in the famous case of *Salomon v. A. Salomon & Co. Ltd.*[18] From the court's conclusion, the firm becomes a person at law, autonomous and separate from its members upon compliance with the Companies Act's requirements. Although states, companies, and organizations do not have the same rights as individuals, they are nonetheless considered as such[19]. Applied in the concept of Ombudsman, this case bears on the need to ensure that the ombudsman institution should be financially, administratively, and operationally detached from the establishers in order to allow it to exercise its mandate without due regard or influence by the interests of those who either established or contribute to its funding.

Jurisprudentially, the legal personality accords powers and capabilities to an entity to exercise its rights and obligations for the attainment of the objectives of its establishment. Therefore, the wording of a statute or any instrument with regard to the nature of the institution being established is crucial in determining the legal status of that particular institution. This is exemplified by the Memorandum of Incorporation of the newly established National Financial Ombudsman Scheme of South Africa, which categorically states that it has legal powers and capacity of an individual for the purposes of carrying out its objectives.[20] Through legal status, the institution has clearly established its independent structures and exercises its rights and powers, including hiring, executing contracts, and having an independent governance board. Also, the Cyprus law establishing the financial ombudsman categorically provides for the establishment of a legal person in the name of a single agency for the out-

17 G.W. Paton and D. P. Derham (4th ed) *A Textbook of Jurisprudence*, 1972, 393, referred in B. Garner, (note3)3623.
18 *Salomon v. A. Salomon & Co. Ltd.* [1897]AC 22.
19 PJ. Fitzgerald, *Salmond on Jurisprudence*, Rep.2002, (12th ed)1970, pp. 296–310.
20 National Financial Ombud Scheme South Africa, *Memorandum of Incorporation*, *Art.6.1*.

of-court settlement of financial disputes.[21] This is reflected further in the charter of the board for the then Banking Ombudsman Scheme of South Africa, which expressly stated that the ombudsman scheme established is independent of the participants that fund its operations and further that its independence is reinforced by its status as a legal entity by virtue of its incorporation.[22] Generally, the establishing instrument must clearly stipulate the institution as being a legal entity independent from its funders or establishers.

Therefore, in order for the ombudsman to function properly as such, it must statutorily assume a legal personality in order to guarantee its institutional independence and effectiveness. Institutional independence is described by the American Bar Association as the ombudsman being and appearing to be free from any interference when legitimately performing its duties, free from control, limitations, or retaliatory penalties by the appointing entities or persons.[23] Such standards of independence are attainable where and only if the particular office is legally capable of asserting its mandate or vindicating its cause. This is why the said standards by the American Bar Association, *inter alia*, require that legislative enactment should clearly empower the ombudsman to commence a court action for enforcing its authority as defined by its establishing charter, legislation, or those standards.[24]

However, unlike the context articulated by the American bar standards, neither the Constitution of the United Republic of Tanzania nor the Insurance Act categorically stipulates the legal status of the Insurance Ombudsman service. To start with the Constitution, there is nothing therein to indicate bodies such as the Insurance Ombudsman Service, save for the powers of the President to establish and disestablish any office for the function of the executive, and the establishment of the Commission for Good Governance and Human Rights[25]. Haphazardly, one can gather

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21 Republic of Cyprus, *The Law Relating to The Establishment and Operation of a Single Agency for the Out of Court Settlement of Disputes of Financial Nature (Financial Ombudsman) of 2010, Section. 3(1)*. Available at <http//: www.financialombudsman.gov.cy> (Last accessed 23 November 2023).

22 New Zealand Banking Ombudsman Scheme, *Board Charter, paragraph 2*. Available at <https:// bankomb.org. nz/ about -us/our-board/board-charter > (Last accessed 16 November 2022).

23 The American Bar Association, 'Resolution on the revised Standards for Establishment and Operation of the Ombuds Office', 2004, 10.

24 New Zealand Banking Ombudsman Scheme, Board Charter, (n19), 2 paragraph 8.

25 The Constitution of the United Republic of Tanzania, 1977 as amended, Articles 36 and 129(1) respectively.

the ombudsman institutions from either the provisions that require equality before the law or those that enjoin the court to dispense justice without due regard to technicalities.[26]This calls upon the recognition of other institutions established for the purposes of dispensing justice out of court, which are accessible even to economically impecunious persons, to ensure equality of access to justice. Without a clear stipulation on legal personality, the insurance ombudsman service is bound, as it is, to operate in the shadows as a unit within the insurance regulatory authority, which in turn impairs the institutional independence, impartiality, and effectiveness.

Generally, institutional accessibility is hampered by the fact that complainants are unaware of the existence of the ombudsman service as an independent institution separate from the regulatory authority. To exemplify this anomaly, there are instances where, due to staff dual functionality, a staff member working for the insurance regulatory authority in the legal enforcement directorate was assigned duties to the insurance ombudsman to resolve disputes that she had previously been engaged with in the capacity of legal enforcement.[27] This situation and the like are a result of a lack of clarity on the legal status of the ombudsman, which denies the head of the Service to, inter alia, hire staff and highly impairs both individual and institutional impartiality.

3.2 Provision for Independent Resources and Sustenance Structures

The term "resource" is described as traditionally being tangible and intangible products of biological, ecological, or geological processes [28]. The concept is used to define the sources of human satisfaction, affluence, or strength [29]This entails labour, skills, financial capital, and assets. Generally, resources are an enabling factor for any human attempts to satisfy wants and needs, both physically and mentally, for sustainable development.

Resources and structures in the context of this article can be categorized as human resources, financial resources, and capital assets in the nature of tools, equipment, facilities, and infrastructure. This article posits that the

26 Ibid. *Article 107A (2) (d).*
27 S(Complainant) vs. MIC (An Insurance Company) Complaint No. TIO/MIL/518/2019.
28 D. Gregory, et.al *The Dictionary of Human Geography*, (5th ed)., Wiley-Blackwell, 2009, 648.
29 Ibid.

absence of independent resources hampers the ability of the ombudsman to function effectively and independently, in that the resource allocation does not always cater to the special and different needs of the ombudsman institution. Also, dual functionality of staff may lead to impaired impartiality and independence, and their consistency in service provision. In the subsequent part, the article attempts a description of the resources in relation to the establishment and operationalization of the Ombudsman institution, and looking at the legislative framework of the insurance ombudsman service in Tanzania, it eventually concludes that the legislative framework of the Service does not guarantee the existence of independent resources and structures for the sustainability of the office.

3.2.1 Provision for Human Resources

Fundamentally, within human resources is an intangible resource known as skills, which is the potential in man's mastery of nature for purposes of fulfilling his life needs. Human resources refer to humans as living beings capable of planning and executing tasks to achieve desired results, be they communal or individual. The fundamental standard for the establishment of an ombudsman requires that the institution of an ombudsman should have its own human resources and should avoid the use of seconded staff[30]. Seconded staff may be engaged to perform special tasks within a specified time, but not to be engaged to perform the daily and core business of an institution indefinitely. This tenet is also reflected in the Tanzanian Public Service Act. This law categorically provides that every head of a public service office is the authority in respect of appointment, confirmation, promotion, and discipline of public servants other than those appointed by the President.[31] This clearly depicts the importance of an institution in public service having its own resources. It is through this element that a particular head of the public office and the office itself are capable of pursuing result-oriented management, open performance review and appraisal systems, and overseeing and ensuring the career development of employees.[32]

In Tanzania, the Insurance Act, which establishes the insurance ombudsman service, is to the effect that the ombudsman service is comprised of the insurance ombudsman appointed by the minister and

[30] INFO Network, 'Guide to Setting Up a Financial Service Ombudsman', 2018, 46. Available at https://www. networkfso. org/ resources /Guide-to-setting-up-a%20financial-services-ombudsman-scheme_ INFO – Network _ March 2018. pdf (Last accessed 16 September 2024).

