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AFRICAN OMBUDSMAN AND MEDIATORS ASSOCIATION STANDARDS FOR THE ESTABLISHMENT AND OPERATION OF OMBUDSMAN OFFICES

PREAMBLE

Ombudsman offices exist in approximately 120 countries. The Ombudsman is an independent, impartial public official with authority and responsibility to receive, investigate or informally address complaints about government actions, and, when appropriate, make findings and recommendations, and publish reports.

An Ombudsman works for the resolution of particular issues and, where appropriate, makes recommendations for the improvement of the general administration of the entities over which it has jurisdiction.

The term “Ombudsman” should only be used if six key criteria are met. Those criteria are: independence of the Ombudsman from those whom the Ombudsman has the power to investigate; accessibility; fairness, public accountability, effectiveness; and impartiality.

These standards were developed to provide advice and guidance on the structure and operation of Ombudsman schemes so that Ombudsman may better fulfill their functions and so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process.

A. ESTABLISHMENT AND OPERATIONS

An entity intending to establish an Ombudsman should do so pursuant to a legislative enactment in plain language, which is available and accessible to the public and which clearly sets forth the role, powers and jurisdiction of the Ombudsman and which authorizes the Ombudsman to:

- (1) receive complaints about alleged acts, omissions, maladministration, improprieties, and systemic problems within the Ombudsman's jurisdiction as defined in the legislative enactment establishing the scheme
- (2) exercise discretion to accept or decline to act on a complaint
- (3) operate by fair and timely procedures to aid in the just resolution of a complaint or problem
- (4) gather or demand relevant information
- (5) resolve issues at the most appropriate level of the entity
- (6) function by such means as:
 - (a) conducting an inquiry
 - (b) investigating and reporting findings
 - (c) facilitating, negotiating, and mediating
 - (d) making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them
 - (e) identifying complaint patterns and trends
 - (f) educating
 - (g) issuing public reports annually
- (7) initiate litigation to enforce or protect the authority of the office as defined by the legislative enactment, as otherwise provided by these standards, or as required by law

B. QUALIFICATIONS

An Ombudsman should be a person of recognized knowledge, judgment, objectivity, and integrity and should be qualified by appropriate training or experience, or both. The Ombudsman should periodically update his/her or her training. The Ombudsman should be aloof of party politics.

**C. INDEPENDENCE, ACCESSIBILITY, FAIRNESS, PUBLIC
ACCOUNTABILITY, EFFECTIVENESS AND IMPARTIALITY**

To ensure the effective operation of an Ombudsman, the legislative enactments should authorise the Ombudsman to operate consistently with the following essential characteristics. Entities that have established Ombudsman offices that lack appropriate safeguards to maintain these characteristics should take prompt steps to remedy any such deficiency.

(1) Independence

- (a) The Ombudsman is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.
- (b) The Ombudsman is appointed at a suitably senior level for a fixed, long term, of at least three years, of office and may be reappointed, to a maximum total of eight years.
- (c) The Ombudsman is appointed by and reports to the parliament or legislature or a committee thereof, which settles the remuneration and monitors the independence and performance of the Ombudsman in regard to the legislative enactment. If The Ombudsman is appointed by and reports to the executive, such appointment should be made only if a supermajority (for example two thirds) of the parliament or legislature supports the appointment.

- (d) The Ombudsman is paid at a level commensurate with the Ombudsman's responsibility.
- (e) The Ombudsman has the power to delegate responsibilities to staff. The Ombudsman has the sole power to appoint, fix the compensation of and remove staff.
- (f) The Ombudsman is immune from liability for acts performed in good faith under the law.
- (g) A person who holds the office of Ombudsman is a full time employee who does not hold any other office or employment in respect of which emoluments are payable or engage in any other occupation, profession, business or commercial enterprise and is not involved in any activity likely to detract from the full-time performance of his/her or her duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality.
- (h) In assessing whether an Ombudsman is independent in structure, function, and appearance, the following factors are important: whether anyone subject to the Ombudsman's jurisdiction or anyone directly responsible for a person under the Ombudsman's jurisdiction (i) can control or limit the Ombudsman's performance of assigned duties or (ii) can, for retaliatory purposes, (aa) eliminate the office, (bb) remove the Ombudsman, or (cc) reduce the budget or resources of the scheme.
- (i) The appointment must not be subject to premature termination, other than for incapacity or misconduct or other good cause.
- (j) The Ombudsman may not be subpoenaed by either of the parties to a dispute to testify in any subsequent court action. The legislative enactment should contain a provision to this/her effect.

