[Chap0307]CHAPTER 3:07

OMBUDSMAN

ARRANGEMENT OF SECTIONS

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17 of 1996

An Act to define and prescribe the powers, duties and functions of the Ombudsman, and to provide for matters incidental thereto or connected therewith

[12TH JULY 1996]

PART I
PRELIMINARY

[Ch0307s1]1. Short title

This Act may be cited as the Ombudsman Act.

[Ch0307s2]2. Interpretation

In this Act, unless the context otherwise requires—

"organ of Government" includes the State, and any local authority, board, commission, committee, corporation, body or institution established or instituted by or under any written law.

"Public Appointments Committee" means the Public Appointments Committee established under section 56 (7) of the Constitution.

PART II

APPOINTMENT OF OMBUDSMAN AND STAFF

[Ch0307s3]3. Terms and conditions of appointment of the Ombudsman

The appointment of the Ombudsman under section 122 of the Constitution shall be on terms and conditions to be determined by the Public Appointments Committee.

[Ch0307s4]4. Staff of the Ombudsman

The Ombudsman shall in the performance of his functions under this Act be assisted by staff appointed by him for that purpose on terms and conditions to be determined by agreement with such staff.

PART III

DUTIES AND FUNCTIONS OF THE OMBUDSMAN

[Ch0307s5]5. Duties and functions of the Ombudsman

(1) Subject to the Constitution, the Ombudsman shall inquire into and investigate in accordance with the provisions of this Act, and take such action or steps as may be prescribed by this Act on any request or complaint in any instance or matter laid before the Ombudsman in accordance with section 7 (1) or (2), and concerning any alleged instance or matter of abuse of power or unfair treatment of any person by an official in the employ of any organ of Government, or manifest injustice or conduct by such official which would properly be regarded as oppressive or unfair in an open and democratic society.

(2) Without derogating from the provisions of subsection (1), any request or complaint in respect of any instance or matter referred to in that subsection may include any instance or matter in respect of which it is alleged—

(a) that any decision or recommendation taken or made by or under the authority of any organ of Government or any act or omission of such organ is unreasonable, unjust or unfair, or is based on any practice which may be deemed as such;

(b) that the powers, duties or functions which vest in any organ of Government are exercised or performed in a manner which is unreasonable, unjust or unfair.

(3) This section shall not apply in respect of any decision taken in or in connexion with any civil or criminal case by a court of law.

[Ch0307s6]6. Powers of the Ombudsman

(1) In the performance of his duties and functions under this Act—

(a) the Ombudsman may determine the nature and extent of any inquiry or investigation referred to in section 5;

(b) the Ombudsman or any person of his staff authorized in writing by the Ombudsman, if so authorized by a warrant issued by a magistrate upon showing cause to the magistrate why the warrant should be issued, shall have—

(i) access to any building or premises, other than a building or premises used as a private home, and to make such inquiries and put such questions to any person employed or found in that building or on that premises in connexion with an inquiry or investigation as the Ombudsman may deem necessary or appropriate;

(ii) access to, inspect and make copies of all books, records, returns, reports and other documents in the possession or under the control of any person, other than the private correspondence of any such person, and which the Ombudsman deems necessary or appropriate to inquire into or to investigate in connexion with such inquiry or investigation; but so, however, that in the case of the Government, such access shall not be permitted unless the warrant issued by the magistrate is served personally on the relevant responsible Minister, and after such service a period of seven days has expired within which the Minister may apply, or cause an application to be made, to a court for an order to prevent any document of the Government from being inspected or used in any inquiry or investigation, or alternatively, from being made public on the ground that the document is a state secret;

(iii) the right to request from any person particulars and information which the Ombudsman may deem necessary or appropriate in connexion with that inquiry or investigation;

(c) the Ombudsman may by notice in writing require any person to appear before him in relation to an inquiry or investigation at a time and place specified in such notice, and to call for all such books, records, returns, reports or other documents or things in the possession or under the control of any such person, and which the Ombudsman may deem necessary or appropriate in connexion with that inquiry or investigation;

(d) the Ombudsman may administer an oath or take an affirmation from any person whether or not any such person has been required to appear before the Ombudsman and to question such person under oath or affirmation in connexion with any matter which the Ombudsman may deem necessary or appropriate in connexion with that inquiry or investigation;

(e) the Ombudsman may direct that any category of persons or all persons whose presence is in his opinion not desirable, shall not be present at any of the proceedings of an inquiry or investigation or any part thereof.

