



Shahid Beheshti University
Research Project

Role of Ombudsman in Protection of Citizenship Rights

Final Report

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Introduction

Contrary to previous centuries, social life in the present world is based on Human Being and its rights. In Macro level, the most obvious feature of this new paradigm is recognition and acknowledgement of this phenomenon that public power and sovereignty belongs to the people and each democratic society seek to ensure the respect and enforcement of this right. In this new paradigm of sovereignty, nations are the true owner of public power in each country, and government, as their representative, is merely an administrator of power. Right to self determination which is product of hundred years of resistance and suffering from totalitarian sovereigns, is shown in two spheres: one, the individual sphere (individual freedom-rights) and the other, the collective sphere (the right to democracy).

In the human-based new paradigm which is distinguished by the Right to self determination from previous eras of human life, the Rule of law governs. Law insures justice in society by providing equal opportunities and affording equal protection to people's rights. In the meantime, government as an entity naturally rooted in public will, must respect individual and collective rights in their administrative and executive functions. Thus the first hypothesis is that, government is bound to insure the rule of law and respect for citizenship sphere and their fundamental rights.

Effective supervision of an independent organ is one of the most important factors in insuring respect for citizenship right. Therefore, a monitoring mechanism has two functions. In the first place, it supervises the government's acts for a better public management. In the second place, it deals with citizen's claim for breaches of citizenship rights. These are two main purposes of good governance.

In the present century, Ombudsman has attracted many attentions as a successful experience in the field of supervision upon government's administration. Ombudsman which is in most countries appointed by parliament are often selected from amongst persons with high moral competences and famous for integrity and impartiality, with sufficient experience in the field of legislation, executive and or judicial affairs. So this

being can affect in different degrees, conducting an effective and efficient supervision on government's administration. Therefore, instituting an Ombudsman, as an effective and comprehensive supervisory mechanism, has a great significance.

For this reasons, the General Inspectorate Organization (recognized as Iranian Ombudsman) referred a research project concerning the Role of Ombudsman in the protection of citizenship rights to Research Department of Shahid Beheshti University. This project was performed under direction of Dr. Ardeshir Amirarjmand (The Director of Iran's Human Rights and Public Law Excellency, Scientific Director Iranian branch of European Center for Public Law and Associate Professor of Faculty of Law in Shahid Beheshti University) with the cooperation of some of the professors of that faculty and the assistance of some Ph.D. candidates in public law and international law. The final purpose of this project was providing an appropriate model law of Ombudsman, based on basic standards of Ombudsman protecting citizenship rights for Asian countries.

Thus, in performing the research project on the Role of Ombudsman in the protection of citizenship rights, the present report is submitted as the final report. In summary, this project was performed in five phases.

The first phase was about the sources (bibliography) and the second phase was about themes of research, the reports thereof have been submitted in detail to the respected employer. Those phases are considered the points of departure for research group in issues related to Ombudsman and identified the necessary sources for research. Report of these two phases is submitted to the revered employer in one volume. The third phase of the project was the comparative study of experiences and present models of Ombudsmen and their roles in protecting citizenship rights especially in Asia. Besides, for completing pathology of Ombudsman in Asia, interviewing officials and managers of General Inspectorate Organization (as an example of the Iranian Ombudsman) was arranged which report thereof is submitted separately. The summary of performance of the research group in the third phase is as follows:

1. *Comparative study of the experiences and present models of Ombudsman and their role in the protection of citizenship rights.*

a. Library Study

Considering the purpose of the project, it is not exaggeration if we deem the third phase, the most important phase among preliminary phases. In this phase, the research group has attempted to provide a comprehensive perspective from the present situation of Ombudsman in the world and its related trends especially in Asia for recognition of experiences and various models of Ombudsman in different countries. So a comparative study was started based on geographical, regional and political criteria. Each sub-section of research group was assigned to study Ombudsmen in different continents. For a detailed and thorough study, Ombudsmen of some countries were studied in depth. That revealed variety of Ombudsmen in respect of their structure or duties and powers.

It is noteworthy that “General Inspectorate Organization” as an Iranian example of Ombudsman has been studied and report thereof was submitted separately. Furthermore, for the comparative study of experiences and patterns of Ombudsmen in world, the issue of “Monitoring on Human Rights in International Law System” was studied, because there is a close relationship between mechanism of protection of human rights and monitoring citizenship rights. This study was intended to recognize and utilize valuable experiences of international law system in the field of monitoring and protection of human rights in funding an effective and efficient Ombudsman.

Comparative study of the experiences and present models of Ombudsman which the report thereof provided in the previous phase deal with following issues such as:

Concept of Ombudsman and its existing patterns, evolution of concept of Ombudsman in domestic level in both public and private sphere and in international levels, Ombudsman in Europe and study of some countries as a case study, study of Ombudsman in Africa, Asia and Pacific, Latin America and Caribbean, study of “General

Inspectorate Organization” as an Iranian example of Ombudsman, study of experiences of England, Canada, France and Australia.

England experience had been submitted in the report of second phase which taken into account the supervisor’s in content resubmitted with amendments in the report of third phase.

b. Field Study

Considering that many of the present experiences of Ombudsman in different countries especially in Asia have not been documented, the research group tried to make contact with those Ombudsmen and make use of their experience. For this, with many efforts, names and addresses of those Ombudsmen were prepared. Then after a time consuming process, 10 main questions which have been selected from about hundred original questions were sent to those addresses. Those correspondences have had good outputs and many of them answered to those questions.

Separately or by sending their digital resources, it is worth noting that those questions are provided at the end of this report (Annex 1) with names and address of those Ombudsmen and their answers (Annex 2).

2. Interviews with Officials of General Inspectorate Organization

The research group also conducted interviews with managers and experts of General Inspectorate Organization. For this reason, an “Interviews Group” of the project was stationed at the headquarters of General Inspectorate Organization from October 23 (the first week of month of Aban, *Persian calendar*). Altogether, 15 interviews were carried out.

To perform the 4th and 5th phases of the project, the research group embarked to identifying models, pathology and providing necessary standard in Asia and providing an appropriate model for Asian Countries. For this, after performing comparative studies

and considering the existing models, which were performed in the last phase, the research group identified a series of necessary characteristics for Asian Ombudsmen protecting citizenship rights, taken into account the characteristics of those countries which will be provided as the report of the 4th phase. In fact, these series are abstracts of the previous studies and framework of the designed model.

Any how, after various studies and sessions, the research group has designed a model law for an Asian Ombudsman which is submitted in the report of the 5th phase. In fact, this model is the final product of all studies and activities in this project.

After formulation of each article, concise explanations of *raison d'être* of some of the main provisions have been provided.

