

Proposal I. Instead of a constitutional amendment, a NEW CONSTITUTION to be drafted, owing to the several proposed amendments. (SUDAN)

A NEW PREAMBLE reflecting the status and position of AOMA at present to be drafted. (KENYA)

PREAMBLE

PURSUANT TO THE RECOMMENDATIONS AND RESOLUTIONS of the 7th African Ombudsman Regional Conference held in Victoria, Seychelles on 26th July 2001 and the 4th meeting of the Board of Trustees of the African Ombudsman Centre held in Victoria, Seychelles during July 2001 for the formation of the African Ombudsman Association;

RECOGNIZING the need for creating, developing and promoting the Ombudsman Institution on the African continent;

RECOGNIZING the importance of the co-operation amongst African Ombudsman and between African Ombudsman institutions in all parts of the world;

RECOGNIZING the important role played by the AFRICAN OMBUDSMAN CENTRE IN Dar Es Salaam, Tanzania since its establishment in 1998 in the development of the Ombudsman concept in Africa;

FURTHER RECOGNIZING the work performed by the Board of Trustees in pursuance of the resolution to form an Association;

THEREFORE, the 8th Regional African Ombudsman Conference held in Ouagadougou, Burkina Faso, constituted as a Constituent Assembly hereby formally resolves to form the African Ombudsman Association and adopt the Constitution herein under.

PROPOSED ADDITION

PRINCIPLES

The African Ombudsman and Mediators Association recognizes the following principles as the expression of an African Ombudsman Standard and requires all its members to observe them:

- a) It should be provided for by Country's Constitution or an Act of Parliament.
- b) Its role should be to protect any person or body of persons against maladministration, violation of rights, unfairness, abuse, corruption, or any injustice caused by a public authority, or official.
- c) It should not receive any direction from any public authority which would compromise its independence and perform its functions independently of any public authority over which jurisdiction is held.
- d) It should have the necessary powers to investigate complaints by any person or body of persons who considers that an act done or omitted, or any decision, advice or recommendation made by any public authority within its jurisdiction has resulted in the kind of action specified in paragraph (b).
- e) It should have the power to make recommendations in order to remedy or prevent any of the conduct described in paragraph (b) and where appropriate to propose administrative or legislative reforms for better governance.
- f) It should be held accountable by reporting publicly to Parliament
- g) Its incumbent or incumbents should be elected or appointed for a defined period of time by Parliament or on the basis of a nomination by Parliament or with its approval, and
- h) Its incumbent or incumbents should only be dismissed for cause as provided by the relevant legislation and by Parliament or with its approval.

ARTICLE 1: NAME

The name of the Association shall be the AFRICAN OMBUDSMAN ASSOCIATION (hereinafter referred to as the "Association").

PROPOSED AMENDMENT TO ARTICLE 1: NAME

The name of the Association shall be the African Ombudsman and Mediators Association (hereinafter referred to as the "AOMA").

ARTICLE 2: LEGAL PERSONALITY

The Association shall be a juristic person with perpetual succession, capable of acquiring and disposing of assets, both movable and immovable, and capable of suing and being sued in its own name.

PROPOSED AMENDMENT TO ARTICLE 2

Legal Personality and Languages

- 1) The AOMA shall be a juristic person with perpetual succession, capable of acquiring and disposing of assets, both movable and immovable, and capable of suing and being sued in its own name.
- 2) English, French, Arabic, Portuguese shall be the official languages of the AOMA.
- 3) Where there is a conflict among the different language versions of this Constitution, the English version will prevail as the official version.

ARTICLE 3: LOCATION

The administrative office of the Association shall be located at any place as may be designated by the Executive Committee and approved by the General Assembly.

PROPOSED AMENDMENT TO ARTICLE 3: LOCATION

The administrative head office of AOMA shall be located at the office of the South African Public Protector Pretoria, R.S.A. It shall extend its operations within the entire territory of the Republic of South Africa and abroad.