(2) Any person appearing before the Ombudsman in accordance with subsection (1) (c) shall be entitled to receive, from moneys appropriated by Parliament for such purposes as witness fees, an amount equal to the amount which such person would have received as witness fees had such person been summoned to attend criminal proceedings in the High Court held at the place mentioned in the notice in writing concerned.

(3) Any person questioned under subsection (1) shall, subject to subsections (1) (b) and (4)—

(a) cooperate with the Ombudsman and disclose truthfully all information within his knowledge relevant to an inquiry or investigation of the Ombudsman;

(b) produce any book, record, return, report or other document or thing to the Ombudsman which the Ombudsman may deem necessary or appropriate in connexion with an inquiry or investigation.

(4) The Ombudsman or any member of the staff of the Ombudsman is compellable to answer any question in any proceedings in a court of law or before any body or institution established by or under any law or before a commission instituted under the Commissions of Inquiry Act in connexion with information which came to his knowledge pursuant to subsection (3) (a), or to produce any book, record, return, report or other document or thing referred to in subsection (3) (b) as long as the investigations are not completed. Cap. 18:01

[Ch0307s7]7. Laying of complaints, etc.

(1) Any person wishing to lay a request or complaint in respect of any instance or matter referred to in section 5 before the Ombudsman shall do so by communication in writing addressed to the Ombudsman, or in such other manner as the Ombudsman may determine.

(2) Any person referred to in subsection (1) who is detained pursuant to an order of a court or any law shall be entitled to lay before the Ombudsman a request or complaint on any instance or matter so referred to by way of communication to the Ombudsman by the person in charge of the place where any such person is detained or any other person.

(3) The Ombudsman shall not be required to inquire into or make further inquiries into or investigate any instance or matter referred to in section 5 which has been laid before him under subsection (2) or (3) when the grounds on account of which the inquiry or investigation concerned or desired is, in the opinion of the Ombudsman, vexatious or frivolous.

[Ch0307s8]8. Remedies

(1) The Ombudsman shall after holding any inquiry or investigation in accordance with this Act—

(a) notify the person who laid the matter before him under section 7 (1) or (2) of the outcome of such inquiry or investigation in such manner and form as the Ombudsman may determine and to such extent as the Ombudsman may deem necessary or appropriate in the public interest, or that the matter will not be inquired into or investigated in accordance with section 7 (3);

(b) take appropriate action or steps to call for or require the remedying or reversal of matters or instances specified in section 5 through such means as are fair, proper and effective, including by—

(i) negotiation and compromise between the parties concerned;

(ii) causing the complaint and the Ombudsman's finding thereon to be reported to the superior of an offending person;

(iii) referring the matter to the Attorney General or the Director of Public Prosecutions or both, as the case may be.

(2) The Ombudsman may, but without derogating from any of the provisions of subsection 1 (b) if he is of the opinion that any instance or matter inquired into or investigated by

him under section 5 can be rectified or remedied in any lawful manner, notify the organ of Government his findings and the manner in which the matter can be rectified or remedied.

PART IV

MISCELLANEOUS

[Ch0307s9]9. Reports of the Ombudsman

(1) The Ombudsman shall compile a full report in respect of every matter inquired into or investigated by him under this Act and which has not been rectified or remedied as contemplated in this Act to the satisfaction of the Ombudsman, and shall submit such report as soon as possible to the Speaker of the National Assembly, and transmit a copy of such report to the Cabinet and any other relevant organ of Government.

