

# Journal of Public Policy & Governance



## **Examining the Investigative Capacity of the Ombudsman in Addressing Administrative Justice in Kenya**

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**ISSN: 2616-8413**

# Examining the Investigative Capacity of the Ombudsman in Addressing Administrative Justice in Kenya

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*How to cite this article:* Msengeti M., M. & Kipchumba H. (2023). Examining the Investigative Capacity of the Ombudsman in Addressing Administrative Justice in Kenya. *Journal of Public Policy & Governance*, 7(1), 99 - 113. <https://doi.org/10.53819/81018102t6057>

## Abstract

This study was conducted to assess the investigative capacity of the Commission on Administrative Justice (CAJ) also known as Office of the Ombudsman, Kenya, in ensuring administrative justice. The study appreciated that the core mandate of CAJ is to ensure administrative justice in the Kenyan public sector through investigating cases of maladministration. The study aimed to fill a gap where previous studies undertaken have focused on the general mandate of the institution whereas this study focused on its investigative mandate. The study adopts that a major determinant of the investigative capacity is the legal framework underpinning the Ombudsman. As such, the objective of the study was to examine how the legal framework underpinning the ombudsman investigative function affects its capacity to ensure administrative justice. The study was guided by the agency and accountability theories. The research was conducted at the Commission's headquarters in Nairobi, Kenya and employed a descriptive study design. Data was collected through questionnaires to the respondents and an analysis of investigation records was also conducted. Census survey and purposive sampling were employed in selecting the respondents while probability sampling was employed in the selection of investigation records for analysis. Secondary data in form of reports, legal instruments, and court judgments were also reviewed and analysed. Statistical packages for social sciences as well as advanced excel were used to analyse quantitative data while qualitative data was analysed and arranged according to thematic areas. A spearman correlation test was undertaken and results indicated a positive relationship between investigative capacity of the Ombudsman and its achievement of administrative justice. The study found that the legal framework underpinning the ombudsman investigations is insufficient and in that regard it was recommended that the CAJ Act, 2011 be amended to empower the Ombudsman to enforce recommendations arising from its investigations.

**Keywords:** *Ombudsman, legal framework, administrative justice, investigative capacity*

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## 1.0 Introduction

The Ombudsman institution is typically established to protect citizens from abuse of power, negligence, unfairness, and maladministration by public institutions and officers (Motlamelle, 2009). The general objectives of the institution are to improve public administration and enhance government accountability and this is mainly achieved through resolution of public complaints and initiating own motion investigations with respect to government administrative practices and recommending remedial action (Reif, 2004). Oosting (1999) posits that the concept of the ombudsman derives from the rule of law whereby the government not only creates the law but is also subject to it and therefore the institution is an element of checks and balances to prevent the state from exercising absolute power without control and accountability. Najmul, (2006) highlights the importance of the ombudsman in modern society by arguing that with the increasing encroachment of government control into spheres of society that were previously under private control, there arises the need to protect the citizen from possible infringement of their rights by the government, and the ombudsman plays a role in ensuring such protection. Malunga (2014) supports this and appreciates that the legislature, courts, and tribunals alone cannot ensure adherence to constitutionalism and good governance. Progressive constitutions, therefore, prescribe a multiplicity of institutions to support constitutionalism and the ombudsman is one among them. According to Myer, Andrea, Jocelyn and Marc (2015), the ombudsman has a clear influence on public administration by addressing maladministration; and promoting fairness in public service delivery therefore ultimately contributing to a healthy democracy.

The concept of the Ombudsman first started in Sweden in 1809 to ensure observance of the law by government employees. The idea began spreading beyond Sweden in the early and mid-20<sup>th</sup> Century when Finland and subsequently other Scandinavian countries adopted the office in their respective constitutions. The institution was increasingly established in other countries from the late 20<sup>th</sup> Century to the early 21<sup>st</sup> century, with the backbone of the ombudsman being its investigative function. Myer, Andrea, Jocelyn and Marc (2015) contend that investigations are at the centre of the Ombudsman's work as it is an intensive complaint resolution method that involves a critical and in-depth analysis of issues. Reif (2004) supports this assertion by describing the Ombudsman as an office provided for by the constitution which receives complaints from aggrieved persons against government agencies, officials, and employees or acts on its own motion and has the power to investigate, recommend corrective action, and issue reports. She further categorizes the ombudsman into classical and hybrid ombudsman. The former is a public office appointed by the legislature to supervise the general administrative conduct of the executive branch of government while the latter has additional functions over and above the classical ombudsman such as human rights commission role, enforcement of anti-corruption laws, and overseeing the promotion of the right to access to information.

The first African Country to establish the office of the Ombudsman was Tanzania in 1966, named the Permanent Commission of Enquiry, with the aim of clipping the discretionary powers of public officials. It was followed by Ghana, Zambia, and Mauritius in the late 20<sup>th</sup> century all in an effort to promote accountability in the public service (Hatchard, 1991). It is argued that the ombudsman in Africa is potentially the most effective investigative body within the government when conferred with the necessary powers as it ensures unique access to government documents and

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officials ensuring expeditious resolution of complaints (Hatchard, 1986). According to the International Ombudsman Institute, currently the institution has been established in over 40 African Countries having different titles for the office.

The Kenyan Ombudsman aptly named The Commission on Administrative Justice (CAJ) is viewed as a hybrid ombudsman since its general mandate is to address maladministration in the public sector with an additional mandate of enforcing the access to information laws which require public and private institutions to avail public information in their possession in accordance with Article 35 of the Constitution of Kenya (COK), 2010. CAJ is a creation of Article 59 of the COK, 2010 which establishes the Kenya National Human Rights and Equality Commission (KNHREC) and under sub-article 4 provides that parliament shall enact legislation to restructure the Commission into two or more separate commissions. Subsequently, CAJ was established in the year 2011 through the CAJ Act, 2011. The functions of the Commission under the CAJ Act, 2011 entail investigating and inquiring into allegations of maladministration in the public sector, capacity building on complaints-handling in public institutions, promoting alternative dispute resolution in complaints relating to public administration, providing advisory opinions on matters public administration and reporting to the national assembly on complaints investigated and remedial action taken thereon. Further, the Access to Information Act, 2016 confers to the Commission powers to enforce and oversight the provisions of the act whose main objective is to uphold and promote the citizens' rights to access to information.

The COK, 2010 under article 59(2) (h) and (i) envisages a commission that investigates any conduct in public administration that is alleged to be improper or prejudicial, complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct. In essence, the COK, 2010 which is the supreme law of Kenya prescribes the core mandate of the Ombudsman as promoting administrative justice by undertaking investigations on maladministration in the public sector, with the other additional functions prescribed through legislation. Consequently, the CAJ investigates maladministration in the public sector either through prompting by complaints or on its own initiative.

