

THE OMBUDSMAN ACT 1997

AN ACT to establish the Office of the Ombudsman and to define and prescribe the powers, duties and functions of the Ombudsman.
(29 October 1997)

ENACTED by the President and the National Assembly of The Gambia.

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| Short Title | 1. This Act may be cited as the Ombudsman Act 1997 and shall come into force on such date as the Secretary of State may by order published in the Gazette appoint. |
| Establishment | 2. (1) There is hereby established the Office of the Ombudsman which shall consist of the Ombudsman and two Deputy Ombudsmen.

(2) The Ombudsman and Deputy Ombudsmen shall be appointed by the President in consultation with the Public Service Commission and subject to confirmation by the National Assembly.

(3) The Ombudsman and Deputy Ombudsmen shall be appointed for a period of five years and shall be eligible for re-appointment.

(4) The Ombudsman and Deputy Ombudsmen shall, before entering upon the duties of office, take an oath of office,

(5) The Ombudsman and Deputy Ombudsmen shall not hold any other public office.

(6) The Ombudsman and Deputy Ombudsman shall constitute a quorum for the purpose of arriving at any decision. |
| Functions of the Ombudsman | 3. (1) In addition to the functions of the Ombudsman under the Constitution, the Ombudsman shall have the following functions -
a. to investigate complaints of injustice, corruption, abuse of power, maladministration and unfair treatment of any person by a public officer in the exercise of official duties;

b. to investigate complaints concerning the functioning of the Public Service Commission, the administrative and security organs of the State, the Police Service and Prisons Services in so far as the complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment to those services or fair administration in relation to those services.

(2) The Ombudsman may, where it is considered desirable, investigate into any matter referred to in paragraphs (a) and (b) of subsection (1). |
| Action or steps to be | 4. (1) The Ombudsman shall after holding any enquiring or |

taken in connection
with outcome of
inquiry or
investigation

- investigation -
- a) recommend appropriate action or steps to call for or require the remedying correction and reversal of matters or instances specified in section 3 through such means as are fair, proper and effective;
 - b) notify the person who laid the matter before the Ombudsman of the outcome of such inquiry or investigation in such manner and form as the Ombudsman may deem necessary in the public interest or that the matter shall not be further enquired into or investigated in terms of section 8.

General powers of
the Ombudsman

3. (1) For the purposes of performing his or her functions, the Ombudsman shall have the following powers -
- (a) to determine the nature and extent of any inquiry or investigation referred to him or her;
 - (b) upon the issue of a warrant under the hand of the Ombudsman to enter at any time any building or premises or any part of any building or premises to make enquiries and put such questions to any person in connection with the matter in question;
 - (c) access to all books, vouchers, stamps, securities, equipment, stores and other movable goods in the possession or under the control of any person;
 - (d) to request particulars and information from any person;
 - (e) to make enquiries into, extracts from or copies of any book, voucher or other document which he or she deem necessary in connection with any inquiry or investigation;
 - (f) to seize anything which they deem necessary in connection an inquiry or investigation.

Power to summon
witnesses

4. (1) The Ombudsman shall have the power to summon witnesses and to examine witnesses under oath.
- (2) A summons for the attendance of a witness or the production of documents shall be served in the same manner as if it were a subpoena for the attendance of a witness in court.
- (3) The ombudsman may by warrant order the arrest of any person, who after being served with a summons fails to appear before it.

Orders by
Ombudsman

- (1) Orders, writs and directions issued by the Ombudsman shall have the same force as an order, writ or direction of the High Court.

Certificate of the
President

8. (1) Notwithstanding section 5, where the President has certified that the giving of any information, or the production of any

document -

- a) might prejudice the security, defence or international relations of the State or the investigation or determination of offences; or
- b) might involve the disclosure of the deliberation of the Cabinet or any sub-committee of the Cabinet relating to matters of a secret or confidential nature and would be injurious to the public interest;

the Ombudsman shall not require the information to be given or the document to be produced.

Jurisdiction of
Ombudsman

9. (1) The Ombudsman shall have jurisdiction to inquire into the conduct of any person to whom this Act applies.

(2) Notwithstanding subsection (1), the Ombudsman shall not have power to question or review -

- a) the decision of any court of law or of any judicial officer in the exercise of judicial functions;
- b) decisions of any tribunal established by law;
- c) any matter which is sub-judice;
- d) any matter relating to the exercise of the prerogative of mercy, and
- e) any matter relating to the affairs of the President.

(3) (1) The Ombudsman may decide to discontinue an investigation where he or she is satisfied that -

- a) the complaint is trivial, frivolous, vexatious, or not made in good faith; or
- b) the inquiry would be unnecessary, improper or fruitless.