(2) The Ombudsman shall submit annually, not later than 31st March, a report to the Speaker of the National Assembly in connexion with all the Ombudsman's activities during the period ending on 31st December of the previous year.

(3) The Speaker of the National Assembly shall lay before the National Assembly every report submitted in accordance with subsections (1) and (2) within fourteen days after it has so been submitted or, if the National Assembly is not then sitting, within fourteen days after the commencement of its next sitting.

(4) Where a report submitted to the Speaker of the National Assembly pursuant to this section contains information which has been obtained by the Ombudsman under this Act but which may not be obtained or made known by certain persons in terms of any law on the protection of certain information, or which has so been obtained by the Ombudsman notwithstanding any law on privilege arising from considerations concerning the security of the State, that report shall be laid before the National Assembly, as a confidential paper for submission to a select committee of the National Assembly and consideration of the question whether the report contains such information and the making of a report to the National Assembly shall be by such select committee of the National Assembly, and no person having access to that report shall disclose any such information.

[Ch0307s10]10. Preservation of secrecy

The Ombudsman and every other person employed or previously employed in carrying out the provisions of this Act shall—

(a) preserve and aid in preserving secrecy in respect of the instances or matters that may come to his knowledge in the exercise of his powers or the performance of his duties and functions in connexion with those provisions; and

(b) not communicate any such instance or matter to any person or permit any person to have access to any documents in his possession or custody, except in so far as any such communication is required to or may be made in accordance with this Act or any other law.

[Ch0307s11]11. Limitation of liability

The Ombudsman or any member of staff of the Ombudsman shall not be liable in respect of anything done or performed in good faith under this Act.

[Ch0307s12]12. Expenditure in connexion with functions of the Ombudsman

The expenditure in connexion with the office of the Ombudsman and the exercise of his power and the performance of his duties and functions shall be paid from moneys appropriated by Parliament for that purpose.

[Ch0307s13]13. Offences and penalties

Any person who—

(a) refuses or fails to comply with any notice issued under section 6 (1) (c);

(b) refuses to take the oath or to make an affirmation at the request of the Ombudsman in accordance with section 6 (1) (d), or refuses to cooperate as contemplated in that section, or gives to such question an answer which to his knowledge is false, or refuses or fails to furnish particulars or information required from him under that section;

(c) contravenes or fails to comply with section 6 (3) (6);

(d) contravenes or fails to comply with section 9 (4) or 10;

(e) discloses to any other person the contents of any book, record, return, report or other document in the possession of the Ombudsman or a member of the staff of the Ombudsman, or the record of any proceedings at an inquiry or investigations of the Ombudsman;

(f) anticipates the proceedings at an inquiry or investigation or the findings of the Ombudsman in a manner calculated to influence such proceedings or findings;

(g) wilfully hinders or obstructs the Ombudsman or any member of the staff of the Ombudsman in the exercise of his powers of the performance of his duties or functions;

(h) wilfully interrupts the proceedings at an inquiry or investigation of the Ombudsman;

(i) in connexion with any inquiry or investigation of the Ombudsman, does anything which, if done in connexion with the proceedings of a court of law, would constitute contempt of court;

(j) does anything calculated improperly to influence the Ombudsman in respect of any matter being or to be considered by the Ombudsman in relation to any inquiry or investigation;

(k) directly or indirectly, makes use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, upon or against, or does or threatens to do anything to the disadvantage of, any other person, or his next of kin, on account of such other person—

(i) having referred any instance or matter to the Ombudsman under this Act; or

(ii) having furnished any particulars or information or produced any book, record, return, report or other document or thing, at or in connexion with any inquiry or investigation of the Ombudsman; or

(iii) intending to lay any instance or matter before the Ombudsman or to furnish any particulars or information or to produce any book, record, return, report or other document or thing at or in connexion with any inquiry or investigation of the Ombudsman,

shall be guilty of an offence and liable on conviction to a fine of K10,000 or to imprisonment for five years or to both such fine and such imprisonment.

[Ch0307s14]14. Rules

The Ombudsman may make rules prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.