

OMBUDSMAN LEGISLATIVE RESOURCE DOCUMENT

by

Dean M. Gottehrer
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International Ombudsman Institute
Room 205 D Weir Library, Faculty of Law
University of Alberta, Edmonton, Alberta, T6G 2H5, Canada.

Introduction

Dr. Marten Oosting

President of the International Ombudsman Institute

In this Occasional Paper the results are presented of a project which consisted of collecting and arranging information from various pieces of legislation from around the world that create ombudsman institutions. The objective of the project was to establish an Ombudsman Legislative Resource Document, in the interest of anyone who contemplates the establishment of an ombudsman and is interested in information that could be of use for the drafting of legislation. The project also aimed to be of relevance for newly established ombudsman offices that are interested in information with the character of a checklist.

The project has been carried out by Dean Gottehrer, who is a past President of the United States Ombudsman Association and has worked recently as an international consultant in the field of ombudsmanship. The Canadian International Development Agency (CIDA) has made the project financially possible. The International Ombudsman Institute acknowledges with gratitude this support from CIDA.

A draft of the results of the project has been discussed by the Board of Directors of the IOI at its annual meeting, October 13-15, 1997, in Copenhagen, Denmark. The Board resolved that the work of Mr. Gottehrer fully meets the purposes and that it should get wider circulation, as an IOI Occasional Paper. However, the Board and Mr. Gottehrer want to prevent a possible misunderstanding of the document. The document is not a kind of model for future legislation. Notwithstanding important similarities between ombudsman offices around the world — in particular with regard to essential elements as independence, expertise and complaint-drivenness — that should be reflected in the relevant legislation, these offices also differ in other respects because of the variety of their political, legal, social and economic environments. Moreover, no person — notwithstanding his knowledge and expertise — will be able to cover fully the variety of the ombudsman schemes around the world and escape from cultural bias and Mr. Gottehrer recognized this fact early in executing the project. Therefore, everybody who faces the task of drafting legislation for an ombudsman is advised to study examples from elsewhere. In the end, drafters will have to make their own choices of what fits into the specific environment for that new ombudsman office in their country.

The Board fully appreciates Mr. Gottehrer's work on this important subject. The Board expresses its hope that this publication of his work may contribute to the further development of the ombudsman around the world, as an important contribution to the entitlement of all peoples to good governance.

Preface

A number of ombudsmen from around the world were called upon to travel to countries considering establishing ombudsmen or human rights institutions after the disintegration of the Soviet Union. I was fortunate to be one of them. After a number of these visits, I realized the questions asked about what was contained in legislation creating an ombudsman's office were often the same or similar in each country I visited.

I thought it would be helpful to develop model legislation that could be recommended. I proposed this idea to a number of ombudsmen. Everyone I talked to thought it would be good to have a collection of the kinds of provisions found in ombudsman legislation around the world but a number of the ombudsmen I consulted felt it would be extremely difficult if not impossible to get ombudsmen from countries all around the world, from different cultures, political, social and economic systems and governmental structures to agree on a single set of provisions, even if alternative acceptable provisions were included.

Through the efforts of Mr. Stephen Owen, then Deputy Attorney General of the Canadian Province of British Columbia and a former president of the International Ombudsman Institute (IOI), and Mr. Harley Johnson, then Executive Director of the IOI and Ombudsman of the Canadian Province of Alberta, a grant was received from the Canadian International Development Agency (CIDA) to make it possible to compile provisions from ombudsman legislation around the world into this Ombudsman Legislative Reference Document. I am very thankful for the support from CIDA and the help of both Mr. Owen and Mr. Johnson. Their involvement made this document possible.

This is not a model ombudsman act. Several of those have been written, most notably one in the United States that was recently revised and one that was written for India in 1991. Both are noted in the list of legislation examined for this document.

At one point, I had hoped to circulate this document to ombudsmen around the world for their comment and suggestions, realizing that while a few others have read it and made suggestions I made the final decisions, for better or for worse, of what would be included here. As hard as I tried, I am sure this is still a work bound by the culture, politics and experiences I bring to it. I regret I was not able to circulate this widely as originally planned for more comment and suggestion. I think it is important to make it as widely available as quickly as possible because more ombudsman offices are being created and could benefit from the information collected here.

Soon after the grant was awarded, I visited the IOI offices in Edmonton, examined all of the legislation that was collected there, copied what I needed and solicited what had not been deposited in the IOI offices from ombudsmen around the world to whom I could communicate via fax. This publication contains a list of the legislation I examined along with the offices I was unable to obtain legislation from. Both the IOI and I would appreciate receiving new or amended legislation. Please send copies of legislation and new constitutional provisions to the IOI at the address on the title page. Please send copies of legislation and new constitutional provisions and any comments on the contents of this-document to me at the following address. Anyone who wishes to consult about the contents of the document may contact me using the following

information:

Dean Gottehrer
323 Arroyo Seco
Santa Cruz, CA 95060-3142 USA
Telephone: 1-408-425-4688, FAX: 1-408-425-8147
Internet: deang@cruzio.com

OMBUDSMAN LEGISLATIVE RESOURCE DOCUMENT

Dean M. Gottehrer^{1, 2}

CONSTITUTIONAL PROVISIONS

Commentary: Not every jurisdiction has a constitution or charter. In jurisdictions that do, these provisions should be considered.

Principle 1. The Office of the Ombudsman is established and its purposes are set out in the jurisdiction's Constitution.

Sample language: The Office of the Ombudsman is established as a legislative officer of (name of the jurisdiction). The Ombudsman is the legislative body's representative to endeavor to ensure that injustice is not committed by the public administration against the individual, that public administration has the highest standards of competence, efficiency and justice in the administration of laws and that human rights are protected and promoted.

The Ombudsman shall be chosen by a two-thirds vote of the legislative body and serve a term of (number) years. The Ombudsman shall be eligible for reappointment and shall serve until a qualified successor is appointed. The Ombudsman receives and investigates complaints as provided in law.

Commentary: The length of constitutional language about the Ombudsman varies. In some jurisdictions, it is no more than one article. In others what would be an act is included in the Constitution. The extent of the provisions should be in keeping with constitutional provisions for other legislative officers, such as an auditor. Lengthier constitutional sections will include provisions on independence, appointment and term of office, functions of the Ombudsman, investigative powers of the Ombudsman, the process to remove the Ombudsman, etc.

Historically, the Ombudsman looked at the administrative acts of government. In recent years that charter has enlarged as various countries have seen the Ombudsman as an institution to promote excellence in public administration and to promote and protect human rights. Whatever purpose a jurisdiction selects, it should be specified in constitutional statements on the office.

The name Ombudsman is used here and throughout this document because of its link to the widely recognized formal origins of the office in Sweden in 1809, but different names have been used in different countries.³ The name is not as important as the structure, powers and

¹ Dean Gottehrer is a former regional director of the Anchorage Office of the State of Alaska Ombudsman, past president of the United States Ombudsman Association and former chairman of the Ombudsman Leadership Forum in the United States.

² Development of this document was funded by the generous support of the Canadian International Development Agency.

³ The names used in various countries around the world are listed here to indicate the diverse titles given to Ombudsman.

Jurisdictions in which the person is called "Ombudsman": Antigua and Barbuda, Australia, Barbados, Belize, Bosnia-Herzegovina, Canada, Croatia, Denmark, European Union, Fiji, Finland, Greenland, Guyana, Hong Kong, Hungary, Ireland, Jamaica, Lesotho., Lithuania, Malawi, Mauritius, Namibia, The Netherlands, New Zealand, Norway, Papua New Guinea, Seychelles, Slovenia, Solomon Islands, Sweden, Trinidad and Tobago, United

responsibilities elaborated in the Act except when it is used for officials who are not independent, impartial and appointed to make recommendations to remedy situations after an investigation that finds complaints supported. Officials who do not have the traditional powers should not be called Ombudsmen.

Terms for Ombudsmen are generally set no lower than four years, normally are five to six years and range as high as 10 years or in several instances constitute a life-time appointment until a retirement age of 65 or 70. Jurisdictions with longer terms may specify a one-term limit for the Ombudsman. Other jurisdictions may limit the number of terms to two or three. Some jurisdictions place no limit on the number of terms.

Principle 2. The jurisdiction's legislative body is responsible for elaborating legislation to implement these sections of the Constitution and detail the Ombudsman's functions, duties, powers and responsibilities.

Sample language: The (legislative body) of (name of jurisdiction) may prescribe the functions, powers and responsibilities of the Ombudsman in a law. Legislation detailing the powers of the Ombudsman shall be an organic act passed by the percentage vote prescribed by this Constitution.

Commentary: Some legislative rules require organic acts to pass with majorities larger than 50 percent plus one. The advantage of the Ombudsman's law being an organic act is that it would also require a larger majority to amend it. This is a desirable goal so the Ombudsman's law has a broad base of legislative support and will not be easily changed.

Principle 3. The power to remove the Ombudsman is specified.

Sample language: The Ombudsman may be removed from office only for inability to exercise the functions of the office whether from infirmity of body or mind or any other cause or

Kingdom, United States, Vanuatu, Zimbabwe.

Jurisdictions that use other names (some of which are translated into English as Ombudsman): **Argentina:** Defensor del Pueblo; **Austria:** Volksanwaltschaftsgesetz (Ombudsman Board); **Belgium:** M6ciateur; **Brazil:** Ouvidor; **Canada: Province of Quebec:** Protecteur du Citoyen; **Colombia:** Defensor del Pueblo; **Costa Rica:** Defensor de los Habitantes; **Cyprus:** Commissioner for Administration; **France:** M6ciateur; **Germany:** Petitions Committee of the German Bundestag; **Ghana:** Commissioner for Human Rights and Administrative Justice; **Georgia:** Public Defender; **Guatemala:** Procurador de los Derechos Humanos (Ombudsman is also used to describe this position, although the law in Spanish uses the first term); **Honduras:** El Comisionado de los Derechos Humanos; **Iceland:** Parliamentary Commissioner; **India: Lokpal** (when established will receive complaints about alleged corruption against Ministers or secretaries to Government nationally and in the states) and Lok Ayukta (receives complaints against other officials in the states and nationally); **Israel:** Public Complaints Commissioner; **Italy:** Difensore Civico; **Japan:** Administrative Counselor; **Latvia:** Director, National Human Rights Office; **Mexico:** President of the National Commission on Human Rights; **Nigeria:** Chief Commissioner, Public Complaints Commission; **Pakistan:** Wafaqi Mohtasib (Ombudsman); **Paraguay:** Defensor del Pueblo (national), Defensor Vecinal (Municipality of Asuncion); **Defensor del Pueblo;** **Philippines:** Tanodbayan; **Poland:** Commissioner for Civil Rights Protection; **Portugal:** Proveedor de Justicia; **Senegal:** Mediateur de la Republique; **South Africa:** Public Protector; **South Korea:** Public Grievance Council; **Spain:** Defensor del Pueblo (National), Defensor del Pueblo (Andalucia), El Justicia de Aragon (Aragon), Diputado del Comfin (Canary Islands), El Procurador del Comfin (Castilla y Leon), Sindic de Greuges (Catalutlya), Valedor del Pueblo (Galicia), Sindic de Greuges (Islas Baleares), Ararteko (Pays Vasco), Sindico de Agravios (Valencia). **Sri Lanka:** Parliamentary Commissioner for Administration (Ombudsman); **Sudan:** President, Public Control and Administrative Evaluation Bureau (Ombudsman); **Taiwan:** Control Yuan; **Tanzania:** Permanent Commission of Enquiry; **Tunisia:** Mediateur Administratif; **United Kingdom:** Parliamentary Commissioner; **United States: Guam:** Suruhanu (Ombudsman); **Western Samoa:** Komesina o Sulufaiga (Ombudsman); **Zambia:** Investigator-General.

from misconduct. The Ombudsman may not be removed from office on the basis of acts performed under the authority of this Constitution.

Commentary: The reasons acceptable for removal should be specified in the Constitution. Also see Principle 13 below for additional language on removing an Ombudsman.

Principle 4. The Ombudsman in the exercise of the office's functions, duties and responsibilities under this Constitution shall not be subject to the direction or control of any other person or authority.

Commentary: A constitutional guarantee of independence in the Ombudsman's functions is one of the strongest that can and should be specified.

LEGISLATIVE ACT PROVISIONS

Establishment of the office

Principle 1. The Office of the Ombudsman is established and its purposes described.

Sample language: The Office of Ombudsman is established as independent and impartial with the power to investigate acts of government agencies and to recommend changes with the goal of endeavoring to ensure that injustice is not committed by the public administration against the individual, that public administration has the highest standards of competence, efficiency and justice in the administration of laws and that human rights are protected and promoted.

This Act may be cited as the Ombudsman Act of (year).

Commentary: Some of the constitutional language is repeated here for jurisdictions that do not have constitutional provisions. If this language is in a constitution it need not be repeated here. Independence and impartiality of the Ombudsman are critical to the office's success because otherwise people will tend not to use it if it appears to be another bureaucratic government office.

Principle 2. The Ombudsman is an officer of the legislative branch of government.

Sample language: The Ombudsman is appointed by the legislative body to exercise the powers and perform the duties assigned under this law.

