

ACT

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THE OMBUDSMAN ACT, 1997

ARRANGEMENT OF SECTIONS

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No.*

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SIGNED this 29th day of April, 1997.

AI.HAJI AHMAD TEJAN KABBAH,
President.

LS

No. 2



1997

Sierra Leone

The Ombudsman Act, 1997

Short title

Being an Act to provide for the establishment of the office of the Ombudsman, to define his functions and for other matters connected therewith.

[8th May, 1997]

Date of Commencement.

WHEREAS by subsection (2) of section 146 of the Constitution it is provided that the functions of the Ombudsman shall "include the investigation of any action taken or omitted to be taken by or on behalf of—

Act No. 6 of 1991.

- (a) any department or ministry of Government;
- (b) any statutory corporation or institutions of higher learning or education, set up entirely or partly out of public funds;
- (c) any member of the Public Service:

being an action taken or omitted to be taken in the exercise of the administrative functions of that department, ministry, statutory corporation, institution or person.”;

AND WHEREAS it is necessary or expedient that further provision be made in respect of the office of the Ombudsman;

NOW, THEREFORE, it is enacted by the President and Members of Parliament in this present Parliament assembled as follows: —

PART I — PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires—

“Minister” means the Minister responsible for a prescribed authority;

“Ombudsman” means the person appointed to the office established by this Act;

“prescribed authority” means the bodies or persons referred to in the preamble, the Public Service Commission, the Armed Forces, the Police Force, the Prisons Service or any other institution for which a Minister is answerable to Parliament;

“principal officer” means the person holding or performing the duties of head of a prescribed authority.

PART II — ESTABLISHMENT OF OFFICE OF OMBUDSMAN

Establishment
of office of
Ombudsman.

2. (1) There is hereby established an office to be known as the office of the Ombudsman.

(2) The office of the Ombudsman shall be a public office but shall not form part of the public service.

(3) The Office shall consist of the Ombudsman and a secretariat composed of such staff as may be required for the purposes of the Ombudsman.

3. The Ombudsman shall be appointed by the President with the approval of Parliament.

Appointment of Ombudsman.

4. The President shall appoint as Ombudsman a person with proven administrative ability and conspicuous probity, but no person shall be appointed Ombudsman unless—

Qualification for appointment as Ombudsman

(a) he is qualified to be appointed a judge of the Superior Court of Judicature; or

(b) he is a person who has held office as a judge of a superior court of judicature, whether in Sierra Leone or in any other country having a system of law analogous to that of Sierra Leone.

5. (1) The Ombudsman shall hold office for a term of four years and shall be eligible for appointment to one more term of four years.

Tenure of office of Ombudsman.

(2) The Ombudsman may resign his office by written notice to the President and may be removed from office but only for inability to perform the functions of his office, whether arising from infirmity of body or mind, or for stated misconduct.

(3) The statement of misconduct referred to in subsection (2) shall be addressed to a tribunal appointed by the President for that purpose, subject to paragraphs (a) and (b) of subsection (5) of section 137 of the Constitution; and subsections (6) and (7) of that section shall apply, with the necessary modifications, to the removal of the Ombudsman.

6. (1) The Ombudsman shall be entitled to such salary, allowances, gratuity and pension as may be determined by Parliament and such entitlements shall not be varied to his disadvantage.

Remuneration of Ombudsman.

(2) The Ombudsman shall also be entitled to such privileges, right in respect of leave of absence and other terms and conditions of office as may be stated in his letter of appointment.

PART III — FUNCTIONS AND ADMINISTRATION OF
OFFICE OF OMBUDSMAN

Functions of
Ombudsman.

7. (1) The functions of the Ombudsman are—

(a) to investigate any administrative act of a prescribed authority in respect of which —

(i) a complaint is made to him by any person who claims to have suffered injustice as a result of any maladministration in connection with such act; or

(ii) information is received by him from any person or source, otherwise than by complaint, concerning the matters referred to in subparagraph (i); and

(b) to take appropriate action to remedy, correct or reverse the act complained of through such means as are fair, proper and effective, including—

(i) the facilitation of negotiation and compromise between or among the parties concerned;

(ii) reporting or causing the finding of any investigation together with his recommendation thereon to be reported to the principal officer of the prescribed authority and, where the offending person is the principal officer, to the Minister;

(iii) drawing the attention of Government to any defect in any law discovered in the course of any investigation together with such recommendation for the remedy of any such defect as he may find necessary; and

- (iv) drawing the attention of the Attorney-General and Minister of Justice to any contravention of the criminal law of Sierra Leone discovered in the course of any investigation.

