

CHAPTER 10:18

OMBUDSMAN ACT

(Will be amended by the Judicial Service Act[Chapter7:18](No.10of2006)when it comes into operation)

Acts 16/1982, 24/1985, 8/1988, 1/1989, 3/1994, 4/1997, 22/2001 (s. 4).

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AN ACT to make provision for the Ombudsman, the Deputy Ombudsman and the staff of the Ombudsman; to provide for their powers, duties and procedures; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 10th September, 1982.]

WHEREAS sections 107 and 108 of the Constitution provide—

107 (1) There shall be an Ombudsman and, where the President has deemed it desirable, a Deputy Ombudsman, whose offices shall be public offices but shall not form part of the Public Service.

(2) The Ombudsman and Deputy Ombudsman shall be appointed by the President after consultation with the Judicial Service Commission.

(2a) If the appointment of an Ombudsman or Deputy Ombudsman is not consistent with any recommendation made by the Judicial Service Commission, the President shall cause Parliament to be informed as soon is practicable.

(3) The Deputy Ombudsman shall—

- (a) assist the Ombudsman in the exercise of his functions and duties and the Ombudsman may authorize him to exercise any of his functions or duties on his behalf;
- (b) act as Ombudsman whenever the office of the Ombudsman is vacant or the Ombudsman is for any reason unable to perform the functions of his office.

(4) An Act of Parliament may make provision for the qualifications and remuneration of the Ombudsman and the Deputy Ombudsman .

108 (1) The Ombudsman may investigate□

- (a) action taken by any officer, person or authority referred to in subsection (2) in the exercise of the administrative functions of that officer, person or authority in any case where it is alleged that a person has suffered injustice in consequence of that action and it does not appear that there is any remedy reasonably available by way of proceedings in a court or on appeal from a court; or
- (b) allegations that any provision of the Declaration of Rights has been contravened by any officer, person or authority referred to in subsection (2).

(Subsection as substituted by s. 2 of Act No. 4 of 1997.)

(2) Subject to such exceptions and conditions as may be prescribed by or under an Act of Parliament, the provisions of subsection (1) shall apply in respect of any action taken by the following officers and authorities—

- (a) any Ministry or department or any member of such Ministry or department; and
- (b) such other persons or authorities as may be prescribed by or under an Act of Parliament for the purposes of this paragraph.

(3) An Act of Parliament may confer other functions on the Ombudsman, and may make provision for the exercise of his functions including, without prejudice to the generality of the foregoing, the officers and authorities whose actions are not subject to investigation by him. NOW, THEREFORE, be it enacted as follows:—

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Ombudsman Act [*Chapter 10:18*].

2 Interpretation

In this Act—

“action” includes failure to act;

“local authority” means a municipal council, town council, local board or rural district council;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“Ombudsman”, in relation to any function exercisable by the Deputy Ombudsman in terms of subsection (3) of section 107 of the Constitution, includes the Deputy Ombudsman;

“pension benefit” means a pension, commutation of pension, gratuity or other like allowance or refund of pension contributions, including any interest payable thereon, for a person in respect of his service as the Ombudsman or the Deputy Ombudsman or in respect of any ill-health or injury arising out of and in the course of his official duties or for any spouse, child, dependant or personal representative of such a person in respect of such service, ill-health or injury;

“resident of Zimbabwe” means a person who in terms of the law is permitted to enter, be or remain in Zimbabwe but does not include a visitor to Zimbabwe;

“statutory body” means any corporate body established by or in terms of any enactment for special purposes and includes any company which is a subsidiary determined in accordance with section 143 of the Companies Act [*Chapter 24:03*] of such body.

PART II

OMBUDSMAN AND HIS STAFF

3 Qualifications of Ombudsman and Deputy Ombudsman

(1) A person shall not be qualified for appointment as the Ombudsman or the Deputy Ombudsman unless—

- (a) he is or has been a judge in Zimbabwe or in a court having unlimited jurisdiction in civil or criminal matters in a country in which the common law is Roman-Dutch or English and English is an official language; or

- (b) he is and has been for not less than seven years, whether continuously or not, qualified to practise as a legal practitioner—
 - (i) in Zimbabwe; or
 - (ii) in a country in which the common law is Roman-Dutch or English and English is an official language;
- or
- (c) he is or has been a regional magistrate in terms of the Magistrates Court Act [*Chapter 7:10*]; or
- (d) he is or has been a Secretary of the Cabinet or of a Ministry; or
- (e) in the opinion of the President he is a person of ability and experience and distinguished in the public life of Zimbabwe.