Commentary: The Ombudsman's independence is strengthened by being an officer of the legislative body. Ombudsmen generally do not investigate those who appoint them because of the conflict inherent in such an arrangement.

Appointment process, qualifications, term, benefits, removal process

(**Note:** The appointment process described is placed in the legislative body and is an example in detail of how such a process works. Most acts do not contain this much detail. Some jurisdictions specify that the Ombudsman is appointed solely by the head of state, either on the advice of leaders of all parties in the legislative body or one or more other commissions or advisers or with the concurrence of the legislative body.)

Principle 3. The process for nomination and appointment of the Ombudsman is designed to foster the office's independence and create a broad base of support in the legislative body.

Sample language: An Ombudsman Selection Committee of three members of each house of (the legislative body) will be appointed by the presiding officers of the respective bodies with

at least one member of each body coming from a minority party. The committee will advertise for applicants for the position. The names and résumés of all applicants are open to the public.

Commentary: Unicameral legislative bodies could appoint a six-member committee. The process of choosing the Ombudsman is one of the important controls the legislative body has over the office. Choosing the right person is important to the success of an Ombudsman's office. Public advertising and review of the qualifications of candidates is one means to foster strength in the final candidate for the office.

Principle 4. Any legislative committee that recommends a candidate to be Ombudsman shall select one candidate and make the recommendation by a majority vote of at least two-thirds of the committee's members.

Sample language: The Ombudsman Selection Committee shall examine persons to serve as Ombudsman regarding their qualifications and ability, shall choose by at least a two-thirds vote the name of the person selected and place that name in nomination.

Commentary: A large majority-and one candidate increases-the likelihood of choosing a well-respected, fair and impartial person with broad support and diminishes the chances of choosing a candidate with a political agenda.

Principle 5. A majority vote of at least two-thirds of the full legislative body is required to nominate or elect the Ombudsman.

Sample language: The appointment of the Ombudsman is effective if the nomination is approved by a roll call vote of two-thirds of the members of (the legislative body) and approved by the executive.

Commentary: A large majority increases the likelihood of choosing a well-respected, fair and impartial person with broad support and diminishes the chances of choosing a candidate with a political agenda. In some jurisdictions, the Ombudsman is appointed by the head of state—the President, Lieutenant-Governor, Governor or other authority—on the recommendation of a two-thirds or unanimous vote of the legislative body. While a two-thirds vote is the most common requirement, some jurisdictions require a three-fifths or three-fourths vote to appoint. Some jurisdictions place time limits on how long after a nomination is submitted the appointment must take place.

Principle 6. The qualifications to be Ombudsman are set at the minimum necessary to select a person fit to hold the office.

Sample language: The Ombudsman shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of law, administration, public policy and human rights. The Ombudsman must be at least 21 years of age and a qualified voter who has been a resident of (the jurisdiction) for at least (number) years.

Commentary: This language is more of an instruction than something that will disqualify candidates. Some jurisdictions set a citizenship requirement which is perhaps better done by requiring that the Ombudsman be a registered voter. Some acts set an upper age limit, which in other countries is viewed as discriminating on the basis of age. Some restrict the Ombudsman from being a member of the legislative body that appoints immediately preceding appointment or from any legislative body in the country or from seeking elective office for some period

immediately after leaving office as the Ombudsman.

Principle 7. The Ombudsman is a full-time official and is prohibited from public and partisan political activity outside the duties of the office, earning income beside the position's pay and benefits, and holding or becoming a candidate for public office so that the Ombudsman is and appears to the public to be impartial and independent.

Sample language: The Ombudsman shall perform the responsibilities of the office as a full-time official. No person serving as Ombudsman shall be actively involved in political party activities or publicly endorse, solicit funds for or make contributions to political parties or candidates for elective office or engage in any other occupation, business or profession. Engaging in any of these activities is misconduct. No person serving as Ombudsman shall be a candidate for or hold other public office. An Ombudsman who wishes to be a candidate for public office shall resign upon declaring the candidacy.

The Ombudsman shall not hold any position incompatible with the correct performance of official duties or with impartiality and independence or with public confidence therein. Within ten days following the Ombudsman's appointment and before taking office, the Ombudsman must resign from any position incompatible with this section or the office, otherwise the Ombudsman must not accept the appointment.

Commentary: An Ombudsman should work full-time in the position and need no additional income for support. The Ombudsman and office staff need to be impartial and independent. They should not be seen as partisans for any political faction. The Ombudsman must also not be seen capable of being influenced through any business or profession that earns income. The prohibitions are so important to the integrity of the office that to violate them is seen as misconduct that could result in removing the person from office. Some jurisdictions list exceptions to earning income in their act, while others allow exceptions with prior approval of the legislative body or its governing committee or presiding officer when it is not in session. Other jurisdictions substitute other officials who may give prior approval. Earning the income without prior approval would be misconduct.

Principle 8. The Ombudsman has a long term and serves until a successor is appointed and qualified. The Ombudsman may be appointed for additional terms.

Sample language: The term of the Ombudsman is (number) years. The Ombudsman serves until a successor is appointed and qualified. The appointment of the Ombudsman becomes effective if the executive neither approves nor vetoes it within (number) days, Sundays excepted, after its delivery to the executive.

Commentary: The minimum recommended term of office is at least five years. Some jurisdictions have terms as high as 10 years or in very few jurisdictions as low as three years. A few have a lifetime appointment with specified retirement ages. Some jurisdictions limit the number of terms for which an Ombudsman may be reappointed while others do not. Also, some jurisdictions set an age for retirement or limit the age at which the Ombudsman can serve, with exceptions subject to approval by the legislative body or appointing authority. The term should overlap the terms of the legislative body and the executive.

Principle 9. The Ombudsman receives a high salary commensurate with the position that may not be diminished during the term of office unless by a law passed by the legislative body

that applies to all salaried officers of the jurisdiction.

Principle 10. The benefits the Ombudsman receives are enumerated in the Act and where possible are the same as those enjoyed by high government officials such as judges, justices or cabinet ministers.

Sample language: The Ombudsman shall receive the same benefits and be placed on the salary schedule of (the jurisdiction) at the same level as (a judge, justice, minister, deputy minister) and be eligible for increases in salary on the same steps and time schedule. The salary of the Ombudsman shall not be diminished during the Ombudsman's term of office, except by a law of (the legislative body) applied to all salaried officers of (the legislative body) or all salaried officers of the jurisdiction including those of (the legislative body).

Commentary: The Ombudsman should receive a salary that reflects the importance of the office, its responsibilities, prestige and position as one that can make recommendations for change to the highest levels of government. The salary should allow for the same raises in pay other high officials receive. The jurisdiction should choose which official has relatively the same high level of responsibility and prestige as the Ombudsman. The salary of the Ombudsman should not be subject to change as a method for punishing the person or the office for what it finds and recommends. Financial constraints that affect the Ombudsman are permitted as long as they affect all other employees of the legislative body as well.

Principle 11. On assuming office, the Ombudsman takes an oath specified in the Act.

Sample language: Before beginning to perform the duties of the office, the Ombudsman takes an oath (administered by the Speaker of [the legislative body] or a judge of the Supreme Court) to exercise the powers and perform the duties of the office faithfully and impartially and not to divulge any information received under this Act except where permitted by this Act.

Commentary: Oaths normally provide that the Ombudsman will perform the duties of the office and will not divulge information except in accord with the Act. Here is an example of an oath:

"I, (name), do solemnly swear (affirm) that I have not given or promised anything on any pretext whatsoever to any person, directly or indirectly and in my name or that of any other person, to obtain this appointment, that I have not accepted and will not accept any present or any promise from any person either directly or indirectly to do or refrain from doing anything in the exercise of my functions. Also I will faithfully, truly, impartially, honestly, justly and to the best of my judgment, skill and ability, execute and perform the powers, duties and functions of the Ombudsman under the Ombudsman Act of (name of the jurisdiction), as now or hereafter amended, and that I will not divulge any information received by me under the Act except as permitted by or to give effect to this Act. (So help me God.)"

The content of an oath should be adjusted to the customs and culture of the jurisdiction.

Principle 12. The Ombudsman may be removed from office for cause specified in the Act by a two-thirds majority vote of the legislative body that appointed the Ombudsman. The Ombudsman may resign by a letter to the presiding officer of one of the legislative bodies. The Ombudsman is entitled to severance pay.

Sample language: The (legislative body) of (name of jurisdiction) by a vote of two-thirds

of all the members may remove the Ombudsman from office because of permanent mental or physical incapacity to perform the duties of the office or other ground sufficient to remove a judge from office in the courts of (name of jurisdiction). The process for removing the Ombudsman shall begin on a motion made by one-third of the members (of both houses) of (the legislative body). The Ombudsman may not be removed from office on the basis of acts performed under the authority of this Act.

The Ombudsman may resign by a letter (giving XX months' notice) to the presiding officer of one of the legislative bodies or if the presiding officer is not present or the position is vacant to the clerk of (the legislative body).

If the Ombudsman is discharged without notice or not reappointed, the Ombudsman shall receive a salary for three months from the end of the month in which the Ombudsman's services end. If the Ombudsman dies before that period ends, any outstanding salary at the time of the Ombudsman's death shall be paid to the Ombudsman's estate.

Commentary: Alternate provisions are provided below since some variety exists in the process and reasons to remove an Ombudsman. Some reasons not mentioned in the sample or alternate language include: bankruptcy or obtaining a moratorium on debts, misconduct, conviction and sentencing for serious violations of the law, accepting posts incompatible with the office of Ombudsman, losing jurisdictional citizenship, being made the subject of a guardianship order, or in the opinion of the jurisdiction's legislative body seriously undermining the confidence placed in the Ombudsman. Removal is made difficult because it should be for widely recognized and accepted cause rather than for political threats or attacks on the office and its holder. Some jurisdictions provide a method for suspending the Ombudsman and allowing the suspension to be considered by the legislative body. If the legislative body does not remove the Ombudsman within a specified time, the suspension is lifted automatically.

Some Ombudsman acts require the Ombudsman to give notice ranging from three to six months prior to resigning from office. Most acts require no advance notice.

Alternate language: The (legislative body) of (name of jurisdiction) may by a two-thirds vote ask a tribunal to investigate whether the Ombudsman shall be removed. The Chief Justice of (name of jurisdiction) shall appoint a tribunal of a chairman and not less than two additional members from among persons who hold or have held office as a judge in a court of unlimited civil and criminal jurisdiction or a court of appeals. The tribunal shall inquire into the matter and report on the facts and recommendations to (the legislative body) of (name of jurisdiction) whether the Ombudsman should be removed. The Ombudsman may be removed from office on a two-thirds vote of (the legislative body) of (name of jurisdiction) if the tribunal has recommended that the Ombudsman should be removed. If the tribunal recommends that the Ombudsman should not be removed, (the legislative body) of (name of jurisdiction) may not remove the Ombudsman.

If a tribunal has been appointed to investigate and recommend whether the Ombudsman should be removed, (the legislative body) of (name of jurisdiction) may suspend the Ombudsman from exercising the functions of the office. The suspension may be revoked at any time by (the legislative body) and shall cease to have effect if the tribunal recommends that the Ombudsman should not be removed.

Commentary: The alternate process uses the judiciary to investigate whether the

Ombudsman should be removed. It has the advantage of removing the investigation from the legislative body and providing for independent review outside the political process of whether the Ombudsman should be removed. If the tribunal does not recommend removal, the Ombudsman cannot be removed. It also provides a method for the Ombudsman to be suspended from exercising the office's functions while the tribunal conducts its work. Some jurisdictions provide for the legislative body or other appointing authority to suspend the Ombudsman under specified circumstances. Acts also provide time limits on suspensions and means for ending the suspension.

Hiring staff, Deputy Ombudsman, delegation of responsibilities, benefits

Principle 13. The Ombudsman may appoint the office's staff, set compensation and other terms and conditions of employment.

Sample language: The Ombudsman may select, appoint and fix the compensation, terms and conditions of employment for employees and officers the Ombudsman considers necessary to discharge the Ombudsman's responsibilities under this act. Compensation shall be fixed within the amount available by appropriation.

Commentary: Because the Ombudsman requires a high level of trust in the office's staff, the power to appoint is reserved to the Ombudsman. In some countries, this will be impossible. The Ombudsman in those countries should set job qualifications, write position descriptions and at the very least participate in the selection process by viewing vita and applications, interviewing candidates and recommending who should be hired.

Principle 14. The Ombudsman shall appoint a Deputy Ombudsman who serves as Acting Ombudsman if the Ombudsman position becomes vacant for any reason until an Ombudsman is appointed for a full term.

Sample language: The Ombudsman shall select, appoint and fix the compensation of a Deputy Ombudsman. The Ombudsman may authorize in writing the Deputy Ombudsman to act in the Ombudsman's stead in the event of illness, absence, leave or disability, or when in the Ombudsman's sole discretion an appearance of impropriety, partiality or conflict of interest prevents the Ombudsman from discharging the duties of this act in a particular matter. If the position of Ombudsman becomes vacant for any reason, the Deputy Ombudsman shall serve as Acting Ombudsman until an Ombudsman has been appointed for a full term.