ARTICLE 4: OBJECTIVES

The objectives of the Association shall be:

- (a) to encourage the establishment, development and promotion of African Ombudsman Institution;
- (b) to further mutual support, co-operation and joint activity through information sharing, training and development of Ombudsman and staff;
- (c) to promote good governance including the observance of human rights, transparency and administrative justice;
- (d) to support and promote the autonomy and independence of Ombudsman offices;
- (e) to foster affiliation and maintain liaison with other Ombudsman Offices, Institutes and Associations, international bodies and organizations interested in the progress of Ombudsman activities and human rights;
- (f) to identify and carry out any other relevant activities which the members may deem appropriate.

PROPOSED AMENDMENT

The objectives of the AOMA shall be:

- (a) to encourage the establishment, development and promotion of African Ombudsman Institution;
- (b) to foster mutual support, co-operation and joint activity through information sharing, training and development of Ombudsman and staff;
- (c) to promote good governance including the observance of human rights, transparency and administrative justice;
- (d) to support and promote the autonomy and independence of Ombudsman offices;
- (e) to foster affiliation and maintain liaison with other Ombudsman Offices, Institutes and Associations, international bodies and organizations interested in the progress of Ombudsman activities and human rights;
- (f) to conduct research;
- (g) to identify and carry out any other relevant activities which the members may deem appropriate.

ARTICLE 5: MEMBERSHIP

1. Categories of membership

The Association shall have three categories of membership: Ordinary, Associate or Honorary.

- a) Ordinary membership: Any Ombudsman institution established by the Constitution or an enactment of a legislative body.
- b) Associate membership: Any individual, institution, corporate body, or organization that commits itself to promoting and encouraging the activities of the Association shall be eligible to join as an Associate Member.
- c) Honorary membership: The Executive Committee may confer "Honorary Membership" upon an individual who has made a distinguished contribution to African Ombudsman activities.

PROPOSED AMENDMENT

The AOMA shall have three categories of membership: Ordinary, Associate or Honorary.

- a) Ordinary membership: Any Ombudsman institution established by the Constitution or an enactment of Parliament.
- b) Associate membership: Any individual, institution, corporate body, or organization that commits itself to promoting and encouraging the activities of the AOMA shall be eligible to join as an Associate Member.
- c) Honorary membership: The Executive Committee may confer "Honorary Membership" upon an individual who has made a distinguished contribution to the African ombudsman institution.

2. APPLICATION FOR MEMBERSHIP

- (a) Application for membership of the Association must be made in writing to the Executive Secretary. The Executive Secretary shall approve applications for membership, which comply with the criteria to be established by the Executive Committee.
- (b) The Executive Secretary shall advise the Executive Committee on a decision on an application. In case of any dispute, the Executive Committee shall rule on the disputed membership application or admission. The applicant may, if not satisfied with the decision of the Executive Committee, lodge an appeal to the General Assembly.

3. MEMBERSHIP FEES

- (a) The entrance fee and annual subscription shall be as determined by the Executive Committee and ratified by the General Assembly.
- (b) Any ordinary member whose annual subscription shall be in arrears before the General Assembly shall be ineligible to vote at the General Assembly.

PROPOSED AMENDMENT

- (b) Any ordinary member whose annual subscription shall be in arrears before the General Assembly shall be ineligible to vote at any meeting.

4. LOSS OF MEMBERSHIP

1. Membership of the Association shall cease if:
 - (a) A member withdraws by a written notification to the Executive Secretary.
 - (b) A member whose conduct proves incompatible with the objectives of the Association or whose conduct brings discredit to the Association is asked to resign by the Executive Committee.
 - (c) A member fails to pay the required fees within the time after such member was duly notified of outstanding fees.
2. Except for withdrawal under (a) above, the member shall be provided an opportunity to be heard by the Executive Committee and can appeal the Executive Committee's decision at the General Assembly.

PROPOSED AMENDMENT

1. Membership of the AOMA shall cease if:

ARTICLE 6: STRUCTURES OF THE ASSOCIATION

1. The Association shall be composed as follows:
 - (a) General Assembly, which shall be the highest decision-making body of the Association;
 - (b) Executive Committee, which shall be the governing body of the Association and shall manage, control and direct the affairs and property of the Association;
 - (c) Secretariat, which shall provide the secretariat support to the Executive Committee and the Association;
 - (d) Sub region structures, which shall co-ordinate all activities of the Association within the sub regions;
 - (e) The African Ombudsman Association shall serve as a documentation and training centre of the Association;
 - (f) The General Assembly shall establish such other structures it deems necessary from time to time.