The present report is composed of two parts. The first part (the report of the 4th phase of project) deals with the necessary features of Ombudsman of advocating citizenship rights. The second part (the report of 5th phase of the project) the model law for Ombudsman of advocating citizenship rights and its commentaries has provided. The proposed model law is an attempt for creating an Ombudsman which is able to insure rule of law, citizenship rights and desirable management.

The First Part (the Report of the 4th Phase)

The Necessary Features of an Ombudsman Advocating Citizenship rights

Necessary features for Ombudsman of advocating citizenship rights are the aftermath of the comparative studies and detailed negotiations of the research group in the course of the project and developing the model law. But to be brief enough, the required criteria for membership in Ombudsman international institute are useful to remind those features. It is necessary to mention them, here, in this part. Those criteria are as follows:

- i) It is created by enactment of a legislative body whether or not it is also provided for in a Constitution;
- ii) its role is to protect any person or body of persons against maladministration, violation of rights, unfairness, abuse, corruption, or any injustice caused by a public authority;
- iii) It does not receive any direction from any public authority which would compromise its independence and performs its functions independently of any public authority over which jurisdiction is held;
- iv) It has the necessary powers to investigate complaints by any person or body of persons who considers that an act done or omitted, or any decision, advice or recommendation made by any public authority within its jurisdiction has resulted in actions of the kind specified in subparagraph ii) above;
- v) It has the power to make recommendations in order to remedy or to prevent any of the conduct described in subparagraph ii), and, where appropriate, to propose administrative or legislative reforms for better governance;
- vi) It is held accountable by reporting publicly to the Legislature or other appropriate authority;
- vii) Its jurisdiction is national, regional or local;
- viii) Its jurisdiction applies to public authorities generally or is limited to one or several public authorities, or to one or several public sectors; and

ix) Its incumbent or incumbents are appointed or elected, according to the relevant legislative enactment, for a defined period and can only be dismissed, for cause, by the legitimate and competent authorities.

But concerning the independence of Ombudsman, it must be added that by independence of this organ, we mean the existence and realizing the following conditions:

Autonomy of Ombudsman in respect of organization which is under its supervisory jurisdiction encompasses efficiency, justice and public accountability.

This autonomy, distinguishes Ombudsman from other processes of supervision and hearing the complaints. Internal inspecting organs of governmental entities which accept and study complaints concerning their internal administration within their respective organization, although described as Ombudsmen, they are not completely independent and objective. However, legislation on Ombudsman must, reflect the following features in many levels:

- A collection of agreed minimum criteria of autonomy, confidentiality, competence for inquiry and providing a report in conjunction with recommendations.
- Features which are arisen according to those criteria in respect of a specific country.

For example, in countries with a history of full of domestic conflicts or countries which have constitutional institutions, it is preferable to include the establishment of Ombudsman and its main duties in constitution. In some areas (especially related to police or military organs) Ombudsman role is some how equal to existing procedural process. In some sensitive cases, the powers to provide a report may be very limited. Other roles of Ombudsman may be different in various countries. Powers related to management rules are very common in pacific area countries; hence, Ombudsman plays an important role in ensuring the correctness of officials and managers in public sphere. In Australia, some Ombudsmen have specialized competence and roles in respect of Act

for freedom of information while many of Ombudsmen are competent to supervise *ultra vires* activities of law enforcement officials.

Structures of Ombudsman are different with respect of their performance. Some of them devote many of their financial and human resources to small problem in an equitable and fast way. Some manages few inquiries but perform them completely and formally.

Regulating process of consideration, providing reports or types of standards are to some extent different between countries. Some prefer a clear and simple statement of fact and some prefer formulas of old customary and well established case law. Some of them state work flow of every case and its output in a precise way while some focus on objective opinion for filing gaps resulting from fluid concepts. In case constitution provides for creating Ombudsman, necessity may require that ordinary law reforms it easily for ensuring and establishing supervision and inquiry processes and necessities of autonomy of Ombudsman. These factors can affect strengthening and positioning the law and necessity of judicial intervention for decision concerning content of provisions. Nevertheless, it is obvious that a valid Ombudsman must enjoy effective legal protections.

Taking into account the above-mentioned consideration and bearing in mind previous studies, the following features for structure of Ombudsmen are as follows:

A. Necessary Features

Feature	Raison d'être and Purpose	Model
Formation	Granting a legal status to Ombudsman based on purpose stipulated in law and other regulations	<i>There must be an Ombudsman.</i>
Appointment	Allowing a clear process for a person to be appointed as Ombudsman	Ombudsman must be appointed by the Parliament. The Parliament must not appoint somebody as Ombudsman unless he/she has pre-requisite such as judicial and managerial background, moral and scientific good reputation a quorum form legislative organ and

Terms of Office	Ensuring Ombudsman and those who acts as Ombudsman	Ombudsman is appointed for a definite years or specifying that one cannot be reelected or can be elected for another specified period.
Early Termination of Office	Determining some condition, in the presence of which, he/she must quit this position	In case one of the following event occurs, this administration can terminate to the activity of Ombudsman: Termination of term of office, age, resignation, death, conviction to a crime with a punishment more than (specified punishment bankruptcy and (...)) inability and/or commission of act which legislator has recognized as crime or serious delinquency
Definitions	Special meaning which has been intended from use of the terms	For example: In this Act, a governmental institution is ... or other definitions
Functions	Function of Ombudsman	According to this Act, Ombudsman can examine the performance of a public organ following a complaint or in case deems it appropriate. This Act or other regulation can provide other functions for Ombudsman.
Scope of competence	Affair and events which can be subject of Ombudsman's competence	Apart from those cases which are specifically provided, Ombudsman can examine a performance or cannot examine some specified acts. From a geographical aspect, Ombudsman must be able to examine the acts of persons which work outside the country in governmental departments.
Powers	Whatever an Ombudsman can do	Ombudsman can demand any information or precedent from any person for performing an inquiry or require an organ to provide information. Ombudsman can inform of any issue in any way he deems it appropriate. The person, who is bound to provide precedent or information and refuses to do so, must face criminal punishment. Concerning information related to national security, the laws governing on those information prevails.
Process	Ombudsman's made of performance	Ombudsman must inquire confidentiality he/she must follow correct and equitable process especially when raising a criticism or recommends some remedial actions.
Immunity of Ombudsman, complainant and witnesses	Allowing a comprehensive inquiry and all embracing without	There must not be any criminal or civil action for what have done with good faith concerning legal purposes or apparently done for those purpose against Ombudsman or its personnel. There must not be any civil, criminal or administrative against those person or persons who