(4) The Ombudsman shall, in any case in which he or she decides to discontinue an investigation, inform the complainant in writing accordingly but shall not be bound to give any reasons.

Investigations to be
in camera

10. (1) Every investigation under this Act shall be in camera.

(1) Notwithstanding subsection (1), the Ombudsman may in the public interest publish his or her findings at the end of an investigation.

Provisions relating to
complaints and
allegations

11. (1) A complaint under this Act can be made by anybody in any form; provided that where a complaint is made orally it shall be reduced into writing by a member of staff of the Ombudsman.

(2) Notwithstanding the provisions of any written law, where a prisoner

or any other person held in any institution makes an allegation or complaint to the Ombudsman, such allegation or complaint shall not be made through, or subject to the scrutiny of any other person.

Evidence and procedure

12. (1) The procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances.

(2) The Ombudsman may authorise any of his or her staff to exercise any of the powers under section 5.

(3) Where the Ombudsman proposes to conduct an investigation, it shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action complained of, an opportunity to comment on any allegation made to him or her.

Reports

13. (1) The Ombudsman shall submit to the President a report of every investigation it has conducted which shall contain -

(a) a summary of the evidence taken together with the conclusions and recommendations;

(b) a statement of any action that has been taken by any person whose conduct is under investigation or by the department or authority of which such person is a member, to correct or ameliorate any conduct, procedure, act or omission that is adversely commented upon in the report;

(c) where any person has suffered loss or injury as a result of any alleged misconduct, maladministration or abuse of office or authority by any person whose conduct is under investigation, the Ombudsman may in his or her recommendations state that compensation should be paid to the person who has suffered such loss or injury or to any dependent of such person, and shall determine the sum which it recommends as compensation.

Enforcement and notification

14. (1) The President may, on receipt of the report of the Ombudsman on any investigation conducted by him or her, or during the continuance of any such investigation, take such decision in respect of the matter investigated or being investigated into by the Ombudsman as the President deems fit.

(2) When the Ombudsman receives such decisions he or she shall notify the complainant and the person against whom the complaint or allegation was made.

Report to National Assembly

15. (1) The Ombudsman shall submit to the National Assembly an annual report of his or her operations.

(2) The annual report shall be submitted within six months of the following year.

(3) A report under this section shall not disclose the identity or contain any statement which may point to the identity of any person into whose conduct an investigation is made.

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| Staff of Ombudsman | 16. The Ombudsman shall employ such staff as he or she may determine, who shall become public officers. |
| Finality of Ombudsman's acts | 17. (1) No investigation, proceedings, process or report of the Ombudsman shall be held bad for any error or irregularity of form or be challenged, reviewed, quashed or called into question in any court save on the ground of lack of jurisdiction.

(2) The High Court shall be the final court of appeal in all matters in which the Ombudsman is a party. |
| Immunity of Ombudsman and members of staff of office of Ombudsman | 18. (1) No proceedings, civil or criminal, shall lie against any Ombudsman or member of staff of the Ombudsman for anything done in good faith in the course of the exercise of his or her official functions.

(2) Subject to the provisions of this Act, the Ombudsman or member of staff of the office of the Ombudsman shall not be called to give evidence before any court or tribunal in respect of any information received in the exercise of official functions. |
| Expenditure | 19. (1) All expenditure in connection with the office of the Ombudsman shall be charged on the Consolidated Revenue Fund and shall be paid at the beginning of each financial year.

(2) A person summoned as a witness under this Act may on the order of the Ombudsman be paid such allowance as the Ombudsman may prescribe. |
| Offences | 20. (1) If any person who -
(a) being a witness before the Ombudsman without lawful excuse refuses to be sworn or affirmed, or having been sworn or affirmed refuses to answer fully and satisfactorily any question lawfully put;

(b) having been sworn or affirmed knowingly gives testimony touching any matter which is material to any question under investigation;

(c) intentionally insults, interrupts or otherwise obstructs the Ombudsman or member of staff of the Ombudsman in the performance of functions under this Act;

(d) intentionally disobeys any order made under section 6; |

commits an offence and shall be liable to the same penalty as any person who commits a like offence in relation to a court.

Power to make rules

21. (1) The Ombudsman may make rules for the better carrying into effect of this Act and, without prejudice to the generality of the foregoing, for any of the following matters:

(a) prescribing terms in respect of proceedings before the Ombudsman;

(b) prescribing the duties of officers and other persons appointed under this Act; and

prescribing the procedure for conducting investigations.