The ombudsman model in most countries where the institution has been adopted is that it issues non-binding recommendations to public institutions that it investigates. This is premised on the argument that in effecting administrative reforms, the application of reason is more powerful than coercion (Hertogh, 2001). Ngaluma (2020) argues that the reliance on moral authority as opposed to coercive powers to ensure implementation of ombudsman recommendations has failed to work effectively in Africa given that the cultural, social, and political environment is characterized by high levels of impunity. He further cites that in some instances, the ombudsman institution in Africa has faced sanctions in form of budgetary cuts in the event where it makes unpopular adverse findings and recommendations against the executive.

The Kenyan Ombudsman is subject to the traditional model whereby it is required to issue non-binding recommendations to public institutions and officers upon completion of an investigation. This consequently means that public agencies are at liberty to apply their discretion in implementing the recommendations. This has been seen as a major drawback in the efforts of the Ombudsman to effect administrative change in a public sector that exists in a legal and political

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environment that often operates with disregard to the rule of law. In the CAJ strategic plan for the period 2019-2023, litigation against its determinations is listed as one of the threats likely to be encountered while implementing the plan. Unresponsiveness by public offices attributed to the non-enforceability of the Ombudsman recommendations was as well cited as a challenge in implementing the preceding strategic plan for the period 2013 to 2018. This points to a challenge in capacity with respect to the legal framework under which the Kenyan Ombudsman operates.

Kabillah (2017) studied the office of the Ombudsman as an advocate of access to administrative justice using the parameters of accessibility of the office to the public, co-operation by other government institutions, and the jurisdiction and powers in executing its mandate. Tallam (2019) examines how the Ombudsman promotes fair administrative action in Kenya. Owino (2019) uses a doctrinal and historical methodology to study the challenges facing the implementation of administrative justice in Kenya. These studies explore the general mandate of the Ombudsman but do not delve deeper into the investigative function of the Commission. A gap, therefore, exists in examining the role of the Kenyan Ombudsman in the context of its investigative mandate and particularly its capability to effectively execute this function.

Given the foregoing, this study will seek to assess the investigative capacity of the ombudsman in Kenya and how this affects achievement of administrative justice, while appreciating that the institution's legal framework as the major indicator of its investigative capacity.

### **1.1 Problem Statement**

It is not what the ombudsman says it is or the purpose for which it is formed that is important but rather whether it has the capacity to perform the particular functions conferred to it (Arlene, 2013). There arises a need therefore to examine beyond the establishment of the institution and it being anchored in law, whether it is capable of fulfilling its core mandate. The impact an ombudsman has in ensuring administrative justice is largely dependent on its capability to resolve complaints and address systemic failures in public administration through investigations. This, therefore, calls for adequate resourcing of the institution in terms of an empowering legal framework to resolve complaints, conduct systemic investigations and provide remedial action. Annual reports by the CAJ as well as the strategic plan 2019-2023 have pointed to the fact that non-enforceability of the ombudsman's recommendations is a huge contributing factor to the effectiveness of the institution.

Preceding studies on the effectiveness of the Ombudsman institution have barely utilized an introspective approach on the investigative mandate of the Ombudsman. Myer, Andrea, Jocelyn and Marc (2015) in a study on the impact of investigations undertaken by the Toronto Ombudsman on public administration base their findings on the perception and experiences of public administrators whose organizations have been subjected to investigations by the institution. Within the context of Kenya, studies have only analysed the general mandate of the Ombudsman without deep interrogation of its investigative function, and this is the gap the study sought to fill.

In light of this, the study sought to examine the capacity of the Ombudsman to ensure administrative justice in the public sector by undertaking investigations. In particular, the study focused on interrogating the legal framework underpinning the institution and whether it equips the ombudsman to effectively address administrative justice in the public sector through investigations.

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## **1.2 Objective of the Study**

To examine how the legal framework underpinning the ombudsman investigations affects its achievement of administrative justice.

## **2.0 Literature Review**

### **2.1 Theoretical Review**

#### **2.1.1 Accountability Theory**

Accountability theory as described by Lerner and Tetlock (1999) explains the implicit or explicit expectation that one may be called upon to justify their actions, decisions or beliefs to others. This expectation subsequently influences one's actions, decisions and beliefs and how they arrive at the same. Lerner and Tetlock further elaborate that in accountability, there exists the account giver which is the party being held to account, and the account holder who is the party holding the account giver to account. When the account givers do not provide sufficient justification for their actions, decisions or beliefs, they suffer sanctions from the account holder whereas when the justification is sufficient, they reap positive benefits. They further hold that the following elements increase the perception of accountability: Social presence- expectation that one's actions are being watched by another, identifiability- one's actions or utterances will be linked to them, evaluation- expectation that one's performance will be assessed by another based on some yardstick and implied consequences, reason giving- that one must give reasons for what they say or do.

This supports the concept of the ombudsman in ensuring administrative justice in that through investigations the ombudsman who is the account holder ensures accountability by public bodies and officers (account givers) on their administrative conduct. Similarly, where justification for administrative action and decision is insufficient then the account givers suffer sanctions in form of adverse findings and recommendations from the Ombudsman. On the other hand, where justification provided for an administrative decision or action is sufficient then the public office that is under scrutiny is vindicated and benefits may be reaped in terms of increased confidence in the office and co-operation with the administrative decisions by the public.

The four aforementioned elements that increase the perception of accountability are seen at work whereby public offices are aware of the mandate of the ombudsman and the oversight function over them and as a result the public bodies and officers with the expectation that they will be held to account, make efforts to ensure that they conduct their administrative matters in a fair and lawful manner.

The main basis of the ombudsman ensuring accountability in the public sector lies in the legal powers and jurisdiction assigned to it thus this study aimed to understand the strength of this basis that the ombudsman stands on as an account holder.

#### **2.1.2 Agency Theory**

This theory describes the relationship between two parties whereby the principal delegates authority to the agent to carry out their (principal's) preferences (Shapiro, 2005). According to Kathleen (1989) the agency theory is concerned with resolving two problems that may arise in the principal-agent relationship: that the desires and goals of the principal and that of the agent may be in conflict, and that it is difficult for the principle to verify the agent's actions.

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The agent may exploit the principal for the former's benefit and fail to execute the principal's will. Principals must then strive to monitor the agent's behaviour and actions to ensure that they align with the principal's will. This relationship can be extrapolated in the citizen-state relationship whereby the citizen is the principal and the government is the agent in that it runs the affairs of the state on behalf of the citizens. Both unelected and elected officials hold state power in trust of the citizens and are therefore expected to exercise it for the benefit of the citizens.