[31] *The Public Service Act, Cap. 298 R.E 2019 S. 6(1)(b).*

[32] *The Public Service Act, (n27) S.6(1) (c).*

other staff employed by the Authority.[33] In this regard, the staff that works in the insurance ombudsman office are all, by virtue of their employment status, employees of the Tanzania Insurance Regulatory Authority, with the exception of the insurance ombudsman, who is a ministerial appointee.[34] Apparently, on account of this legal provision, the Ombudsman's mandate as the head of office to recruit and maintain independent staff who are of the calibre and skills desired for the performance of the duties of the insurance Ombudsman service is diminished. That apart, it enhances uncertainties and lack of consistency of employees' performance of their work as they are not within the mandate of the Insurance Ombudsman but under the management of the Commissioner of Insurance in terms of that legal provision.

Clearly, the mandate of the Ombudsman to hire independent staff is curtailed and thus should depend on the staff of the Insurance Regulatory Authority, who are potentially hired and oriented to enforce regulatory laws and not the resolution of disputes. This clearly is contrary to such tenets entrenched in the Public Service Act and hence a defeat to the operational independence of the Ombudsman institution. Staff dual roles in both regulatory authority and the Service may result in potential conflict of interest as well as inefficient performance of duties. A vivid example where such scenarios are avoided by having the head of an ombudsman as an appointing authority through established employment systems is the Financial Services and Pensions Ombudsman of Ireland.[35]

This article argues that what enhances the effective operationalization of the ombudsman institution with regard to human resources includes their criteria of appointment, their remuneration, and their tenure, as well as the technical competencies and capabilities to perform assigned duties dictated by the legal system in a particular jurisdiction. These, arguably, are within the confines of the ombudsman office and the head of that office. He is statutorily supposed to determine and oversee the recruitment process in order to ensure that credible and capable human resources are recruited and retained. Therefore, predating the ombudsman's human resources to the insurance regulatory authority potentially maims the ombudsman institution and may potentially disable

33 *The Insurance Act, (n6) S.122(2).*
34 *Ibid. S.122(2).*
35 *The Financial Services and Pensions Ombudsman Act, 2017, S.15(1).*

it from fully fledged independent, accountable, and effective operational and functional status. As a result, public trust in the institution is impaired because it no longer appears independent due to staff's mixed roles of regulation and dispute resolution at the same time, as alluded to earlier. Thusly, the ability of the staff to deliver impartially, independently, consistently and timely on their function is hampered due to the possibility of being either reassigned or relocated or given additional regulatory duties apart from insurance disputes.

3.2.2 Financial Provisions

In order to function effectively, the ombudsman office must be adequately financially resourced.[36]Through a legislative provision, it should have its own funds and sources thereof independent of governments or other executive agencies in order to enable it to operate without financial control.[37] It is said that the ombudsman scheme should have and control of its own budget in order to attain its objectives, including ensuring its accessibility to complainants, sufficient money, and adequate cash flow, as well as maintaining prudent reserves.[38] Arguably, the ombudsman as an institution can only undertake effective planning and control of its budget where it has independent sources of funds as well as its own funds. The dire implication of a lack of independent sources of funds includes limited budgetary allocation and failure to deliver timely on complaint resolution, particularly conducting circuit sessions for complaint handling and awareness creation upcountry. The opposite thereto is that, with adequate funding, the ombudsman institution is capable of maintaining adequate resources, thereby putting in place structures and systems that enable it to deliver on its mandate in a timely and effective manner, a fact which in turn enhances consumer trust in the ombudsman.

Accordingly, an instrument establishing the ombudsman institution should provide for its funding and sources of such funds. The standards are to the effect that the funding of the ombudsman should be separate from the funding of either the appointing authority or the establishing

36 The United Nations, 'Principles related to the Status of National Human Rights Institutions' Ibid. paragraph. 3. See also the Venice Commission, 'Principles on the Protection and Promotion of the Ombudsman Institution' (Venice Principles),2019, Principle 21.
37 Ibid.
38 INFO Network, Ibid. 98.

entity so as to guarantee its financial independence.[39]Financial independence entails the ability to undertake planning and budgeting for its activities without control of another entity and without fear of budget cuts or denial of funds due to retaliatory reasons by the entities under the ombudsman's jurisdiction or within the executive.[40]

It also entails the availability of funds within reach of the ombudsman to enable the office to cater to all of its planned activities. Therefore, some jurisdictions and industries have devised reliable ways of funding the ombudsman office. For instance, the sources of funds for the National Financial Ombudsman South Africa are the industry levies from members of the scheme and prorate case fees for every dispute filed against a particular member.[41] Generally, the financial independence of an ombudsman institution is pivotal to other categories of institutional independence, namely, administrative and operational independence.

Essentially, the legitimacy and the cost-benefit of the ombudsman lie in its ability to resolve complaints and disputes amicably, expeditiously, and cost-effectively, thereby promoting harmonious business relationships and steady operation as potential catalysts to productivity.[42] With independent sources of funds, the ombudsman institution is enabled to plan and execute its programs aimed at consumer awareness and capacity building, as well as ensuring consumer-centric service provision. These altogether enhance operational capacity in complaints and dispute resolution, which in turn builds consumer confidence in the ombudsman system. This view serves as a basis for ensuring statutorily that the ombudsman office has its own reliable financial resources and is capable of planning activities. For instance, in Ireland, as it is in South Africa, through statutory provisions, an industry levy is prescribed for each industry member as a contribution to the funding of the ombudsman

39 Ibid.

40 Ibid.

41 National Financial Ombudsman South Africa, Memorandum of Incorporation, Clause 10.2.5.15. A Similar arrangement exists in India under the *Insurance Ombudsman Rules,2017 Rule.12(2)* to the effect that the funds for the salaries and other administrative expenses of the Ombudsman are born by the Life Insurance Council and General Insurance Council, on advisement of the Council for Insurance Ombudsmen.

42 Parliament of Tanzania, 'Hansard of the proceedings at the 45th session of the 15th Parliamentary meeting held on 13th June,2019, pp.139-40.

office.[43] This creates a stable flow of funds, thereby enabling it to function effectively and independently.

In the Tanzanian legislative context, the law provides that the funds of the ombudsman are the funds appropriated by the parliament to the Authority.**[44]** This directly implies that the insurance ombudsman service does not have independent sources of funds, and therefore, it does not have its own independent funds to enable it to function as an independent institution in the discharge of its mandate. As such, the law does not depict the guarantee of independent funds and the source thereof for the insurance ombudsman service. In this stance, the full and proper control of the ombudsman service over the financial resources cannot be guaranteed, thereby maiming its independent, accountable, and effective operationalization as argued hereinbefore.

3.2.3 Provision for Facilities, Tools and Equipment

For the purposes of maintaining institutional independence of an ombudsman institution, there should be the creation of separate and independent sustenance structures through legislative provisions. The legislative instrument intrinsically guarantees that ombudsman offices are separate from a regulator, industry entities, or consumer body, with adequate facilities, tools, and equipment.[45] These include mediation and conciliation rooms conducive to holding meetings in reconciliation and mediation.[46] Such rooms must be well ventilated, soundproof, and spacious to allow mobility in the sitting arrangement. Also, it should have adequate chairs, tables, and cabinets for the purpose of keeping case files in a secure and confidential manner. The office should have enough well-functioning equipment, including computers, laptops, and internet facilities, which enable business automation.