PROPOSED AMENDMENTS TO ARTICLE 6: STRUCTURES OF THE ASSOCIATION

ARTICLE 6: STRUCTURES OF THE AOMA

1. The AOMA shall be composed as follows:
 - (a) General Assembly, which shall be the highest decision-making body of the Association;
 - (b) Executive Committee, which shall be the governing body of the Association and shall manage, control and direct the affairs and property of the Association;
 - (c) African Ombudsman Research Centre (AORC) which shall serve as the Secretariat;
 - (d) Regional structures, which shall co-ordinate all activities of the AOMA within the respective regions.
2. The General Assembly shall establish such other structures it deems necessary from time to time.

ARTICLE 7: GENERAL ASSEMBLY

1. The General Assembly shall be constituted by the gathering of all the members.
2. The main business of the General Assembly shall include:
 - (a) The approval of policies, plans and programmes of the Association for implementation by the Executive Committee;
 - (b) The consideration of the progress report from the President and the Executive Secretary;
 - (c) The consideration of financial statements including the auditor's report; and
 - (d) The amendment of the Constitution
 - (e) Election of members of the Executive Committee
 - (f) The assessment of the progress and development of the Association
 - (g) Any other business

PROPOSED AMENDMENT

- Replace the word **Association** with the word **AOMA** in paragraph 2 (a) + (f)

ARTICLE 8: EXECUTIVE COMMITTEE

1. **Composition of the Executive Committee**

- (a) The Executive Committee shall consist of:
 - i) The President
 - ii) The First Vice President
 - iii) The Second Vice President
 - iv) The Executive Secretary

PROPOSED AMENDMENT

- v) **The Treasurer and**

vi) One member from each of the recognised regions and elected in accordance with Article 11 of this Constitution.

- (b) The Executive Committee shall also include the following ex officio, non voting members:
- i) African Regional Directors to the Board of Directors of the International Ombudsman Institute.
 - ii) The outgoing President, if not elected as a member of the Executive Committee, may serve two years as Past President or a shorter term if succeeded by a more recent past President.

PROPOSED ADDITION

iii) AOMA members who sit on the AORC Board

- (c) The Executive Committee may co-opt such other members as it may deem necessary but such members shall have no right to vote.

PROPOSED ADDITION

- (d) Members of the Executive Committee, except the Executive Secretary, shall be elected at a General Assembly by voting members entitled to vote under this Constitution.**
- (e) The voting members shall, by ballot, elect members of the Executive Committee and Directors.**

2. General Powers and duties

Subject to any directions that may be given to it by the General Assembly, the Executive Committee shall be responsible for the:

- (a) General direction of the Association activities;
- (b) The administration of the finance;
- (c) Agenda, dates and venue of general meetings/regional conferences;
- (d) Progress report on the overall activities of the Association to the General Assembly;
- (e) Appointment and discipline of employees;
- (f) Implementation of measures and actions deemed appropriate for the interests of the Association;
- (g) Appointment of any Committee it may deem fit for the purpose of investigating and reporting on any matter;
- (h) Recommendation of a budget for approval by the General Assembly;
- (i) Submission of progress reports to the General Assembly, particularly the President's Report, the Executive Secretary's Report and the Audited Annual Financial Statements;

- (j) Framing and proposing by laws for the Association and to seek ratification by a majority of the members at the General Assembly;
- (k) Execution and implementation of the resolutions and recommendations of the General Assembly;
- (l) Delegation of any of the powers to a particular member or members of the Executive Committee, or the Secretariat or any other member of the Association or any other person, to such an extent and in such a manner as the Executive Committee may from time to time determine and to retain final responsibility for such delegation; and
- (m) Doing any other lawful thing that is necessary to achieve the aims and objectives of the Association.