(2) In this section —

“injustice” includes hardship, detriment or grievance occasioned by any inequitable treatment, whether legally or otherwise;

“maladministration” includes —

- (a) bias;
- (b) unfair discrimination or failure to explain grounds of a decision which appears discriminatory;
- (c) harshness or general high-handedness;
- (d) misleading a member of the public as to his rights or deliberately withholding from him material information concerning the rights of such person;
- (e) using powers for a wrong purpose;
- (f) failing to consider relevant material or taking irrelevant material into account for any decision;
- (g) losing or failing to reply to correspondence with a member of the public;
- (h) delaying unreasonably before making a tax refund or presenting a tax demand or dealing with any application for a grant or licence.

8. (1) Nothing in section 7 shall be taken to authorise the Ombudsman to investigate any matter —

Exclusion
of
jurisdiction.

- (a) pending before or already decided by a court of competent jurisdiction;
- (b) relating to the dealings between the Government of Sierra Leone and another Government or international organization of States or Governments;
- (c) relating to the exercise of the prerogative of mercy;
- (d) relating to the exercise by the Attorney-General and Minister of Justice of the power to prosecute or not to prosecute or to stop the prosecution of any criminal offence; or
- (e) relating to the grant of honours or awards.

(2) Without prejudice to paragraph (a) of subsection (1), the Ombudsman shall have power to investigate any complaints against the conduct of an officer or servant of the court referred to in subsection (1) of section 142 of the Constitution in his capacity as a public officer.

Lodging of
complaints.

9. (1) A complaint under section 7 shall be made in writing addressed to the Ombudsman and shall state in a clear and concise manner the nature of the grievance.

(2) A person who is detained in custody is entitled, upon making a request to the detaining authorities —

- (a) to be provided with facilities for preparing a complaint under this Act and for the enclosing of the complaint in a sealed envelope; and
- (b) to have forwarded to the Ombudsman, without undue delay, a sealed envelope delivered by him to the person in whose custody he is detained and addressed to the Ombudsman.

(3) Where a sealed envelope is delivered to a person under subsection (2) for forwarding to the Ombudsman, neither the person in whose custody he is detained nor any other person performing duties in connection with his detention is entitled to open the envelope or inspect any document enclosed in the envelope.

(4) A person detained in custody may also submit a complaint through a representative.

10. (1) Where, upon the receipt of any complaint or information referred to in subsection (1) of section 7, and after such preliminary inquiries as he may find necessary or expedient, the Ombudsman decides to investigate any administrative act of a prescribed authority, the Ombudsman shall notify the prescribed authority in writing of the decision to investigate the act concerned together with a statement of the grounds or reasons for the investigation and offer the prescribed authority the opportunity to appear before him, or before any person authorised by the Ombudsman in that behalf, to make such representation, either orally or in writing in response to the matters to be investigated as the prescribed authority may wish.

Conduct of investigation.

(2) A copy of the notification to the prescribed authority referred to in subsection (1) shall be sent to the principal officer and the Minister.

(3) The failure to respond by a prescribed authority to which or to whom an opportunity is offered under subsection (1) shall not prevent the Ombudsman from proceeding with any investigation.

(4) For the purposes of any investigation under this Act, the Ombudsman shall have such powers, rights and privileges as are vested in the High Court of Justice or a judge thereof at a trial in respect of —

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; and
- (b) compelling the production of documents; and
- (c) the issue of a commission or request to examine witnesses abroad;

and the Rules of Court shall, with the necessary modification, apply to the exercise of the powers, rights and privileges of the Ombudsman conferred by this subsection.

Conduct of proceedings.

11. The proceedings of the Ombudsman in connection with any investigation shall be generally of an informal nature and shall, in particular, not be governed by the rules of evidence and procedure applicable in a court of law and may as far as possible be conducted in private.

Ombudsman not liable to legal proceedings, etc.

12. No legal proceedings, whether civil or criminal shall be brought against —

(a) the Ombudsman or any member of his staff in respect of anything done in good faith and falling within this Act and no proceeding, decision or report of the Ombudsman shall be challenged or otherwise called in question in any court;

(b) any person in respect of loss, damage or injury of any kind suffered by another person by reason of —

(a) the making of a complaint to the Ombudsman under this Act; or

(b) the making of a statement to, or the furnishing of a document or information to the Ombudsman or a member of his staff.

Follow-up on reports.