		has raised a complaint or have provided some information with good faith to Ombudsman.
Providing Report	Competence of Ombudsman to provide report	After performing an inquiry, Ombudsman, in case determines that the act in question has been objectionable, can provide a report that may include some recommendations. That report will be submitted to legislative organ.
Yearly Reports	Obligation of Ombudsman to provide report	Ombudsman must provide a report concerning its performance in a yearly basis and this report must be published formally.
Violations	Imposing Criminal Violations	Persons must not interfere or put obstacle in the course. They must not provide incorrect or misleading information in their complaints or in the course of inquiry to the Ombudsman
Relationship with courts and ...	Limit and extent of accountability of Ombudsman to courts	The court must not reconsider the act or decision of Ombudsman which is <i>prima facie</i> in the scope of his/her competence and undertake with good faith. Ombudsman or its assistants must not be required to provide information, documents or testimony to the court or authority which can require other organs to provide evidences or information.
Confidentiality	Responsibility for non disclosure of information	Considering their duties, Ombudsman, its representative or its personnel must not file, utilize or disclose resulting information outside the prescribed legal formalities unless the law requires them or authorizes them to do so

B. Features of Desirable Law

Feature	Raison d'être and Purpose	Model
Purpose	Stating the <i>Raison d'être</i> of Ombudsman	This Act intended to create Ombudsman for improving public management, protection of fundamental rights and citizenship rights of peoples and settlement of complaints in a fast, correct, informal and efficient way.
Stipulation to independence	Stating whatever that is necessary according to regulations	In performing its duty under the law, Ombudsman is not bound to comply with any instruction of any person or organs. Ombudsman relations with other organs and method of devoting the budget must be in a way to ensure its independence.
Appointment of Deputy	Filling the Ombudsman's position in case of vacancy	Ombudsman may appoint another person to act as Ombudsman in a specified period, or in a period which Ombudsman has not been appointed or is not present in its place of work. Deputy will have all the powers of Ombudsman.

Resources	Ensuring that Ombudsman has sufficient resources	Remuneration of Ombudsman and budget which is sufficient for continuance of Ombudsman's activities.
Standards	Enabling Ombudsman to regulate standards	Ombudsman can regulate its guidance document or rules of conduct governing its short term, midterm and long-term purposes and method of inquiry and follow up of recommendation and their public disclosure and ...
Comments	Ombudsman must inform the public from issues related to public interests	Notwithstanding any provision in this Act or other laws, Ombudsman can comment concerning issues related to public interests or provide information to person or organ or inform the public thereof.
Employment of auxiliary forces	Ombudsman can have some assistance	Ombudsman can employ some persons according to criteria or specified conditions.
Delegation	The employee must be able to act on behalf of Ombudsman	Ombudsman can delegate its competence to an employee except competence concerning...
Stopping the inquiry	Ombudsman must be able to discontinue inquiry about every issue	Ombudsman can decide to discontinue any inquiry or refuses to begin an inquiry.
Small problems	Dealing with issue which cannot require the submission of a report	Ombudsman can inform a governmental organ that it will not issue a report but will provide its observations and comments resulting from an inquiry.
Negotiation	Facilitating settlement	Ombudsman can enter negotiation with Minister or manager of an organ during or after an inquiry. The minister or manager of an organ can request negotiation from Ombudsman during or after an inquiry.
Acquisition of Information	Facilitating informal inquiry	The person Ombudsman has demanded to furnish some information or the person who has some information related to Ombudsman, can disclose them. The person who discloses information with good faith is under the same legal protection as the person who is bound to disclose those pieces of information.
Delay	Necessity to act	Ombudsman can confirm that an organ has had an unreasonable delay in making a decision or doing an act. Where Ombudsman issues on approval, it is supposed that that organ must decide to do or not to do the act specified in that approval.
Advisory opinion	Making clear the hard core	Ombudsman can request advisory opinion from the court concerning a given issue. An organ or any third party can request from the court to participate in that issue as a person related thereto.
Foresee-ability of enforce recommendation	The recommendation must be enforceable	Where Ombudsman provide a recommendation, it is possible that an organ in exceptional cases does not comply with that recommendation even though it is in contravention with the law because in some cases, strict application of law leads to inequitable

		results while Ombudsman's purpose is ensuring an equitable result.
Other protections	Encouraging and inducing cooperation and making complaint	Nobody can interfere with or harassing any person who has provided a complaint to Ombudsman or has provided some information in good faith to him.
Abuse in performance	Disclosing abuse in performances	Where Ombudsman acquires evidence or information which in his/her view imply that a person has committed a crime or delict and determine that they are of sufficient strength, can disclose them to the Minister, chairman of a bureau or an organ of law enforcement.
Ombudsman's Role in respect of administrative performance of High-level officials	Ombudsman will supervise on administrative acts of high-level political, judicial or administrative officials	It should be defined who is high-level official. A collection of code of conduct is developed. It is provided that Ombudsman can examine the complaints related to those codes of conducts.

C. Standards which must be implemented

Feature	Raison d'être and Purpose	Model
Decision for suspension of an Inquiry	Defining the circumstances in which Ombudsman can decide to not to inquire [about a complaint]	<p>Ombudsman can decide not to start an inquiry or discontinue inquiry in the following circumstances:</p> <ol style="list-style-type: none"> The complaint initially has negotiated the issue with the organ; Ombudsman determines that mis-complaint previously investigated sufficiently by Ombudsman, court or an investigation body; Complaint is resulted from an act which complainant informed thereof from many times ago; Ombudsman determines that this complaint has not been made with good faith; Ombudsman determines that there is no strong possibility of settling the complaint through investigation; The issue in question is of the kind, considering the resource which is available to him, that Ombudsman determines that has no priority for investigation; Ombudsman determines that the act in question has been partial, trifling or unfounded or does not require more investigation.
Competence	Whatever Ombudsman cannot inquire about	<p>Ombudsman cannot investigate concerning some cases <i>inter alia</i>:</p> <ol style="list-style-type: none"> Acts of specified persons or organs;