However, government officials may be inclined to further their desires while exercising state power at the expense of the citizens' will. The power asymmetry is such that the agent in this case has more power than the principal and so the ombudsman plays a role in clipping these powers and being the citizen's watchdog. In conducting investigations, the ombudsman balances the scale of power as information that the citizens may not be privy to is brought to light by the ombudsman and as a result the principals (citizens) are in a position to keep the agent (government) in check. The aim of this study was to establish whether the ombudsman is sufficiently equipped to ensure that the interests of the principal with respect to administrative justice are secured

## **2.2 Empirical Review**

### **2.2.1 Role of Ombudsman Investigations in Ensuring Administrative Justice**

Traditionally, the judiciary played a key role in ensuring administrative justice. However, the courts were considered adversarial, time-consuming, rigid and expensive. As such, a cure was born in form of the ombudsman whose model does not require legal representation and has no cost implications to the citizens and so it is considered flexible, accessible and more expeditious (Najmul, 2006). Najmul posits that the ombudsman is an institution with the primary role of protecting citizens from bureaucratic wrongdoing and maladministration as well as providing redress to complaints against public administration. He postulates that over time there has been expansion of government in size and scope globally, for instance the movement from free-market economies to regulated economies in a number of sectors is indicative of this. Such has led to citizens gaining more services and interaction with public service and officials while subsequently subjecting the public to higher levels of vulnerability to government administrative action and decisions. Citizens therefore, require additional protection of their rights from abuse by the expanding government, and the ombudsman is the institution tasked with this protection. He further argues that the legislature, which traditionally played a role in clipping executive powers either through its committees or as whole, does not have sufficient capacity to do so on its own. He attributes this to limitation on time, technical and/or specialised expertise within the legislature in addressing grievances while fulfilling the oversight role, as it has to deal with pressing emerging issues on a frequent basis in fulfilment of its other roles of representation and legislation. The ombudsman provides a remedy to this as it is specifically tasked with investigating government administrative conduct. He further argues that on the flipside, the ombudsman through its investigations and verifying of facts also protects public administration from malicious and frivolous complaints where allegations against the government are unfounded.

Malunga (2014) supports Najmul and appreciates that the legislature, courts and tribunals alone cannot ensure adherence to constitutionalism and good governance. National constitutions therefore prescribe a multiplicity of institutions to support constitutionalism and the ombudsman is one among them. He further states that the traditional avenues of ensuring accountability in

government are not commensurate to the volume of irregularities occasioned by the several points of contact between the state and the citizen. The ombudsman is therefore an intervention to bridge this gap by promoting constitutional values which include respect to human rights, accountability and efficient public administration.

Hertogh (2001) argues that it is difficult for a public office to seek clarification on a court decision that it is required to implement as the court process is generally antagonistic and this likely results in misinterpretation of the court determinations. On the other hand, ombudsman investigations allow for discussion and negotiation and it is easier to seek clarification on the recommendations arising out of investigations. Soderman (2004) supports this assertion and avers that the ombudsman intervenes where judicial remedies to disputes between citizens and the government administration would otherwise be laborious, costly, and slow to obtain. That the ombudsman also generally promotes administrative justice through findings and recommendations emanating from the investigation of complaints as well as systemic investigations. According to Reif (2004), Ombudsman investigations are a method of alternative dispute resolution for conflicts between the citizens and the government whereby the ombudsman conducts impartial investigations upon receiving a complaint against government administrative conduct and afterwards a determination is made. In a number of jurisdictions, the ombudsman can initiate own motion investigations on systemic administrative problems and where weaknesses are detected, recommendations are made to address them. Such systemic investigations are a form of preventive measures where the ombudsman takes a proactive role in administrative justice in addition to the traditional retrospective one of complaints resolution.

Myer, Andrea, Jocelyn and Marc (2015) evaluate the impact of ombudsman investigations on public administration, using a case study of the Office of the Toronto Ombudsman. They contend that investigations represent the most intensive intervention of the ombudsman office through critical analysis of issues under its mandate. The methodology adopted in the study is that of interviewing public servants in various cadres from institutions that have been investigated by the Toronto Ombudsman and assessing their responses on the impact the investigations have had on their institutions. The study appreciates that assessing the impact of the ombudsman is a difficult task as the ombudsman's work to a great extent involves ensuring that a government treats its citizens fairly, which is a difficult parameter to measure. The study finds that ombudsman investigations have been critical in improving public administration through ensuring fairness, accountability, good governance and streamlined public service delivery. It also finds that in some instances the difficulty in complying with ombudsman investigation recommendations is attributed to the limitation of resources in the public institution required to implement the recommendations.

While the aforementioned study aims at establishing the impact the ombudsman investigations have in public administration, this study aimed to establish whether the ombudsman investigations are capable of having the intended impact. The methodology differs in that this study examined the internal capacity of the ombudsman while the previous study relied on perception and experiences by external parties. The study on the Toronto ombudsman also utilised interviews as the main and only tool for data collection whereas this study utilised questionnaires and relied on both primary and secondary sources to ensure validity of the findings. This study also differed in scope as the above study is on the Toronto Ombudsman while this study concentrates on the Kenyan ombudsman. This study anticipated a similar challenge in terms of measurability in

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examining whether the Kenyan ombudsman is equipped to effectively dispense administrative justice through investigations as the concept of administrative justice is itself not easily quantifiable.

Oosting (1999) observes that the existence of an ombudsman is indicative of a government that is committed to preventing injustice which results from maladministration. That the ombudsman prevents the state from gaining and exercising absolute powers and lends legitimacy to the government through creation of public confidence in public institutions. To create this confidence, the ombudsman must yield results and thus this study aimed to establish whether the CAJ has capacity to yield the intended results through investigations.

Motlamelle (2009) notes that conventionally most research relating to the state and governance has focused on the main three arms of government which are the executive, judiciary and legislature, and the separation of powers between them while ignoring other constitutional and statutory bodies with equal relevance in governance, the ombudsman being one of them. He argues that the three arms of government are not sufficient in ensuring checks and balances especially with respect to constitutionalism, human rights and democracy thus it calls for additional institutions to ensure the same and the ombudsman has been identified as the best remedy for administrative excesses. This study, therefore, aimed to fill the gap identified by Motlamelle by appreciating the place of constitutional offices in governance and the need to add to the body of knowledge with respect to those offices.

Kabillah (2017) studies the Office of the Ombudsman as an advocate for administrative justice and particularly looks at whether the Commission has promoted access to administrative justice since its inception. In doing so, she identifies accessibility of the office by the public, co-operation with the office by other public bodies and jurisdiction & powers of the office as the main study parameters. Kabillah's study just as this study does, appreciates the scope of jurisdiction and powers of the ombudsman as a major determinant of the office in promoting administrative justice effectively. However, her study differs in scope from this study as she evaluates the ombudsman in terms of its general mandate while this study concentrated on the investigative function of the office.

Tallam (2019) examines the role of the Kenyan ombudsman in promoting the right to fair administrative action. She describes fair administrative action as fairness in decision making by persons to whom power has been bestowed to exercise on behalf of others. She conducts an assessment on ways through which the ombudsman promotes this right through resolution of complaints. She further identifies challenges and opportunities for the ombudsman in promoting the right to fair administrative action. She finds that the use of inquiries in resolving complaints is more frequent than investigations. This is identified as a weakness since inquiries involve issuing letters to public entities while investigations involve critical analysis of issues, and therefore she recommends that the ombudsman should invest more into investigations. This study however departed from Tallam's study as she concentrates on resolution of complaints as a measure of the extent to which the ombudsman promotes fair administrative action while this study appreciates that the role of investigations is not limited to resolving complaints but also includes addressing systemic failures in public administration.