Commentary: Creating the Deputy Ombudsman position and giving the Deputy the power to act under the described circumstances insures that someone will always be able to perform the duties and responsibilities of this Act, even if the position becomes vacant. The Acting Ombudsman is subject to the same limitations on political activity and remuneration listed in Principle 7 and has the same responsibilities and rights as a regularly appointed Ombudsman except for a term of office. The sample language provides a way to avoid the Ombudsman's conflicts of interest. Some jurisdictions provide for the appointing authority to name a temporary or substitute Ombudsman to handle such matters.

Principle 15. On assuming their positions, Ombudsman staff take an oath specified in the Act.

Sample language: Before beginning to perform their duties, Ombudsman staff take an oath administered by the Ombudsman to exercise the powers and perform the duties of the office faithfully and impartially and not to divulge any information received under this Act except where permitted by this Act.

Commentary: Oaths normally provide that Ombudsman staff will perform the duties of the office and not divulge information except in accord with the Act. Here is an example of an oath for employees:

“I, (name), do solemnly swear (affirm) that I will faithfully, truly, impartially, honestly, justly and to the best of my judgment, skill and ability, execute and perform the duties required of me as (name of position) under the Ombudsman Act of (name of the jurisdiction), as now or hereafter amended, and that I will not divulge any information received by me under the Act except as permitted by or to give effect to this Act. (So help me God.)”

The content of an oath should be adjusted to the customs and culture of the jurisdiction.

Principle 16. The Ombudsman may delegate any responsibilities conferred by this Act to any member of the staff. No staff person shall act in a matter in which the person has interests that preclude acting in a fair, unbiased and proper manner.

Sample language: The Ombudsman may delegate in writing to staff members or officers any powers conferred on the Ombudsman under this Act except the power of delegation under this section and the power to make a report under this Act. Delegations may be revoked at any time and do not prevent the Ombudsman from exercising any delegated powers. Delegated powers remain in effect as long as the delegate remains on the staff or until revoked by the Ombudsman. While exercising any power of the Ombudsman delegated under this section, the person exercising such power is subject to and entitled to all the benefits, privileges and protections of this Act relating to the Ombudsman.

No person shall conduct an investigation or render assistance in any matter in which the person has any pecuniary interest or any other interest which may preclude the person from performing the functions of the Ombudsman in a fair, unbiased and proper manner. If a person fails to disclose such an interest, the Ombudsman may take such steps as deemed necessary to ensure a fair, unbiased and proper investigation.

Commentary: The power of delegation is required for the office to function. Delegations normally are for a limited time or without expiration. They can be revoked by the Ombudsman and do not prevent the Ombudsman from exercising the same powers at any time. Ombudsman staff should not investigate or assist in matters where they have pecuniary or other conflicts of interest. (A provision in Principle 15 deals with conflicts of interest of the Ombudsman.)

Principle 17. All Ombudsman staff serve at the pleasure of the Ombudsman and are entitled to participate in all employee benefits of the jurisdiction. The Ombudsman may dismiss staff at any time.

Sample language: All Ombudsman officers and employees serve at the pleasure of the Ombudsman. The Ombudsman may dismiss staff at any time. The Ombudsman and staff shall be entitled to participate in any employee benefit or retirement plan accorded to the jurisdiction’s employees. The Ombudsman and staff are not members of the jurisdiction’s civil service or public service. They are entitled to the privileges and perquisites of office, including holidays,

pension plans, vacations, sick leave, severance pay, medical and other benefits of a member of the civil service who is not covered by a collective bargaining agreement.

Commentary: The delicate and sensitive nature of the Ombudsman's work requires a high degree of trust and confidence in staff since much is delegated to them, so the Ombudsman should be free of civil service restraints in hiring and firing. The Ombudsman and all staff participate in government employee benefits.

Principle 18. The Ombudsman may contract for professional services.

Sample language: The Ombudsman may contract for the services of persons having technical or specialized knowledge of any matter to advise and assist the Ombudsman in the exercise or performance of the powers, duties and functions under this Act. Such persons may be paid fees and expenses as contracted by the Ombudsman.

Commentary: The Ombudsman may require special knowledge and abilities for individual inquiries or investigations and will contract with individuals to acquire skills staff do not have.

Powers of the office

Principle 19. The Ombudsman's powers are specified in the Act.

Principle 20. The Ombudsman may receive and investigate complaints about the acts of agencies and may initiate an investigation without a complaint.

Sample language: The Ombudsman's powers and duties include but are not limited to the following:

(a) to investigate on complaint or on the Ombudsman's own motion any administrative act or alleged violation of human rights by an agency, without regard to the finality of the administrative act;

(b) to undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies that might improve the functioning of agencies or lessen the risks that objectionable administrative acts or violations of human rights will occur;

(c) to make such inquiries and obtain such assistance and information from any agency or person as the Ombudsman shall require for the discharge of the Ombudsman's duties. Agencies shall not restrict the Ombudsman's access to agency personnel or to people held against their will in institutions under the jurisdiction's control.

(d) to bring suit in (name of court) to enforce the provisions of this Act.

Commentary:

(a) The Ombudsman's powers of investigation vary. This includes most powers found in different jurisdictions. Some jurisdictions focus the Ombudsman's powers on administrative acts and include human rights violations as part of that. Others focus solely on human rights and do not look at administrative acts that cannot be linked to a human right.

(b) The Ombudsman's focus will be primarily individual complaints but giving the Ombudsman the power to work in other ways to improve public administration tends to reduce the numbers of complaints.

(c) The Ombudsman and staff need direct access to agency personnel responsible for taking action or making decisions that are the subject of complaints.

(d) The Ombudsman may bring suit regarding exercise of powers seeking judgments to: obtain jurisdiction, enter and inspect agencies, enforce a summons, subpoena or demand, and enforce confidentiality provisions.

Principle 21. Complaints may be made orally. The Ombudsman may require a complaint to be made in writing.

Sample language: The Ombudsman may accept complaints made orally. At the Ombudsman's discretion or under regulations promulgated under this Act, the Ombudsman may require certain kinds of individual complaints to be made in writing. The Ombudsman or staff will assist complainants who cannot write to put a complaint in writing.

Commentary: Some jurisdictions will accept oral complaints; others require them in writing. Many complaints can be handled when received orally, but the Ombudsman needs the discretion to require certain kinds of complaints, for example of employee misconduct, to be made in writing so specifics are noted by the complainant when the complaint is made. Since some complainants may not be able to write, the Ombudsman's staff may need to assist them. Some acts stipulate the kinds of information that must be presented in a complaint.

Principle 22. Who may file a complaint is defined in the Act.

Sample language: Any person affected by acts of the government of (jurisdiction) may file a complaint with the Ombudsman.

Alternate additional language: Except as otherwise provided, a complaint shall be made by the person affected by the act of the agency.

Alternate additional language: When the person who might have complained under this Act has died or is in the Ombudsman's opinion unable to act, the complaint may be made by the person's representative, a family member or any other individual the Ombudsman thinks suitable.

Alternate additional language: The leadership or any committee of (the legislative body), the Prime Minister or any minister of government may refer to the Ombudsman a matter within the Ombudsman's jurisdiction that the leadership or committee considers should be investigated by the Ombudsman. On any matter referred under this section, the Ombudsman shall carry out the investigation and submit a report to the Speaker of (the legislative body), committee chair, Prime Minister or minister of government as appropriate. If a person aggrieved in the matter has an appeal, review, right or remedy that is being exercised, the Ombudsman may refrain from starting the investigation until the appeal, review, right or remedy being exercised or sought cannot or will not be exercised or that any proceedings on the matter have been finally concluded or abandoned.

Commentary: Many jurisdictions require the complainant to be affected personally by the act that is the subject of the complaint. Many jurisdictions allow complaints on behalf of individuals by third parties so long as the individual affected approves of the Ombudsman looking at the complaint. Some jurisdictions allow complaints to be filed by groups, including non-governmental organizations, especially when the issues raised in the complaint come from vulnerable groups or people unlikely to complain themselves. Acceptable alternatives will

include language to cover these situations.

Principle 23. The types of acts the Ombudsman may investigate and a definition of agency or a list of agencies under the Ombudsman's jurisdiction are included in the Act.

Sample language: (a) The Ombudsman shall investigate any complaint alleging that an act of an agency is: (1) contrary to the law or regulation of the jurisdiction; (2) contrary to an international treaty or convention on human rights the jurisdiction has recognized; (3) based on mistaken facts or irrelevant grounds or considerations; (4) unsupported by an adequate statement of appropriate reasons; (5) performed in an inefficient manner; (6) arbitrary, unreasonable, unfair, unjust, oppressive or otherwise objectionable even though in accordance with law; (7) an abuse of discretion; or (8) otherwise erroneous or wrong. The Ombudsman may investigate without regard to the finality of an agency act. The Ombudsman shall determine whether a complaint offers sufficient grounds for investigation.

(b) As used in this. Act, "Agency" means any ministry, department, organization, board, commission, council, bureau, administrative tribunal, facility, institution or other governmental entity of (name of jurisdiction), [Alternative: any person who is providing services to individuals under contract with (name of jurisdiction) and who has agreed as a term of that contract to be subject to the Ombudsman's jurisdiction], and any official, officer, administrative hearing examiner, employee or member of (name of jurisdiction), whether elected or appointed, acting or purporting to act by reason of connection with (name of jurisdiction), except: (1) any court or judge; (2) (the legislative body), its members, its committees and its employees; (3) the executive and the executive's personal staff; (4) any multi-jurisdiction government entity.

Commentary: (a) This section notes some of the most common acts Ombudsmen have the duty to investigate. The sample language of Principle 25 lists the types of reasons the Ombudsman may have for declining to investigate these complaints. Ombudsmen have discretion whether to investigate before an act is final or afterwards. Ombudsmen often ask complainants to exhaust their administrative remedies before they will examine a complaint and still remain sensitive to times when that may impose an undue burden on the complainant.

(b) Some acts have a section of definitions where provisions such as this are located. The definition of agency is a key provision of an Ombudsman Act because it establishes the places and people in government under the Ombudsman's jurisdiction. Some acts include a schedule that lists agencies under the Ombudsman's jurisdiction. Both methods are acceptable. In different jurisdictions agencies in municipalities, school districts and other types of institutions and authorities are treated differently. Jurisdictions with government-owned parastatal corporations and those partially owned by government generally include them under the Ombudsman's jurisdiction. Each jurisdiction decides which agencies are under the Ombudsman's jurisdiction.

(c) Ombudsman acts in parliamentary governments often exclude the Cabinet of Ministers and Ministers in their function as members of the government and policy heads of their agencies from the Ombudsman's jurisdiction. Some acts exclude recommendations made to Ministers from the Ombudsman's jurisdiction; others include them.

Principle 24. The Act describes what types of complaints the Ombudsman has the discretion not to investigate or may not investigate.

Sample language: The Ombudsman in the Ombudsman's discretion may decide not to

investigate or may cease to investigate a complaint if: (a) an adequate remedy or appeal right already exists that the complainant could reasonably be expected to use whether the complainant has used it or not; (b) it is trivial, frivolous, vexatious or not made in good faith; (c) considering all circumstances of the complaint further investigation is unnecessary or not warranted; (d) the complainant has had knowledge of the acts for more than (number) months (or years) before making a complaint and has no reasonable explanation for not pursuing a remedy or appeal or filing a complaint; (e) the complainant is not personally aggrieved by the subject matter of the complaint; (f) Ombudsman office resources are insufficient for adequate investigation; (g) other complaints are more worthy of attention; (h) investigation would serve no useful purpose; (i) the complaint or one substantially like it has been previously investigated; (j) the complainant's identity is not disclosed to the Ombudsman.

The Ombudsman may proceed with an investigation where the complainant has had knowledge of the acts for more than (number) months (or years) before making a complaint and has no reasonable explanation for not pursuing a remedy or appeal or filing a complaint if the Ombudsman is satisfied that substantial grounds exist why it is in the public interest to conduct the investigation.

Declining a complaint does not prevent the Ombudsman from initiating an investigation on the Ombudsman's own motion into the act being complained about or into related matters.

Alternate additional language: When the question arises whether the Ombudsman has jurisdiction to conduct an investigation, the Ombudsman, the complainant or the party subject of the investigation may apply to a judge of the Supreme Court for a determination of that question and the judge may order whatever the judge considers proper on the application.

Commentary: The Ombudsman has the discretion not to investigate at any stage of the complaint process if the Ombudsman believes one or more criteria have been met. In most jurisdictions, the time limit to file a complaint is a year; at least one jurisdiction sets it at two years.

Some legislative acts specify matters the Ombudsman may not investigate and authorize the Ombudsman to ask the highest court of the jurisdiction to determine whether a specific complaint or class of complaints fall under the Act and the Ombudsman's jurisdiction. One Act allows such a matter to be heard in the judge's chambers, preserving confidentiality.

Some jurisdictions prohibit the Ombudsman from acting on a complaint where an administrative appeal process exists until the process has been used and completed.

Principle 25. The Ombudsman maintains confidential any matter related to complaints and investigations including complainants' identities and the records of the Ombudsman's office, except as the Ombudsman deems necessary to discharge the duties created under this Act and to make reports this Act authorizes.

Sample language: The Ombudsman shall maintain confidential any matter related to complaints and investigations, including the complainants' identities and investigative records of the Ombudsman's office, except as the Ombudsman deems necessary to discharge the duties created under this Act and to make reports this Act authorizes.