		<ul style="list-style-type: none"> b) Specified acts; c) Specified acts which have been done by given (particular) persons or organs. <p>Ombudsman can investigate concerning the act of an organ although that organ or its agents claim that they are legally immune from investigation unless the relevant law specifically excluded them from Ombudsman's scope of competence.</p>
Process	Detailed process	<p>Prior to beginning of an investigation, Ombudsman must inform the manager or chairman of an organ in writing from the beginning of investigation process and as appropriate reach to an agreement concerning the method thereof. Ombudsman can determine the method or time schedule of investigation. During the investigation, Ombudsman can acquire information by any method including questioning every person or consulting with expert.</p>
Violation which require an investigation and report	What a violation requires issuing a report	<p>Where after conducting investigation, Ombudsman believes that the act of an organ requires issuing a report can provide a report to the manager of that organ.</p> <p>It is questionable what matters must be included in that report by they are probably as follows:</p> <ul style="list-style-type: none"> a) Whatever apparently against the laws and regulations or violates citizen's rights and freedoms; b) Whatever by a brand interpretation seems unreasonable <i>i.e.</i> act which has not been done by a reasonable and rational person of a balanced view of the realities subject to similar policy making legal limitations; c) Whatever without any acceptable reason is discriminatory; d) Whatever has been done legally and correctly but leads to irrational or inconsistent consequences; e) Whatever which is not sufficiently elaborated.
Recommendation	Type of recommendation	<p>Ombudsman can recommends in its report that:</p> <ul style="list-style-type: none"> a) A decision be repeated or amended; b) An organ apologizes (for an act); c) Better reasons must be provided; d) The law, policy or practice must be amended; e) Every other act must be done or must not be done.

The Second Part (Report of the 5th Phase)
Model Law of Ombudsman
Advocating Citizenship rights for Asia

Article 1. Purpose

The objects of this Act is to give people a timely, effective, independent and just method of having administrative actions of agencies investigated with the aim of safeguarding human and citizenship rights and consequently to improve the quality of decision-making and administrative practice in agencies to ensure the realization of human and citizenship rights. Therefore, in addition to other remedies or complaint mechanisms or rights of appeal under the law, there shall be established an independent, impartial, national, readily available organization to the public, accountable to the Parliament, which is called “Human and citizenship Rights Ombudsman” (hereinafter called Ombudsman), empowered to investigate the acts of state organs or administrative agencies.

COMMENT

- 1. This introduction provides a concise description of the functions and characteristics of the Ombudsman and its goals.*
- 2. Introduction has a great interpretive value in every legislation, since it deals with values and goals of the document. In some countries, introduction comes as an article of the Act; like this model.*
- 3. Establishing a national Ombudsman is not an obstacle to creating local Ombudsman or state Ombudsman in federal states.*

Article 2. Definitions

As used in this Act,

- (a) "Organ" means any department, organization, local government agencies, board, commission, committee, subcommittee, council, bureau, any person or institution which is established for a public purpose under an Act and supported directly or indirectly by government funds or other help over which government is in a position to exercise control including municipalities, state companies, universities, professional unions, police, armed forces and public medias; it also means any person or private company who is providing public services to individuals under a contract with an organization utilizing public budget and also any member of the state whether elected or appointed, acting or purporting to act by reason of connection, with except:
- a. Any judge;
 - b. The legislature, its members, its committees and their members;
 - c. Those political officials which is directly chosen by peoples under the constitution.
- (b) "Administrative act" is any action about a matter of administration, and includes a decision and an act; and a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; and arbitration, rule, regulation, interpretation, recommendation, policy, practice or procedure of any organ.
- (c) "Person" means any individual or group of individuals, corporation, partnership, or unincorporated association.
- (d) "Record" means all records, documents, books, letters, 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 organ.

COMMENT

1. *Specifying by name all those organs under the Ombudsman's jurisdiction is neither possible nor desirable. Thus for the sake of its purposes, the Act opens the*

jurisdiction of Ombudsman over all public organs in pursuance of public function unless those organs that have been excepted. With the purpose of minimizing the state and increasing popularity of "privatization" of government services, all governmental organs when entering into a contract with private companies or institutions include in that contract a clause that this contract is subject to the Ombudsman supervision.

- 2. The exclusion of judges is based upon the existence of the long established system of appellate review of judicial decisions in all countries and there are well established sanctioning and/or the removal of judges. The exclusion is narrow and contemplates that the Ombudsman would have jurisdiction to investigate administrative or ministerial acts by employees of the judicial branch, when those acts are peripheral to the adjudication itself. In case that the courts based on practice or unfairly interpretation of the law, act in systematic breach of fundamental human right and citizenship rights, Ombudsman can examine the case and make recommendation. In many instances, administrative errors affecting a particular adjudication and amounts to unfair results, can be challenged and resolved through the established judicial process such as review or appeals, but even in those cases, the Ombudsman could make recommendations for improving administrative and judicial procedures. The Ombudsman would not, of course, have the jurisdiction to question, criticize or review the merits of any judicial order or decision.*
- 3. The exclusion of judges would pertain only to judicial officers of the judicial branch of government and would not exclude administrative tribunals or administrative law "judges" from the Ombudsman's jurisdiction.*
- 4. The Legislature or independent policy making bodies, whose actions are subject to public scrutiny, and whose tenure is subject to periodic popular review is excluded. Committees and staff members who assist them in policy formation are, likewise, excluded. Ombudsman is appointed by Parliament and considering autonomy of investigation and reporting, it cannot supervise organ which itself is his creation.*

5. *Other public policy-makers, whom are directly elected by the people and are subject to periodic election such as president, deserve exclusion for the same reasons as para. 4 above. This exception extends only to the person who possess such an office and will not extend to organs under its authority which based on general rule are subject to Ombudsman supervision. They must be distinguished from other elected state officials who are less immediately involved in policy-making. They are subject to Ombudsman supervision. Thus, this paragraph might read, "Elected constitutional officials and their personal staff".*
6. *"Administrative Act" is broadly defined and includes decisions by administrative boards or tribunals or administrative law "judges" and rule-making activities.*
7. *"Person" is defined broadly and encompasses any natural or judicial person.*
8. *"Record" is broadly defined to make it clear that the Ombudsman is able to have access to all recorded information possessed or controlled by organs, regardless of the form or manner of storage of that information.*

Article 3. Appointment of Ombudsman

The Ombudsman shall be elected by two-thirds vote of present members of parliament upon a motion expressed by the speaker of the parliament or [alternative a: by one-third] [alternative b: 35] of members of parliament. The process of election for the Ombudsman shall start not later than three months prior to the expiration of the term of office of the actual Ombudsman.

COMMENT

1. *The Ombudsman is an appointed officer of the legislative. This arrangement helps to guarantee the independence of the Ombudsman, who might be reluctant to make a precise supervision and criticize the actions of persons who have appointed him as Ombudsman. If he or she were an executive appointee.*
2. *As a part of the legislative branch of government, the Ombudsman is not only providing a direct service to citizens, but also assists the Parliament in proper enforcement of its legislations as well as in finding problems and lacks of law.*

3. *Since the Ombudsman may only make recommendations, and its decisions are not binding on the Executive Power, the Ombudsman's role is consistent with the concept of separation of powers.*

Article 4. Ombudsman oath

Prior to assumption of duties, the Ombudsman shall make the following oath before the Parliament:

“I solemnly and in the name of God and my dignity do swear that in performing the duties entrusted to me as the “Human and citizenship Rights Ombudsman” of the country, I shall keep my faith with the constitution, do my best to safeguard the rights and liberties of human being and citizen, being always guided by the law and human values and principles of liberty, equality, justice and good governance and do my duties thoroughly and impartially”.