(2) Accessibility

- (a) The scheme seeks to ensure that all potential users are aware of its existence through promoting its existence in the media or by other means and by producing readily available material in simple terms explaining:
 - (i) how to access the scheme;
 - (ii) how the scheme works;
 - (iii) the major areas with which the scheme deals; and
 - (iv) any restrictions on the scheme's powers.
- (b) The scheme provides appropriate facilities and assistance for disadvantaged complainants and those with special needs.
- (c) In most cases the staff of a scheme will help a complainant reduce a complaint to writing where the complainant requires assistance to do so.
- (d) Complainants are not obliged to pay any application or other fee or charge before a complaint is dealt with by the scheme, or at any stage in the process.
- (e) The scheme's processes are simple for complainants to understand and easy to use.
- (f) The scheme discourages the use of legal representatives before the Ombudsman except in special circumstances.

(3) Fairness

- (a) The Ombudsman produces decisions that are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

(b) The Ombudsman conduct inquiries and investigations in a procedurally fair manner which includes informing the responding party of the allegations against it, permitting the parties to respond to information that is an adverse to them and taking into account relevant considerations and ignoring irrelevant considerations.

(c) The Ombudsman makes findings about the complaint based on the facts, the law and conclusions drawn on an analysis of them.

(d) Where appropriate, the Ombudsman applies principles of equity in resolving a complaint.

(4) Public Accountability

(a) The scheme publicly accounts for its operations by publishing its decisions and information about complaints and highlighting any systemic problems.

(b) The scheme publishes a detailed and informative annual report containing specific statistical and other data about the performance of the scheme, including:

- (i) the number and types of complaints it receives and their outcome;
- (ii) the time taken to resolve complaints;
- (iii) any systemic problems arising from complaints;
- (iv) examples of representative case studies.

(c) The annual report is distributed to relevant stakeholders and otherwise made available upon request.

(5) Effectiveness

(a) The Ombudsman follows informal and cost-effective procedures and has sufficient human, financial and operational resources, funded by the

participants in the scheme, to enable the Ombudsman to conduct inquiries and investigations in an effective and timely manner.

(b) The Ombudsman may recommend clarification, amendment, or initiation of legislation and administrative rules and regulations or remedial action to address any systemic issue identified by the Ombudsman.

(c) Before the Ombudsman commences an investigation, the complainant has first exhausted the internal complaints procedures of the entity complained against.

(d) The Ombudsman's procedures are straightforward for complainants to understand and use.

(e) The legislative enactment establishing the Ombudsman scheme should be subject to periodic review to assess its effectiveness and credibility.

(6) Impartiality in Conducting Inquiries and Investigations

(a) The Ombudsman conducts inquiries and investigations in an impartial manner, free from the bias and conflicts of interest.

(b) The Ombudsman is not an advocate for any individual or group.

(c) Impartiality does not preclude the Ombudsman, after an investigation has been conducted, from developing an interest in securing changes that are deemed necessary or advocating for recommendations that would benefit a complainant.

(d) The Ombudsman or any member of the Ombudsman's staff does not personally deal with a complaint brought by a party known to him or her.

(e) The questions, concerns and complaints of consumers are treated equitably and consistently in a courteous manner.

D. LIMITATIONS ON THE OMBUDSMANS'S AUTHORITY

(1) An Ombudsman should not:

- (a) make, change or set aside a law, policy, or administrative decision.
- (b) conduct an investigation that substitutes for administrative or judicial proceedings.
- (c) accept jurisdiction over an issue that is currently pending in or has been disposed of in a legal forum.
- (d) accept jurisdiction over an issue that the entity complained against has not had the reasonable opportunity to resolve.
- (e) act in a manner inconsistent with the grant of and limitations on the jurisdiction of the office when discharging the duties of the office of Ombudsman.