(2) In computing, for the purposes of paragraph (b) of subsection (1), the period during which any person has been qualified to practise as a legal practitioner, any period during which he has held judicial office after having so qualified shall be included, and the reference therein to a legal practitioner shall include a reference to persons in other jurisdictions who are legal practitioners or who have comparable functions.

(3) A person shall not be qualified to be appointed or to hold office as the Ombudsman or the Deputy Ombudsman if—

- (a) subject to subsection (3) of section *eight*, he performs the functions of any other public office; or
- (b) he holds any other paid office or employment; or
- (c) he is a director, consultant or adviser of any corporate body or partnership.

(4) A person, before assuming the office of Ombudsman or Deputy Ombudsman, shall declare in writing to the President if he has any financial, commercial or other interests that might conflict with his duties and responsibilities in his office as Ombudsman or Deputy Ombudsman, as the case may be, and shall likewise declare any such interests if he acquires them after assuming his office.

4 Terms of office of Ombudsman and Deputy Ombudsman

(1) The Ombudsman shall vacate his office at the expiration of five years from the date of his appointment but shall be eligible for re-appointment for one or more further terms of office, each of which shall not exceed three years, as may be determined by the President.

(2) The Ombudsman or the Deputy Ombudsman shall retire when he attains the age of sixty-five years unless, before he attains that age, he has elected to retire on attaining the age of seventy years: Provided that—

- (i) an election under this subsection shall be subject to the submission to, and acceptance by, the President, after consultation with the Judicial Service Commission, of a medical report as to the mental and physical fitness of the Ombudsman or the Deputy Ombudsman, as the case may be, so to continue in office; (ii) this subsection shall not apply to an acting Deputy Ombudsman.

(3) The Ombudsman and the Deputy Ombudsman may at any time resign their offices by notice in writing to the President.

(4) The Ombudsman or the Deputy Ombudsman may, notwithstanding that he has ceased to hold office, complete any investigation commenced by him while in office:

Provided that this subsection shall not apply if the Ombudsman or the Deputy Ombudsman, as the case may be, has ceased to hold office in terms of section 110 of the Constitution.

5 Conditions of service of Ombudsman and Deputy Ombudsman

(1) The Ombudsman and the Deputy Ombudsman shall hold office on such terms and conditions, including terms and conditions relating to the payment of salary, allowances and pensions benefits as the President may fix.

(2) The salaries and any pensions benefits payable to the Ombudsman and the Deputy Ombudsman shall be a charge on the Consolidated Revenue Fund, which is hereby appropriated to the purpose.

(3) When fixing the conditions of service of the Ombudsman or the Deputy Ombudsman, the President may direct that any enactment relating to the conditions of service of members of the Public Service shall apply to the Ombudsman or the Deputy Ombudsman, as the case may be, subject to such modifications or exceptions as the President may specify, and thereupon the enactment concerned shall so apply to the Ombudsman or the Deputy Ombudsman, as the case may be.

6 Staff of Ombudsman

(1) The Public Service Commission shall appoint such members of staff of the Ombudsman as may be necessary to assist the Ombudsman in exercising his functions.

(2) The Ombudsman may authorize any member of his staff to exercise on his behalf such of his functions as he thinks fit.

7 Oaths to be taken

The Ombudsman and the Deputy Ombudsman shall, before entering upon their offices, take and subscribe before the President, or some person authorized by the President in that behalf, the oath or affirmation of loyalty and the oath or affirmation of office as set out in Schedule I to the Constitution.

8 Additional functions of Ombudsman

(1) Subject to section *nine*, in addition to the person and authorities whose action or conduct the Ombudsman may investigate by virtue of paragraph (a) of subsection (2) of section 108 of the Constitution, the Ombudsman may investigate□

- (a) action of the kind referred to in paragraph (a) of subsection (1) of the said section 108, taken by any force, service, authority, institution or body set out in the First Schedule, or by any officer or employee thereof; or
- (b) allegations that any provision of the Declaration of Rights in the Constitution has been contravened by any force, service, authority, institution, body or person referred to in paragraph (a).

(Subsection as substituted by s. 3 of Act No. 4 of 1997.)

(2) Notwithstanding item 1 of the First Schedule□

- (a) the Ombudsman may investigate allegations that any provision of the Declaration of Rights in the Constitution has been contravened by the Defence Forces, the Police Force or the Prison Service or by any member thereof;
- (b) the President may make regulations providing for all or any of the powers of the Ombudsman referred to in paragraph (a) of subsection (1) of section 108 of the Constitution to be exercised, in relation to the Defence Forces, the Police Force or the Prison Service, by the Ombudsman or by any other person or authority that he may appoint or establish for the purpose.