The facilities include infrastructure, namely adequate number of offices and allied accessories. A review of literature and establishing instruments shows that the ombudsman offices should be established at places where they can be easily accessible. In Pakistan, for instance, the Ombudsman is mandated to authorize provincial functionaries, including public servants

[43] Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2025, Statutory Instrument No. 133 of 2025.
[44] *The Insurance Act, (n6) S. 125.*
[45] INFO Network, ibid, 52.
[46] R.K, Chopra & G. Priyanka, *Office Management*, (17th ed)., Himalaya Publishing House, 2015, 10-11.

or agents in such regions, to perform the roles of the Tax Ombudsman.[47] Likewise, in India, the ombudsmen's offices are established in every region, and the ombudsman may hold sittings at various places within his area of jurisdiction in order to expedite the disposal of complaints.[48]

Infrastructural facilities also include the office website, which is one of the essential communication tools for the Ombudsman institution.[49] The website must be clear with complete information to the public on the institution and its mandate, as well as its accessibility.[50] Through the website, community members should be able to lodge complaints and find sufficient assistance in accessing the services.[51] Facilities and equipment are key in enhancing accessibility, accountability, and transparency of the Ombudsman institution, as they enable access by the public to various information regarding the institution.

In Tanzania, the legislative provisions on the funds and composition of the Service curtail the creation and maintenance of independent structures such as tools, facilities, and adequate offices. This is due to the fact that the resource needs are determined subject to the budgetary approvals and considerations by the Authority, whose head remains the accounting officer of the funds in the absence of such a clear legislative stipulation. In that accord, it is apparent that budgetary considerations for the procurement of the Service’s equipment and facilities are centralized in that it must go through the Authority. This is accounted for by the absence of legislative clarity of the Ombudsman’s mandate and scope as the head of the institution, and the rights and obligations of the institution itself.

3.3 Provision for Independent Governance Board

This is an upper management strategic machinery that acts as an oversight mechanism over the functions and performance of the institution.**[52]** It is generally established for the effective discharge of the mandate while upholding the independence of the ombudsman.[53] A review of literature

47 *The Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000, Section 21.*
48 In India, under the *Insurance Ombudsman Rules, 2017, Rule.11(1*).
49 INFO Network, ibid., 67.
50 Ibid.
51 Ibid.
52 T. Robert, *Ibid.*
53 INFO Network, ibid. 85.

and legislative documents shows that these bodies are referred to as councils or boards, and their formation depends on the type of ombudsman office.[54] Its composition includes professionals from the particular industry, provided they are not barred by conflict of interest, and further, in terms of the law, they are not conflicted through either shareholding in an industry member company. They are usually in an odd number of at least 5, not exceeding 7 or 9.

A board or council that is independent from the ombudsman scheme's administration is one of the potential legal guarantees that must be legislatively established for the effective operationalization of the ombudsman office. It performs various administrative and oversight roles, including assisting in maintaining the ombudsman's independence; ensuring the ombudsman scheme has the resources to carry out its duties; supervising the ombudsman's efficacy and efficiency; and providing advice to the ombudsman regarding the institution's strategic direction.[55]

In Tanzania, the National Insurance Board (the NIB), which is established under the Insurance Act, is an oversight body of the Insurance Regulatory Authority.[56] Presumptively, it is supposed to play the advisory and oversight role for the insurance ombudsman service as well. This, arguably, does not augur well with the established norm among the insurance ombudsmen institutions and legislative enactments or instruments establishing them, which largely support the existence of independent oversight organs as described hereinabove. Thusly, its functions and roles in respect of the Service is limited as demonstrated hereunder.

The NIB by virtue of the law, is established as an oversight organ of the Authority, which is entrusted with the supervision and regulation of the insurance industry while enforcing the law. This is diametrically opposite to the Service's mandate of resolving insurance disputes between

[54] In India, the Council for Insurance Ombudsman established under the Insurance Ombudsman Rules, 2017, Rule 5(1); in South Africa, it is referred as a Board under the National Financial Ombud Scheme (NFO) Memorandum of Incorporation, Article 9.

[55] D. Thomas, and F. Frizon, 'Europe-Resolving disputes between consumers and financial businesses (Vol.1 of 2) *a practical guide based on experience in western Europe (English).* Washington, DC: World Bank., 2012, p.36. Available at https://documents.worldbank.org/en/publication/documents-reports/ document detail/ 16979 146823 309 1885/ a-practical-guide- based-on-experience-in-western-europe.(Last accessed 10 January 2025).

[56] *The Insurance Act, (n6) S.14.*

insurance registrants and consumers, as well as beneficiaries, fairly and equitably. The statutory roles performed by each in the discharge of their respective mandate are fundamentally different in that, whereas the regulator performs and makes administrative decisions in the regulation and supervision of the insurance industry, the insurance ombudsman performs the roles of dispute resolution and potentially may issue a determinative order.

It is argued that the mix of the roles for the oversight board may lead to divided attention as well as a lack of actual oversight and ultimately impair the independence of the Service as an institution. Flowing from the Insurance Act, which prescribes the roles of the Board of ensuring the Authority performs its functions competently, and given the fact that the "Insurance Regulatory Authority does not include the "Insurance Ombudsman Service," it becomes apparent that the latter does not have an independent board to perform oversight functions crucial in preserving its independence and securing its operational efficacy. Apparently, therefore, there is a potential for conflict of interest for the board members when it comes to performing their oversight roles over the regulatory authority and at the same time the insurance ombudsman service. For instance, the board's objectivity may be impaired where it is required to advise the Authority on an enforcement matter referred to it by the Insurance Ombudsman service.

This article posits further that the functions of the board for the Service cannot be discharged effectively and fully where the same are made adjunct or addendum to the principal duties of supervising the Authority, as is the case in Tanzania. Arguably, the NIB's function in respect of the Service is drawn from the general mandate of the minister to make regulations in respect of all matters pertaining to the Insurance Act.[57] Nevertheless, it does not suffice in this thread, as the law limits the minister's powers to make regulations in relation to the Service in respect of procedures for hearing the Complaints.[58]As a result, this legal setup, which compels a mix of roles for the NIB, may lead to various challenges, including violation of governance norms, diminished accountability, operational inefficiency, and a diluted focus of the board.

[57] Ibid. *S.167.*
[58] Ibid. *S.124(4).*

Apart from such challenges, the governance structure for the insurance ombudsman service puts the institutional status before the public at jeopardy since it is viewed as part and parcel of the Authority. This, in turn, has a negative bearing on the institutional independence and its appearance as such, leading ultimately to loss of public confidence generally and consumer confidence in its ability to discharge its mandate fairly, impartially, and independently.

3.4 Provision for Substantive and Procedural Terms of Reference

The substantive and procedural terms of reference in this context refer to a set of rules and principles expressed in the form of principal legislation, regulations, rules, guidelines, charters, or bylaws that prescribe the ombudsman's operational guidelines. These terms prescribes important operationalization aspects including jurisdiction in terms of eligible complaints, eligible complainants, eligible pecuniary values, time limitations, and other processes; principles guiding operations, namely informality, confidentiality, equity, and cost-effectiveness; duties and powers of the Ombudsman; complaint handling and dispute resolution procedures, including manner of filing a complaint, modes of resolution, hearing, and appeals and enforcement of decisions or recommendations.