13. (1) The principal officer or Minister, as the case may be, to whom a report is made by the Ombudsman under subparagraph (ii) of paragraph (b) of subsection (1) of section 7, shall as soon as possible acknowledge the receipt of the report and respond in writing to any recommendations made in such report within such reasonable time as may be specified in the report.

(2) A copy of every report under subparagraph (ii) of paragraph (b) of subsection (1) of section 7 shall be served on the prescribed authority concerned.

(3) Where action that is, in the opinion of the Ombudsman, adequate and appropriate in the circumstances is not taken within a reasonable time or the time, if any, specified by the Ombudsman with respect to the matters and recommendations included in a report under subparagraph (ii) of paragraph (b) of subsection (1) of section 7 to the principal officer or the Minister, as the case may be, the Ombudsman may inform the President accordingly in writing.

(4) In considering whether to furnish information in relation to a report to the President in accordance with subsection (3), the Ombudsman shall have regard to any comments furnished to him by the prescribed authority to which or to whom the report was made.

14. Where the Ombudsman has, in accordance with subsections (3) and (4) of section 13, furnished information to the President in relation to a report concerning an investigation made by him and his recommendations are not acted upon within ninety days, the Ombudsman shall also forward to the Speaker of Parliament copies of a report prepared by him concerning the investigation for presentation to Parliament for its consideration together with any comments furnished to the Ombudsman under subsection (4) of section 13.

Special
Reports to
Parliament.

15. In addition to the reports on individual cases, the Ombudsman shall prepare and submit to the President half-yearly reports of the activities of his Office and the President shall cause any such report, together with an explanatory memorandum, to be laid before Parliament.

Annual
Report of
Ombudsman.

16. (1) The Office of the Ombudsman shall have a Secretary appointed by the President, after consultation with the Ombudsman.

Secretary to
office of
Ombudsman.

(2) The Secretary shall be responsible for —

- (a) the day-to-day administration of the secretariat referred to in subsection (3) of section 2; its records and other concerns thereof;
- (b) the supervision and discipline of the staff of the Office of the Ombudsman; and
- (c) any other functions as the Ombudsman may assign to him.

17. (1) The Ombudsman may employ such staff as he thinks necessary for the efficient performance of his functions.

Staff of
Ombudsman

(2) Public officers may be seconded or otherwise render assistance to the Office of the Ombudsman.

(3) The staff of the Ombudsman shall be employed on such terms and conditions as the Ombudsman may, after consultation with the Minister responsible for finance, determine.

Acting
appointments.

18. (1) The President may appoint a person to act in the office of Ombudsman, subject to the approval of Parliament,

(a) during any period, when the person holding the office is absent from duty or from Sierra Leone; or

(b) during the suspension from office of the person holding the office; or

(c) during a vacancy in the office,

and may, at any time, terminate such an appointment.

(2) A person appointed to act as an Ombudsman during any vacancy in that office shall not continue so to act after the expiration of six months after the occurrence of the vacancy.

Independence
of
Ombudsman.

19. Except as otherwise provided in this Act, in the exercise of his functions under this Act, the Ombudsman shall not be subject to the control or direction of any other person or authority.

PART IV — MISCELLANEOUS PROVISIONS

Expenses of
Ombudsman
charged on
Consolidated
Fund.

20. The administrative expenses of the Office of the Ombudsman including the salaries, allowance, gratuities and pensions, if any, of the Ombudsman and his staff, shall be a charge on the Consolidated Fund.

Accounts
and audit.

21. (1) The Office of the Ombudsman shall keep proper books of account and other records in relation to the functions or activities of the Office of the Ombudsman and shall prepare in respect of each financial year of the Office a statement of accounts in a form designed to —

(a) indicate monthly expenditures;

(b) provide data for up-to-date budget control;

(c) ensure correct use of the funds of the Office of the Ombudsman.

(2) The accounts of the Office of the Ombudsman kept under subsection (1) shall be audited by the Auditor-General or by an auditor appointed by him.

(3) The statement of accounts and the audit report thereon shall be submitted to the President who shall cause it to be laid before Parliament.

22. Any person who, whether wilfully or otherwise, interferes with the Ombudsman or any member of his staff in the discharge of his functions under this Act commits an offence and shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding two years or to both such fine and imprisonment. Offence of obstruction.

23. The Ombudsman may make regulations for any matter connected with the functions of the Ombudsman or otherwise for giving effect to the provisions of this Act. Regulations.

Passed in Parliament this 25th day of *March*, in the year of our Lord *one thousand, nine hundred and ninety-seven*.

J. A. CARPENTER,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

J. A. CARPENTER,
Clerk of Parliament.