(Subsection as substituted by s. 3 of Act No. 4 of 1997.)

(2a) In addition to the functions conferred on him by subsection (1) of section 108 of the Constitution, the Ombudsman may□

- (a) examine any enactment and report to the Minister on whether, in his opinion, it contravenes or is likely to contravene, as the case may be, the Declaration of Rights in the Constitution; and
- (b) take such measures as he considers necessary or desirable to promote public awareness of human rights.

(Subsection as inserted by s. 3 of Act No. 4 of 1997.)

(3) The Ombudsman or the Deputy Ombudsman may exercise the functions of chairman or member of—

- (a) the tribunal appointed for the purposes of paragraph 2 of Schedule 2 to the Constitution; and
- (b) any other tribunal, board or committee that may be specified by the President by statutory instrument.

9 Investigations that Ombudsman may not undertake

(1) The Ombudsman shall not investigate any action taken by any officer or authority set out in the Second Schedule or by any member of the staff thereof.

(2) Notwithstanding that the Ombudsman is prohibited by subsection (1) or any other provision of this Act from investigating the conduct of any body or person, such prohibition shall not prevent the Ombudsman investigating a complaint against such body or person by an officer or employee of the body or person relating to the conduct of such body or person in relation to the officer or employee.

(3) Except as otherwise provided in this Act, the Ombudsman shall not conduct an investigation in respect of□

- (a) any action of the kind referred to in paragraph (a) of subsection (1) of section 108 of the Constitution, where□

- (i) the person aggrieved has or had a remedy, whether by way of appeal, review or otherwise, to a court or a tribunal established under any enactment:

Provided that the Ombudsman may conduct an investigation in such a case if he has informed the person aggrieved of his remedy and that person has requested him to proceed with the investigation; or

- (ii) he has been given written notice by the Minister that the investigation would not be in the interests of public security or the foreign relations of Zimbabwe

or

- (b) any matter which the Ombudsman considers frivolous, vexatious or trivial or where he considers the person aggrieved has no sufficient interest in the subject-matter of the complaint.

(Subsection as substituted by s. 4 of Act No. 4 of 1997.)

(4) For the purposes of subsection (2), the reference therein to any body shall be deemed to include a reference to any force, service, institution or authority.

10 Initiation of investigation by Ombudsman

(1) Any person may make a complaint to the Ombudsman requesting him to investigate any action taken by any force, service, institution, authority, body or officer or employee or member of the staff thereof made subject to investigation by section 108 of the Constitution or this Act.

(2) Notwithstanding subsection (1), the following shall not be entitled to make a complaint to the Ombudsman—

- (a) a local authority;
- (b) any authority or body constituted for carrying out duties on behalf of the Public Service or a local authority;
- (c) any organization controlled or owned by the State;
- (d) any organization whose governing body is appointed by the President, a Vice-President or a Minister;
- (e) any organization the revenue of which consists wholly or mainly of moneys provided by Act of Parliament.

(3) When the person by whom a complaint might have been made under this section has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or such other person as the Ombudsman considers suitable to represent him, but except as aforesaid a complaint shall not be entertained in terms of this Act unless made by the person aggrieved himself.

(4) A complaint shall not be entertained in terms of this Act unless it is made within twelve months from the date on which the person aggrieved first had notice of the act complained of unless the Ombudsman considers that there are special reasons which make it proper for the period to be extended.

(5) A complaint shall not be entertained in terms of this Act unless the person aggrieved—

- (a) in the case of an individual, is a citizen or resident of Zimbabwe or, if dead, was such a citizen or resident at the time of his death; or
- (b) in any other case, carries on any business or activity in Zimbabwe.

11 Discretion of Ombudsman regarding investigations

(1) In determining whether to initiate, continue or discontinue an investigation in terms of this Act, the Ombudsman shall, bearing in mind the provisions of this Act, act in accordance with his own discretion, and any question whether a complaint is duly made under this Act shall be determined by the Ombudsman:

Provided that, if any question arises as to whether the Ombudsman has jurisdiction to initiate, continue or discontinue an investigation or to exercise any powers in connection therewith, the Ombudsman may apply to the High Court for a declaration, direction or decision to determine such a question.

(2) No action of the Ombudsman or his staff in the *bona fide* exercise of their powers or the performance of their duties shall be called in question in any court, except on the ground of lack of jurisdiction.