The terms of reference in those aspects depend on the nature of the particular ombudsman institution. In the context of this article, referring to the private sector ombudsman, such matters are provided for either in the establishing legislation or in a separate instrument like rules, regulations, or guidelines. They must be coherently and categorically stipulated in order to define the scope of the mandate of the ombudsman institution while ensuring predictability of the procedures and the outcome, and ensuring the complaint and dispute are ultimately resolved. In the Tanzanian context, it can be fairly said that the terms of reference, despite being described partly in the Insurance Act and in the Insurance Ombudsman regulations, suffer from a lack of clarity, coherence, and completeness. The subsequent part describes the components of the basic guarantees with respect to the terms of reference.

3.4.1 Jurisdiction

The standards for the establishment and operationalization require that the jurisdiction of the ombudsman should be clearly stipulated in the law in order to ensure the exercise of the mandate effectively and legitimately.[59] The term "jurisdiction" entails the extent to which the ombudsman can intervene in a particular complaint and dispute, and as such, it prescribes the criteria within which the ombudsman can and cannot act over a particular complaint. These prescriptions relate to the eligible complainants and eligible complaints in terms of the pecuniary values of the subject matter, the time within which it is instituted since its occurrence, the territorial scope of the exercise of the function, and the eligible respondents.

In the description of these criteria for jurisdiction, the article draws from various jurisdictions and ombudsman institutions, including the then Ombudsmen for short-term insurance of South Africa, the Ombudsman for long-term insurance of South Africa (now part of the National Financial Ombudsman), and the Insurance Ombudsman of India. The former were private sector ombudsmen established by the insurance industry members.[60]The Insurance Ombudsman of India, on the other hand, although established by the government, serves the insurance industry, which comprises both private companies and government companies[61]. As such, the standards applicable in these institutions can be more befitting in the context of this discussion, particularly in drawing inference as to the basic guarantee for the functionality of the ombudsman institution.

i) Eligible Complainants and Eligible Complaints

With regard to eligible complainants, the terms of reference of the ombudsman for short-term insurance in South Africa provided that the ombudsman resolves disputes between insurers and policyholders where such disputes fall within his jurisdiction.[62] This eligibility criterion for the complainant was maintained by the National Financial Ombud Scheme of South Africa.[63] Therefore, an eligible complainant must be a policyholder who is in disagreement with the insurer with regard to various matters, as deemed eligible complaints or disputes. Similarly, the eligible

[59] T. Buck., et.al. *The Ombudsman Enterprise and Administrative Justice*, Ashgate, England, 2011, 234.

[60] They are part of the Ombudsman scheme organized and established by members of the insurance industry as not- for-profit Companies and recognized under the *Financial Service Regulation Act, 2017*.

[61] The rules are promulgated by the central government through the Insurance Regulatory and Development Authority and the Ministry of Finance is a member in the Insurance Ombudsman Council.

[62] *Terms of Reference of the Ombudsman for Short Term Insurance, paragraph 1.1.1.*

[63] *National Financial Ombud Scheme (NFO) Rules, 2024, Rule 2(a) and (c).*

complainants for the Ombudsman for long-term insurance are policyholders of life insurance who are in disagreement with the insurers.[64]

The insurance ombudsman rules of India provide that the rules are applicable to all complaints against insurance companies and their intermediaries filed by the policyholders. Therefore, the primary eligibility criteria for insurance complaints and disputes are that the complainant must be a policyholder.[65] Where this criterion is not met, a complaint will be rejected as being non-entertainable. In India, it is reported that complaints were rejected as non-entertainable for inter alia being out of pecuniary jurisdiction, and not having been referred to the respective insurers.[66]

Apparently, the requirement that eligible complainants should be policyholders stems from the privity of contract principle, which dictates that only parties to the contract can sue and be sued on the said contract. In this regard, a third party to the contract of insurance will be ineligible to bring a dispute directly against the insurer since he or she is not privy to the insurance contract.[67] This, however, in the context of alternative dispute resolution, arguably can be said to be a constraint position. Thus, for the purposes of facilitating amicable resolution of a dispute, it is essentially right for any person with a grievance against the insurer or related to insurance business to be eligible to file the same at the insurance ombudsman service.

In the Tanzanian context, the legislation provides that all persons with a disagreement with an insurance business registered in Tanzania are eligible as complainants.[68] In this accord, even third parties not privy to an insurance contract are eligible complainants. This, however, presents a hurdle to the complainant, especially where issues of the validity of an insurance contract arise, including instances where the premium for a

64 *Ombudsman for Long Term Insurance Rules, Rule.2.1.*
65 *The Insurance Ombudsman Rules, 2017, Rule.2.*
66 Council of Insurance Ombudsman, Annual Report, 2023-2024, pp 69-70 available at https://www. cioins.co. in/Annual Reports (last accessed 6 May 2025).
67 *Metropolitan Tanzania Insurance Co. Ltd vs Frank Hamadi Pilla* (Civil Appeal 191 of 2018) [2019] TZCA 281 and *SAS Logistics Limited vs Yahaya Ali Amour & 2 Others* (Civil Appeal No. 5598 of 2024) [2024] TZHC 7991
68 The Insurance (n6) *S.123.*read in tandem with the Insurance Ombudsman Regulations, (n8) Regulation 3.

particular policy was not paid by the insured. A guide indicating procedures for third-party claims for the purposes of establishing the validity of cover could mitigate such hurdles.

ii) Pecuniary Jurisdiction

With regard to the pecuniary value of the subject matter, most of the private sector ombudsmen prescribe the amount the ombudsman can admit for determination and finally issue decisions to the parties depending on the nature of the services for which it is established. For instance, the Insurance Ombudsman of India accepts complaints whose monetary value is not more than 30 Lakhs of Rupees.[69] As for the Ombudsman for Long-Term Insurance of South Africa, the Ombudsman could award only up to 50,000 rands as compensation with regard to material distress or inconvenience suffered by the complainant as a result of poor service or incompetence by the insurer.[70]

However, for the public service ombudsman that deals with complaints of service, maladministration, or procedural nature against the public servants, the limitation is in relation to the subjects of investigations, namely the institutions, as well as the subject matter that can be complained against.[71] Therefore, the ombudsman's limitations in this regard are determined by particular subject matter and its eligible institutions, which are in the ambit of its mandate. In all respects, what guarantees the proper operationalization of the Ombudsman is clarity in terms of the pecuniary scope and mandate of the Ombudsman.

A scrutiny of the law establishing and operationalizing the Service in Tanzania shows that the desired clarity in terms of jurisdiction is amiss. It states that the insurance ombudsman can grant an award to the complainant for direct losses and damages suffered up to 15 million. On the other hand, the Insurance Ombudsman Regulations limit the pecuniary powers of the ombudsman to 40 million in terms of the value of the complaint that can be admitted by the Service. The High Court of Tanzania, noting this confusion, explained that the subsidiary legislation is of no effect with regard to the pecuniary jurisdiction of the Service.[72]

69 Conditions for filing a Complaint with the Insurance Ombudsman of India, available at <https://www. cioins. co. in/>(Last accessed 26 October 2023).
70 *Ombudsman for Long Term Insurance Rules, Rule.3.2.5.*
71 *Republic of Botswana Ombudsman Act, 1997*, *S. 4.*
72 First *Assurance Co. Ltd* vs *Tanzania Insurance Ombudsman & Others* (Misc. Civil Cause 26 of 2020) [2020] TZHC 3360 (22 October 2020).