E. REMOVAL FROM OFFICE

The legislative enactment that establishes the office of the Ombudsman should also provide for the discipline or removal of the Ombudsman from office for good cause by means of a fair procedure.

- (1) Good cause may include bias, neglect of duty, misconduct, or inability to perform duties through incompetence or ill health.
- (2) The decision to dismiss the Ombudsman should be by more than a majority of the members of the appointing body, such as two-thirds.
- (3) The Ombudsman may not be dismissed for making decisions that are unpopular with the entities over which it exercises jurisdiction, with consumer or political groupings or the media.

- (4) The Ombudsman should only be dismissed if a supermajority (for example two thirds) of the parliament or legislature supports the dismissal.

F. SOURCE

These standards draw on documents produced by the International Ombudsman Institute, the International Ombudsman Association, the US Ombudsman Association, the American Bar Association (Administrative Law Section: Ombudsman Committee), the British and Irish Ombudsman Association, the Australia and New Zealand Ombudsman Association, the South African Ombudsman and Mediators Association as well as the South African Ombudsman for Banking Services.

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CODE OF ETHICS

PREAMBLE

The African Ombudsman and Mediators Association (AOMA) is committed to promoting the highest degree of ethical behaviour among members. The AOMA Code of Ethics provides a common set of professional ethical principles to which members and their staffs adhere in the execution of their duties.

Based on the traditions and values of Ombudsman practice, the Code of Ethics reflects a commitment to promote ethical conduct in the performance of the Ombudsman role and to maintain the integrity and dignity of the Ombudsman profession.

The Ombudsman shall be truthful and act with integrity, shall merit the respect of all, and shall promote procedural fairness in the content and administration of his/her duties.

The Ombudsman must ensure that he or she acts independently and impartially and free of outside influence in resolving any complaints. All officials of the office of the Ombudsman must ensure that their conduct protects and promotes the reputation and image of the office. It is a requirement that all officials of the Ombudsman act ethically and in accordance with this/her Code of Ethics.

The Ombudsman should appoint an ethics committee drawn from his/her staff to monitor and enforce this/her Code and to advise officials when approached for guidance on specific situations by them.

Compliance with this/her Code of Ethics should be made a condition of employment for all officials of the Ombudsman's office and any breach of its terms should be treated as misconduct.

Definitions

- a) **Ombudsman** is an independent, impartial public official with authority and responsibility to receive, investigate or informally address complaints about government actions, and, when appropriate, make findings and recommendations, and publish reports.
- b) **Official** refers to an officer, employee, functionary or agent in the Ombudsman office.
- c) **Bribery** occurs when a person, (who can be either a official of an entity under the ombudsman's jurisdiction or a complainant or any other person) unlawfully and intentionally offers any official of the office any item of value, including money, in return for certain action or inaction by the official.
- d) **Corruption** is any conduct or behaviour in relation to persons entrusted with responsibilities in public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others.
- e) **Intimidation** occurs when a person, (who can be either a official of an entity under the ombudsman's jurisdiction or a complainant or any other person) unlawfully and intentionally threatens any official of the office with the intention of forcing a certain action or inaction by the official.
- f) **Interest** refers to any kind of relationship, including familial and business, between an official and a party in a matter before the Ombudsman.
- g) **Complainant** is the aggrieved party in a matter.
- h)

1. Scope

This Code applies to all Ombudsman and officials.

2. General Principles of Conduct

These principles, which are endorsed by the AOMA, provide guidance on the aspects of integrity and impartiality but they cannot and do not cover every situation an Ombudsman or official may encounter. It applies to all officials alike, irrespective of seniority. If any official is uncertain about what to do in any situation, guidance should be sought from the Ombudsman.

