



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 11

1990

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 7 of 1990: Ombudsman Act, 1990.

ACT

To define and prescribe the powers, duties and functions of the Ombudsman, and to provide for matters incidental thereto.

(Signed by the President on 6 June 1990)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Definitions.

1. In this Act, unless the context indicates otherwise -

“Attorney-General” means the Attorney-General appointed in accordance with the provisions of Article 32 of the Namibian Constitution;

“Auditor-General” means the Auditor-General appointed under Article 127 of the Namibian Constitution;

“Cabinet” means the Cabinet constituted in terms of Article 35 of the Namibian Constitution;

“fundamental rights and freedoms” means any fundamental right or freedom as defined in Chapter 3 of the Namibian Constitution;

“official” means an official as contemplated in Article 93 of the Namibian Constitution;

“Ombudsman” means the Ombudsman appointed under Article 90 of the Namibian Constitution;

“Prosecutor-General” means the Prosecutor-General referred to in Article 88 of the Namibian Constitution;

“Public Service Commission” means the Public Service Commission referred to in section 1 of the Public Service Commission Act, 1990.

Terms and conditions of appointment of Ombudsman, and appointment of persons as deputy Ombudsman and acting Ombudsman.

2. (1) The appointment of the Ombudsman in pursuance of the provisions of Article 90 of the Namibian Constitution, shall be on such terms and conditions as the President may determine.

(2) The President may, on recommendation of the Judicial Service Commission, and on such terms and conditions as the President may determine, appoint a person who -

- (a) is a fit and proper person; and
- (b) shall either be a Judge of Namibia, or a person possessing the legal qualifications which would entitle him to practise in all the Courts of Namibia,

as deputy Ombudsman to exercise or perform on behalf of the Ombudsman the powers and duties conferred or imposed upon the Ombudsman by this Act or any other law and which may be assigned to him or her by the Ombudsman.

(3) The President may, on recommendation of the Judicial Service Commission, and on such terms and conditions as the President may determine, appoint a person who -

- (a) is a fit and proper person; and
- (b) shall either be a Judge of Namibia, or a person possessing the legal qualifications which would entitle him to practise in all the Courts of Namibia,

as acting Ombudsman to exercise or perform the powers and duties of the Ombudsman whenever the Ombudsman is for any reason unable to exercise or perform the powers and duties of his or her office or the office of the Ombudsman is vacant, and the acting Ombudsman so appointed by the President shall serve as such during the incapacity of the Ombudsman or until a Ombudsman has

been appointed and has assumed office, as the circumstances may require.

(4) The Ombudsman or his or her deputy shall not perform or commit himself or herself to perform remunerative work outside his or her official duties without the permission of the President.

Duties and functions of
Ombudsman.

3. (1) The Ombudsman shall enquire 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 the provisions of subsection (3) (a) or (b), and concerning -

- (a) alleged or apparent or threatened instances or matters of violations or infringements of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether national or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society;
- (b) the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such services;
- (c) the over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia;
- (d) practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms have taken place;

- (e) all instances or matters of alleged or suspected corruption and the misappropriation of public moneys or other public property by officials.

(2) Without derogating from the provisions of subsection (1), any request or complaint in respect of instances or matters referred to in that subsection, may include any instance or matter in respect of which the Ombudsman has reason to suspect -

- (a) that any decision or recommendation taken or made or about to be taken or made by or under the authority of the State, or any local or regional authority, commission, board, corporation, committee, body or institution established or instituted by or under any law, or any act performed or about to be performed or any omission to act on account of any such decision or recommendation, or any act performed or about to be performed by, or any omission to act of, any person in the employment of the State or any such authority, commission, board, corporation, committee, body or institution, or any act performed or about to be performed, or any omission to act, being an act or omission on behalf of the State or such authority, commission, board, corporation, committee, body or institution, or purporting to be any such act or omission -

- (i) abolishes, diminishes or derogates from the fundamental rights and freedoms or will abolish, diminish or derogate from any such rights and freedoms;
- (ii) is or will be in conflict with any provision of any law or the common law;
- (iii) is or will be unreasonable, unjust, unfair, irregular, unlawful or discriminatory or is based on any practice which may be deemed to be as such;
- (iv) is based on a wrong interpretation of the law or the relevant facts;