COMMENT

Making oath is more symbolical than juridical. Normally this symbolic ceremony is for president and the highest level of any country (like MPs, attorney generals etc.). However this shows the importance of the Ombudsman and gives him a grate responsibility.

Article 5. Qualifications

1. The Ombudsman shall be a [the name of the country] citizen and a person of recognized judgment, objectivity and integrity and high moral and scientific qualifications and notaries in judicial or legal experience who is well-equipped to analyze problems of law, administration, and public policy.
2. The following persons cannot be appointed as Ombudsman:

- a) Those actively involved in activities of a political movement or party or groups with a political interests or publicly endorse or solicit funds for or make other contributions to political parties or candidates for elective office;
- b) Those who are candidate for any other elective public office;
- c) Those who engage in any other occupation, business, or profession likely to detract from the full-time performance of his or her duties as Ombudsman or to result in a conflict of interest or leads to obstacle in performing his duties as Ombudsman;
- d) Those who in three years before appointment, were the member of parliament or president (/prime minister) or holder other public authority equal, higher or the same as minister deputy.

COMMENT

1. *The Ombudsman should be a full-time expert in whom the public can have confidence. This subsection gives the core characteristics and qualifications for an Ombudsman and hence provides more guidance than a mere listing of restrictions on the appointment.*
2. *Sub-paragraph (b) seeks to preserve the Ombudsman's impartiality.*

Article 6. Term of Office

1. The term of office for an Ombudsman is Five years which will start by taking oath before the Parliament and until his or her successor is appointed. The same person may not serve as Ombudsman for more than two terms of office, whether successive or otherwise.
2. The authority of the Ombudsman cannot be terminated or restricted in the event of expiration of term of the authority of the Parliament or its dissolution (self-dissolution), declaration of the state of emergency in the country.

COMMENT

1. *A long term of office is desirable since it gives sufficient time to the Ombudsman to become proficient at his or her duties; and provide a measure of its independence from politics and political parties;*
2. *Moreover it provides prestige and security to attract qualified persons to the position. An excessively long term (e.g., 15 years) prevents the desired accountability to the Legislature. However the term should not be less than five years. Since comparative studies show periods of Parliament election is often four years. The Five-year period, on the one hand, ensures the independence of Ombudsman from legislative and on the other hand put him/her aside from political controversies for presidential and parliamentary elections.*
3. *After the election of Ombudsman he shall be regarded as an autonomous supervising entity the continuance of his/her powers and duties of which should not be depend upon any organization. Most importantly in the case of a natural or unnatural disasters (like War) the work of Ombudsman is much more important.*

Article 7. Resignation, Removal and Vacancy

- 1- The Ombudsman may at any time resign the office by a written notice to the Speaker of the Parliament.
- 2- In the case of mental or physical incapacity to perform the duties of the office, or other grounds sufficient for removal of a judge under the law, the Parliament by a vote of two-thirds of the members present and voting may decide to remove the Ombudsman from office.
- 3- If the position of Ombudsman becomes vacant for any reason, the Deputy Ombudsman shall serve as Acting Ombudsman until an Ombudsman be appointed for a full term.
- 4- Upon the expiration of the term of authority for which the person has been elected as Ombudsman, he/she shall be provided with the job (post) previously held before the appointment and which is safeguarded for him/her during the

period that he/she performs the duties of Ombudsman, or he/she shall be provided with another equivalent job (post) at the same enterprise or, if this should prove impossible, with his/her consent, at another enterprise, institution, organization, and if he/she decide not to work he/she would receive the salary of Ombudsman [(alternative A) till the age of his retirement] [(alternative B) forever].

COMMENT

- 1. The Ombudsman should be secure in the position, so his/her removal must have a complicated, documented or reasoned process. This protects the Ombudsman from groundless or political attacks.*
- 2. In filling vacancies, full term appointment is preferable to remainder-of-term appointment.*

Article 8. Compensation

1. The Ombudsman is entitled to be paid the same salary and benefits as [(Alternate A) Chairman of Supreme Court], [(Alternate B) Head of Parliament], [(Alternate C) Prime Minister or vice President]. The salary of the Ombudsman shall not be stopped or diminished during his/her term of office, unless by general laws applying to all remunerated officers of the state.
2. The Ombudsman must be reimbursed for reasonable traveling and out of pocket expenses necessarily incurred in discharging duties.

COMMENT

- 1. The Ombudsman is a high-level official who should receive a salary that reflects the importance, of his office. On the other hand, independence of this office requires a high salary.*
- 2. Receiving salary from public budget will not violate his/her independence.*

Article 9. Organization of Office

- 1- In order to secure the activity of the Ombudsman, there shall be established the “Office of Ombudsman”, which has an autonomous legal personality under the authority of Ombudsman. The structure of the office, distribution of duties and other issues concerning the organization of its activity shall be governed by a regulation adopted by the parliament.
- 2- The Ombudsman:
 - Shall select a person as Deputy Ombudsman and fix his/her salary and benefits. Ombudsman also can select as such, other persons as deputy, assistants or employee deem necessary to discharge the Ombudsman’s responsibilities under this Act. Compensation shall be fixed within the framework of annual budget approved by the Parliament.
 - May delegate to staff members any authority or duty except the power of delegation and the Ombudsman’s duty to make any report under this Act which is incumbent on Ombudsman himself. However, the Ombudsman may authorize 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 or partiality or a conflict of interest may prevents the Ombudsman from discharging his or her duty in a particular matter.
 - The Ombudsman and his or her staff shall be entitled to enjoy from all employee benefits or retirement privileges available to state employees.
 - The Ombudsman may appoint employees necessary to perform the duties of the office in accordance with relevant laws on engaging and dismissal of state staff. For the purposes of the application of those relevant laws, the Ombudsman is considered as a minister.

COMMENT

1. *The sensitive nature of the work and the high degree of jurisdiction and confidence in its staff dictate that the Ombudsman be free of civil service and*

political constraints in staff selection and retention. The Ombudsman, however, should refer to civil service salary schedules in setting comparable salaries for staff, and would naturally use state accounting facilities for payment of such salaries. The appointment of a Deputy Ombudsman is compulsory while selection of other officials, including an Assistant Ombudsman or inspectors is optional.