### **2.2.2 Legal Framework and the Ombudsman Investigations**

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The powers and jurisdiction of the ombudsman are mainly anchored in law thus the legal framework underpinning the office greatly impacts its effectiveness. A hallmark of the ombudsman institution is that it does not have the power to give determinations that are binding to the offices that it investigates. It is argued that were it to be conferred with such powers, then the ombudsman would be another court or tribunal, and such institutions are already in place (Reif, 2004).

Hertogh (2001) conducts a study in the Netherlands to establish the level of compliance by public bodies with administrative courts and with the ombudsman determinations respectively. He describes the model used by the former as coercive control, where sanctions and directives are given to ensure compliance with the court's decisions. He argues that this kind of control is likely to elicit a defensive reaction from the public body towards which the control is exercised and ultimately the intended policy outcomes may not be attained. He attributes this to the vertical nature of coercive control which does not leave any room for negotiation and/or discussion and thus the court decision may be considered ambiguous and negative towards a public office. He on the other hand refers to the kind of control exercised by the ombudsman as co-operative control whereby there is room for negotiation with regards to recommendations arising from investigations. He also finds that due to this, public bodies consider ombudsman recommendations more realistic and easier to understand. Consequently, the public bodies are more likely to comply with the ombudsman's recommendations as there is less tension and as a result, ombudsman investigations will result in greater policy impact than that of determinations made by the administrative court. The study is within the context of the ombudsman in Netherlands whereas the scope of this study was the ombudsman in Kenya. As such, this study will partly examined whether the same principle applies in Kenya, whether co-operative control which is suggested by the legal framework underpinning the ombudsman does indeed result in compliance with its recommendations.

Soderman (2004) supports the application of reason rather than coercion in resolving administrative disputes. He argues that well-reasoned and convincing arguments are highly likely to lead to compliance with recommendations. Whether this holds for the context of Kenya is one of the questions that this study sought to answer.

In Africa, there exists a mixture of the classical and hybrid ombudsmen and questions still abound as to which model and legal framework is best suited for states within the continent. In Ghana, the Commission on Human Rights and Administrative Justice (CHRAJ) plays the role of an ombudsman, human rights protector and anti-corruption institution with powers to seek enforcement of its recommendations through court. In Uganda, the Inspector General of Government (IGG) also plays an ombudsman, human rights and anti-corruption organisation with both investigatory and enforcement powers which include arrest and prosecution of offenders. The Ombudsman in Namibia is also a hybrid one with mandates on administrative justice, human rights and environmental protection. It has additional oversight powers over the police, prison service and the defence force. It has the powers to refer matters for prosecution or to the auditor general and can as well push for court intervention on instances where it is of the opinion that the government is in violation of the constitution (Reif, 2004). All this points to the fact that the Ombudsman concept is not a 'one size fits all' and that some African states have appreciated that the institution is created to serve the environment and realities within which it exists. This study

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sought to examine the legal framework supporting investigations in Kenya's ombudsman and whether it aligns with the environment within which it exists.

According to Hatchard (1991) the scope and powers of the ombudsman vary from one country to the other and the model adopted in Africa should not necessarily emulate the exact model adopted in the traditional western models. He further emphasizes that however large the jurisdiction of the ombudsman, its effectiveness in covering the jurisdiction is largely dependent on the extent of its investigative powers and available remedial measures. In that regard, the Ombudsman should be able to undertake investigations on its own initiative especially where citizens are ignorant of their rights and susceptible to abuse of power by government officials. Action by the ombudsman should therefore not be solely predicated by a complaint from a citizen. He further points out that such a model coupled with political will, adequate budget and satisfactory staffing will ensure that the ombudsman plays a key role in promoting government accountability in Africa.

Motlamelle (2009) conducts a study on the effectiveness of the Ombudsman of Lesotho as a democracy promotion institution. One of the findings he makes is that the effectiveness of the institution in addressing maladministration has been hampered by its lack of enforcement powers as most public agencies do not comply with its recommendations. It is argued that the institution would bear more fruit if it had powers to enforce its recommendations. Otiende (2013) supports this and asserts that administrative justice can only be achieved in Africa if there is a clear mechanism in enforcing the ombudsman's decisions and recommendations as well as an environment where there is respect for the law. Mekdes (2013) presents that the Ethiopian Institution of the Ombudsman does not have powers to enforce decisions in court and so depends on soft powers to ensure compliance. He cites this as a weakness in law as public agencies interpret co-operation with the ombudsman as an obligation during investigations only and not at the enforcement stage. This study endeavoured to establish the status of implementation of CAJ's investigation recommendations and to what extent the supporting legal framework has a bearing on the same.

Malunga (2014) posits that the main aim of the ombudsman is to protect the rights and interests of the citizens from government maladministration through investigations and resolution of complaints. Investigative action by the ombudsman involves interrogation of state conduct and/or action and its legitimacy with a view of providing remedial action where prejudice or impropriety is identified. This can only be attained where findings are issued and compliance of the remedial action is demanded and so state offices should have an obligation and willingness to co-operate with ombudsman investigations and recommendations. He notes that most public agencies in South Africa are quick to provide justification for their actions or even challenge the ombudsman determinations through legal suits to avoid compliance. This has been the case even with Kenya's ombudsman as per its Strategic Plan 2019-2023 and thus this study sought to ascertain how litigation challenging the ombudsman's determinations has affected its investigative mandate.

Kabillah (2017) finds that CAJ's powers and ability to promote administrative justice are limited by insufficient legal framework. She also notes that a number of public officers have challenged the ombudsman's findings and recommendations in court causing delays in the resolution of complaints. This study endeavoured to establish the limitation in terms of legal framework with specific reference to the ombudsman's investigative mandate.

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Owino (2019) studies the challenges facing the implementation of administrative justice by the Kenyan Ombudsman. He conducts a comparative analysis between the legal framework of the ombudsman in less developed countries and developed countries, concentrating on the enforcement question. He finds that in developed countries there are strong governance structures and the rule of law is respected and therefore public bodies implement the ombudsman's decisions through mere moral suasion. He posits that in less developed countries such as Kenya, the governance structures are weak and characterised with violations of human rights, thus compliance with the ombudsman's decisions can only be ensured through express provisions of the law. He thus finds the legal framework encompassing the Kenyan Ombudsman weak as it does not expressly provide for compliance with the ombudsman's recommendations. The gap that this study will sought to fill was that it employed a descriptive study design in assessing the legal framework of the ombudsman while Owino's employed a comparative analysis approach.

Otono (2018) studies the legislative and institutional framework of the Ombudsman in the resolution of complaints. In doing so, she utilises doctrinal, historical and comparative research designs while this study utilised a descriptive study design in studying the capacity of the ombudsman with respect to investigations.