The Ombudsman may create a public summary of closed complaints received and how they have been resolved, investigated or declined. This summary may be maintained by the

office in a computer system and made available by the Ombudsman to assist in the management of government programs, respond to inquiries about the performance of government agencies, and educate and inform the public about the activities and performance of the Ombudsman. A summary prepared and distributed under this section may not disclose the name or other personal information about the complainant.

Ombudsman records of complaints and investigations are not subject to any Act or law concerning government records, retention schedules or archiving of government documents. The Ombudsman may set policy to govern the retention of case files and other office records.

Commentary: Confidentiality encourages confidence in the Ombudsman by complainants who fear retaliation or retribution if they complain. A public record of closed complaints that does not identify the complainants makes the office more transparent and accountable and helps the public understand what complaints the office receives and how they are resolved or investigated.

Principle 26. The Ombudsman may adopt rules, regulations, policies or procedures to govern the activities of the office.

Sample language: The Ombudsman may adopt, promulgate, amend and rescind rules and regulations required for the discharge of the Ombudsman's duties, including procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations.

Commentary: Legislation cannot cover everything and the Ombudsman needs to write rules and regulations for the operation of offices. In addition, the Ombudsman may create a policies and procedures manual detailing how the office operates.

Principle 27. The Ombudsman may not charge a fee for the services of the office.

Sample language: The Ombudsman may not charge a fee to receive or investigate complaints or to exercise or not exercise any of the Ombudsman's powers and responsibilities.

Commentary: The provision is especially important where fees would discriminate against the poor and where bribes are demanded by government employees to perform services.

Principle 28. The Act sets out the Ombudsman's responsibilities to complainants and agencies when the Ombudsman decides not to investigate a complaint.

Sample language: If the Ombudsman decides not to investigate, or to cease to investigate, a complaint, the Ombudsman shall inform the complainant of that decision and state the reasons. If the Ombudsman decides not to investigate a complaint, the Ombudsman may notify the agency of the decision. Notice given under this section may be oral but the Ombudsman shall state in writing the reasons for not investigating a complaint if requested by the complainant.

Commentary: The Ombudsman informs complainants if complaints are not going to be investigated. Some variation exists in whether Ombudsmen must inform agencies of a decision not to investigate. This provision leaves that to the Ombudsman's discretion. Some acts require the Ombudsman to notify the agency. Decisions not to investigate are often communicated orally to complainants. This instructs the Ombudsman to state the reasons in writing if the complainant requests.

Principle 29. Communications between the Ombudsman and persons who reside in agency dwellings or are in custody are confidential.

Sample language: A letter to the Ombudsman from a person who resides in an agency dwelling or is in custody, including by detention, incarceration or hospitalization, shall be forwarded immediately, unopened and unread, to the Ombudsman. A letter from the Ombudsman to such a person shall be delivered immediately, unopened and unread, to the person. Telephone calls between such persons and the Ombudsman are confidential. Communications between the Ombudsman and such persons are not covered by or counted under any restrictions on the right to send letters or other documents.

Principle 30. The Ombudsman may see anyone held in custody at any time without stating a reason and without being required to gain anyone's permission.

Sample language: The Ombudsman or any staff to whom this duty has been delegated may see and talk with any person held in custody, including by detention, incarceration and hospitalization, at any time without the presence of agency personnel, without stating a reason and without being required to gain anyone's permission.

Commentary: Ombudsmen and investigative staff may need to see persons in agency custody to determine their health, state of mind, etc. If requested, agency staff should be present or available if needed for security purposes.

Principle 31. The Ombudsman refers criminal and disciplinary matters to appropriate authorities.

Sample language: If the Ombudsman believes any agency official or employee has acted in a way that warrants criminal or disciplinary actions, the Ombudsman may refer the matter to the appropriate authorities.

Commentary: The Ombudsman is not an official who prosecutes criminal behavior or imposes disciplinary sanctions. Those acts should be performed by the appropriate authorities. Provisions of this sort are rarely used, but they instruct the Ombudsman what to do in such situations. This duty to report is directed at government employees and officials, not private persons. Private persons in trouble with the law should be able to seek assistance from the Ombudsman without fear that the Ombudsman will report them.

Investigations

Principle 32. The Ombudsman notifies the agency of the intention to conduct an investigation. The Ombudsman has the discretion to determine the form and timing of the notification.

Sample language: If after making preliminary inquiries the Ombudsman decides to investigate a complaint, the Ombudsman shall suitably notify the agency involved of the decision unless the Ombudsman reasonably believes that advance notice will unduly hinder the investigation or make it ineffectual. The Ombudsman may inform the agency orally or in writing. The Ombudsman shall also inform the complainant if the investigation results from a complaint.

Commentary: Notice in some jurisdictions is a formality because an investigation cannot be conducted without contacting the agency. Other jurisdictions are more formal about notice. This provision permits informal preliminary inquiries, under which the vast majority of

complaints in some offices are handled or resolved, without requiring formal notice. Notice in some circumstances would hinder an investigation, and the Ombudsman has the sole discretion in determining those cases. Some acts specify by position a number of different people in an agency who must be informed when an agency is notified that the Ombudsman will conduct an investigation. No Act restricts the person notified of an investigation from informing others in the agency of the pending investigation.

Principle 33. Investigations are conducted in private, subject to a provision allowing the Ombudsman to hold public hearings and make necessary disclosures.

Sample language: Investigations under this Act shall be conducted in private unless the Ombudsman considers that because of special circumstances public knowledge is essential to further the investigation. No person is entitled as of right to be heard by the Ombudsman, except for a person who is the subject of a critical report. Notwithstanding this and other sections, the Ombudsman may disclose or authorize a member of the staff to disclose a matter that, in the Ombudsman's opinion, is necessary to further an investigation, prosecute an offense under this Act, or establish grounds for conclusions, findings or recommendations made in a report under this Act.

Commentary: Most investigations are conducted without public notice that an investigation is under way. Some Ombudsmen have found that public hearings may be useful in investigating systemic issues. The Ombudsman may need to make disclosures to further investigations, prosecute offenses and create the basis for findings and recommendations.

Principle 34. The Ombudsman has access to all records, public or confidential, of any agency under the office's jurisdiction but may not disclose confidential records.

Sample language: The Ombudsman shall have access to, and be able to examine and copy without payment of a fee, agency records including records which are confidential by jurisdiction law. No provision of any act of (the legislative body) requiring a person to maintain secret or not to disclose information relating to any matter shall apply to an investigation by the Ombudsman. No person required by the Ombudsman to furnish information or produce any document, paper or thing summoned [Alternate: demanded or subpoenaed] by the Ombudsman to give evidence, shall refuse to furnish the information, document, paper or thing or to answer questions on the ground of any such provision. The Ombudsman shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.

Alternate additional language: Where any provision of an act prohibits or restricts, or authorizes or requires a prohibition or restriction on the communication of information, that provision does not apply to disclosure or communication of information that will prevent or restrict the making of a complaint to or the carrying out of an investigation by the Ombudsman.

Alternate additional language: Where the Attorney General certifies in writing to the Ombudsman that disclosure of information concerning a specified matter or the contents of a specified record would be contrary to the public interest because the information or record contains or relates to a deliberation or decision of the Cabinet of Ministers or one of its committees or would prejudice an open investigation of a crime or other offense or is a matter of national security, the Ombudsman may not require a person to give information or disclose

records pertaining to the matter certified by the Attorney General. The giving of such a certificate by the Attorney General shall be reported to (the legislative body) of (the jurisdiction) no later than in the Ombudsman's next annual report to (the legislative body).

Commentary: Every legislative act examined to prepare this reference document gives the Ombudsman access to all public records. Access to confidential records is treated in different ways. Some acts specify information the Ombudsman may not see. Some acts give access to all confidential records providing the Ombudsman may not disclose a confidential record. Some acts specify that witnesses may not be compelled to give evidence or produce documents for the Ombudsman if they could not be so compelled in court. Other acts give the Ombudsman access to all confidential records and allow the Ombudsman to exercise discretion about disclosing their contents to further the purposes of the Act and an investigation and provide a basis for recommendations. Some acts allow a Minister or Attorney General to certify that records or information sought concern acts or advice to the Cabinet of Ministers or a matter of national security, defense or international relations among others. Such certification blocks the Ombudsman's right to the information or testimony. The ability to examine confidential materials is key to some investigations. Access to this information may be the only way for a complainant to have an independent, impartial third party determine whether agency actions complied with law. When certifications are allowed, the Ombudsman should report them to the legislative body no later than the Ombudsman's next annual report.

Principle 35. Records are defined and any limits on records being accessible to the Ombudsman or information the Ombudsman may not have are set out in the Act.

Sample language: As used in this Act, "record" means all records, documents, books, papers, files, photographs, microfilms, sound recordings, video recordings, magnetic storage media, computer data and all other materials, regardless of physical form or characteristics, created, generated, recorded, received, possessed or controlled by or on behalf of any agency but does not include (specify material to which the Ombudsman may not have access).

Commentary: Restrictions on what can be withheld from an Ombudsman vary. One act, for example, excludes: "an attorney's work product, material that is confidential as a privileged communication between an attorney and client under rules adopted by the supreme court, or confidential oil and gas geological and geophysical data." The extent to which statutory or common law privileges or jurisdictional immunities may apply to the Ombudsman's work should be analyzed in each jurisdiction. Some acts provide that the jurisdiction's Attorney General may certify that the giving of information may involve disclosure of information injurious to the public interest, national security or defense. Other acts restrict access by the Ombudsman to confidential proceedings of Cabinet or any of its committees. Such certifications should be reported to the legislative body no later than the Ombudsman's next annual report.

Principle 36. In some jurisdictions, statements and testimony to the Ombudsman may not be used in any other proceedings.

Sample language: Except in a trial of a person for perjury or for an offense under this Act, no statement made or answer given by that or any other person in the course of an inquiry or by any proceeding before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

Commentary: The Ombudsman does not gather evidence for use in other proceedings but to make determinations on complaints and formulate recommendations.

Principle 37. The Ombudsman may enter and inspect agency premises.

Sample language: The Ombudsman may at any reasonable time enter, remain on and inspect all of the premises of any agency without prior notice, converse in private with any person there and otherwise investigate matters within the Ombudsman's jurisdiction.

Commentary: Advance notice may negate the effects of a visit. Information gathered by the Ombudsman on inspections may raise issues for Ombudsman-initiated investigations.

Principle 38. The Ombudsman may summon, subpoena or compel production of any records and the presence of any person to give testimony under oath that is related to the investigation.

Sample language: The Ombudsman may summon, subpoena or compel production of documentary or other evidence reasonably relevant to the matters under investigation. The Ombudsman and members of the staff to whom the power has been delegated may administer oaths. A person under oath who provides oral or documentary information under this provision shall be accorded the same privileges and immunities extended to witnesses in the courts of this jurisdiction and shall also be entitled to be accompanied and advised by counsel while being questioned.⁴ If a person refuses to comply with the summons or subpoena, the Ombudsman may seek enforcement in (the appropriate court of the jurisdiction).

With the exception of government officials and employees, witnesses are entitled to the same fees and travel allowances paid witnesses in the jurisdiction's courts. The Ombudsman may choose to disallow in whole or in part payment of any amounts under this section.

Where a person incurs expenses in complying with a request of the Ombudsman for documents or other information, the Ombudsman may at the Ombudsman's discretion reimburse that person for reasonable expenses incurred that are not covered by witness fees or travel allowances.

Alternate additional language: Any document sent to the Ombudsman or the staff or by the Ombudsman or the staff under this Act that was prepared specifically for the purposes of an investigation shall be privileged and not admissible in evidence in any proceedings other than proceedings for perjury or any offense under this Act alleged to have been committed in any proceedings of an investigation.

Commentary: The Ombudsman can compel any person to provide documentary, testimonial or other evidence under whatever is the jurisdiction's legal instrument to compel testimony or production of evidence. The Ombudsman and staff may administer oaths or affirmations. Persons summoned have the same protections and privileges as court witnesses. In several jurisdictions, the Ombudsman may summon persons to court to give testimony in a closed proceeding where the person who is the subject of the complaint may be present with counsel.

⁴ While most Ombudsman acts do not contain any provisions relating to the right to be represented before the Ombudsman, some do. The provisions vary. Some allow the Ombudsman to decide, some prohibit representation, others permit it. Many acts give witnesses the rights they would have in courts, as provided in Principle 39, which include the right to counsel.

The Commonwealth of Australia Ombudsman Act has provisions that prevent persons from being excused from furnishing information on the ground that to do so would violate other laws, tend to incriminate the person or make the person liable for a penalty, disclose legal advice or be otherwise contrary to the public interest. Since those are not reasons to be excused, the product of those inquiries or the production of evidence is not admissible as evidence against the person except in two instances named in the act.⁵

Principle 39. A complainant has the right to know why the Ombudsman believes a complaint lacks legal or factual substance and to have the opportunity to make submissions.

Sample language: Before the Ombudsman determines that a complaint is not supported, a complainant has the right to know from the Ombudsman why the complaint lacks legal or factual substance and have the opportunity to make submissions to the Ombudsman.