PROPOSED AMENDMENTS

General Powers and Duties

Subject to any directions that may be given to it by the General Assembly, the Executive Committee shall be responsible for the:

- (a) General direction of the AOMA activities;
- (b) Administration of the finances;
- (c) Agenda, dates and venue of general meetings/regional conferences;
- (d) Progress report on the overall activities of the AOMA to the General Assembly;
- (e) Appointment and discipline of employees;
- (f) Implementation of measures and actions deemed appropriate for the interests of the AOMA;
- (g) Appointment of any Committee it may deem fit for the purpose of investigating and reporting on any matter;
- (h) Recommendation of a budget for approval by the General Assembly;
- (i) Submission of progress reports to the General Assembly, particularly the President's Report, the Executive Secretary's Report and the audited Annual Financial Statements;
- (j) Framing and proposing by-laws for the AOMA and to seek ratification by a majority of the members at the General Assembly;
- (k) Execution and implementation of the resolutions and recommendations of the General Assembly;
- (l) Delegation of any of the powers to a particular member or members of the Executive Committee, or the Secretariat or any other member of the AOMA or any other person, to such an extent and in such a manner as the Executive Committee may from time to time determine and to retain final responsibility for such delegation; and
- (m) Doing any other lawful thing that is necessary to achieve the aims and objectives of the AOMA.

3. TERMS OF MEMBERS OF THE EXECUTIVE COMMITTEE

The members shall serve for a term of four years and shall be eligible for re-election. A member shall not serve for more than two elected terms.

PROPOSED AMENDMENT TO ARTICLE 8 (3)

The members, **except the Executive Secretary**, shall serve for a term of four years and shall be eligible for re-election. A member, **except the Executive Secretary**, shall not serve for more than two elected terms.

4. VACANCIES

- (a) A position on the Executive Committee shall become vacant if:
 - i) A member resigns by notice in writing to the President.
 - ii) A member who is an office bearer is asked to resign from the Executive Committee by a 2/3 vote of the members, and in the case of a regional co-ordinator by decision of at least two-thirds of the members present at a General Assembly on the grounds that he/she has failed to perform his/her duties fairly, honestly or adequately including failing to attend sufficient Executive Committee meetings as the Committee may decide from time to time.
 - iii) A member dies.
- (b) A vacancy may be filled by the Executive Committee from amongst their members by majority vote. If the member is representing a sub region, such a vacancy shall be filled by his or her successor from that sub region for the remainder of the term.

PROPOSED AMENDMENT TO ARTICLE 8 (4)

- (a) A position in the Executive Committee shall become vacant if: ...
- (b) ... by his or her successor from that region for the remainder of the term.

ARTICLE 9: OFFICERS OF THE ASSOCIATION

- 1. **The Officers** of the Association shall be the President, the first Vice President, the second Vice President and the Executive Secretary and may include such other officers as the Executive Committee may from time to time by resolution determine.
- 2. **The President** shall preside over all the meetings of the Association. He or she shall be charge with general supervision of the affairs and operations of the Association and act as the Spokesperson for the Association.
- 3. **The First Vice President** shall, in the absence of the President, perform the duties and exercise the powers of the President and shall perform such other duties as may be required from him or her by the Executive Committee.
- 4. **The Second Vice President** shall act in the absence of the President and the first Vice President.

PROPOSED AMENDMENTS TO ARTICLE 9

ARTICLE 9: OFFICER-BEARERS OF THE AOMA

1. **The Officer-bearers** of the AOMA shall be ...
2. **The President** shall preside over all the meetings of the AOMA. He or she shall be charged with the general supervision of the affairs and operations of the AOMA and act as the spokesperson for the AOMA.
5. **The Executive Secretary** shall be responsible for managing the financial and administrative affairs of the Association including the following:
 - (a) Managing the Secretariat of the Association;
 - (b) Executing of the decisions and instructions of the Executive Committee;
 - (c) Co-coordinating the activities of the Association.
 - (d) Submission to the Executive Committee of annual report on Association activities including a report of the activities of the Executive Secretary and at the time of the General Assembly, submit a report;
 - (e) Maintaining the Association membership register;
 - (f) Organizing the meetings of the Association, issuing notices about all meetings and activities of the Association, recording minutes of all meetings, keeping accurate and up-to –date records of all activities; and
 - (g) Performing all functions proper to the office of the Executive Secretary, and such other duties as may from time to time be assigned to him/her by the Executive Committee or by the President.