- (b) that the provisions of any law or any other matter is administered by or under the authority of the State or such authority, commission, board, corporation, committee, body or institution, or by any person in its employment, or that any practice is so followed, in a manner which is not in the public interest;
 - (c) that the powers, duties or functions which vest in the State or such authority, commission, board, corporation, committee, body or institution, or any person in its employment are exercised or performed in an incompetent, dishonest or irregular manner or are not exercised or performed;
 - (d) that moneys forming part of the funds of the State or such authority, commission, board, corporation, committee, body or institution, or received or held by or on behalf of the State or such authority, commission, board, corporation, committee, body or institution, or its other property are being or have been dealt with in a dishonest, irregular or improper manner;
 - (e) that any person either directly or indirectly has been or is being enriched, or has received or is receiving any advantage, in an unlawful or improper manner through or as a result of any act or omission in connection with the administration of the affairs of the State or such authority, commission, board, corporation, committee, body or institution, or by any person in its employment in the course of his or her employment as such or has so been or is so being enriched, or has so received or is so receiving any advantage at the expense of the State or such authority, commission, board, corporation, committee, body or institution.
- (3) (a) Any person wishing to lay any instance or matter referred to in subsection (1) before the Ombudsman shall do so in such manner as the Ombudsman may determine or allow.
- (b) Any person referred to in paragraph (a) who is detained in terms of an order of a court of law or judicial officer or the provisions of any law, shall be entitled to lay before the Ombudsman any instance or matter so referred to by way of a communication

in writing in a sealed envelope which envelope shall be handed to the Ombudsman by the person in charge of the place where any such person is detained or any person designated by him or her.

(4) The State or any local or regional authority, commission, board, corporation, committee, body or institution established or instituted by or under any law or the National Assembly may at any time when it deems it necessary or expedient in the public interest refer any instance or matter of which the administration vests in the State or that authority, commission, board, corporation, committee, body or institution, as the case may be, or, in the case of the Cabinet or the National Assembly, in the State or any such authority, commission, board, corporation, committee, body or institution and in respect of which it has reason to suspect or in respect of which it is alleged by any person that such instance or matter is of a nature referred to in subsection (1), to the Ombudsman for inquiry or investigation and report, and the Ombudsman shall enquire into or investigate and report on any such instance or matter in accordance with the provisions of this Act, or take such other steps as may be prescribed by this Act.

(5) The Ombudsman shall not be required to enquire into or make further enquiries into or investigate any instance or matter referred to in subsection (1) which has been laid before him or her under subsection (3) when the grounds on account of which the inquiry or investigation concerned is desired is in the opinion of the Ombudsman of a vexatious or trivial nature.

(6) The provisions of this section shall not apply in respect of any decision taken in or in connection with any civil or criminal case by a court of law.

Powers of Ombudsman.

4. (1) When the Ombudsman performs his or her duties and functions in terms of this Act -

- (a) the Ombudsman may in his or her discretion determine the nature and extent of any inquiry or investigation referred to in section 3;
- (b) the Ombudsman or any person on his or her staff authorized thereto by the Ombudsman in writing shall have, subject to the provisions of any law

regulating the privileges or immunities of the President, members of the Cabinet or Parliament or any other persons or institutions provided for in any law -

- (i) the right to enter at any time after such notice as the Ombudsman may deem sufficient or appropriate any building or premises or any part of any building or premises, except any building or premises or any part thereof used as a private home, and to make such enquiries therein or thereon, and put such questions to any person employed thereon or finds himself in or on that building or premises in connection with the matter in question, as the Ombudsman may deem necessary in connection with that inquiry or investigation;
- (ii) access to all books, vouchers, other documents, money, stamps, securities, forms having a face or potential value, equipment, stores and other movable goods in the possession or under the control of any person, except the private correspondence or goods of any such person, and which the Ombudsman deems necessary to inquire into or to investigate in connection with such inquiry or investigation;
- (iii) the right to request particulars and information from any person which the Ombudsman may deem necessary in connection with that inquiry or investigation;
- (iv) the right, without payment of any fees, to make enquiries into and extracts from, or copies of, any such book, voucher or other document which he or she may deem necessary in connection with that inquiry or investigation;
- (v) the right to seize anything, but subject to the provisions of this paragraph, which he deems necessary in connection with that inquiry or investigation or which is connected with that inquiry or investigation, as the case may be,

and to retain any such thing in safe custody for as long as it is necessary for purposes of that inquiry or investigation;

- (c) the Ombudsman may by notice in writing require any person to appear before him or her in relation to that inquiry or investigation at a time and place specified in such notice and to or her all such books, vouchers or other documents or things in the possession or under the control of any such person, but subject to the provisions of paragraph (b), and which the Ombudsman may deem necessary in connection with that inquiry or investigation;
- (d) the Ombudsman may administer an oath or take an affirmation from any person referred to in paragraph (c), or any person present at the place referred to in paragraph (c), notwithstanding whether any such person has been required to appear before the Ombudsman under the said paragraph (c), and to question such person under oath or affirmation in connection with any matter which the Ombudsman may deem necessary in connection with that inquiry or investigation;
- (e) the Ombudsman may in his or her discretion direct that any category of persons or all persons whose presence are, in his or her opinion, not desirable, shall not be present at any of the proceedings of that inquiry or investigation or any part thereof.