2. *Broad delegation of powers from Ombudsman to his/her staff is desirable. The Ombudsman, however, remains responsible for the organization of the office and for what reports leave the office unless the Deputy Ombudsman has assumed the Ombudsman's duties under this sub-section or when the office is vacant.*

Article 10. Powers and Duties

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

1. To investigate, on complaint or on the Ombudsman's own initiative, any administrative act of an organ, without regard to the finality of that act;
2. Protecting human and citizenship rights and freedoms as enshrined in the Constitution; other relevant laws and international conventions and document accepted by ratification; or human rights obligations incumbent upon the state by customary international law;
3. preventing acts of violation against human and citizens' rights and freedoms or the facilitation of their renewal;
4. Providing reports and/or instituting complaints concerning inconsistency of laws and regulations with higher norms of human and citizenship rights, before competent authorities. The latter is bound to consider the Ombudsman's complaint and report immediately and shall declare the result;
5. facilitating the process of passing legislations on human and citizenship rights and freedoms in accordance with the Constitution of and international standards in this area;
6. improving and further developing international cooperation in the area of the protection of human and citizens' rights and freedoms;

7. Preventing any forms of discrimination with regard to a person's implementation of his or her rights and freedoms;
8. Promotion or Participating actively in promoting human and citizenship rights, improvement of respect and ensuring International standards of human and citizenship right with well-organized methods including but not limited to:
 - a) Holding meetings, explanatory sessions, educational workshops, participating in public debates, issuing publication, films, and educational booklets, using other educational media and any other promoting and informative means.
 - b) Protection of persons or groups at risk, including children, women, minorities, elderly persons, disabled persons and making required recommendation for them.
 - c) Adopting general measures for preventing breaches of human rights or citizenship rights through proposing reform of laws and regulations.
 - d) Public sensitizing concerning cases of human rights violations and sensitizing media to those cases and systematically reminding the sensitivity of those violations for media.
 - e) To endeavor for developing general and special rules of conduct for respecting human and citizenship rights by state organs or public officials and supervision on their implementation.
 - f) Increasing public awareness concerning values of rule of law and constitutionalism.
 - g) Providing report concerning parliamentary or governmental bills or other legal project in competent authorities which may be in contradiction with human or citizenship rights.
 - h) Cooperation with human rights non-governmental organizations and supporting their activities.
 - i) Encouraging legal knowledge among the population and protecting confidential information about each person.

9. To make such inquiries and obtain such assistance and information from any agency or person as the Ombudsman shall require for the discharge of its duties. Organs shall not restrict the Ombudsman's access to organ's personnel;
10. Notwithstanding any other existing laws or regulations Ombudsman should have access to and to examine and copy any organ records, including records which are confidential under the law. 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 disclosure. Ombudsman must return a confidential document which has been available to him by complainant to the latter unless he has given a written authorization to disclose such document to third parties or Ombudsman has been reached to the conclusion that the document was illegally in the possession of complainant;
11. To maintain confidential any matter related to complaints and investigations, including the identities of the complainants and witnesses, except as the Ombudsman deems it necessary in discharging his/her duties;
12. To bring suit in competent court or other competent bodies to enforce the provisions of this Act;
13. To 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 inspections and report's findings, conclusions and recommendations. However, the Ombudsman may not levy any fees for the submission or investigation of complaints;
14. The Ombudsman shall be entitled to Be received, without any delay, by the President, the Speaker of the Parliament, the Prime Minister/or deputy of president, the chairmen of the Constitutional Court/Guardian Council/ Constitutional Council and the Head of Judiciary;
15. Appeal to the Constitutional Court/Guardian Council/ Constitutional Council, with regard to:
 - a) the issue of conformity between the Constitution and the laws of state and other legal acts issued by the Parliament;
 - b) Acts issued by the President;

c) Acts issued by the Cabinet of Ministers concerning human and citizenship rights and freedoms;

d) Applying for an official interpretation of the Constitution and other relevant laws;

In this case the Constitutional Court/Guardian Council/ Constitutional Council shall give priority to deal with the case.

16. Invite, or to subpoena if necessitated, officials and officers, citizens, foreigners and stateless persons to submit oral and written explanations with regard to cases under review;

17. Visit, at any time, places of detention, holding cells, various types of facilities where convicts are imprisoned and facilities where medical treatment and rehabilitation is forcefully applied, psychiatric hospitals, interview persons who are residing there and obtain information on their living conditions;

18. Attend him/herself or his/her representatives court sessions of all instances, including court sessions held behind closed doors, in the event that the subject of the legal case at hand, in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;

19. Appeal to the court about protecting human and citizenship rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reason, and also attend judicial proceedings personally or through a delegate in accordance with the instances and procedure established by law;

20. To prepare and administer a yearly budget for the office of the Ombudsman;

COMMENT

In this article, powers and duties of the Ombudsman are enumerated; however, they are not an exhaustive list of all the powers and duties delegated to the Ombudsman. Additional provisions related to staffing, delegation of powers and duties, recommendations, and reports are contained in other articles of this Act.

1. *The Ombudsman's investigatory power is limited to administrative acts of organs. The Ombudsman may receive and consider complaints from any source. The Ombudsman can initiate himself an investigation when others are unwilling to come forward with a complaint for any reason or when the Ombudsman discovers a matter warranting investigation concerning a case including broad and systematic breaches of human rights and citizen's rights.*
2. *Although most of the Ombudsman's time will be occupied with individual complaints, the Ombudsman can conduct studies of a general nature to improve efficiency or improvement of service to the public, either independently or jointly with other governmental bodies or non-governmental research enterprises.*
3. *The Ombudsman has broad access to any type of information in the possession of an organ or person, and the public organs cannot restrict agency personnel from assisting or providing information to the Ombudsman. There is no requirement to conduct formal hearings of an adversary nature, although the Ombudsman can take statements from persons under oath or hearing their testimonies without any need to comport with what is normally required in a formal adjudication hearing.*
4. *The Ombudsman can examine and copy or obtain a copy of any document in the possession of state or public organ, including records which are confidential under the law, without the payment of any fee. However, the Ombudsman and the Ombudsman's staff are obligated to maintain the confidentiality of any confidential records provided by an organ to the same extent as the legal custodian of the records.*
5. *The Ombudsman has the power to inspect any organ without prior notice, as advance notice might negate the value of such a visit. Information gathered on site visits may provide subjects for following inspections on the Ombudsman's own motion.*
6. *The Ombudsman can compel any person to provide testimony, document, or other evidence through issuance of a subpoena. The Ombudsman and his or her staff are empowered to administer oaths to such witnesses. Protections and privileges for witnesses have been provided in Article 17. If a person refuses to comply with the subpoena, the Ombudsman can seek enforcement under Article 10.*