PROPOSED AMENDMENTS TO PARAGRAPH 9(5)

The Executive Secretary, who shall be the Public Protector of South Africa, or any member of her/his staff, shall be responsible for managing the financial and administrative affairs of the **AOMA** including the following:

- a) Managing the Secretariat of the **AOMA and cover the personnel and operating cost, including the costs related to the AOMA website, as long as the Public Protector or a member of the Public Protector acts as Executive Secretary.**
- b) Executing the decisions and instructions of the Executive Committee;
- c) Co-ordinating the activities of the **AOMA**
- d) Submitting an annual report to the Executive Committee on **the AOMA's** activities, including a report of the activities of the Executive Secretary and, at the time of the General Assembly, submit a report;
- e) Maintaining the **AOMA** membership register;

ARTICLE 10: SECRETARIAT

1. The Secretariat shall perform the daily administration of the Association.
2. The Executive Committee may appoint such other staff members as the work and funding of the Association requires.

PROPOSED AMENDMENTS TO ARTICLE 10

1. The AORC, which shall be the Secretariat, shall perform the daily administration of the **AOMA**
2. ... funding of the AOMA requires.

ARTICLE 11: SUB REGIONS OF THE ASSOCIATION

1. There shall be the following recognized sub regions:
 - a) Northern
 - b) West
 - c) East
 - d) Southern
 - e) Central
 - f) Indian Ocean
2. The General Assembly shall establish such sub regions as deemed necessary.
3. The sub Regions shall have the following purposes:
 - a) to promote the objectives of the Association;
 - b) to carry out the decentralization of the activities of the Association within the sub region.

PROPOSED ADDITION

- c) **Regions shall meet at least once every year.**

PROPOSED AMENDMENTS TO ARTICLE 11

ARTICLE 11: REGIONS OF THE AOMA

1. There shall be the following recognised regions: ...
2. The General Assembly shall establish such regions as deemed necessary.
3. The Regional Co-ordinators shall have the following purposes:

- (a) to promote the objectives of the AOMA;
- b) to carry out the decentralisation of the activities of the AOMA within the region.

4. Regions shall operate in accordance with the Constitution and By-Laws.

PROPOSED ADDITION

5. The member, who represents aRegion on the Executive Committee, shall be elected by that Region and serve as a Regional Co-ordinator for all activities within the Region and submit a report of all activities to the Executive Committee. **The Regional Co-ordinator shall be assisted by two members elected by that region.** The Regional Co-ordinator shall keep the Executive Secretary informed of activities and developments every six months.

PROPOSED ADDITION: PARAGRAPH 6

6. **Any vacancy caused by death, resignation or retirement of a Regional Co-ordinator shall be filled by that region from amongst their members for the remainder of the term.**

ARTICLE 12: THE AFRICAN OMBUDSMAN RESEARCH CENTRE

1. The African Ombudsman Research Centre shall have the following objectives:
- (a) Promote the study of the activities, obligations and problems of Ombudsman institutions in Africa;
 - (b) Organize training, seminars and short courses on special issues relating to the work of the Ombudsman;
 - (c) Establish standing committees for research and documentation on issues relating to the Ombudsman field, human rights and public administration in general;
 - (d) Publication of occasional papers, Ombudsman profiles and a journal promoting the development of Ombudsman activities;
 - (e) Distribution and exchange of documents;
 - (f) Catalogue, store and disseminate relevant information concerning the Ombudsman institutions including books, periodicals, reports, court cases, speeches, media responses, annual reports, etc.

PROPOSED AMENDMENTS TO ARTICLE 12

➤ Insert Article 2

2. (a) The AOMA shall establish the AORC as a Non-Profit Company in terms of the South African Companies Act (71 of 2008), with its seat at the University of KwaZulu-Natal (UKZN).
- (b) The Board of Directors of the AORC shall consists of the Executive Secretary, who shall be the Chairperson of the Board, the President of the AOMA, two representatives of the UKZN, two representatives of AOMA and the Chief Executive Officer of the Public Protector of South Africa.
- (c) The Board may co-opt such other members as it may deem necessary, but such members shall have no right to vote.
- (d) The Board shall meet at least every three months, provided that any member of the Board may, through the Chairperson call a meeting of the Board.
- (e) The functions of the Board shall be:
 - i) to co-ordinate high level issues relevant to the service and general direction of the AORC and to report to the Executive Committee;
 - ii) to identify and consider proposals and projects for future course development;
 - iii) to resolve, by reaching consensus, any dispute that may arise between the AOMA and the UKZN;
 - iv) to submit an annual report of the activities under its oversight to the Executive Committee.
- (g) The Executive Secretary shall manage the AORC on behalf of the Executive Committee, including all of the finances related and destined to the activities of the AORC and receiving all funds on behalf of the AOMA.