2.1 Officials of the Ombudsman office shall, at all times, maintain the independence, impartiality and integrity of the office and shall: -

- i) Render, with integrity, a responsive and effective service, which is accessible to complainants;
- ii) Respect the authority that he or she has as an official of the office in dealings with any person, complainant or organisation;
- iii) Act fairly and impartially in respect of all parties when exercising any discretion in the performance of duties;
- iv) Truthfully investigate and report on every matter regardless of the consequences;
- v) Maintain high professional standards at all times;
- vi) Avoid conduct that can result in the perception of bias, this includes conflicts of interest and perceived conflicts of interest situations.

1.2 Exercise those powers conferred on them in a responsible manner particularly by:

- i) Performing all their duties impartially and independently, without favouring any party and regardless of status, gender, race, religion, nationality, political beliefs or aspirations;

ii) Acting honestly, respectfully, transparently and professionally, and in an accountable manner;

iii) Treating all persons with equal consideration and objectivity;

iv) Using any discretion vested in them justly, impartially and reasonably.

1.3 Officials shall maintain confidentiality in respect of any information received in the course of their work and duties, unless the performance of duty or the needs of justice require otherwise;

1.4 Resist and report to the Ombudsman or appropriate authority, any offers of bribes or other corruption emanating from any source;

1.5 Behave in a manner, which does not bring discredit to or impair the dignity or reputation of the office;

1.6 Respect and apply this/her Code and if they have reason to believe that a violation of this/her Code or the law has occurred or is about to occur, report the matter to a member of the Ethics Committee, equivalent structure or the Ombudsman.

1.7 if any official is uncertain about what to do in a situation, guidance should be sought from the Ethics Committee, equivalent structure or the Ombudsman.

2. Specific policy

2.1 Gifts from entities under the ombudsman's jurisdiction

An official may not accept a gift from an entity or party under the Ombudsman's jurisdiction, where it may be construed that the gift is being offered to them in that capacity, whether it be money or any other item, however small in value.

2.2 Gifts from complainants.

No gift or money may be accepted from any complainant. Complainants who wish to express gratitude to the office once a matter has been resolved, should be requested to send a letter of appreciation.

2.3 Social events: including lunches, dinner invitations and invitations to events

2.3.1 General

Extreme caution must be exercised in attending events hosted by entities under the Ombudsman's jurisdiction, consumer bodies, political organisations or other organisations.

2.3.2 invitations

Invitations to officials from complainants or entities under the Ombudsman's jurisdiction should ideally be made through the Ombudsman. If it is sent to the individual official, permission should be sought from the Ombudsman or designated authority.

If an official receives an entity under the Ombudsman's jurisdiction that is specifically for that member, the invitation must be recorded in the register of events and permission to attend or accept must be obtained from the Ethics Committee or the Ombudsman before the invitation is accepted or the event is attended.

The name of the person and entity who made the invitation to the official, the type of function or facility offered, the date, the time and names of those who will be present at the function, must be written in the register.

3. Bribery, corruption and intimidation

The official receiving a bribe must immediately record how the bribe came to be offered and the exact words of the person who offered the bribe.

If a complainant offers a bribe to any official the official should immediately inform the briber that “you are offering me what I believe amounts to a bribe and we are suspending the investigation into your complaint.” The investigation or handling of that complainant’s file or files should then be suspended and the matter brought to the attention of the Ombudsman for action, as soon as possible.

Any bribe offered by any person, institution or legal entity to a staff member must be reported by that person to the Ombudsman. Details of the bribe must be recorded in a register.

This/her register shall record the name of the briber, the amount or nature of the object offered as a bribe, the name of the file/complainant to whom it relates and the date and the time when the bribe was made.

The provisions of this/her section will apply equally, with appropriate changes, if a member or staff is threatened by an outside person or entity.

Any incident of bribery or intimidation should be reported to the appropriate authority (usually the police).

4. Declaring an interest in a complaint

Any official who is in a position to take a decision or investigate a complaint where the complainant is known to that official, shall declare that interest to the Ethics Committee or the Ombudsman for a decision whether the file should be allocated to another official.

A complainant or representative of a respondent entity is known if the complainant is a friend, acquaintance, family member, relative or someone that a official has had dealings with outside the office. If the complainant is a legal entity, the complainant will be known if the official or his/her or her immediate family has any social, family or business connections of any nature with the complainant.