Commentary: The Ombudsman should observe the same administrative fairness expected of agencies. Having the opportunity to know that the complaint lacks legal or factual substance permits the complainant to make whatever submissions might allow another determination.

Principle 40. The Ombudsman sets the procedures for investigations.

Sample language: Subject to this Act, the Ombudsman may regulate the procedures on an investigation in such manner as the Ombudsman sees fit. The Ombudsman, in the Ombudsman's sole discretion, determines whether a complaint has been properly submitted.

Reports

Principle 41. After an investigation, the Ombudsman will issue a report to any agency where the Ombudsman believes additional actions are needed with a finding on the complaint and any recommendations. The Ombudsman may set a date for a response to the report and its recommendations.

Sample language: If, after investigation, the Ombudsman is of the opinion that an agency should: (1) consider the matter further, (2) modify or cancel an act, (3) alter a regulation, practice or ruling, (4) explain more fully the act in question, (5) rectify an omission, or (6) take any other action, the Ombudsman shall state any conclusion, recommendations and reasons to the agency. If the Ombudsman so requests, the agency shall, within the time specified, inform the Ombudsman about action taken on recommendations or the reasons for not complying with them.

If after considering a response by an agency, the Ombudsman modifies the recommendations of a report, the Ombudsman shall notify the agency of the modified recommendation(s) and may set a new deadline for the agency to inform the Ombudsman about action taken on modified recommendations or the reasons for not complying with them.

Commentary: The Ombudsman's conclusions and recommendations are made in a report to the agency, which must respond within a deadline specified by the Ombudsman.

Principle 42. Before issuing a critical report, the Ombudsman will consult with the agency or person about to be criticized and permit a reasonable time for a reply.

Sample language: Before formally issuing a report critical of or adverse to an agency or

⁵ The Ombudsman Act 1976, Commonwealth of Australia, Section 11A (4), (5), (5A).

person, the Ombudsman will consult with that agency or person and permit a reasonable amount of time for the agency or person to reply. The Ombudsman will provide a full or partial copy of a finding or recommendation to the agency or person. That copy is confidential and may only be released to the public by the Ombudsman. The Ombudsman will summarize or print in its entirety any reply by the agency or person in any report the Ombudsman makes of the investigation.

Alternate additional language: In cases where the investigation of a complaint proves to be lengthy, the Ombudsman may submit an interim report recommending corrective action which the Ombudsman believes is necessary before completion of the investigation and the submission of the final report.

Alternate additional language: The Ombudsman may in writing direct any government official or employee not to disclose to any other person any information contained in the document except for the purposes of the investigation to which the document relates. A person to whom such a direction is given shall comply with it. Violation of this provision is an offense under this Act.

Alternate language: Before closing an investigation, the Ombudsman shall report investigative findings to the administrative body concerned in writing and, in appropriate cases, to the public servant whose actions have been the subject of the investigation and to the person who made the complaint if the investigation was not begun on the Ombudsman's own motion.

Commentary: The sample language protects anyone being criticized by the Ombudsman. It covers private persons as well as agency employees and officials. Some acts limit the length of a reply and require the Ombudsman to print it in its entirety. While some acts specifically allow responses by counsel, Ombudsmen should allow that. Some acts specifically allow Ministers to request consultations prior to the Ombudsman formulating a final opinion in a complaint and require the Ombudsman to honor such a request.

The additional language allows the Ombudsman to instruct government officials and employees to keep documents confidential providing another method to allow the Ombudsman to use confidential documents in an investigation and preserve their confidentiality.

The alternate language instructs the Ombudsman to make a preliminary report available to an agency, public servant and complainant before closing the investigation. A final report would then also be sent to all three and would contain any response from the agency and/or others criticized. Confidential material that may have been included in any earlier preliminary reports would be removed.

Principle 43. The Ombudsman reports the results of an investigation to the complainant.

Sample language: The Ombudsman may report from time to time to the complainant on the progress of an investigation and whenever requested by the complainant. The Ombudsman shall report the results of an investigation to the complainant. The report to the complainant shall contain any responses from the agency under this Act but shall not contain any information the agency or Ombudsman are required to keep confidential. The Ombudsman may make comments to the complainant on the investigation and its consequences as the Ombudsman deems appropriate.

Commentary: When an investigation results from a complaint, the Ombudsman keeps the

complainant informed of the investigation's progress and reports on its results. While the Ombudsman and staff have access to confidential materials under the Act, they may not disclose them unless the laws governing the materials or the provisions of the Act allow for disclosure.

Principle 44. The Ombudsman may make a report, findings and/or recommendations to the legislative body, the executive, the public or any other appropriate authority.

Sample language: Within a reasonable amount of time after the Ombudsman reports the opinion and recommendations to an agency the Ombudsman may present the opinion and recommendations to the executive, (the legislative body), (an official or authority capable of issuing an indictment or making a criminal charge), the public or any of these. The Ombudsman shall include with the opinion any reply made by the agency. The Ombudsman may make a special report to (the legislative body) if any agency persists in obstructing an investigation or refuses to follow the Ombudsman's recommendations and may also include that information in the Ombudsman's annual report.

Commentary: Making reports is one way Ombudsmen seek better administration. Reports should include any replies made under this Act.

Principle 45. The Ombudsman may make recommendations to change laws to any agency and/or to the legislative body.

Sample language: If the Ombudsman believes that an action has been dictated by laws whose results are unfair or otherwise objectionable and could be revised by legislative action, the Ombudsman shall notify (the legislative body) and the agency of desirable statutory changes.

Commentary: The Ombudsman can recommend changes where existing law was followed and yielded unjust, unfair or unreasonable results.

Principle 46. The Ombudsman will report annually and may also report periodically about the office's activities.

Sample language: The Ombudsman will report annually and may also report periodically about the office's activities to (the legislative body). The Ombudsman also has the discretion to make reports or send copies of reports to (the legislative body) to the executive, legislative members and/or committees and commissions, the public and agencies. The Ombudsman shall, at least once yearly, issue a summary report to the chief executive officer of each agency under the Ombudsman's jurisdiction stating the number of complaints involving the agency or a person employed by the agency during the period covered by the report and the nature and outcome of each complaint. These reports are public records and shall not contain the names or any other identifying material about the complainants or any other confidential information.

Commentary: The Ombudsman's final remedy for correcting flawed practices when agencies refuse to implement recommendations is to publish criticism and recommendations. Reporting on each complaint to the agencies at least once a year will provide the agency's chief executive officer with management information to improve agency services and functions.

Privileges, immunities, protections and penalties

Principle 47. The findings, conclusions, recommendations or reports of the Ombudsman or a member of the Ombudsman's staff are not reviewable by any court. Courts may not review acts of the Ombudsman except to determine the Ombudsman's jurisdiction.

Sample language: No substantive content of any finding, conclusion, determination, recommendation or report of the Ombudsman or member of the Ombudsman's staff shall be challenged, reviewed, quashed or called into question in any court. No proceeding, decision or action of the Ombudsman may be reviewed in any court except whether the Ombudsman has jurisdiction over an agency or complaint.⁶

Commentary: Because the Ombudsman has no enforcement power and reports are expressions of opinion, no basis exists for judicial review of the Ombudsman's work except whether the Ombudsman has jurisdiction over an agency.

Principle 48. The Ombudsman and persons acting under the Ombudsman's direction or authority are immune from civil and criminal proceedings for any act performed in good faith under this Act. Ombudsman reports and proceedings are privileged.

Sample language: The Ombudsman and any person acting under the authority of the Ombudsman are immune from proceedings for anything they may in good faith do, report or say in the course of the exercise or purported exercise of their duties under this Act.

For the purposes of any law governing libel or slander, anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the Ombudsman under this Act are privileged as if they took place in court. A report made by the Ombudsman and a fair and accurate account of the report published or broadcast is privileged as if it were a court order.

Alternative 1: The Ombudsman and persons acting under the Ombudsman's direction or authority have the same immunities from civil and criminal liabilities as a judge of this jurisdiction.

Alternative 2: No proceedings lie against the Ombudsman or against any person acting under the Ombudsman's direction or authority for anything they may do or report or say in the course of the exercise or performance or intended exercise or performance of their functions and duties under this Act, unless it is shown they acted in bad faith.

Commentary: These immunities protect the Ombudsman, staff and anyone else acting under the Ombudsman's direction or authority from harassment when dealing with controversial issues or making a finding seen as favorable to an unpopular position and from any consequences in a libel or slander suit.

In some jurisdictions, Ombudsman acts are defined as official acts making the provision on libel and slander unnecessary.

Principle 49. The Ombudsman, staff and former staff shall not be compelled to testify or produce evidence.

Sample language: The Ombudsman, Deputy Ombudsman, staff and any person engaged by the Ombudsman to assist in any inquiry or investigation and any former Ombudsmen, Deputy Ombudsmen, staff and any person formerly engaged by the Ombudsman to assist in any inquiry or investigation shall not be compelled to testify or produce evidence about their activities in the

⁶ A number of Ombudsman acts give the Ombudsman the power to apply to the Supreme Court or Constitutional Court to determine the constitutionality of laws or acts. Most acts allow the courts or specific courts to determine whether a specific complaint is within the Ombudsman's jurisdiction.

Ombudsman's office or in any investigation in any judicial, quasi-judicial or administrative proceeding except as may be necessary to enforce this Act or pursue penalties for any offense.

Commentary: This protects confidentiality of complainants and Ombudsman records, prevents the Ombudsman and current and former staff from being used as tools of discovery and saves the Ombudsman and current and former staff from spending much time in court.

Principle 50. Interfering with the Ombudsman's work is an offense.

Sample language: Anyone who willfully obstructs, hinders, resists, misleads or attempts to mislead the Ombudsman or staff shall be guilty of an offense with a specific penalty that may include a jail sentence.

Alternate approach: Any person who: (a) without lawful justification or excuse willfully obstructs, hinders or resists the Ombudsman or any other person in the exercise or performance of powers, duties and functions under this Act; (b) without lawful justification or excuse, refuses or willfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; (c) willfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise or performance of powers, duties and functions under this Act; is guilty of an offense and liable on summary conviction to a fine not exceeding (amount) or to imprisonment for a term not exceeding (number) months or both fine and imprisonment.

Commentary: Since fines for offenses vary and may be subject to change, it is better to refer to an offense with penalties specified in another law so that changes do not require this section to be changed each time. Some acts have penalties ranging as high as \$2,000 or 12 months in jail or both for the most serious offenses.

Principle 51. No persons shall falsely represent themselves to be the Ombudsman or members of the office staff.

Sample Language: No persons shall represent that they are the Ombudsman, Deputy Ombudsman, Acting Ombudsman, a special officer or member of the Ombudsman's staff unless they have been appointed to that position. Someone who falsely claims to hold one of these positions shall be guilty of an offense with a specific penalty that may include a jail sentence. For purposes of this section, persons represent that they hold one of these positions if they do or say anything, or cause, permit or suffer anything to be done or said where it is represented or where a belief may be created that the person holds one of these offices.

Commentary: Because of access the Ombudsman and staff have to government officials, employees and records, falsely claiming to be the Ombudsman or a member of the staff is an offense punishable by the courts.

Principle 52. No person who files a complaint or participates in any way in an Ombudsman investigation shall be subject to reprisals or denied any rights, privileges or benefits because of such action.

Principle 53. Anyone who subjects complainants to reprisals or denies them any rights, privileges or benefits shall be guilty of an offense with a specific penalty that may include a jail sentence.

Commentary: These principles allow the Ombudsman to protect complainants and

witnesses in investigations from adverse action. These provisions offer better protection than so-called whistleblower acts because the Ombudsman seeks enforcement and under whistleblower protection the whistleblower has to hire a lawyer and sue to obtain the protection.

Principle 54. Anyone who complies with a requirement of the Ombudsman is immune from prosecution for an offense in the production of any information, document or thing.

Sample language: No person is guilty of an offense against any other act of (the legislative body) by reason of compliance with any request or requirement of the Ombudsman to furnish information or produce any document, paper or thing, or by answering any question of the Ombudsman or staff.

Commentary: This provision protects government employees who comply with requirements of the Ombudsman from prosecution under other acts.

Miscellaneous provisions

Principle 55. An Act creating an Ombudsman with jurisdiction over complaints about human rights violations contains provisions enabling the Ombudsman to promote and protect human rights.

Sample language: The Ombudsman shall:

1. Promote and protect human rights and guarantees established in the Constitution and laws of the jurisdiction, all treaties, conventions and covenants ratified or acceded to by the jurisdiction, the Universal Declaration of Human Rights and any other internationally recognized treaties, conventions, covenants or human rights documents.

2. Propose policy for the jurisdiction relating to the observance and defense of human rights and establish coordination mechanisms to ensure the adequate implementation of that policy.

3. Promote an awareness, understanding and public discussion of human rights in the jurisdiction.

4. Review laws and draft laws to determine whether they are inconsistent with or contrary to any human right and report on that examination to (the legislative body), any of its commissions or any other body working on draft legislation.