Tallam (2019) finds that over and above the powers to conduct inquiries and investigations, public entities are bound by the ombudsman decisions and the same can be enforced in court in the event of non-compliance. She attributes this to a decision by the Court of the Appeal as at the time of her study, differing with previous findings which found the legal framework insufficient with respect to enforcement of the ombudsman decisions. Nguluma (2020) notes that non-compliance with the ombudsman's decisions is common in investigations that involve maladministration, administrative justice and leadership & integrity. He posits that the non-compliance by public officials takes the form of defensiveness, evasive responses, and inordinate delays in effecting recommendations, outright defiance and challenging ombudsman's decisions in court. He emphasizes that enforcement of the ombudsman's decisions is critical in ensuring effectiveness of the institution. He however states that in the case of Kenya, the ombudsman is endowed with coercive powers which include warrants of arrest for breach of summons, powers to search and inspect premises and compel production of relevant information among others. He to an extent agrees with Tallam that the ombudsman's decisions are enforceable, while Kabillah and Owino take a different standpoint. In light of these contradictions, this study sought to understand what the exact position on the enforceability of the ombudsman decisions is, and how this affects its investigative function.

Further, the Commission on Administrative Justice annual reports for the years 2017/18, 2018/19 and 2019/20 all cite insufficient legal framework as a challenge by the ombudsman in enforcing its decisions and recommendations. This study aimed to go a step further to examine the nature of this insufficiency and prescribe what remedial action can be taken to cure the same particularly with respect to the Commission's investigative mandate.

The Commission on Administrative Justice powers and jurisdiction with respect to investigations are anchored in the COK, 2010 and CAJ Act, 2011. Article 59 of the COK establishes the Kenya National Human Rights and Equality Commission and sub-article 4 provides that parliament shall enact legislation that may restructure the Commission into two or more separate commissions and it is from this restructuring that the CAJ Act, 2011 is born establishing the Office of the

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Ombudsman. The COK prescribes the function of CAJ as investigating any conduct in state affairs, or any act or omission in public administration or in any sphere of government that is alleged or suspected to be improper or results to prejudice. It further establishes the function of investigating complaints of abuse of power, unfair treatment, manifest injustice, unresponsive official conduct and taking remedial action.

The CAJ Act, 2011 confers to the Commission powers to issue summons and compel the attendance of any person or group before the commission as well as the power to lawfully obtain information it considers relevant from any parties or premises. It further prescribes that upon a completion of an investigation, the Commission may require the organisation to which the investigation relates to submit a report within a specified period on steps taken to implement its recommendations. In the event there is failure by the organisation to implement the recommendations, then the Commission should prepare a report detailing the same to the National Assembly for appropriate action. The Act also describes the jurisdiction over which the ombudsman has mandate as any public office, State Corporation and any other state agency but also provides limitation over among others, criminal matters, matters pending before court and proceedings or decisions of the Cabinet. One of the study's objectives was to establish whether these powers prescribed by the Act are sufficient for the ombudsman to effectively execute its investigative mandate. It further examined what is meant by appropriate action to be taken by parliament where a public body fails to implement the recommendations of the ombudsman and whether there are instances where the said action has been effective.

### **3.0 Methodology**

#### **3.1 Research Design**

The study adopted a descriptive design. According to Kothari and Garg (2019) descriptive research studies are concerned with specific predictions and entail narration and/or description of facts and characteristics with respect to an individual, a group or situation. In this case, the study made a specific prediction that the investigative capacity of the ombudsman institution has a bearing on how it upholds administrative justice.

#### **3.2 Study Variables**

The independent variable is investigative capacity with the indicator being the legal framework underpinning the ombudsman. The dependent variable is administrative justice whereby the indicators are rate of achievement, timeframe for undertaking investigations and compliance with investigation recommendations.

#### **3.3 Site of the Study**

The study was conducted in Nairobi where the headquarters of the Commission on Administrative Justice is located. The investigations division which handles all investigation cases at the institution is also based at the headquarters. As a result, all the respondents as well as secondary sources that the study relied on were accessed from Nairobi.

#### **3.4 Target Population**

The target population for this study included all 124 cases of maladministration investigated as per the CAJ investigation database as well as all staff working at the investigations, legal, advisory,

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human resource and finance divisions at CAJ which is a total of thirty-five (35) (Commission on Administrative Justice, 2022). The members of staff at the aforementioned divisions were identified as they have sufficient knowledge and experience on the subject of interest. Data on investigations timelines as well as status of compliance with investigation recommendations was further obtained from the investigation database. This was also utilised to triangulate the data sourced from the staff as a way of mitigating against possible bias.

### 3.5 Sampling techniques and Sample Size

A census survey was employed on staff from the investigations, legal and advisory divisions since they make up a relatively small number.

Purposive sampling was employed in selecting the head of the human resource and finance divisions as it is anticipated that they are the custodians of data and are well versed with respect to the topic of interest.

All systemic investigations undertaken and all investigation cases that have been challenged in court were considered for the study. Simple random sampling was employed to select the rest of the cases investigated by the ombudsman.

**Table 1: CAJ Staff Size 2022**

Division	Total Number	Sample size	Percent (%)
Investigations	4	4	100
Legal	20	20	100
Advisory	2	2	100
Human Resource	4	1	25
Finance	5	1	20
<b>Total</b>	<b>35</b>	<b>27</b>	<b>77</b>

**Source: CAJ Staff Establishment 2022**

In addition, cases of investigations undertaken were sampled from the database as follows:

**Table 2: CAJ Investigations Database**

Categories of Cases	Total number	Sample size	Percent (%)
Systemic Investigations	4	4	100
Specific Investigations	120	17	14
<b>Total</b>	<b>124</b>	<b>21</b>	<b>17</b>

**Source: CAJ Investigation Database, 2022**

As per Mugenda and Mugenda (2003) at least 10% of the accessible population is sufficient sample in a descriptive study. All 4 systemic investigation reports were included in the study. Of the 120

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specific investigation reports released by the Office of the Ombudsman, 17 cases were randomly selected for the study. An aggregate of 21 cases were therefore studied.

### **3.6 Research Instruments**

The study utilized a semi-structured questionnaire to obtain quantitative and qualitative data from the respondents. The other form of primary data was the CAJ investigation database where data including timelines and status of compliance with recommendations was acquired. Secondary data in form of annual reports, annual work plans, court judgements and legal instruments were reviewed and analysed according to thematic areas to augment the primary data collected.

### **3.7 Pre-testing/Piloting study**

The research instruments were pretested on randomly selected respondents. Mugenda and Mugenda (2003) posit that the pre-test sample should be between 1% and 10% depending on the sample size. Subsequently, the pre-test was conducted on 10% of the total population of 35, therefore 3 members of staff who formed part of the respondents were selected for the pre-test. The questionnaire was administered to the selected subjects with and was used to establish whether the subjects comprehended the questions, the estimated time taken to complete the questionnaire, and whether any issues with respect to the objectives were omitted in the questionnaire. The tool instruments were then adjusted accordingly.

### **3.8 Validity**

Construct validity was realised through literature review where the concept of capacity with respect to the ombudsman investigations was established through thorough analysis of existing knowledge on the subject. Consequently, the research instruments were informed by these concepts. Further, data collected from the respondents was triangulated through analysis of secondary sources.

### **3.9 Reliability**

Reliability was ensured through the test/re-test technique whereby the instruments were administered twice on the subjects selected for the pre-test on an interval of two weeks and it was established that there was minimal deviation in responses submitted by the subjects.