(2) Any person appearing before the Ombudsman in terms of paragraph (c) of subsection (1) who is not in the public service, shall be entitled to receive from moneys appropriated by the National Assembly 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 of Namibia held at the place mentioned in the notice in writing concerned.

(3) Any person questioned under subsection (1) shall, subject to the provisions of subsection (4) -

- (a) be required to co-operate with the Ombudsman and to disclose truthfully and frankly any information

within his or her knowledge relevant to any inquiry or investigation of the Ombudsman;

- (b) be compelled to produce any book, voucher or other document or thing, but subject to the provisions of subsection (1) (b), to the Ombudsman which the Ombudsman may deem necessary in connection with that inquiry or investigation.

(4) The provisions of subsection (3) shall not be so construed that the Ombudsman or deputy Ombudsman or any member of the staff of the Ombudsman shall be competent and compelled to answer questions in any proceedings in a court of law or before any body or institution established by or under any law or before a commission contemplated in the Commissions Act, 1947 (Act 8 of 1947), in connection with information which came to his or her knowledge referred to in paragraph (a) of subsection (3) or to produce any book, voucher or other document or thing referred to in paragraph (b) of the said subsection (3).

Action or steps to be taken by Ombudsman in connection with outcome of inquiry or investigation.

5. (1) The Ombudsman -

- (a) shall after holding any inquiry or investigation in accordance with the provisions of this Act -
 - (i) notify the person who laid the matter before him or her under section 3 (3) or (4) 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 in the public interest or that the matter will not be enquired into or investigated in terms of the provisions of section 3 (5);
 - (ii) take 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, including -
 - (aa) by negotiation and compromise between the parties concerned;

- (bb) by causing the complaint and the Ombudsman's finding thereon to be reported to the superior of an offending person;
 - (cc) by referring the matter to the Prosecutor-General or the Auditor-General or both, as the case may be;
 - (dd) by bringing proceedings in a Court of competent jurisdiction for an interdict or some other suitable remedy to secure the termination of the offending action or conduct or the abandonment or alteration of the offending procedures;
 - (ee) by bringing proceedings to interdict its enforcement by challenging the validity of such legislation or regulation if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise *ultra vires*;
 - (ff) by reviewing such laws as were in operation before the time of the Independence of Namibia in order to ascertain whether they violate the letter or the spirit of the Namibian Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon;
- (b) may, but without derogating from any of the provisions of subparagraph (ii) of paragraph (a), if he or she is of the opinion that any instance or matter enquired into or investigated by him or her under section 3 can be rectified or remedied in any lawful manner, notify the State or local or regional authority, commission, board, corporation, committee, body or institution established or instituted by or under any law, as the case may be, in such manner as he or she may deem fit of his or her findings and the manner in which the matter can, in his or her opinion, be rectified or remedied.

(2) the State or any such local or regional authority, commission, board, corporation, committee, body or institution, as the case may be, or any person acting under its authority may, if pursuant to the notification of the Ombudsman referred to in paragraph (b) of subsection (1) the matter ought in its or such person's opinion be rectified or remedied in the manner recommended by the Ombudsman or in any other manner, rectify or remedy the matter accordingly and shall notify the Ombudsman accordingly.

Reports of Ombudsman.

6. (1) The Ombudsman shall forthwith compile a full report in respect of every matter enquired into or investigated by him or her in terms of this Act and which has not been rectified, corrected or remedied as contemplated in this Act to the satisfaction of the Ombudsman, and shall submit any such report as soon as possible to the Speaker of the National Assembly and shall transmit a copy of such report to the Cabinet and, in the case of a matter of which the administration vests in a local or regional authority, commission, board, corporation, committee, body or institution established or instituted by or under any law, a further copy to the authority, commission, board, corporation, committee, body or institution concerned.

(2) In addition to the report referred to in subsection (1) the Ombudsman shall submit annually not later than 31 March a report to the Speaker of the National Assembly in connection with all the Ombudsman's activities during the period ending on 31 December of the previous year.

(3) The Speaker of the National Assembly shall lay upon the table of the National Assembly the reports submitted in terms of subsections (1) and (2) within 14 days after it has so been submitted, if the National Assembly is then in session or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

(4) The Ombudsman shall set out in the report referred to in subsection (1) -

- (a) the nature of the instance or matter enquired into or investigated and the facts in connection with, and the circumstances under which, the instance or matter came to his or her attention;

- (b) where the facts in connection with the instance or matter were in dispute, the facts which he or she found in the circumstances to be the truth and the reasons for such finding;
- (c) the nature and extent of the inquiry or investigation;
- (d) any defects or deficiencies, if any, which in his or her opinion exist in the administration of the instance or matter concerned;
- (e) the other findings which he or she made in the course of the inquiry or investigation and such other matters which in his or her opinion should be brought to the attention of the National Assembly;
- (f) where he or she has made in relation to any person any adverse finding, the opportunities afforded to any such person to contradict allegations or facts on which that finding is based or to reply thereto and what such person has adduced in contradicting it or replying thereto;
- (g) the action or steps taken to remedy, rectify, correct or reverse the instance or matter in question;
- (h) the outcome of the action or steps so taken;
- (i) whether such report should in his or her opinion be laid upon the table of the National Assembly as a confidential paper in terms of subsection (5),

and make such recommendations in that report as he or she may deem necessary or expedient.