5. Report to the President, Prime Minister, (the legislative body), any of the legislative body's commissions, any government Minister or agency head or any judge or justice of any court in (the jurisdiction) about:

(a) laws that should be passed by (the legislative body) or action that should be taken by (the jurisdiction) or any part of its government or court system on matters relating to human rights in (the jurisdiction), including advising the government which additional international human rights instruments should be signed, ratified or acceded to by the jurisdiction;

(b) any action the Ombudsman believes needs to be taken by (the jurisdiction) or any part of its government or court system to comply with the provisions of the Covenant or of the Declarations of any relevant international human rights instrument.

6. Appear before any commission of (the legislative body) or any working group drafting proposed legislation that may have an effect upon human rights in the jurisdiction to discuss the

effect of such legislation on human rights and make any recommendations as the Ombudsman sees fit to further the promotion and protection of human rights in the jurisdiction.

7. Conduct research, educational programs and other programs to promote human rights in (the jurisdiction) and coordinate any such programs undertaken by any other Ombudsman, agencies or authorities on behalf of (the jurisdiction).

8. Formulate programs and propose actions designed to encourage compliance in (the jurisdiction) with treaties, conventions and international agreements signed by (the jurisdiction) and to prepare and publish in any manner the Ombudsman considers appropriate guidelines for the avoidance of acts or practices that may be inconsistent with or contrary to any human right.

9. Contribute to any report required of the jurisdiction under any international human rights instrument information of the Ombudsman's activities relevant to the instrument and review all such reports for accuracy and completeness.

10. Maintain constant communication to consult with and exchange information with national and international governmental, intergovernmental and non-governmental organizations and bodies for the promotion and protection of human rights.

11. Organize and maintain the Ombudsman's Human Rights Documentation Center.

12. Write and distribute academic programs to teach human rights and the principle of democratic participation in government in coordination with the Ministry of Education at all levels of the jurisdiction's schools.

13. Develop curricula in human rights and the principles of democracy to be taught to future public servants in appropriate schools in the jurisdiction.

14. At the Ombudsman's discretion, the Ombudsman may create an Advisory Council of representatives from any human rights committees or commissions of (the legislative body), any non-governmental organizations that focus specifically on human rights or on the human rights aspects of their constituents, public and private universities. The Advisory Council may help the Ombudsman set policies, design programs and make recommendations about the Ombudsman Office and its functions.

The President, Prime Minister, any government Minister or agency head who receives a report or recommendation from the Ombudsman under this article shall present a report to (the legislative body) within 30 days or at the beginning of the body's next session, whichever comes later, on what actions will be taken in response to the Ombudsman's report or recommendations.

The Ombudsman shall keep a record of all reports and recommendations and the responses to them and publish it in the Ombudsman's annual report.

Commentary: Where the Ombudsman has jurisdiction over complaints about human rights violations, the Ombudsman will have a role in educating the people and their public servants about human rights and what steps need to be taken to promote and protect those rights.

Principle 56. Any agency that contracts with a person or company to provide services to individuals on behalf of the government shall include a clause in the contract requiring the person or company to submit to the Ombudsman's jurisdiction for services under that contract.

Commentary: Since some agencies contract with private individuals or companies to

provide traditionally public services, this brings those private contractors under the Ombudsman's jurisdiction.

Principle 57. The provisions of this Act do not limit or affect any other provisions that provide remedies or rights of appeal. The Ombudsman may act without regard to provisions in other acts that might be interpreted as limiting the Ombudsman's power to act.

Sample language: The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in another Act or law to the effect that (a) a decision, recommendation or act is final; (b) no appeal lies in respect of the Act; or (c) no proceeding or decision of the agency whose decision, recommendation or act it is shall be challenged, reviewed, quashed or called into question. This Act does not extend any time limits in which appeals or judicial review of agency action must be sought.

Commentary: The Ombudsman must be able to inquire and investigate all acts of all agencies under the office's jurisdiction. Any provisions to the contrary have no force. Some jurisdictions have statutes of limitation to set limits on when administrative remedies or appeals can be sought or law suits filed. Because the Ombudsman has no power to issue binding rulings, filing a complaint-with the Ombudsman should not extend those limits.

Principle 58. The Ombudsman's powers are not limited by the finality or appealability of any act.

Sample language: The Ombudsman may exercise the powers conferred by this Act regardless of the finality or appealability of any administrative act or violation of human rights. The Ombudsman may review acts that are considered final and not reviewable elsewhere.

Commentary: Ombudsmen normally expect complainants to exhaust administrative remedies before they investigate complaints. Otherwise they would become the first line of appeal. However, on occasion the Ombudsman will receive complaints that need to be examined without waiting for the act to become final. Additionally, the Ombudsman is able to review acts that can no longer be reviewed in an appeal process or in the courts. In this sense, the Ombudsman is the last line of appeal.

Principle 59. The Office of the Ombudsman shall be funded at a level sufficient to carry out the purposes of this Act and shall spend and account for its funds directly to the legislative body.

Sample language: The Office of the Ombudsman shall be funded at a level sufficient to carry out the purposes of this Act. The Ombudsman may spend and account for the office funds directly to (the legislative body). The (name of the government agency) shall provide the Ombudsman with such offices, equipment and supplies as are necessary for the efficient operation of the Ombudsman's office. The Ombudsman may establish and staff an appropriate number of regional offices according to the population distribution and complaints received. Regional staff will perform the duties and functions assigned by the Ombudsman. The Ombudsman may make a special report to (the legislative body) if the Ombudsman believes the amounts and establishment provided for the Office of the Ombudsman in the jurisdiction's budget or the staff or services provided are inadequate to fulfill the duties required of the Ombudsman under this Act.

Commentary: The Ombudsman and staff must have sufficient resources to fulfill the

office's functions. The Ombudsman's Office must be able to spend and account for its funds directly to the legislative body. In no event should its funds be controlled by an agency that falls under the Ombudsman's jurisdiction. The Ombudsman should make a report to the legislative body when the resources provided are deemed inadequate or insufficient to perform the duties the law requires.

Notable provisions:

(Note: This is a highly subjective selection of notable provisions from the acts examined. No value judgments were intended by including or excluding provisions. The only meaning intended was that these provisions were unusual and thus noteworthy. Someone else examining all of these acts would likely have added others and not included some found here.)

The Ombudsmen of Austria may apply to the Constitutional Court for a decision on their jurisdiction and to set aside an ordinance as illegal. Decisions on jurisdiction are decided in closed proceedings.

The Commissioner for Civil Rights Protection of Poland may apply to the Constitutional Court for binding interpretations of statutes and the Supreme Court for explanations of vague legal provisions or applications of law causing discrepancies in judicial provisions.

The Ombudsman of the Seychelles may initiate proceedings relating to the constitutionality of a law or the provisions of a law.

The Ombudsman of Vorarlberg must be elected by a three-fourths vote.

The Ombudsman of the Province of New Brunswick has a term of 10 years and is eligible for reappointment. The Ombudsman also has responsibilities under the province's Right to Information Act.

Under legislation that was later repealed, the Ombudsman of the Province of Newfoundland had a term of 10 years and was eligible for reappointment.

The Ombudsman of the Yukon is also the Information and Privacy Commissioner under the Access to Information and Protection of Privacy Act of that territory.

The Ombudsman of Denmark has jurisdiction over the military and the Established Church. (The Ombudsman does not have jurisdiction in matters that directly or indirectly involve the Church's tenets or doctrines.)

Ombudsmen in the following countries have jurisdiction over corruption in government or of government employees or officials: Ghana; India's States of Andhra Pradesh, Assam, Bihar, Gujarat, Himchal Pradesh, Karnataka, Maharashtra, Rajasthan, Uttar Pradesh; Mauritius; Namibia; Papua New Guinea; Philippines; South Africa; Sudan; Taiwan; Trinidad and Tobago; Vanuatu.

The Ombudsman of Finland has jurisdiction over judges and is responsible for seeing that judges as well as public officials uphold the laws and regulations.

The Commissioner for Human Rights and Administrative Justice in Ghana may take matters to court to seek remedies to enforce recommendations.

The Ombudsman of Namibia is appointed for a term that ends when the Ombudsman reaches age 65 (and can be extended to age 70 by the President). The Commissioner for Human Rights and Administrative Justice of Ghana is appointed for a term that ends when the Commissioner reaches age 70. The Parliamentary Commissioner for Administration (Ombudsman) of Sri Lanka holds office until reaching age 70. The Parliamentary Commissioner for Administration of the United Kingdom holds office until the end of the year of service in which the Commissioner reaches age 65. The Northern Ireland Commissioner for Complaints holds office until the end of

the year of service in which the Commissioner reaches age 65.

The Commissioner for Administrative Complaints in Hong Kong may continue an investigation notwithstanding that the complainant has withdrawn the complaint.

The Ombudsman of Hungary does not have immunity from slander, libel or civil law proceedings. (Section 12 of the act is one of the most detailed on suspension of the Ombudsman's immunity.) The Hungarian Ombudsman may also apply to the Constitutional Court to determine constitutionality of law, whether it violates international agreements and other interpretations of the constitution.

The Model Lokayukta Act of India gives the Lokayukta the discretion to grant or refuse permission to the complainant to withdraw the complaint. Under the Model Act, a person who falsely alleges that a complaint has been made under the Act against a public functionary is guilty of an offense. Every proceeding before a Lokayukta under the Model Act is a judicial one under Indian Law. The Lokayukta has the power under certain circumstances to try certain offenses under the Act summarily and impose fines up to 5,000 rupees or jail sentences up to six months or both. A person who makes a false, frivolous or vexatious complaint under the Act can be punished with imprisonment up to a year, a fine or both.

The Lokayuktas and Upa-Lokayuktas of India are generally entitled to an official, furnished residence without rent. Their laws also generally prevent examination of corruption complaints made after more than three to six years after the event being complained about took place. Some of them may punish for contempt and may try offenses summarily. Their laws generally provide a mechanism for the government to confer additional responsibilities and direct them to conduct investigations. They may also bring prosecutions for false complaints, which on conviction can result in imprisonment, fines or both. They generally may not hold public employment after leaving office.

The Andhra Pradesh Lokayukta Act 1983 contains a schedule of record retention.

The Gujarat Lokayukta Act 1986 requires a complainant to make a deposit of 1,000 rupees which can be: forfeit to the state if the complaint is not investigated or discontinued because the complaint is frivolous, vexatious, no sufficient grounds to investigate exist or other more appropriate remedies exist; used to compensate the public functionary complained against at the discretion of the Lokayukta; or refunded to the complainant. The Lokayukta can exempt a complainant from paying the deposit for sufficient cause.

Laws establishing Ombudsmen in the following jurisdictions specifically give the Ombudsman some type of jurisdiction over the environment: Difensore Civico of the Province of Trent, Italy; Lesotho; Malawi; Namibia.

The Ombudsman of Jamaica is not eligible for appointment to the public service after ceasing to hold the office of Ombudsman. The Jamaica Ombudsman is required to keep a register that includes the name of the complainant, subject matter of the complaint and the Ombudsman's decision. Complaints from prisoners are not to be recorded on the register. Any person may inspect the register after paying prescribed fees during business hours.

The Mohtasib of Pakistan may award reasonable compensation to an agency, public servant or other functionary against whom a complaint was made if he finds a complaint false, frivolous or vexatious. The compensation is recoverable from the complainant as an arrear of land revenue.

Similarly, the Mohtasib may do the same against a public servant, other functionary or agency.

The Tanodbayan of the Philippines has the power .to investigate criminal complaints against public officers and employees, file appropriate criminal charges with the Sandiganbayan, a special court, and prosecute the charges.

The Provedor de Justicia of Portugal is a member of that country's Council of State. The Provedor may also ask the Constitutional Court to pass on the constitutionality or legality of rules made by public entities.

No one who has held the office of Parliamentary Commissioner for Administration (Ombudsman) of Sri Lanka can be a public officer afterwards without the written consent of the country's president.

The Ombudsmen of Sweden have the duty to ensure that courts of law and administrative authorities observe constitutional provisions concerning objectivity and impartiality and do not encroach on fundamental rights and freedoms. The Ombudsmen also act in the role of special prosecutor to prosecute officials who have committed an offense by departing from their official obligations. (While this power still exists, the Chief Ombudsman of Sweden reports it has not been used in quite some time.) The Ombudsmen report people who are authorized or entitled to practice a profession in health and medical care, dental care, retail sale of medicine or as veterinarians and have shown great negligence or otherwise shown they are apparently unfit to perform the profession to the official who has the right to repeal their authorizations to practice. Most documents, including complaints and investigative decisions, in the office of the Swedish Ombudsmen are open to the public.

The Control Yuan of the Republic of China (Taiwan) has the responsibility under the Constitution to propose impeachment of public officials, including the President, Vice President and judges, among other officials.

A number of Ombudsman Acts prohibit the Ombudsman from identifying anyone who has been the subject of an Ombudsman investigation.

The Parliamentary Commissioner of the United Kingdom may investigate complaints that are made to a member of the House of Commons which are then referred to the Commissioner with permission of the complainant.

In the State of Alaska, the executive may veto the selection of the Ombudsman and the legislative branch may override the veto. A provision that allows for this would read:

Sample language: The executive may veto the appointment and return it, with a statement of objections, to (the legislative body). Upon receipt of a veto (the legislative body) shall meet immediately and reconsider approval of the vetoed appointment. The vetoed appointment becomes effective by an affirmative vote of two-thirds of the members of (the legislative body). The vote on the appointment and on reconsideration of a vetoed appointment shall be publicly recorded.