### **3.10 Data Collection**

The questionnaire was administered online through google forms as it is anticipated that the respondents are literate and have easy access to the internet. This also facilitated digital collation and analysis of the collected data. Collection of data from the CAJ investigation database was done through desktop research.

### **3.11 Data Analysis and Presentation**

Statistical Packages for Social Sciences (SPSS) was used to conduct correlation analysis between the variables. Advance excel was used to organize, collate and present data in form of charts and tables for ease of interpretation and drawing of inferences.

Qualitative data was organized according to the themes of study and was used to explain the trends/patterns established in the quantitative analysis.

The study sought to find out the presence and degree of correlation between the independent variables and dependent variable. Therefore, to draw inferences as to the relationship and to test the hypothesis, correlation analysis was employed. Data collected with respect to the independent variables was subjected to correlation test to determine the existence and strength of the relationship with the dependent variable

## **4.0 Findings and Discussion**

The study deployed 27 questionnaires to the respondents and they were all dully filled and returned, translating to a response rate of 100% which was sufficient for analysis. The questionnaires were deployed via the google form platform as all the respondents had access to the internet and are literate. Kothari (2004) recommends the use of computer systems in data collection and analysis as it ensures speed, accuracy, diligence and reliable storage in the process.

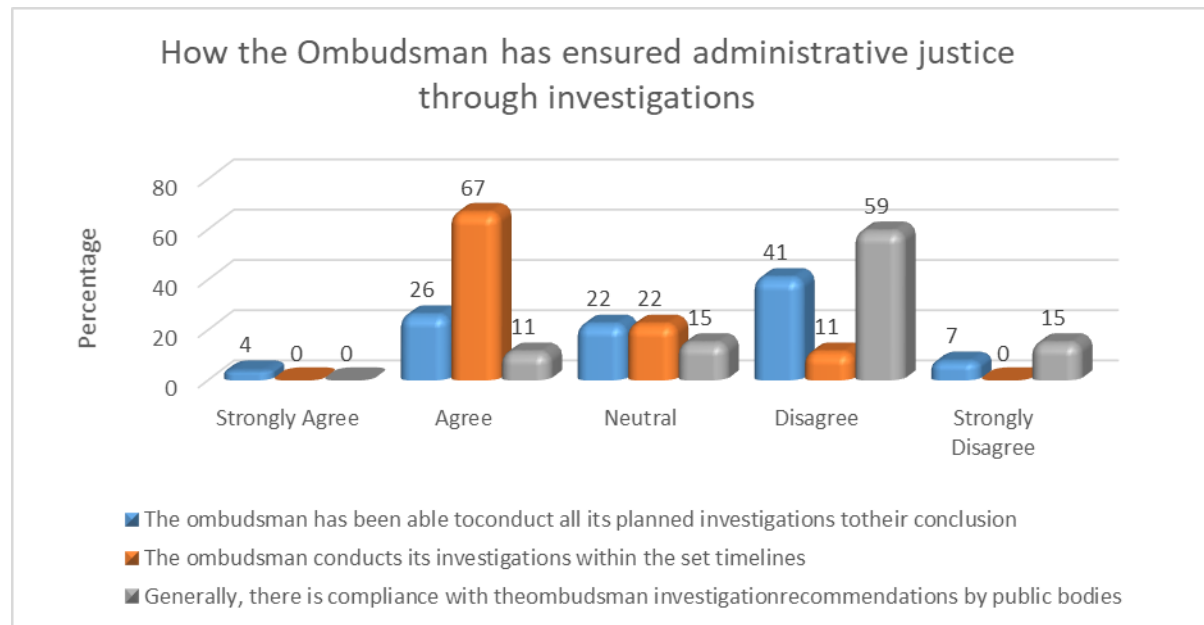
### **4.1 Descriptive Statistics**

#### **4.1.1 Ombudsman Achievement of Administrative Justice through Investigations**

The study first endeavoured to establish to what extent the ombudsman has achieved administrative justice through investigations. A Likert scale was used to assess the respondents' views on the level of rate of achievement on investigation, timelines in undertaking investigations and compliance of investigation recommendations by public bodies.

On the rate of achievement, the proposition was that the ombudsman is able to undertake all its planned investigations to their conclusion. 41% of the respondents disagreed with the statement, 26% agreed, 22% were neutral, 7% strongly disagreed and 4% strongly agreed with the statement. Cumulatively, 48% are in disagreement, 30% in agreement and 22% neutral. Majority of the respondents therefore disagreed that the ombudsman has undertaken all its planned investigations.

On timelines, the proposition was that the ombudsman conducts its investigations within the set timelines. 67% agreed with the statement, 22% were neutral, and 11% disagreed. This indicates that majority of the respondents are of the view that although the Ombudsman has not conducted all its planned investigations, for the ones it has undertaken, they have been completed within the set timelines.



**Figure 1: Attainment of Administrative Justice**

**Source: Research data, 2023**

A statement was made that generally there is compliance with the ombudsman investigation recommendations by public bodies. 59% disagreed, 15% strongly disagreed, 15% were neutral, and 11% agreed. In total, 74% disagreed, 15% neutral and 11% in agreement. Majority of the respondents therefore do not agree that there is compliance with ombudsman investigation recommendations by public bodies.

The findings were verified through analysis of the investigation database to confirm timelines on investigations undertaken as well as status of compliance with recommendations on investigations that have been undertaken by the Ombudsman. Data on a sample of 21 cases comprising of both specific and systemic cases was analysed.

**Table 3: Timelines and status of Compliance on Undertaken Investigations**

Serial Number	Nature (Specific/Systemic Investigation)	Time Taken to conclude	Status of Compliance
1.	Specific	5 months	Follow up ongoing
2.	Specific	6 months	Follow up ongoing
3.	Specific	5 months	Follow up ongoing
4.	Specific	7 months	Follow up ongoing
5.	Specific	6 months	Follow up ongoing

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6.	Specific	5 months	Closed
7.	Specific	6 Months	Follow up ongoing
8.	Specific	7 months	Follow up ongoing
9.	Specific	6 months	Follow up ongoing
10.	Specific	7 months	Follow up ongoing
11.	Specific	7 months	Closed
12.	Specific	6 Months	Follow up ongoing
13.	Specific	8 months	Follow up ongoing
14.	Specific	7 months	Follow up ongoing
15.	Specific	7 months	Closed
16.	Specific	8 months	Follow up ongoing
17.	Specific	6 months	Follow up ongoing
18.	Systemic	10 months	Closed
19.	Systemic	11 months	Follow up ongoing
20.	Systemic	9 months	Follow up ongoing
21.	Systemic	10 months	Follow up ongoing

**Source: CAJ Investigation Database, 2023**

From the table 3, the average time taken to conclude an investigation is 7 months. On the status of compliance, 4 out of 21 cases (19%) have been closed meaning the public bodies to which recommendations were made after investigation, complied with the same. For 17 out of 21 cases (81%) follow up on recommendations is ongoing meaning the public bodies to whom recommendations were made are yet to fully comply with the recommendations. This confirms the findings from the respondents indicating that there is a low level of compliance by public bodies with the Ombudsman investigation recommendations.