(5) When a report submitted in terms of this section to the Speaker of the National Assembly 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 upon the table of the National Assembly as a confidential paper for submission to, and consideration of the question whether

the report contains such information and the making of a report to the National Assembly by a select committee of the National Assembly, and no person having access to that report shall disclose any such information.

Staff of Ombudsman.

7. (1) The Ombudsman shall in the performance of his or her functions under this Act be assisted by officers in the public service made available for such purpose.

(2) The Ombudsman may obtain the services of any person, not being an officer referred to in subsection (1), for the purposes of the Ombudsman's functions on such conditions as may be determined by agreement with such person.

Preservation of secrecy.

8. The Ombudsman and every other person employed in carrying out the provisions of this Act shall preserve and aid in preserving secrecy in respect of the instances or matters that may come to his or her knowledge in the exercise of his or her powers or the performance of his or her duties and functions in connection with those provisions, and shall not communicate any such instance or matter to any person whomsoever or permit a person to have access to any documents in his or her possession or custody, except in so far as any such communication is required to or may be made in terms of this Act or any other law.

Expenditure in connection with functions of Ombudsman.

9. The expenditure in connection with the office of the Ombudsman and the exercise of his or her powers and the performance of his or her duties and functions shall be paid from moneys appropriated for that purpose.

Offences and penalties.

10. Any person who -

- (a) contravenes or fails to comply with the provisions of section 3 (3) (b);
- (b) refuses or fails to comply with any notice under paragraph (c) of subsection (1) of section 4, or refuses to take the oath or to make an affirmation at the request of the Ombudsman in terms of paragraph (d) of the said subsection (1), or refuses to co-operate as contemplated in that section, or gives to such question an answer which to his or her knowledge is false, or refuses or fails to furnish

particulars or information required from him or her under that section;

- (c) discloses to any other person the contents of any book, voucher or other document in the possession of the Ombudsman or of his or her deputy or a member of the staff of the Ombudsman, or the record of any proceedings at an inquiry or investigation of the Ombudsman;
- (d) contravenes or fails to comply with the provisions of section 6 (5) or 8;
- (e) insults, disparages or belittles the Ombudsman or his or her deputy, or anticipates the proceedings at an inquiry or investigation or the findings of the Ombudsman in a manner calculated to influence such proceedings or findings;
- (f) wilfully hinders or obstructs the Ombudsman or his or her deputy or any member of the staff of the Ombudsman in the exercise of his or her powers or the performance of his or her duties or functions;
- (g) wilfully interrupts the proceedings at an inquiry or investigation of the Ombudsman or misbehaves himself in any other manner in the place where such inquiry or investigation is held;
- (h) in connection with any inquiry or investigation of the Ombudsman does anything which, if done in connection with the proceedings of a court of law, would have constituted contempt of court;
- (i) does anything calculated improperly to influence the Ombudsman or his or her deputy in respect of any matter being or to be considered by the Ombudsman or his or her deputy in relation to any inquiry or investigation;
- (j) directly or indirectly, by himself or herself or by any other person 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 or her next of kin, on account of such other person -

- (i) having laid any instance or matter before the Ombudsman in terms of this Act; or
- (ii) having furnished any particulars or information or produced any book, voucher or other document or thing, at or in connection 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, voucher or other document or thing at or in connection with any inquiry or investigation of the Ombudsman,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Limitation of liability in respect of anything done under this Act.

11. The Ombudsman, his or her deputy or any member of the staff of the Ombudsman shall not be liable in respect of anything done in good faith under any provision of this Act.

Repeal of Act 26 of 1986 and Act 11 of 1988, and saving.

12. (1) Subject to the provisions of subsection (2), the Ombudsman for South West Africa Act, 1986, and the Ombudsman for South West Africa Amendment Act, 1988, are hereby repealed.

(2) Any request, complaint, inquiry, investigation, action or steps made, done or taken and any other act performed in terms of the provisions of any law repealed by subsection (1), shall, if not inconsistent with the provisions of this Act, be deemed to have been made, done, taken or performed in terms of the corresponding provisions of this Act.

Short title.

13. This Act shall be called the Ombudsman Act, 1990.