Apart from such a contradiction, the principal legislation in pronouncing the limitation in monetary value of the award implies that the Ombudsman cannot admit complaints whose value is more than the said limit. This connotation in itself is inhibitory in nature, as it tends to exclude complaints from being admitted for purposes of amicable resolution. This obviously does not meet the basic legal guarantee of the clarity sufficiently required in prescribing the scope and mandate of the Ombudsman institution for its effective operationalization

iii) Territorial Jurisdiction

Territorially, whereas other ombudsmen are established with a wide range of coverage, say throughout a particular country[73]Others exercise their jurisdiction within a particular locality where they are established.[74] Therefore, the territorial limitation depends on the nature of the ombudsman office as well as the establishing statute. For instance, most of the public sector ombudsmen have territorial jurisdiction within the area of their establishment.

The Service's territorial jurisdiction extends over the whole of the United Republic of Tanzania. This is clearly evident from the law, which prescribes the scope of its applicability to extend to the Republic of Tanzania, Zanzibar.[75] This notwithstanding, this article argues that in order to ensure its accessibility, the law should prescribe clearly with regard to the services on the part of the islands of Zanzibar, including providing for establishing an office thereof and its head as deputy ombudsman.

iv) Subject Matter Jurisdiction

With regard to subject matter limitations, the ombudsman's jurisdiction may or may not be limited depending on the nature and purpose of its establishment. However, the standards are to the effect that the limits and scope of the ombudsman in terms of eligible subject matter should be clearly spelled out for the purposes of ensuring certainty on its mandate.

The Ombudsman for Long Term Insurance, the Ombudsman for short term insurance of South Africa operates throughout the Country. See the Ombudsman for Long term insurance, 'Insurance Ombudsman 2022 Annual Report' p.18 depicting the geographical distribution of complainant being across the entire South Africa.

74 India, *Insurance Ombudsman Rules,2017 r. 11(1), (2) and (3)* to the effect that the territorial jurisdiction of the Ombudsman is specified from time to time by the Council and may exercise jurisdiction only within the territory where it is established.

75 *The Insurance Act, (n6) S.2(1).*

The Tanzania Insurance Act substantially meets this criterion, as it categorically prescribes matters that cannot be entertained by the Service.[76] The propriety or otherwise of this provision, nevertheless, in terms of the general context of the insurance law and the objectives of establishing the Service, is questionable. This is because it has a tendency to limit accessibility of the Service as an alternative dispute resolution mechanism in resolving insurance disputes. Persons involved in such disputes over non-entertainable matters are denied the benefits of resolving such disputes at the Service, including low costs and less time.

3.4.2 Provision for Principles Governing Performance of Functions

Apart from the fundamental principles for operationalization of the ombudsman institution, there are governing principles that guide the day-to-day operations in the discharge of the mandate of the ombudsman. These include the principles of informality, equity, and confidentiality.[77] The International Ombudsman Association has derived these principles, *inter alia,* from its Code of Ethics, which sets the principles that guide the general conduct of the Ombudsman institution in the performance of its functions. They are vital in ensuring that the staff in the ombudsman institution adheres to set standards of practice in order to maintain its status as an ombudsman and hence maintain its identity and legitimacy in the eyes of the public.

The principle of informality is to the effect that the Ombudsman institution adopts informal, cost-effective, and less technical rules of procedure for handling complaints.[78] In the context of dispute resolution, it entails the adoption of procedures that are outside the normal legal rules of dispute resolution. It allows off-the-record engagements with the neutral party to gain each party's perspective, understand their interests, and explore options without focusing on a win-lose stance.[79] Informality is encouraged in dispute resolution for its essential characteristic of enabling parties to iron out their differences and explore early solutions to their disputes in a more relaxed and casual conversation manner without

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76 Ibid. *S.23(a) (i-vii).*

77 The International Ombudsman Association, 'Standards of Practice'. Available at http: //www. Ombuds association. org (Last accessed 22 May 2022).

78 The American Bar Association, (Note20) pp.7 and 17.

79 Lara K.D. 'Informality: the hidden treasure in conflict resolution: A reflection on the principle of informality from an ombudsman's' perspective', in UNtoday, (Official Magazine of the International civil servants) 1 March,2023. Available at https://untoday.org/resolving-conflict-through-the-secret-weapon-of-informality/ (Last accessed 22 May 2023).

engaging in legal tussles. To this end, in resolution of the disputes, the Ombudsman will not be bound by the rules of evidence, and further, they are empowered to adopt their own rules of procedure required for the discharge of their mandate.

The law in Tanzania mentions the principle of informality as one of the guiding principles of the insurance ombudsman in the discharge of the duties.[80] However, it is yet to be implemented in the proceedings since the regulations that govern the procedures do not clearly put out how informality needs to be put into practice. In an actual sense, the insurance ombudsman regulation stipulates that the insurance ombudsman, in the performance of his function, shall adopt, among others, informal procedures.[81] That notwithstanding, the regulations prescribe the procedures for filing as well as the resolution of the disputes as mandated in terms of the principal legislation. It is argued that where informality is to be adopted, the insurance ombudsman office should be accorded residual power by virtue of legislation to adopt any means of resolving a particular dispute that may be deemed appropriate in the circumstances of the dispute.

As for confidentiality, it is an important aspect in the operations of the ombudsman institution due to the crucial role it plays. It encourages reluctant complainants to fully disclose and have open communication between the parties, and it ensures protection against reprisals from any person or authority.[82]The principle is to the effect that the ombudsman and the staff cannot be compelled to testify in respect of matters they gained knowledge of during the resolution of a particular dispute.[83] It covers the nondisclosure by the Ombudsman of the source of information and the information received. Therefore, the legislation should prohibit compelling the ombudsman to disclose, even by way of testimony, any matter received or gathered during the handling of a complaint.[84] Exceptions to this restriction exist, including where such disclosure is required by law or where necessary to prevent the commission of a crime.

80 *Insurance Ombudsman Regulations, (n8) Regulation.4(b).*
81 Ibid.
82 Lara, K.D, Informality: the hidden treasure in conflict resolution: A reflection on the principle of informality from an ombudsman's' perspective (Note 71) 14.
83 Ibid. 15.
84 D. Thomas, and F. Frizon,. Europe-Resolving disputes between consumers and financial businesses (Note48).

In Tanzania, the law, particularly the Ombudsman regulations, includes the requirement to maintain confidentiality as one of the principles to be observed by the ombudsman when performing his function.[85] It, however, stipulates maintaining confidentiality insofar as it is feasible to do so, without mentioning any circumstances where this may not be feasible. It thus makes confidentiality a matter of discretion to the ombudsman and his staff. This in itself may erode the concept of confidentiality and hence lower the confidence of the public in the insurance ombudsman service as an institution.