ARTICLE 13: MEETINGS

1. General Assembly

- (a) The AOMA members shall meet once every two years.

- (b) A special meeting of members may be called by the Executive Committee at any time on its own motion or at the request of at least twenty five percent (25%) of the voting members.
- (c) The quorum for the General Assembly shall be a majority of the total number of voting members.
- (d) All members shall have the right to attend the General Assembly.
- (e) All ordinary paid up members shall have the right to vote.

2. **EXECUTIVE COMMITTEE**

- (a) Regular meetings of the Executive Committee shall be held at least once every year between the General Assembly meetings. Special meetings may be called at the request of one third of the members of the Executive Committee.
- (b) Six Executive Committee members shall constitute a quorum at the Executive Committee meetings.
- (c) In the event of equal votes, the President shall have a casting vote as well as his/her own vote.
- (d) An attendance register and minutes will be maintained of all Executive Committee meetings and the President shall sign all approved minutes.
- (e) Decisions shall be by consensus provided that where consensus can not be reached, a vote shall be taken and the motion shall be carried if it is supported by a simple majority of the members present and voting. In case of a tie, the President shall have an original vote and a casting vote.

- 3. Any decision at the General Assembly shall be made by way of a resolution passed by the majority of those present, entitled to vote and voting at such meeting, subject to requirements in relation to quorums.

ARTICLE 14: ACCOUNTS

- 1. The Treasurer is responsible for the financial affairs of the AOMA.
- 2. The Treasurer shall keep proper records, which reflect:
 - (a) Detailed income and expenditure of the AOMA;
 - (b) The assets held by the AOMA;

- (c) Liabilities of the AOMA; and
 - (d) The payment of fees by members.
3. An external auditor appointed by the Executive Committee shall audit the accounts of the AOMA.
 4. The Financial year shall begin on January 1 and end on December 31.

PROPOSED ADDITION

5. The Executive Secretary *or the Treasurer* and any one of two other persons nominated by him/her shall have signing powers in respect of the banking account of the Association.
6. The Executive Secretary shall be responsible for the collection of fees from the members.
7. AOMA resources include but are not limited to:
 - (a) Entrance fees;
 - (b) Annual subscriptions;
 - (c) Donation and legacies;
 - (d) Subventions;
 - (e) Grants; and
 - (f) Consultancy services.

ARTICLE 15: AMENDMENT OF THE CONSTITUTION

1. This Constitution may be amended by the General Assembly upon the proposal laid before such meeting by the Executive Committee of the AOMA or upon the request of the majority of the members.
2. Amendments shall be adopted by two thirds of the members present and voting at the General Assembly.

ARTICLE 16: DISSOLUTION

1. The AOMA can only be dissolved by the General Assembly or at a special meeting called for that purpose and in accordance with the laws of the country in which the AOMA is registered.

2. At least three fourths of all eligible votes at the General Assembly or a special meeting as provided for in Article 13(1) (b) hereof are necessary to dissolve the AOMA.
3. In case of dissolution, the assets and liabilities of the AOMA shall be distributed as determined by the General Assembly dissolving the Association.

ARTICLE 17: BY-LAWS

1. The Executive Committee shall make such By-laws as may be necessary for carrying out the work of the AOMA.
2. The By-laws shall be of immediate effect but must be approved by the next General Assembly to remain in force.

ARTICLE 18: TRANSITIONAL PROVISIONS

1. The interim Constitution has been adopted by the Board of Trustees of the African Ombudsman Centre during its 6th Meeting held in Windhoek on the 14th November 2002 and ratified by the General Assembly constituted as a Constituent Assembly for that purpose.
2. All acts performed or done in pursuance of the provisions of the Interim Constitution will be deemed to have been performed or done in accordance with this Constitution.