Commentary: Many jurisdictions do not allow an executive veto. It reduces the likelihood of selecting a candidate with a political agenda. But the legislative body can override the veto with the same majority needed to select the Ombudsman. So the legislative body and the executive are both more likely to select as Ombudsman someone widely recognized as an excellent candidate.

A petition signed by qualified voters of Guam equal to 10 percent of the number of votes cast in the last election where a governor was elected may initiate the process for removal of the Suruhanu (Ombudsman). A two-thirds vote of the legislature is required to remove the Suruhanu. The Suruhanu's salary is established by a majority vote of the Legislature at the time of election. The Suruhanu may not initiate an investigation without a complaint. The Suruhanu may retain legal counsel to bring suit to enforce the law creating the office.

The Hawaii Ombudsman may enter without notice to inspect the premises of an agency.

Reports of the Ombudsman of Vanuatu are public unless the Ombudsman decides to keep all or part of the report confidential to the President. The complainant is to be informed of the results of the investigation.

Legislation Reviewed for Ombudsman Legislative Resource Document

Model Acts:

Canada: The Annotated Ombudsman Act, an annotated collection of the statutes of Canadian provinces that have had ombudsmen beginning in 1967 with Alberta and New Brunswick, was edited by Michael Zacks and Elaine Buckstein with contributions from Charles Ferris, Mary Marshall, Gordon Mayer, Jacques Meunier, Brent Parfitt and Michael Zacks.

India: The Model Lok Ayukta Bill, The Implementation Committee, Third All-India Lok Auktas Conference, Hyderabad, 1991.

United States: American Bar Association: Model Ombudsman Statutes for State Governments, American Bar Association Resolution on the Ombudsman.

United States: Annotated Model Ombudsman Statute, Walter Gellhorn.

United States: A State Statute to Create The Office of Ombudsman, Harvard Journal on Legislation.

United States: The USOA Model Ombudsman Act is an updating of the American Bar Association Model Ombudsman Statute for State Governments published in February 1974 by the Ombudsman Committee of the Administrative Law Section of the American Bar Association under the chairmanship of Bernard Frank. The original model statute was the joint work product of the committee and Yale Legislative Services. The committee that updated the work is chaired by Ruth Cooperrider, legal counsel, State of Iowa Ombudsman (Internet e-mail address: rcooper@legis.state.ia.us) and its members are: Michael Hostina, former Deputy Ombudsman, State of Alaska Ombudsman (103131.2720@compuserve.com); Marshall Lux, Ombudsman, State of Nebraska (Marshall_Lux@Unicam3.Lcs.State.NE.US); and Yen Lew, Ombudsman, State of Hawaii (ombuds@aloha.net).

Legislation:

Antigua and Barbuda: Antigua and Barbuda Constitution, Section 66; The Ombudsman Act, No, 5 of 1994.

Argentina: National Constitution, ss. 86 and 43; Act 24-284 Regulating the office of the National Ombudsman (1993).

Australia, Commonwealth of: Ombudsman Act 1976 (Reprinted as at 31 October 1992), Complaints (Australian Federal Police) Act 1981 (Reprinted as at 31 December 1990).

Australia, New South Wales: Ombudsman Act, 1974, No. 68 (Certified 18th May, 1977) and as amended by Act. 81, 1978.

Australia, Northern Territory: Ombudsman (Northern Territory) Act, 1974. As in

force at 10 September, 1980, and as amended by the Ombudsman (Northern Territory) Amendment Act, 1981.

Australia, Queensland: Parliamentary Commissioner Act 1974-1990.

Australia, South Australia: Ombudsman Act, 1972; Ombudsman Act Amendment Act, 1974.

Australia, Tasmania: Ombudsman Act 1978. **Australia, Victoria:** Ombudsman Act 1973.

Australia, Western Australia: Parliamentary Commissioner Act 1971, Reprinted as at 21 October 1992.

Austria, Republic of: Austrian Federal Constitution, Chapter Seven, Article 148, sections a-j; Federal Law on the Austrian Ombudsman Board (Volksanwaltschaftsgesetz/ Ombudsman Board Act 1982).

Austria, State of Vorarlberg: Constitution of Land Vorarlberg, 31 May 1984, Articles 57-59; Law on the Landesvolksanwalt, 31 May 1985; Amendment to the Law on the Landesvolksanwalt, 10 March 1987.

Barbados: Ombudsman Act, 1980.

Belgium, Région wallonne: Décret portant création de l'institution de médiateur de la Région wallonne, 22 December 1994; L'Institution de Médiateur de la Région wallonne, Règlement d'ordre intérieur fixant les modalités de traitement des réclamations, 5 July 1995.

Belize: Ombudsman Act, 1993.

Bophuthatswana: Ombudsman Act, 1986.

Bosnia-Herzegovina: Constitution of the Federation of Bosnia and Herzegovina, Section II.B Initial Appointment and Functions of the Ombudsmen; Regulations, 21 January 1995.

Brazil, State of Paraná: Government of the State of Paraná, Executive Order N.º 468.

Canada, Province of Alberta: Ombudsman Act (Revised Statutes of Alberta 1980, Chapter O-7 with amendments in force as of January 1, 1990).

Canada, Province of British Columbia: The Ombudsman Act, R.S.B.C. 1979, C.306.

Canada, Province of Manitoba: The Ombudsman Act, Chapter O45.

Canada, Province of New Brunswick: Ombudsman Act, Chapter O-5.

Canada, Province of Newfoundland: The Parliamentary Commissioner (Ombudsman) Act, Chapter 285, 1970. (Repealed in 1990).

Canada, Province of Nova Scotia: Ombudsman Act, Chapter 3 of the Acts of 1970-71.

Canada, Province of Ontario: Ombudsman Act, Revised Statutes of Ontario, 1990, Chapter O.6.

Canada, Province of Quebec: Public Protector Act (R.S.Q. Chapter P-32).

Canada: Province of Saskatchewan: The Ombudsman and Children's Advocate Act, Chapter O-4.

Canada, Yukon Territory: Ombudsman Act, Statutes of the Yukon, 1995, Chapter 17.

Canada, City of Winnipeg: Ombudsman (S.M. 1989-90, c. 10, Sections 66 to 73).

Canada: Canadian Human Rights Act.

Canada: Official Languages Act, Revised Statutes of Canada, 1985, C. 31 (4th Supplement).

Colombia: Law 24 of 1992, Defensor del Pueblo.

Costa Rica: Law 7319, Defensor de los Habitantes (17 November 1992), Law 7426 (18 July 1994), Decree 22266-J, Reglamento del Defensor de los Habitantes de la República (15 June 1993).

Croatia: Law on the Ombudsman, September 25, 1992.

Cyprus: Commissioner for Administration Laws of 1991 and 1994.

Denmark: The Ombudsman Act, Act No. 642 of 17 September 1986; Directives for the Parliamentary Ombudsman, Directive No. 48 of 9 February 1962.

European Union: Statute of the European Ombudsman, adopted by the European Parliament on 9 March 1994.

Fiji: The Ombudsman Act, 1970.

Finland: Ombudsman: Parliament Act, 1928, Articles 9 and 59; Instructions for the Parliamentary Ombudsman, (adopted December 12, 1919, and December 9, 1971); The Working Regulations of the Office of the Ombudsman (Confirmed September 25, 1973. Amended December 31, 1974).

Finland: Chancellor of Justice: Service Regulations for the Chancellor of Justice of the Council of State. January 1, 1958.

France: Law n° 73-6 of 3rd January 1973 establishing a Mediator of the French Republic supplemented by law n° 76-1211 of 24th December 1976 and by law n° 89-18 of 13th January 1989 and modified by law n° 92-125 of 6th February 1992.

Gambia: Draft Legislation: Public Complaints Commission Act 1993.

Germany: Landtag of Baden-Wuerttemberg: Petitions Committee of the Landtag:

Standing Orders of the Landtag of Baden-Wuerttemberg, 19 April 1972 as amended 12 June 1985.

Germany: Act on the Rights of the Petitions Committee of the Deutscher Bundestag, 19 July 1975; Principles of the Petitions Committee governing the Treatment of Requests and Complaints, 8 March 1989, edited and adopted 20 February 1991, supplemented by a decision taken on 19 June 1991.

Germany: Law on-the Military Ombudsman of the German Bundestag, 16 June 1982.

Ghana: The Commission on Human Rights and Administrative Justice Act, 1993.

Georgia: Public Defender of Georgia, Signed by President Eduard Shevardnadze, 16 May 1996.

Greenland: Landsting Act No. 7 of 13 June 1994 concerning the Landsting Ombudsman.

Guatemala: Ley de la Comisión de los Derechos Humanos del Congreso de la República y del Procurador de los Derechos Humanos (Decretos 54-86 y 32-87 del Congreso de la Republica de Guatemala).

Guyana: Constitution of Guyana, 1980, Chapter V The Executive, Part 2 The Ombudsman, Articles 52 - 56.

Honduras: Ley Orgánica del Comisionado Nacional de los Derechos Humanos, Decreto No. 153-95, 21 de Noviembre de 1995.

Hong Kong: Chapter 397, The Ombudsman Ordinance, 27 December 1996.

Hungary: Act LIX of 1993 On the Ombudsman (Parliamentary Commissioner) of Civil Rights, 1 June 1993.

Iceland: The Althing Parliamentary Commissioner Act, 9 March 1987.

India: State of Andhra Pradesh: The Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 (Act II of 1983) with published rules on Investigations, Competent Authority and Conditions of Service.

India: State of Assam: The Assam Lokayukta and Upa-Lokayukta Act, 1985 (With Amendments); The Assam Lokayukta and Upa-Lokayukta Rules, 1988.

India: State of Bihar: The Bihar Lokayukta Act, 1973 with published rules on Condition, Service, and Investigation.

India: State of Gujarat: The Gujarat Lokayukta Act, 1986 (Gujarat Act No. 31 of 1986).

India: State of Himchal Pradesh: The Himchal Pradesh Lokayukta Act, 1983 (Act 17 of 1983) with published rules on Proceedings, Conditions of Service, work and holidays, and payment of diet and road money to witnesses.

India: State of Karnataka: The Karnataka Lokayukta Act, 1984, & Rules, 1985.

India: State of Kerala: The Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987 as of 1993.

India: State of Madhya Pradesh: The Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981.

India: State of Maharashtra: The Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 and The Rules Issued Thereunder (Corrected up to the 1st August 1994).

India: State of Punjab: The Punjab Lokpal Act, 1995 (Punjab Act No. 9 of 1995).

India: State of Rajasthan: The Rajasthan Lokayukta and Up-Lokayuktas Act, 1973.

India: State of Uttar Pradesh: The Uttar Pradesh Lokayukta and Up-Lokayuktas Act, 1975 (U.P. Act No. 42 of 1975).

Ireland: Ombudsman Act, 1980 (Number 26 of 1980).

Israel: State Comptroller Law, 5718-1958, Consolidated Version as amended through 1995.

Italy: Autonomous Region of Trent: Institution of the office of the Ombudsman, Provincial Law of 20 December 1982, No. 28 including amendments through 1991.

Jamaica: The Ombudsman Act, 1978 (Act 23 of 1978).

Japan: Administrative Management Agency Establishment Law (July 1, 1948); The Commission for Administrative Management and Inspection Establishment Law (July 1, 1965); The Administrative Counselors Law (July 1, 1955); Management and Coordination Agency Establishment Law (no date).

Latvia: Law on the Latvian National Human Rights Office, 1996.

Lesotho: Ombudsman Act, 1996.

Lithuania: Law on the Seimas Ombudsmen, 11 January 1994; Statute of the Seimas Ombudsmen's Office, 22 February 1995.

Malawi: Ombudsman Act, 1996 (Act No. 10 of 1996) 26 June 1996.

Mauritius: Ombudsman Act.

Mexico: Decree, National Commission on Human Rights, 5 June 1990, Internal Bylaws of The National Commission on Human Rights, 1 August 1990.

Namibia: Ombudsman Act, 1990, No. 7 of 1990.

The Netherlands: National Ombudsman Act, most recently amended by Act of

Parliament of April 26, 1995.

New Zealand: Ombudsmen Act 1975, Human Rights Commission Act 1977.

Nigeria: Public Complaints Commission Decree 1975, Decree No. 31; Public Complaints Commission (Amendment), Decree No. 21, 1979.

Norway: Act concerning the Storting's Ombudsman for Public Administration of 22 June 1962, amended by Acts of 22 March 1968, 8 February 1980 and 2 September 1991, Directive to the Storting's Ombudsman for Public Administration (19 February 1980). Instructions to the Armed Forces' Ombudsmannemnd (and the Ombudsman for the Armed Forces).

Pakistan: Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983.

Papua New Guinea: Organic Law on the Ombudsman Commission, adopted 15 August 1975; Organic Law on the Duties and Responsibilities of Leadership and Leadership Code (Alternative Penalties Act, adopted 15 August 1975).

Paraguay: Ordinance of the Municipality of Asuncion, No. 65/91, creating the Defensor Vecinal, adopted 13 August 1991.

Perú: Ley Organica de la Defensoria del Pueblo, Ley N° 26520, promulgated 4 August 1995.