With regard to the principle of "equity," the term is used to describe a jurisprudential branch whereby the courts would, as an alternative to strict common law, endeavour to determine what is fair in the circumstances of the matter instead of strict precedents. This principle would also apply where the law is inadequate.[86] It refers to justice and fairness.[87] It can be more described by its derivative adjective of "equitable," which refers to fair, impartial, and just; for instance, "equitable distribution" means the distribution of property fairly and not necessarily equally amongst the interested parties.[88] The Black's Law Dictionary sheds light on the term. It defines it as fairness, impartiality, and even-handed dealing.[89]

This principle is grounded on the tenets of natural justice and procedural fairness, which are at the core of Ombudsman decision-making. It requires that in the dispensation of justice and handling of complaints and disputes, the Ombudsman should strive to do or decide that which it considers fair and just in the circumstances of a particular complaint without strict regard to the spirit of the law. For example, the Irish High Court[90] commenting on the wider discretion of the financial service and pensions ombudsman conferred on grounds of equity[91], observed that "the mere absence of a breach of law does not immunize a financial services provider from a finding of unreasonable and improper conduct under s. 60(2)(b) and (g)." This implies that the principle involves going beyond

[85] *Insurance Ombudsman Regulations, (n8) Regulation 4.*
[86] A.H, Blackwell, *The Essential Law Dictionary*, Sphinx Publishing, 2008,166.
[87] Ibid.
[88] Ibid.
[89] B. Garner, (Note3), 206.
[90] Justice Hyland J. in *Danske Bank A/S v. FSPO & Another*. [2021] IEHC 116.
[91] Republic of Ireland, the *Financial Services and Pensions Ombudsman Act, 2017, S.60 (2) (b) and (g).*

what is prescribed in the letter of the law in order to do justice in the circumstances of the case.

Therefore, it should be provided for in the legislative documents of the ombudsman institutions in order to ensure that its application is not contested by the service providers or the complainants. In South Africa, for instance, by virtue of the law, the ombudsman scheme is required to have rules that require the application of equity where appropriate as one of the conditions for its recognition and approval by the Ombuds Council[92]. This is due to the fact that service providers, in most instances, would seek to avoid liability on a lack of apprehension of the principle of equity where there is no breach of the terms of the contract and, as such, would seek to challenge the decision or recommendation of the Ombudsman[93]. It is for this reason that the rules of the Ombudsman for Long-Term Insurance of South Africa, which are in pari materia with the Insurance Ombudsman Regulation of Tanzania, require the Ombudsman, when discharging the mandate, to give due weight to consideration of equity[94]. In one of the recent complaints involving the undervalued sale of a mortgaged house by the Bank, the ombudsman applying the principle of equity found the sale to have been below the market value and recommended the write-off of the remaining balance of the loan.[95]

Apart from those principles, in order to ensure adherence thereto, the Ombudsman office staff's general conduct in the performance of their duty should be guided by a set of codes of ethics and conduct. It guides staff conduct to ensure that important aspects such as integrity, honesty, competence, and professionalism are maintained. The Bangalore Principles of Judicial Conduct[96] serve as a benchmark in developing such codes to ensure that the conduct of the personnel befits the institution of the administration of justice. These are instrumental in ensuring internal compliance with various legal standards in the discharge of the mandate and operational efficiency.

92 The *Financial Sector Regulation Act, 2017, S.196(3)(b)(vii)*.
93 Ombudsman for Long Term Insurance, 'Annual Report', 2012, p.24.
94 *Ombudsman for Long Term Insurance Rules, rr.1.2.4 and 1.2.7*.
95 Available at https://www.moonstone.co.za/when-banks-get-it-wrong-ombud-cases-reveal-costly-mistakes(last accessed 9 July 2025)
96 Bangalore Principles of Judicial Conduct, 2002. Available at <https:// www.unodc. org/pdf/crime/ corruption/ judicial_group/Bangalore_principles.pdf> (Last accessed 12 September,2021).

The Insurance Ombudsman Regulations of Tanzania provide that the staff, as well as the Registrar of Complaints, must abide by the code of conduct that is prescribed therein.[97] However, despite such mention, that particular schedule is non-existent therein. This leaves it in the confines of the Ombudsman to determine the code, albeit unwritten. It is argued that even if the code was in existence, the current legal setup in terms of the composition of the Service would still make its enforcement a hurdle to the Ombudsman since all employees belong to the Authority.

3.4.3 Complaints Handling and Dispute Resolution Procedure

The rules of procedure for the ombudsman institutions are contained in the documents showing the steps and procedures in handling the complaint and resolving a dispute. They entail procedural aspects of complaint handling from lodging the complaint to the conclusion. For a private sector ombudsman with a mandate to resolve disputes, these rules entail the procedure of filing a complaint or a dispute, including the manner in which it should be filed, investigation and determination, hearing procedure, review, appeal, and enforcement of the decision. The essence of procedural rules is to guide the conduct and practice, enhance predictability and assessment of the effectiveness of the ombudsman in access to justice in line with the constitution or establishing legislation.

In this regard, the Service draws its terms of reference in respect of complaint-handling procedures from the Insurance Ombudsman regulations. However, as it will be shown, there is a want of clarity and comprehensiveness of the said regulations, which in turn leads to a practical challenge in the aspects of conduct and practice. The decision of the High Court exemplifies the confusion that emanates from a lack of clarity of the regulations, particularly with regard to the status of the decision of the insurance ombudsman and remedial processes thereafter.[98] In that case, the High Court agreed to the argument that the available remedy where a claimant is dissatisfied with the decision of the ombudsman is to challenge the same by way of reference. In an actual sense, what the High Court refers to as a decision of the ombudsman was a reconciliation agreement between the parties. Also, the Court's conclusion was devoid of the fact that the decision, if at all, is made by the ombudsman, and does not bind the complainant. He can opt to

[97] The Insurance Ombudsman Regulations, (n8) Regulation 10.
[98] *Britam Insurance Company Limited vs. Francis H. Samba &Another, [2022] TZHC 14165.*

abandon the proceedings and file the suit afresh in Court. The subsequent part shows the scope of this basic legal guarantee for the operationalization of the ombudsman institution.

3.4.3.1 Manner of Filing a Complaint

The procedural terms of reference for the ombudsman institution must prescribe the ways in which a complaint may be filed. The standards require that, for enhancing accessibility, the rules should provide simplified and cost-effective ways of filing a complaint, and the same should be well communicated and known by the users. To that end, for instance, the rules of procedure provide that a complaint may be made in writing or orally, and it can be filed physically through a known postal address or by delivery at the Ombudsman office or by electronic means such as online filing and emails.[99]

This mode of filing the complaint is also reflected in the insurance ombudsman regulations of Tanzania. Despite its being scanty as to guiding the complainant in this respect, the regulations at least show the mode of filing the complaint. Nevertheless, it does not go further to prescribe the standards of the documents to be filed, and the regulations do not mention the requirement for the insurers to make the existence of the ombudsman known to the unsatisfied customers for the purposes of filing the disputes and thereby enhancing the accessibility of the insurance ombudsman service. This continuously presents a hurdle to complainants who wish to file their complaints, as they are forced to seek legal services at a fee.

Enhancement of accessibility through mandatory dissemination of information for the insurers about the ombudsman has been a regulatory norm in jurisdictions such as South Africa. Without such a requirement and given the scarce financial resources for the ombudsman to engage in a countrywide awareness program, its accessibility is highly hampered. Regulatory intervention through the requirement for the insertion of essential information about the ombudsman in the insurance contract would be instrumental in communicating the existence and accessibility of the Service.