(3) Any expenses incurred by the Ombudsman in the determination of any question referred to in the proviso to subsection (1) shall be met from moneys appropriated for the purpose by Act of Parliament.

PART IV

PROCEDURE AND MANNER OF INVESTIGATIONS BY OMBUDSMAN

12 Manner of making complaint

(1) The Ombudsman shall, by notice in a statutory instrument, set out the form in which complaints to him should be made, the information he will require and the documents, if any, that should be attached to the complaint.

(2) The Ombudsman shall not refuse to consider a complaint solely on the grounds that the complaint is not in proper form or not accompanied by the required documents.

(3) The staff of the Ombudsman shall assist a complainant in making his complaint and advise him on the requirements of the Ombudsman and, if he is illiterate or not able to complete his complaint, shall write out his complaint on his behalf and assist him in obtaining any documents required to substantiate his complaint.

13 Complaint by person in mental institution

Any person who is detained in terms of the Mental Health Act [*Chapter 15:06*] may complain to the Ombudsman and his complaint shall be forwarded to the Ombudsman without alteration or comment.

14 Refusal to investigate

(1) The Ombudsman shall refuse to investigate any complaint if he is satisfied from the complaint that he is not authorized in terms of this Act to carry out the investigation.

(2) The Ombudsman shall discontinue any investigation if he is satisfied by the evidence he has received that he is not authorized in terms of this Act to carry the investigation any further.

(3) If the Ombudsman refuses to investigate a complaint or discontinues such an investigation he shall, in writing—

- (a) inform the complainant and the party or parties complained against of his decision, stating his reasons for the decision; and
- (b) advise the complainant of any remedy that appears to him to be available to him.

15 Manner of conducting investigation

(1) When an investigation in terms of this Act is held— (a) the proceedings shall be conducted in private;

- (b) subject to this section, the procedure shall be such as the Ombudsman considers appropriate in the circumstances;

- (c) the principal officer of any authority or body concerned and any other person who is alleged to have taken or authorized the action in question shall be afforded an opportunity to comment on any allegations made to the Ombudsman in respect thereof;
- (d) the Ombudsman may permit any person involved in the proceedings to be represented by a legal practitioner or otherwise;
- (e) the Ombudsman may obtain information from such persons, in such manner, and may make such inquiries, as he thinks fit;
- (f) the Ombudsman may require a Vice-President or any Minister or Deputy Minister or member of any authority or body concerned or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document;
- (g) the Ombudsman shall, subject to paragraph (h), have the same powers as commissioners under the Commissions of Inquiry Act [*Chapter 10:07*] in respect of the summoning and examination of witnesses;
- (h) no obligation to maintain secrecy and no other restriction upon the disclosure of information obtained by or furnished to persons employed by the State which is imposed by any law shall apply to the disclosure of information for the purposes of the investigation, and the State shall not be entitled, in relation to any such investigation, to any such privilege in respect of the production of documents or the giving of evidence as is allowed in law in legal proceedings:

Provided that no person shall be required or authorized, by virtue of this paragraph, to furnish any information or answer any question or produce any document relating to the proceedings of the Cabinet or any committee thereof comprised wholly or partly of members of the Cabinet or Ministers, and, for the purposes of this proviso, a certificate issued by the Secretary to the Cabinet, and certifying that any information, question or document so relates, shall be conclusive.

(2) If the Minister gives notice to the Ombudsman with respect to any document or information or class of documents or information specified in the notice that, in his opinion, the disclosure of that document or information or of documents or information of that class would be contrary to the public interest in relation to defence, external relations or internal security, or to the economic interests of the State, the Ombudsman or any member of his staff shall not communicate any such document or information to any person outside the office of the Ombudsman for any purpose otherwise than with the authority of the Minister and subject to such conditions as he may fix.

(3) The Ombudsman or any member of his staff to whom is disclosed any information obtained by or furnished to any person employed by the State subject to an obligation referred to in paragraph (h) of subsection (1) shall not communicate any such information to any other person outside the office of the Ombudsman for any purpose.

(4) Information obtained by the Ombudsman or any member of his staff in the course of or for the purposes of an investigation shall not be disclosed to any person except—

- (a) for the purposes of the investigation and for any report to be made thereon in terms of this Act; or
- (b) for the purposes of any proceedings for perjury alleged to have been committed in the course of an investigation in terms of this Act or for the purposes of an inquiry with a view to taking such proceedings; or
- (c) for the purposes of any proceedings in terms of this Act or the Commissions of Inquiry Act [*Chapter 10:07*] as applied to this Act by paragraph (g) of subsection (1).