According to Oosting (1999), the existence of an ombudsman is indicative of a government that is committed to preventing administrative injustice. However, the mere existence does not assure this occurs as the institution must yield results to ensure the government administrative action is checked. As is evident in the above findings, the existence of the Ombudsman does not guarantee that administrative justice is achieved. This study proceeded to examine how various variables have contributed to the Ombudsman's achievement of administrative justice or lack thereof, through investigations.

#### **4.1.2 Legal Framework in Investigations and Achievement of Administrative Justice**

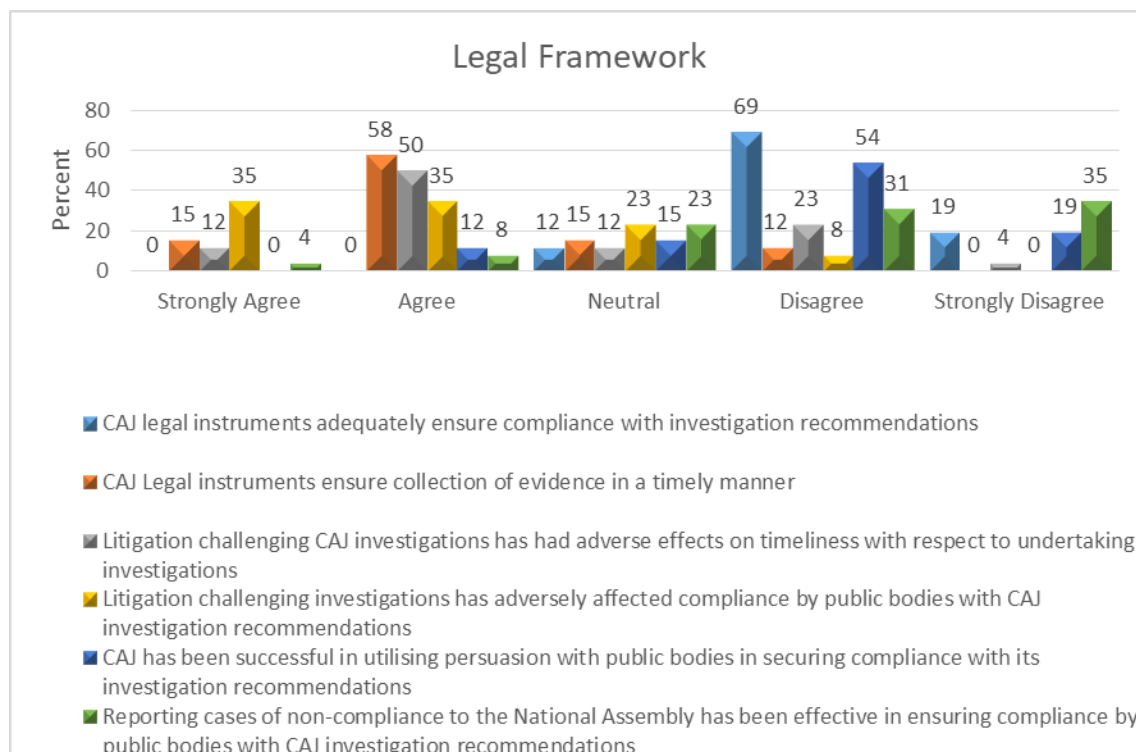
The study sought to establish how the legal framework underpinning the Ombudsman's investigations affects its achievement of administrative justice, with the legal instruments,

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litigation against ombudsman investigations and measures in effecting recommendations being indicators of the legal framework.

The researcher propositioned the statement that CAJ's legal instruments adequately ensure compliance with investigation recommendations. 69% of the respondents disagreed, 19% strongly disagreed, and 12% were neutral. Majority of the respondents were therefore of the view that the Ombudsman's legal instruments are incapable of ensuring compliance with investigation recommendations. This is in concurrence with Owino (2019) who finds that the Ombudsman's legal framework is weak as it does not provide expressly for compliance with recommendations. This is further confirmed by the Commission on Administrative Justice Annual report for the year 2020/22 that indicates one of the challenges faced by CAJ as insufficient legal framework which inhibits enforcement of recommendations of the Commission.

The CAJ Act, 2011 which is the main legal instrument that provides for the powers and functions of CAJ, under section 42 only provides that CAJ may require the public body which was the subject of investigations to submit a report specifying the steps it has undertaken to implement recommendations. It provides that upon failure of the public body to do so, CAJ may report the same to the National Assembly. The only remedy available to the Ombudsman therefore whereupon a public body refuses to implement its recommendations is to report the same to National Assembly, with the discretion of any further action lying with the National Assembly. This lends credence to the finding that the legal instruments provide a weak framework in terms of compliance with CAJ investigation recommendations.



**Figure 2: Legal Framework in Investigations**

**Source: Research data, 2023**

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The researcher propositioned that CAJ legal instruments ensure collection of evidence in a timely manner. 58% agreed with the statement, 15% strongly agreed, 15% were neutral and 12% disagreed. In total, 73% agree with the statement, 15% neutral and 12% disagreed. The responses give an indication that legal instruments supporting the Ombudsman's mandate ensure timely collection evidence during investigations. This supports the assertions made by Nguluma (2020) that the ombudsman is endowed with coercive powers which include powers to search and inspect premises and compel production of relevant information during investigations. Section 28 of the CAJ Act does indeed confer these powers to the Commission, including powers to compel anyone to appear before the Commission on a matter that is under investigation. It is noteworthy that these powers are to be employed in collection of evidence during investigation but cannot be used to compel compliance with recommendations once the investigations are complete. This is as well in line with Mekdes (2013) remarks with respect to Ethiopia's Ombudsman, that public agencies interpret co-operation with the ombudsman as an obligation during investigations only and not at the enforcement stage.

The researcher made a proposition that litigation challenging CAJ investigations has had adverse effects on investigation timelines. 50% agreed, 12% strongly agreed, 23% disagreed, 12% were neutral and 4% strongly disagreed. Cumulatively, 62% agreed, 27% disagreed and 12% neutral. The responses indicate therefore that litigation has indeed had an adverse effect on investigation timelines.

A statement was made that litigation challenging investigations has adversely affected compliance by public bodies with investigation recommendations. 35% strongly agreed, 35% agreed, 23% were neutral and 8% disagreed. In total, 70% are generally in agreement with the statement, 8% disagree while 23% were neutral, indicating that indeed litigation has adversely affected compliance by public bodies with CAJ investigation recommendations. A hall mark case on how litigation affected implementation of CAJ recommendations is Petition no. 42 of 2019 at the Supreme Court of Kenya, between Kenya Vision 2030 Delivery Board and CAJ, where the former was the appellant and the latter the respondent. The Board was appealing a decision by the Court of appeal that compelled them to comply with a recommendation arising out of an investigation by CAJ against the Board. The Supreme Court overturned the Court of Appeal ruling and made a determination that CAJ has requisite mandate to make recommendations to a public officer or body upon investigations, but the recommendations are not binding to the public body of officer. This therefore meant that the Board and any other public body have the discretion to determine the manner in which they implement the Ombudsman's recommendations.