[99] In South Africa, under the Ombudsman for *Long Term Insurance Rules, rule.3.1*; and in India under the Insurance *Ombudsman Rules, rule.14(1) and (2).*

3.4.3.2 Settling a Complaint or Dispute

The procedural terms of reference entail a guide as to how the complaint or dispute will be settled. These include issues pertaining to methods of resolution, namely mediation, conciliation, hearing, determination, recommendations, appeals, and reviews. It also entails ways of enforcing the decisions or recommendations of the ombudsman. The insurance ombudsman regulations, which guide the conduct and mode of resolving complaints by the insurance ombudsman service, suffer from a lack of an explicit manner of settling the disputes. This shortfall is demonstrated in the subsequent part through exposition of the scope of this basic legal guarantee for operationalization of an ombudsman institution.

3.4.3.3 Methods and Procedures

Essentially, the ombudsman, as an alternative to court litigation, employs the conventional ADR methods of reconciliation, mediation, negotiation, determination, arbitration, and neutral evaluation.[100] The rules of procedure also provide for a hearing of the parties in case of evidential issues that require a hearing. In all material respects, the rules should provide a streamlined procedure on stages and the modality of conducting the hearing, including the appearance of parties and the right of representation. Under the insurance ombudsman regulations of Tanzania, the methods of resolving disputes or handling complaints are namely mediation, reconciliation, and arbitration.[101] These ADR methods entail different procedural aspects from commencement to finalization of each process. The regulations do not contain a detailed guide as to the approach in the application of each, namely, when and how to resolve a particular complaint by reconciliation, mediation, and arbitration. In South Africa and India, informal mediation is prescribed as the first step, escalating to recommendation and Award, which are adjudicative in nature.[102]

That apart, these methods rest upon the principle of party autonomy as well as voluntariness, which altogether entails the agreement of parties to submit to the particular forum or method of resolving the dispute between them. In this accord, it is argued that the regulations fall short of

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100 M. Hertog, and R. Kirkham., *Research Handbook on Ombudsman*, Cheltenham, UK, Edward Elga, 2018, 21.

101 *Insurance Ombudsman Regulations, (n8) Regulation 6(2) (c).*

102 National Financial Ombud Scheme South Africa, Rules, r.7 and 8; N VijayaLaxmi vs. Insurance Regulatory and Development Authority of India and others, W.P.No.45471 of 2022.

guidelines as to at what stage of the dispute and in what manner a particular method should be adopted. That notwithstanding, the regulations also prescribe a hearing despite the prescription of mediation and reconciliation, methods that are essentially negotiation-oriented with the assistance of a neutral third party.

3.4.3.4 Reviews and Appeals

The right to a review of the decision and appeal available to the parties to a dispute is grounded on the principles of natural justice, particularly the right to be heard, which is also a constitutional right of any subject of the law. In the same vein, and on the footing of the procedural justice theories, the terms of reference for the ombudsman should provide for the right of review and appeal. This is essentially so important because the ombudsman enjoys wide discretion in the name of the principle of equity in the process of handling complaints and resolving disputes.[103] Expounding the principles of equity, the Irish High Court observed that the ombudsman is mandated to operate in ways that are different from the court, whereby he can reach conclusions that are not open to the court and fashion remedies that are otherwise not available in courts of law. These, according to the Court, include findings of impropriety or lack of clarity not amounting to a breach of rights but which call for remedies such as directing a change in practice or payment of compensation.

On that footing, it is only fair that the legislative provisions and rules of procedure, as well as guidelines, should provide for the right of appeal to the dissatisfied parties and enable the process or determination to be reviewed as a safeguard against serious error amounting to injustice. Essentially, the existence of a right of appeal to the High Court represents an important safeguard against serious error, although it cannot be regarded as a *de novo* appeal.[104]

To this end, the ombudsman institution may establish internal mechanisms of reviews and appeals to serve the unsatisfied parties. For instance, the South African National Financial Ombud Scheme has its established Appeal Tribunal[105]. Also, others have established appeal mechanisms externally, which operate independently. An example of this

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103 *O'Brien v. Financial Service Ombudsman* [2014] IEHC 111 as quoted in *KBC Ireland PLC v. Financial Services and Pensions Ombudsman*, [2023] IEHC 234, p.14.

104 *Molyneaux v. FSPO* [2021] IEHC 668.

105 *National Financial Ombuds Schem South Africa, Rule 10.*

is the Irish Financial Services and Pensions Ombudsman, whereby an aggrieved party to the dispute has a right of appeal to the High Court.[106] Internally, the appellate tribunals are constituted within the Ombudsman system, whereby a party aggrieved will lodge an appeal to the Ombudsman appeal tribunal upon obtaining leave from the Tribunal.[107] On the other hand, externally, an aggrieved party to a complaint may file an appeal to the High Court.[108]

The grounds of appeal sufficient to invoke the powers of the court or appellate body are that such body or court should be satisfied that the adjudicative process, taken as a whole, was vitiated by a serious and significant error or a series of such errors.[109] Therefore, the burden of proof will always lie on the appellant to establish that the decision so made is vitiated or tainted by such errors. These matters altogether are matters that should be within the legislative purview of an ombudsman institution to guarantee the exercise of the fundamental right of accessing review and appeal.

Neither the principal legislation nor the insurance ombudsman regulation of Tanzania provides for reviews or appeals for an aggrieved party to an insurance dispute. Instead, the only remedy, which nevertheless is unilateral, is reference to the High Court, which is only available to unsatisfied complainants. In one of the complaints cited earlier, the complainant's claim was declined after unilaterally being reviewed, whereby a determination order previously issued against the insurer was rescinded without giving the claimant an opportunity to present his side of the story on the purported new evidence.**[110]** The apparent plight of the claimant is that he was left without a remedy thereto except the said reference. Due to the absence of review and appeals mechanisms, reopening the matters to the disadvantage of a complainant, even at the regulatory level, in seeking to comply with the law before taking regulatory action against non-compliance, is evident. In that regard, the guarantee to the operationalization of the insurance ombudsman service as a justice administration body that operates on the principle of fairness,

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[106] *Financial Services and Pensions Ombudsman Act, (n83) S.64.*
[107] *The National Financial Ombuds Scheme South Africa, Rule 10.2.*
[108] *Financial Service and Pensions Ombudsman Act, (n83) S.64.* See also the case of *Llyod's Insurance Company S.A. v. The Financial Services & Pensions Ombudsman & Anor* [2022] IEHC 290.
[109] *KBC Ireland PLC v. Financial Services and Pensions Ombudsman*, [2023] IEHC 234.
[110] S (Insured) vs. MIC (Note 26).

among others, is impaired due to the absence of such levels of access to justice on an equal footing to all parties.

3.4.3.5 Manner of Enforcing the Decisions or Recommendations

The standards of practice of the ombudsman are to the effect that the ombudsman has no formal policy-making, enforcement, or disciplinary roles except for those internally designed within the Ombudsman program.[111] In that regard, the Ombudsman, upon concluding an investigation with respect to a complaint, makes a report containing recommendations to the particular government department or organization complained against. Also, he may submit a particular report to the appointing authority or a legislative body for purposes of taking necessary measures where the recommendations are not implemented by the particular respondent to the complaint.[112] In enforcement, the Ombudsman is also empowered to publish the findings and the fact that a particular organization has refused to implement the recommendations. However, in all instances, the ombudsman is required to also present the explanations, if any, made by the particular organization that was complained against.

Given the extension of the roles to industry-based dispute resolution, the ombudsman is empowered to make decisions that bind the service provider.[113] Apparently, compliance with the decision of the Ombudsman on the part of the service provider is mandatory as part of their regulatory compliance with the service provision standards. Therefore, a non-compliant service provider risks facing regulatory actions as well as being published by the ombudsman and hence reputational risk to the consumers.