A official may not be impartial in handling a complaint if the member or his/her or her immediate family:

- i) is indebted to a complainant;
- ii) holds directly or indirectly, through a trust or otherwise, any financial interest in a complaint or complainant;
- iii) is a member of the governing body or is a officer of the complainant.

5. Personal finances of officials

Any official who has a judgment against his/her or her name for debt or who has received a summons for amounts unpaid, must report the matter to the Ethics Committee, equivalent structure or the Ombudsman.

The office will not enter into agreements to pay amounts from staff member's salaries to other organisations or persons owed money by staff members, unless required to do so by law, nor will the office provide money loans to officials for the repayment of such debts.

Officials who incur excessive debt, which they cannot manage within their financial means, and which the office becomes aware of, through reasons of non-payment could lead to disciplinary action being taken against the individual. The office does not provide loans of any nature to personnel other than in exceptional circumstances, nor will it bind

itself in anyway whatsoever in support of loans applied for by personnel from any financial or other institution.

6. Business interests or employment outside the office

No official shall take up full-time, part-time or casual employment outside the office where that employment would impair the dignity or the reputation of the office.

No official may engage in another income-producing activity or receive a fee for services rendered outside of normal office hours without the prior written consent of the Ombudsman.

This/her consent may be withheld if in the opinion of the Ombudsman, such activities and or services may in any way whatsoever, adversely affect the services which the official is expected to perform for the office.

7. Conduct of officials inside the office

7.1 Lending and borrowing of money

Officials may not borrow any money from, nor lend money to any other official or complainant.

7.2 Gifts

Gifts between members of staff particularly between supervisors and subordinates may only be given for traditional reasons such as birthday, weddings and Christmas. In the event of a gift being given for any other reason, prior approval of the Ethics Committee must be obtained.

8. Conduct of members outside the office

Conduct of members of staff when outside the office and in their free time must not impair the dignity or the reputation of the office.

Membership of or association with consumer, political or other organisations must be disclosed to the Ombudsman.

Members of staff may not use their employment at the office to gain an unfair advantage when dealing with any person or organisation in their private capacity.

9. Confidentiality

Members of staff must honour the confidential nature of the work performed at the office of the Ombudsman at all times. Officials may not divulge confidential information obtained in the course of their employment.

Officials must safeguard any information about complainants and entities complained against. Officials may only use information obtained from entities complained against and complainants for the purpose of investigating or processing complaints or to assist a complainant with an enquiry. Any other use of the information or documents is not permitted.

Information obtained during the processing or handling of a complaint may only be disclosed to the parties to the complaint, with the exception of information used for statistical purposes or with the explicit permission of the parties or as required by law.

9.1 Improper use of confidential information

No member of staff may take any action or obtain any interest, property or benefit as a result of the improper use of confidential information obtained from any matter that is

lodged with the office, or obtained as a result of knowledge gained in the course of their employment.

No documents or information in the office may be used by any member of staff for any improper use. This/her confidentiality requirement applies to staff members whether or not they continue to serve or be remunerated by the office.

9.2 Public presentations on behalf of the Ombudsman

Officials should at all times take steps to protect and enhance the reputation of the office and its officials. The content of any public presentations being made by officials must be approved by the Ombudsman prior to such official agreeing to make such a presentation.

9.3 Disclosures to the media

No official may disclose any information about or express any view regarding any matter dealt with by the Ombudsman's office or anything pertaining to the operations of the Ombudsman's office to the media unless specifically authorised to do so by the Ombudsman.

All communications with the media should be in keeping with the principles contained in this/her Code, and in particular should be mindful of upholding the integrity and dignity of the Ombudsman's office.

9.4 Breach of the code

Any breach of this/her code, or any rule or procedure based thereon, will be viewed in a serious light, and officials committing such breach will be subject to disciplinary action. Officials who become aware of a breach of this/her code are required to immediately

bring such breach to the attention of the Ethics Committee, who must deal with it promptly and equitably and with due regard to confidentiality.