(5) Any person who—

- (a) contravenes subsection (2), (3) or (4) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

(Paragraph amended by s. 4 of Act 22/2001)

- (b) has been subpoenaed to give evidence or to produce any book or document in terms of the Commissions of Inquiry Act [*Chapter 10:07*] as applied to this Act by paragraph (g) of subsection (1) for the purposes of an investigation and who fails to attend or to remain in attendance until duly excused by the Ombudsman from further attendance or refuses without sufficient cause, the onus of proof whereof lies upon him, to be sworn as a witness or to answer fully and satisfactorily a question lawfully put to him or to produce such book or document, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(Paragraph amended by s. 4 of Act 22/2001)

16 Proceedings after investigation

(1) If, after conducting an investigation, the Ombudsman is of the opinion—

- (a) that the action or conduct which was the subject-matter of the investigation
 - (i) was contrary to law, based wholly or partly on a mistake of law or fact, unreasonably delayed or otherwise unjust or manifestly unreasonable; or
 - (ii) contravened the Declaration of Rights in the Constitution; and

(Paragraph as substituted by s. 5 of Act No. 4 of 1997.)

- (b) that—

- (i) the matter should be given further consideration; or
- (ii) an omission should be rectified; or
- (iii) a decision should be cancelled, reversed or varied; or
- (iv) any practice on which the act, omission, decision or recommendation was based should be altered; or
- (v) any law on which the act, omission, decision or recommendation was based should be reconsidered; or
- (vi) reasons should have been given for the decision; or
- (vii) any other steps should be taken;

the Ombudsman shall report his opinion, together with his reasons therefor, to the Secretary or principal officer of any Ministry, authority or body concerned and may make such recommendations as he thinks fit and shall also send a copy of his report and recommendations to the President and, where the report or recommendations concern any function exercisable by a Vice-President or a Minister, to that Vice-President or Minister, as the case may be.

(2) The Ombudsman may request the Secretary or principal officer referred to in subsection (1) to notify him, within a specified time, of the steps, if any, that it is proposed to take to give effect to his recommendations.

(3) If, within a reasonable time after a report is made in terms of subsection (1), no action is taken which, in the opinion of the Ombudsman, is adequate and appropriate, he may if he thinks fit after considering the comments, if any, made by or on behalf of any Ministry, authority or body affected make a personal report on the matter to the President.

17 Reports by Ombudsman

(1) If, after conducting an investigation under this Act, it appears to the Ombudsman that injustice has been done to the person aggrieved in consequence of maladministration and the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before the President and Parliament a special report on the case.

(2) The Ombudsman shall annually lay before Parliament a general report on the performance of his functions in terms of this Act and may from time to time lay before Parliament such other reports with respect to those functions as he thinks fit.

18 Reports, etc., of Ombudsman to be privileged

For the purpose of the law of defamation, any of the following publications shall be absolutely privileged—

- (a) the publication of any matter by the Ombudsman in terms of this Act;
- (b) the publication, by any member of Parliament in communicating with the Ombudsman or his staff, of any matter relating to any report made by the Ombudsman;
- (c) the publication to a person aggrieved of a report from the Ombudsman and the publication of such report by that person to any other person;
- (d) any complaint to the Ombudsman or a member of his staff:

Provided that the publication by any other person than the Ombudsman or a member of his staff of such complaint to any other person shall not be protected by this section.

FIRST SCHEDULE (Section 8)

FORCES, SERVICES, INSTITUTIONS, AUTHORITIES AND BODIES SUBJECT TO INVESTIGATION

1. Any force or service maintained and controlled by the State, other than the Defence Forces, the Police Force and the Prison Service.
2. Any local authority.
3. Any hospital, clinic, school or training institute directly or indirectly controlled by the State.
4. Any statutory body.
5. Any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the State or any authority mentioned in subsection (2) of section 108 of the Constitution or by or on behalf of any force, service, institution, authority or body referred to in items 1, 2, 3 or 4, but including the Defence Forces, the Police Force and the Prison Service.

SECOND SCHEDULE (Section 9)

OFFICERS AND AUTHORITIES EXCLUDED FROM INVESTIGATION

1. The President and his personal staff.
2. The Attorney-General and the Secretary to the Ministry which is responsible for giving legal advice to the Government and any member of their staff in relation to the conduct of any prosecution, the conduct of any civil action or any legal advice given to the Government or any of the forces, services, institutions, authorities or bodies set out in the First Schedule.
3. Judicial officers.