Philippines: Tanodbayan Decree: Presidential Decree No. 1630 Further Revising Presidential Decree No. 1487 as Revised by Presidential Decree No. 1607 Creating the Office of the Tanodbayan, 18 July 1979.

Poland: Act of 15 July 1987 on Commissioner for Civil Rights Protection.

Portugal: Statute of the Ombudsman, Law Nr. 9/91 of 9 April 1991.

Russian Federation: Federal Constitutional Law on the Commissioner for Human Rights in the Russian Federation, Adopted by the State Duma 25 December 1996, Approved by the Federation Council 12 February 1997, Signed by B.Yeltsin, President of the Russian Federation, Moscow, Kremlin 26 February 1997.

Senegal: Law n° 91-14 of February 11, 1991 creating a Médiateur de la République.

Seychelles: Constitution, Chapter X Ombudsman, Articles 143, 144; Schedule 5 Ombudsman.

Slovenia: The Human Rights Ombudsman Act, December 1993.

Solomon Islands: The Ombudsman Act, 1980.

South Africa: Public Protector Act, 1994, Act No. 23, 1994.

South Africa: Qwaqwa: Qwaqwa Ombudsman Act, 1987.

South Korea: Statute on the Public Grievance Resolution Council.

Spain: Ley Orgánica 3/1981, de 8 de Abril, del Defensor del Pueblo; Regulations for the Organization and Functioning of the Office of the Defensor del Pueblo, approved by the General Committees of the Congress and the Senate, at the proposal of the Defensor del Pueblo, during their joint meeting on 6 April 1983.

Sri Lanka: Parliamentary Commissioner for Administration Act, No. 17 of 1981; Parliamentary Commissioner for Administration (Amendment) Act, No. 16 of 1991; Parliamentary Commissioner for Administration (Amendment) Act, No. 26 of 1994.

Sudan: Public Control and Administrative Evaluation Bureau Act, 1995.

Sweden: The Riksdag (Parliament) Act, Chapter 8 Certain Officials and Bodies, Article 10 and supplementary provisions 8.10.1 and 8.10.2 as amended by law in 1990; Act of Instruction to the Parliamentary Ombudsman, enacted 13th of November 1986 (as amended through SFS 1990:1507).

Sweden: An Act to establish the Office of the Children's Ombudsman, promulgated 13th May 1993; An Ordinance containing Standing Instructions for the Children's Ombudsman, promulgated 3rd June 1993.

Sweden: Act against Ethnic Discrimination (SFS 1994:134) Printed on 19 April 1994, creating the Ombudsman against Ethnic Discrimination.

Sweden: Law of the Disability Ombudsman, issued June 9, 1994.

Taiwan: Control Yuan.

Tanzania: An Act to Prescribe the Procedure, Powers and Privileges of the Permanent Commission of Enquiry, Act No. 25 of 1966 As Amended by Act No. 2 of 1968, Act No. 13 of 1980.

Trinidad and Tobago: Chapter 2:52, Ombudsman Act (Assented to 24th May, 1977).

Tunisia: Decree No. 925-2143 of 10 December 1992, relative to the creation of the Administrative Mediator function.

United Kingdom: Parliamentary Commissioner Act 1967 (1967 c.13).

United Kingdom: Northern Ireland: Commissioner for Complaints Act (Northern Ireland) 1969.

United Kingdom: Local Government Act 1974.

United Kingdom: Legal Services Ombudsman: Courts and Legal Services Act 1990.

United States: Alaska: The Ombudsman Act: Alaska Statutes, Chapter 55. Office of the Ombudsman (AS 24.55.010-AS 24.55.340).

United States: Arizona: Arizona Revised Statutes, Title 41, Chapter 8, Article 5. Office of Ombudsman Citizens Aide, Sections 41-1371 to 41-1383.

United States: Guam: Government Code, Title II, Chapter V-A Office of the Suruhanu (Ombudsman), Public Law 14-99.

United States: Hawaii: Hawaii Revised Statutes, Chapter 96, The Hawaii Ombudsman Statute.

United States: Iowa: Iowa Citizens' Aide Act, State of Iowa Code, Chapter 2C Citizens' Aide.

United States: Jackson City, Missouri: Office of Human Relations and Citizen Complaints (Ombudsman).

United States: Kansas: Corrections Ombudsman Board, Article 74, Kansas Statutes.

United States: King County, Washington: King Country Office of Citizen Complaints, Chapter 2.52.

United States: Michigan: Legislative Corrections Ombudsman Act, Act No. 46, Public Acts of 1975.

United States: Michigan: The Children's Ombudsman Act, Act No. 204, Public Acts of 1994.

United States: Nebraska: Public Counsel Act, Chapter 81 State Administrative Departments, Public Counsel (81-8,240 to 81-8,254).

United States: Puerto Rico: Citizens' Investigating Official (Ombudsman) Act, June 30, 1977, No. 134.

Vanuatu: Ombudsman Act, No. 14 of 1995.

Western Samoa: Komesina o Sulufaiga (Ombudsman) Act 1988.

Zambia: The Commission for Investigations Act; 1991 (No. 20 of 1991).

Zimbabwe: The Ombudsman Act, 1982; The Ombudsman Amendment Act, 1985; The Ombudsman Amendment Act, 1988.

Uncollected Legislation: (Requested of those offices with faxes, not requested of others)

Austria, State of Tirol: Landesvolksanwalt von Tirol

Belgium: Ombudsman Flemish Community

Belgium: Ombudsman Antwerp

Cook Islands: National Ombudsman

El Salvador: Procurador para la Defensa de los Derechos Humanos

France: Médiateur de Paris

Gabon: Médiateur de la République

Germany: Bürgerbeauftragter des Landes Rheinland-Pfalz

Israel: Ombudsman, Haifa

Israel: Ombudsman, Herzliya

Israel: Ombudsman, Jerusalem

Israel: Ombudsman, Nathaniya

Israel: Ombudsman, Tel Aviv

Italy: All regional ombudsmen except Trent

Liechtenstein: National Ombudsman

Macao: High Commissioner Against Corruption and Maladministration

Malta: Parliamentary Ombudsman

Mauritania: Médiateur de la République

Mexico: All regional ombudsmen

The Netherlands: All municipal ombudsmen

Nicaragua: Comisión Permanente de Derechos Humanos

Norway: Consumers Ombudsman

Pakistan: Wafaqi Mohtasib, Muzaffarabad

Perú: Fiscal Provincial, Arequipa

Saint Lucia: Parliamentary Commissioner

Swaziland:

Sweden: Consumer Ombudsman

Switzerland: Regional and municipal ombudsmen

Uganda: Inspectorate of Government

Uruguay: Defensor del Pueblo

Venezuela: Mérida: Defensor del Pueblo

Collected but not reviewed:

Argentina: Some regional and state ombudsmen

Australia, New South Wales: Privacy Committee Act, 1975, No. 37 [Reprinted as at 26th March, 1979]; Police Regulation (Allegations of Misconduct) Act, 1978, No. 84.

Burkina Faso: Organic law and various decrees concerning Le Médiateur du Faso.

Madagascar: Le Médiateur, Défenseur du Peuple, Ordonnance N° 92-012, 29 Avril 1992.

Spain: Régimen Jurídico del Defensor del Pueblo (Laws of the regional/provincial ombudsman not reviewed).

Constitutional Ombudsman Offices:

Antigua and Barbuda: Antigua and Barbuda Constitution, Section 66.

Argentina: National Constitution, ss. 86 and 43.

Argentina: Cordoba: Constitution of the Province of Cordoba, 1987, Chapter VII, Article 124.

Argentina: La Rioja: Constitution of the Province of La Rioja, 1986, Chapter IX, Article 144.

Argentina: Salta: Constitution of the Province of Salta, 1986, Chapter V, Article 124.

Argentina: San Juan: Constitution of the Province of San Juan, 1986, Chapter III, Article 150.

Austria: Volksanwaltschaft, Federal Constitution of Austria, Chapter Seven, Article 148.

Austria: Landesvolksanwalt von Vorarlberg, Constitution of Land Vorarlberg, 31 May 1984, Articles 57-59.

Bosnia-Herzegovina: Constitution of the Federation of Bosnia and Herzegovina, Section II B, Articles 1 through 9.

Croatia: Constitution of Croatia, Article 93.

Colombia: Constitution of Colombia, Articles 281-283.

Denmark: Constitution, 1953, Article 55.

European Union: Treaty on European Union, Signed in Maastricht on 7 February 1992, Articles 8d and 138e. (While the treaty strictly speaking is not a constitution, it serves the same purpose for the Union.)

Fiji: Constitution, Chapter IX, Articles 112-117.

Finland: Ombudsman: Constitution Act, as amended 1971 (Promulgated in Helsinki, July 17, 1919). Articles 49 and 59.

Finland: Chancellor of Justice: Constitution Act, as amended 1971 (Promulgated in Helsinki, July 17, 1919). Articles 37, 45-48, 59.

Gambia: The draft legislation for this office would make it constitutional. But it is unclear whether the legislation ever passed.

Germany: Constitution, 1949, Article 45c (Petitions Committee of the Deutscher Bundestag).

Georgia: Constitution of Georgia, Article 43.

Ghana: Constitution of the Republic of Ghana, Chapter Eighteen, Commission on Human Rights and Administrative Justice, Articles 216-230, 1992.

Guatemala: Constitución Política de la República de Guatemala, Título VI, Garantías Constitucionales y Defensa del Orden Constitucional, Capítulo V, Comisión y Procurador de Derechos Humanos, Articles 273 - 275.

Guyana: Constitution of Guyana, 1980, Title V The Executive, Subtitle 2 The Ombudsman, Articles 191 - 196.

Honduras: Constitutional amendment and ratification.

Hungary: Constitution of Hungary, Article 32/B, Approved Aug. 18, 1949 and amended Oct. 18, 1989.

Latvia: Constitution of the Republic.

Lesotho: S 134 & 135 of Constitution of Lesotho.

Lithuania: Constitution of the Republic of Lithuania, 1992; Article 73.

Malawi: Constitution of Malawi, Chapter X, Articles 120 to 128.

Mauritius: Constitution (1968), Chapter IX, Articles 96 to 102A.

Mexico: Federal: Article 102, para. B of the Mexican Constitution, 1917 (Decreed 27 January 1992).

Mexico: Distrito Federal: Political Constitution of the Mexican United States, Chapter 102, subchapter B.

Namibia: Articles 89-94. Namibian Constitution.

Norway: Constitution of the Kingdom of Norway, Article 75, Section 1.

Papua New Guinea: Constitution, Leadership Code, Articles 26 - 31; The Ombudsman Commission, Articles 217 - 221. (Note: Other articles in the Constitution also refer to the Leadership Code and the Ombudsman Commission. These are the major sections where both are established.)

Paraguay: Constitution of Paraguay, Título II De la Estructura y de la Organización del Estado, Capítulo IV De Otros Organismos del Estado, Sección I De la Defensoría del Pueblo, Articles 276 - 280, 1992.

Perú: Political Constitution of Peru 1993, Chapter 11, Articles 161 and 162.

Philippines: Constitution of the Philippines, 1986, Article XI, Section 5.

Poland: Constitution of the Republic of Poland, Article 36a, The Commissioner of Civil

Rights Protection, Amendment to the Constitution, 7 April 1989.

Portugal: Constitution of Portugal, 2 April 1976, Title I, Article 23.

Romania: Constitution of Romania, Chapter IV Advocate of the People, Articles 55-57.

Russia: Russian Constitution, Chapter 5 Federal Assembly, Article 103, Appointment of Plenipotentiary for Human Rights.

Seychelles: Constitution, Chapter X Ombudsman, Articles 143, 144.

Slovenia: Constitution of the Republic of Slovenia, Article 159 The Office of the Ombudsman.

Solomon Islands: Constitution of Solomon Islands, Chapter IX The Ombudsman, Articles 96 - 99.

South Africa: Constitution of the Republic of South Africa, Article 182 and 183 Public Protector, Functions of the Public Protector, 8 May 1996.

Spain: Defensor del Pueblo, Spanish Constitution, Chapter IV, Article 54, December 6, 1978.

Sri Lanka: Constitution, Article 156.

Sweden: The Instrument of Government (Constitution of Sweden), Chapter 12. Parliamentary Control, Articles 6 and 8.

Taiwan: 1947 The Constitution of the Republic of China, Chapter IX Control, Articles 90 - 106; 1992 The Additional Articles, Articles 1, 2, 6.

Tanzania: Constitution of the United Republic of Tanzania, 1977 as amended by the Constitution of the United Republic of Tanzania (Amendment Act), 1980; Act No. 15 of 1984; Act No. 4 of 1992.

Trinidad and Tobago: Constitution of Trinidad and Tobago, Chapter 6, Part 2 Ombudsman, Articles 91 - 98 (Act No. 4 of 1976).

Vanuatu: Constitution of the Republic of Vanuatu, Articles 61 to 65 (Revised 1988).

Zambia: Constitution of Zambia (No. 1 of 1991), Article 90 The Investigator-General.

Zimbabwe: Constitution of Zimbabwe, Chapter XII Miscellaneous Provisions, Part 1 General, Articles 107 - 109.