7. *To facilitate the gathering of information, respect for private life of persons, the Ombudsman has discretion to keep confidential any complaint or investigative information. The Ombudsman may disclose such information as the Ombudsman deems necessary or appropriate in carrying out the Ombudsman's duties.*
8. *The Ombudsman may bring suit regarding the exercise of his or her powers, including actions for a declaratory judgment to affirm its jurisdiction [under Article 10(a)]; to inspect organs under Article 10(e); to show cause for not appearing after being subpoenaed under Article 10(f); and to enforce confidentiality provisions under Article 10(g).*
9. *The Ombudsman is given a broad regulatory discretion to determine the procedures for carrying out the office's functions. The Ombudsman may through rules or regulations specify the means by which complaints may be submitted (which may include fax or electronic mail) and require that certain types of complaints be in writing. To insure accessibility (and avoid discrimination against the poor), no fee may be imposed for the Ombudsman's services.*
10. *A provision for budgetary powers may be necessary in some states and useful in others, to insure that the Ombudsman's budget is independent of outside (agency) administration.*

Article 11. Rights to Complaint

- (a) Any person have the right to make complaint before the Ombudsman, if the Ombudsman decided whether or not to investigate a complaint, shall suitably inform the complainant thereof.
- (b) The Ombudsman shall, if requested by the complainant, suitably report the last status of his or her investigation to the complainant.
- (c) After investigation of a complaint, the Ombudsman shall suitably inform the complainant of his or her conclusion or recommendation and, if appropriate, any action taken or to be taken by the organ involved.
- (d) A letter to the Ombudsman from a person held in custody--including by detention, incarceration and hospitalization--by an agency shall be forwarded immediately,

unopened, to the Ombudsman. A letter from the Ombudsman to such person shall be immediately delivered, unopened, to the person. Telephone and personal contacts between the Ombudsman and a person in custody shall not be prohibited or monitored.

(e) All phases of considering complaints are confidential.

The final report of Ombudsman concerning every case must be made available to public unless the complainant request in written their non-disclosure and Ombudsman has accepted such a request. In case Ombudsman deems publication of report necessary for ensuring public rights and awareness of people of the Ombudsman's performance and complainant is opposed to its publication or it is in contradiction with citizen's rights of complainant, the report will be published with hypothetical names in the place of nouns of complainants and witnesses.

COMMENT

The above-mentioned article gives the Ombudsman a general duty to inform the complainant of the status of his complaint. The experience and judgment of the Ombudsman will determine the suitable response to be made.

Article 12. Investigation of Complaints

1. The Ombudsman shall conduct a suitable investigation of complaints that he/she seems admissible for investigation. An admissible complain includes any administrative act which the Ombudsman believes might be:
 - a) Contrary to laws or regulation;
 - b) Implying of non-respect of citizenship rights, fundamental rights or freedoms according to the International Bill of Human Rights (universal declaration of Human Rights, Civil and Political Covenant and Economic, Social and Cultural Covenant (in case of accession of a country to those covenants) and other citizen's rights;
 - c) Based on mistaken findings or irrelevant considerations;
 - d) Unsupported by an adequate statement of reasons;

- e) Performed in an inefficient manner;
- f) Unreasonable, unfair, discriminatory or otherwise inequitable, even though in accordance with law;
- g) That act has been done with mismanagement. Mismanagement includes impartiality, prejudice, negligence, carelessness, unreasonable delay, inefficiency, derogation, corruption, willfully, impudence, reluctance to treat with people as those having citizenship rights; refusal to response to reasonable questions; failure in mentioning people's rights or privileges; deliberately providing misleading or incomplete information to people; refusal to provide compensation or clearly inadequate compensation; racial and gender discrimination or any other types of discrimination; refusal to aware people of their right to appeal; adopting wrong measures; failure of manager in supervision in correct implementation of regulations; failure to discount in "strict" implementation of laws and regulations when this type of law enforcement leads to clear unfair results or otherwise the administrative act is incorrect.

2. In examining whether the conduct of organs has been fair or not, the Ombudsman can cite some indications including:

1. *Communication*

- 1.1 Public information is available and understandable;
- 1.1. Forms are in a simple formal language;
- 1.2. Customers will receive all required information;
- 1.3. Customers are treated honorably.

2. *Facilities and services*

- 2.1. Telephones are responded in a first manner;
- 2.2. Voice E-mail, responding machines or similar equipment are available;
- 2.3. Administrative building are easily accessible and appropriate for crossing wheelchair;
- 2.4. Work places are safe and hygienic for staff;

2.5. Rights of people to private sphere are respected.

3. *Decision making procedures*

3.1. Those who are affected from a decision has opportunity of receiving information, providing evidence and defending their positions;

3.2. Decisions are made in a reasonable time;

3.3. Reasons for decisions are provided.

4. *Appeal, judicial review and complaint procedures*

4.1. At the time of decision making, it has been openly noted to people that this decision is subject to appeal and it is possible to request administrative or judicial review;

4.2. Procedure for making complaint is sufficiently clear;

4.3. People are requested to provide their ideas for improvement of services.

5. *Organizational issues*

5.1. The staff are delegated to do some duties and act within their scope of jurisdiction;

5.2. Administrative organizations have the issue of continues reform of organizational structure for performing these services which they provide, based on their agenda;

5.3. Administrative organizations cooperate with each other for providing better services.

6. *Urban planning*

6.1. People are invited to participate in urban planning;

6.2. Process of decision making is clear in these fields from the beginning to the end;

6.3. Required statistical information are maintained for evaluation and improvement of services.

3. The Ombudsman in the Ombudsman's discretion may decide not to investigate or suspend investigation because:
 - a) The complainant could reasonably be expected to use another remedy or channel;
 - b) The complaint is trivial, frivolous, vexatious, or not made in good faith;
 - c) The complaint has been too long delayed to justify present examination;
 - d) The complainant is not personally aggrieved by the subject matter of the complaint;
 - e) Resources are insufficient for adequate investigation;
 - f) Considering the resources available to Ombudsman, the complaint has not priority for investigation;
 - g) Before providing a report by the Ombudsman concerning the merits of the complaint, organ in question provides an agreed remedy for both complainant and Ombudsman;
 - h) The complaint previously had been investigated sufficiently by Ombudsman, court or another investigation board;
 - i) Disclosing the identity of complainant will be required for thorough investigation but the complainant does not agree with this; or
 - j) Providing information or documents are requested from complainant and he defaults to provide them in due date.
4. The Ombudsman's declining to investigate a complaint shall not bar the Ombudsman from proceeding on his or her own initiative to investigate subject matter of that complaint.
5. The decision by the Ombudsman to decline or reject a petition shall be final.