It was propositioned that CAJ has been successful in utilising persuasion to secure compliance with its recommendations by public bodies. 54% of the respondents disagreed, 19% strongly disagreed, 15% neutral and 12% agreed. Cumulatively, 73% disagreed, 15% neutral and 12% agreed. Majority of the respondents therefore disagree that the Ombudsman has successfully used persuasion to ensure compliance with its investigation recommendations by public bodies. This finding concurs with Motlamelle (2009) who concluded that the effectiveness of the Ombudsman institution in addressing maladministration in Lesotho has been hampered by its lack of enforcement powers. It further negates the supposition by Hertogh (2001), on a study that he conducted on understanding the policy impacts of the ombudsman and administrative courts in the

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Netherlands. He found that what he terms as co-operative control is an effective mechanism in ensuring compliance with recommendations as opposed to coercive control where public bodies are compelled to implement the Ombudsman's recommendations. Based on this study's findings, in the Kenyan jurisdiction the principle of co-operative control where implementation is secured through persuasion as opposed to coercion is not effective.

The last statement in this section was that reporting cases of non-compliance to the National Assembly has been effective in securing compliance with Ombudsman recommendations. 35% strongly disagreed, 31% disagreed, 23% were neutral 8% agreed and 4% strongly agreed. A total of 66% agreed, 23% were neutral and 12% disagreed. Majority of the respondents therefore disagree that reporting cases of non-compliance to the National Assembly as stipulated by section 42(4) of the CAJ Act, 2011. It is provided that CAJ may prepare and submit a report indicating the refusal by a public body to implement recommendations and the National Assembly shall take appropriate action. However, the CAJ Act does not give any clear direction and/or obligation as to what appropriate action the National Assembly should take thereafter, it remains open for interpretation.

An open ended question was asked as to how else the legal framework has affected the Ombudsman's investigative function other than the aforementioned factors. It was noted that respondents raised concern with section 28 (1) of the CAJ Act, 2011, which provides that the Commission may for the purpose of carrying out any investigation employ the services of any public officer or government investigation agency at the Commission's expense. It was the respondents' view that this provision undermines the Commission's capacity to undertake investigations and it is hence required to contract external parties to undertake the same.

Asked on how the legal framework supporting ombudsman investigations can be enhanced, majority of the respondents indicated that the CAJ Act should be amended to provide the Ombudsman with powers to enforce its recommendations. This reverberates the assertions made by Trever, Richard & Brian (2016), that there is no singular model to the ombudsman and a key feature of the enterprise that contributes to its success is its flexibility and adaptability to the circumstances surrounding it.

#### **4.2 Inferential Statistics**

The spearman's correlation co-efficient was utilised to measure the strength and direction of relationship between the indicators of investigative capacity of the ombudsman and those of administrative justice, where -1 indicates a perfect negative correlation and +1 a perfect positive correlation.

There is a correlation between legal framework and administrative justice. Further analysis of the indicators of legal framework indicated that the relationship was positive which implied that with a strong legal framework in place there is an increase in the attainment of administrative justice. Regarding the strength and direction of association for the indicators, results indicated a positive moderate relationship for legal instruments and compliance as well as legal instruments with timelines. There is a moderate positive relationship between measures in effecting recommendations and compliance. These findings are in line with Kabillah (2017) and Owino (2019) who both emphasize that the effectiveness of the Ombudsman institution is pegged on the strength of its legal framework.

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There is a weak negative correlation between litigation and compliance as well as litigation and timelines. This is in concurrence with Malunga (2014) where he finds that in South Africa, legal suits against the Ombudsman determinations have adversely affected compliance with the determinations.

A significant relationship was established for: legal instruments and compliance, measures in effecting recommendations and compliance, and legal instruments and timelines.

**Table 4: Legal Framework vs Administrative Justice**

Category	Variable	Correlation coefficient	Significance
Legal framework	Legal instruments vs compliance	0.473	0.015*
	Litigation vs compliance	-0.142	0.489
	Measures in effecting recommendations vs compliance	0.472	0.015*
	Measures vs compliance	0.144	0.482
	Legal instruments vs timelines	0.444	0.023*
	Litigation vs timelines	-0.168	0.412

\* Significant at 0.05

## 5.0 Summary

The study established that the legal framework underpinning the Ombudsman investigations affects its attainment of administrative justice. A positive moderate relationship was established between legal instruments and compliance as well as legal instruments with timelines in undertaking investigations. The findings showed that the legal instruments which essentially define the Ombudsman's powers and functions are not sufficient to secure compliance with the Ombudsman investigation recommendations. Conversely, the legal instruments were found to be strong enough to ensure timely investigation of cases. The study interpreted the results to indicate that the powers of the institution as provided in the CAJ Act, 2011, empower the Ombudsman in the collection of evidence while undertaking investigations but fall short in empowering it to enforce recommendations arising from the investigations.

A moderate positive relationship was established between measures in effecting recommendations and compliance. The study further found that the measures employed in securing compliance by public bodies with Ombudsman investigation recommendations have not been effective. These measures include persuasion of public bodies to implement investigation recommendations and reporting of non-compliant public bodies to the National Assembly for further action. The measures employed can only be limited to the powers and jurisdiction of the Ombudsman as derived from the legal instruments.

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A weak negative correlation was established between litigation against the ombudsman investigations with compliance as well as with timelines in undertaking investigations. According to the study, court cases challenging the ombudsman's investigation determinations have limited the Ombudsman to making recommendations to the investigated public bodies and not dictate whether or how the public bodies implement those recommendations.

## **6.0 Conclusion**

This study establishes that the legal framework defining the powers and functions of the Ombudsman, the major instrument being the CAJ ACT, 2011, empowers the Commission to employ coercive and effective measures in the collection of evidence during investigations. However, the legal instruments do not empower the ombudsman to employ coercive measures in enforcing its investigation recommendations. As a result, the measures deployed by the Ombudsman to ensure implementation of its recommendations have been ineffective in securing compliance from public bodies with the recommendations. This has been compounded by litigation in court by public bodies challenging the ombudsman investigation recommendations, which has seen the Supreme Court of Kenya interpret the powers of the Ombudsman as limited to making recommendations only but not to enforce them.

## **7.0 Recommendations**

The study makes the following recommendations based on the findings:

The Commission on Administration Act, 2011, to be amended to give powers to the ombudsman to enforce its recommendations. From the study it is clear that the legal framework as it currently exists has not been sufficient in securing compliance with the ombudsman's investigation recommendations by public bodies. In as much as a common characteristic of the ombudsman institution globally is the use of soft powers, this is an impediment to the institution achieving administrative justice within the Kenyan jurisdiction. Further to that, the law is unclear as to what action is required by the National Assembly on non-compliant public bodies as envisioned in section 42 of the CAJ Act. There is need therefore to have express provisions to elaborate as to what consists the action to be undertaken by the National Assembly.

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