The principal legislation establishing the Service does not contain any provision with regard to enforcement or compliance with the ombudsman's decision. Instead, it provides for the power of the minister to make regulations in respect of the procedures for the hearing of the complaints. The insurance ombudsman regulations likewise do not empower the insurance ombudsman to execute or enforce his decision.

[111] International Ombudsman Association, 'Standards of Practice', (Note69), paragraph 2.4.
[112] D.M Gottehrer, & G.M Dean, 'Fundamental Elements of an Effective Ombudsman Institution' (Note 9), 25.
[113] *India Insurance Ombudsman Rules, rule.17 (8)* and the *then Insurance Ombudsman for long term insurance Rules, 1998, rule 3(5).*

Instead, it empowers the Commissioner of Insurance to enforce the said decision.**[114]** That provision notwithstanding, there is no clear procedure in the regulations to guide the Commissioner of Insurance in the enforcement of the decisions made by the Insurance Ombudsman, apart from prescribing the action that can be taken by the commissioner against a non-compliant insurer.

As a result, the noncompliance by the insurer is regarded as a regulatory breach that calls for the invocation of the commissioners' powers to impose penalties and other regulatory actions. Such actions are subject to insurance regulatory internal procedures, which entail submission of the matter to the enforcement committee and rehearing of the concerned parties, which in this case are the insurance ombudsman and the concerned insurer.[115]

This article argues that the legislative setup with regard to the enforcement of the ombudsman's decision does not enhance clarity and finality of dispute resolution through the insurance ombudsman service. Arguably, since the insurance ombudsman is potentially an ADR institution that operates informally, it is not expected to issue judgments. However, that notwithstanding, the enforcement powers bestowed upon the Commissioner of Insurance could be exercised better by the insurance ombudsman service in order to ensure finality of the process without further use of time and resources of the parties in a regulatory enforcement wrangle. For instance, in Ireland, the decision of the ombudsman is enforceable through the Circuit Court upon either application of the ombudsman or a party in whose favour the decision was made against the party who refuses to comply.[116]

4.0 Conclusion and Recommendations

4.1 Conclusion

The Service in Tanzania is pivotal in access to justice, as it provides an alternative mechanism to court litigation in insurance disputes, fostering expeditious, fair, and less costly means of resolving insurance disputes. Therefore, the move to establish it is commendable. It conforms to the international norms in consumer protection as recognized by the

[114] *Insurance Ombudsman Regulations, (n8) regulation 22.*
[115] For instance, in a complaint between *LF(Complainant) and FA(Insurer), Complaint No.TIO/FAC/877/44/2021*
[116] *Financial Services and Pensions Ombudsman Act (n83) S.65(1).*

International Association of Insurance Supervisors, which, in its insurance core principles, emphasizes the need to have in place insurance claims dispute resolution procedures that adopt a balanced and impartial approach.[117]

4.2 Recommendations

Despite the efforts, much needs to be done with respect to the insurance ombudsman service in order to guarantee its independence, promote its accountability and fairness, and enhance its effectiveness. This requires an overhaul of the legal framework with regard to the insurance ombudsman service in order to guarantee the basic legal guarantees as identified in this article. This will ultimately enhance institutional reforms of the insurance ombudsman service in order to enhance its existential legitimacy and effectiveness.

Accordingly, the law should be amended, particularly in section 122 by categorically stating the legal personality status of the insurance ombudsman service so as to promote its independence both operationally and functionally. In this regard, the Ombudsman will be able to exercise rights such as hiring staff and determining their qualifications. Along with the legal personality, the same provision should be amended in order to guarantee the availability of independent resources, such as human resources, and do away with the current dual functionality of staff that erodes the functional independence of the ombudsman institution.

In complementing the independence aspect, the Insurance Act should also be amended in section 125 in order to guarantee its own financial resources to the insurance ombudsman service. Thusly, the law should provide for the independent sources of funds, such as industry levies or contributions, donations, and other subsidies. In South Africa, the source of funds is the insurance industry members' contributions per year, as well as donations from well-wishers. This can be adopted in Tanzania by prescribing a special amount of premium levy chargeable from the insurers from the gross written premium to ensure that the insurance ombudsman service is adequately financed and capable of controlling its own budget. With independent financial resources, the effective discharge

117 International Association of Insurance Supervisors, 'Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups', 2019, ICP 19.10.10.

of the mandate will be enhanced because the budgetary constraints arising from shared resources with the regulatory authority will be mitigated.

That apart, section 124 of the Act, which sets jurisdictional limits in terms of pecuniary powers of the insurance ombudsman service and the subject matters eligible for admission and determination by the ombudsman, should be amended to provide for an inclusive jurisdiction for purposes of alternative dispute resolution of all insurance disputes. This will expand the accessibility of the insurance ombudsman service and reduce the costs of access to justice to the disputants in line with the tenets of alternative dispute resolution.

The governance structure of the insurance ombudsman service should be improved by amending the Insurance Act to add powers to the insurance ombudsman service for recruiting and retaining staff. This will do away with staff dual functionality and ensure their performance efficiency and independence. The Ombudsman will be able to recruit staff through set criteria and standards and will be able to monitor their performance without the possibility of interruption through reassignment of duties and or relocation of workstation. In this line, amendments should include the establishment of the Ombudsman Council or Board for ensuring there is a governance structure that supports the sustainability and functionality of the insurance ombudsman service as an independent institution. It will oversee and guide the ombudsman service in the discharge of its mandate and for the purposes of improving efficiency through ensuring capacity development and monitoring staff and institutional performance.

That apart, the procedural terms of reference contained in the insurance ombudsman regulations should be amended first to be streamlined and secondly to clearly stipulate the important aspects of procedural conduct in terms of reconciliation, mediation, and arbitration. Streamline regulations will enhance ease of procedural conduct and process predictability and ultimately enable attainment of an equitable end result of the dispute resolution process. Accordingly, the regulations should include the right to appeal and review to ensure full access to justice by the disputants.

In this accord, internal review and external appellate mechanisms should be prescribed through the regulations to guarantee the fairness of the Service as a cornerstone of justice. In line with this, the regulations should be amended to allow enforcement of the ombudsman's decision by the Service rather than the Authority. This can be achieved by according the decisions of the Ombudsman a status akin to High Court decisions and thus executable in the same manner as judgments. This will ensure predictability of the procedure and finality of the process without necessarily mixing up regulatory and dispute resolution functions through the enforcement window. It will also enable parties to realise the fruits of the decisions in a timely manner and without further costs or hurdles.

Alternatively, the principal Act should be amended to include the procedures for dealing with non-compliance with the ombudsman's decision by the insurance registrants in order to separate such a process from regulatory actions. Generally, there is a need to align the law with basic legal guarantees in order to ensure that the insurance ombudsman service delivers to its maximum.

In order to affect the above recommendation in a meaningful and comprehensive way, stakeholders' participation is key. These include insurers and allied service providers, the insured, as well as the general public, constituting potential consumers and or beneficiaries of the insurance services. Accordingly, further studies should be conducted on the role of and effective mechanisms of stakeholder engagement in the design and establishment of an effective ombudsman institution.

It should be noted, however, that the factors put forward and discussed in this article as basic legal guarantees are not exhaustive but rather a depiction of the commonality of the basic features found in literature and legislation establishing ombudsmen institutions. They serve as a basis for further study and evaluation for the purposes of ensuring effective and efficient deployment of the Ombudsman institution.

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