COMMENT

1. *The Ombudsman has a duty to investigate the complaints described in subsection (a), although he or she may decline to investigate for the reasons given in subsection (b). The enumerated complaints indicate the kinds of administrative*

acts that generate complaints. As it inferred from the terms of this article, complaints that can be submitted to Ombudsman are not limited to enumerated cases and it is especially emphasized on case of new respect for citizenship rights or their breaches in general.

- 2. The Ombudsman may choose to investigate a complaint even though the statute permits him or her to refuse. For instance, under paragraph (b)(1), if the Ombudsman believes that recourse to an administrative or legal remedy would be futile the Ombudsman may investigate the complaint. Similarly, the Ombudsman may decide to investigate a complaint even though the complainant was not personally aggrieved. Complaints which are inappropriate for investigation may nevertheless reveal administrative fact and consequently proposing reform in practice which the Ombudsman may decide to investigate on his or her own initiative.*
- 3. This article contains some substantive conditions for determining the correctness of administrative acts. Ombudsman Acts often does not deal with these issues since there are many binding laws in the field of human rights and citizens and deployment of standards of desirable management while in most of the Asian countries, there is no definition of desirable management or mismanagement. Thus, it seems enumerating some cases of mismanagement is necessary in Ombudsman Act. Of course cases of mismanagement or non respect for human rights or citizen's right are not limited to those cases.*

Article 13. Rights of Organs

Before formally issuing a conclusion or recommendation that is significantly critical or adverse to an organ, the Ombudsman shall have consulted with that agency and permitted the organ reasonable opportunity to reply. If the Ombudsman makes a conclusion or recommendation available to an organ, those documents must be deemed confidential and may not be disclosed to the public by the organ unless the Ombudsman releases it.

COMMENT

1. *This article protects organs, their officers and employees by requiring giving them reasonable time to reply to significant criticism before the Ombudsman issues its findings. The Ombudsman has the discretion to make all or part of his or her findings available to facilitate a reply. Because the Ombudsman can modify its findings, after reviewing the agency's reply, disclosure of findings not released by the Ombudsman is a violation of law.*
2. *Notice of the Ombudsman's decision to investigate is not required because such formalities are inconsistent with the role of the Ombudsman as an alternative to procedure-bound remedies and the limited resources of the office; This is largely procedural in that the Ombudsman will require inevitably to contact the organ during an investigation; and are not violations of due process given the absence of Ombudsman power to enforce its recommendations and the fact that an opportunity to be heard is required before publication.*

Article 14. Procedure after Investigation

- (a) If, after investigation, the Ombudsman is of the opinion that an organ should:
- (1) consider the matter further,
 - (2) modify or cancel an act,
 - (3) alter a regulation, practice or a rule,
 - (4) explain more fully the act in question,
 - (5) rectify a failure, or
 - (6) take any other action,

The Ombudsman shall state any conclusions, recommendations and reasons therefore to the concerned organ. If the Ombudsman so requests, the organ shall, within the time specified, inform the Ombudsman about the action taken on recommendations or the reasons for not complying with them.

- (b) After a reasonable period of time has elapsed, the Ombudsman may issue his or her conclusions or recommendations to the legislature, President, Prime Minister, the Governor, a grand jury, the public, or any other appropriate authority. The Ombudsman shall include any brief statement the organ may provide if an opportunity to reply is required by this Act.
- (c) If the Ombudsman believes that an action has been dictated by laws whose results are unfair inconsistent with citizen's rights and freedoms or otherwise objectionable, and could be revised by legislative action, the Ombudsman shall notify the Parliament and the agency in question of desirable statutory change.
- (d) If the Ombudsman believes that any organ official or employee has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman shall refer the matter to the appropriate authorities without notice to that person.

COMMENT

- (a) Though the Ombudsman will rarely have reason to make a recommendation if there is no error in what the organ has done or neglected to do, the Ombudsman should remain free to suggest improvements in methods or policies even when the existing practice may be legally permissible. Thus the Ombudsman may facilitate one organ's learning about and taking advantage of the experience of another. This subsection contemplates no entry of judgment, but simply providing an opportunity for expression of opinion by the Ombudsman. The Ombudsman is not a superior official, in a position of command, and cannot compel a change in an administrative act. The Ombudsman's recommendation may, however, induce an organ to exercise whatever power it may possess to right what the Ombudsman points out as mistake.*
- (b) If the Ombudsman is required to provide an opportunity to reply under Article 13 and a reply is forthcoming, the Ombudsman must include it when issuing findings. Ombudsman can to summarize replies of the organ concerned and they shall be printed unedited; regulations as to what is "summary" might be promulgated under Article 10(k).*

(c) There may be instances where an organ acted in accordance with existing law, but the law itself produces unjust results or it is inconsistent with citizen's rights and freedoms. The Ombudsman has the duty to bring these situations to the attention of the legislature and appropriate organ officials; if appropriate; the Ombudsman may comment on or recommend changes in legislation.

(d) The Ombudsman is obliged to report wrongdoing pertaining to different officials. This subsection makes it clear that the Ombudsman may report allegations of wrongdoing without having to first notify the person involved (who may otherwise flee or destroy pertinent evidence if tipped off prematurely).

Article 15. Reports

The Ombudsman shall annually report on his or her activities to the Parliament or any of its committees or commissions, and to the President /Prime Minister/ Governor, to the public and, in the Ombudsman's discretion, to organs concerned.

COMMENT

The Ombudsman's sole means of correcting of flawed practices when organs refuse to do so is to publish criticism and recommendations.

The annual report whose release date would be set by the Ombudsman (Article 10(l)), is mandatory. Special or general reports (Art. 14(b)) are discretionary with the Ombudsman.

Article 16. Ombudsman's Immunities

1. The substantive content of any finding, conclusion, recommendation, or report of the Ombudsman or member of the Ombudsman's staff shall not be reviewable in any court.

2. The Ombudsman and the Ombudsman's staff have the same immunities from civil and criminal liabilities as a judge and a Member of Parliament under the Constitution and other relevant laws. The Ombudsman shall not be held in custody in the criminal proceedings instituted against him without the prior consent of the Parliament.
3. The Ombudsman and the Ombudsman's staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Act.

COMMENT

1. *As a public watchdog, the Ombudsman should be able to state his or her position freely and candidly without fear of pressure or reprisal. The judicial immunities afforded the Ombudsman are intended to protect against harassment when the Ombudsman deals with controversial issues or makes an unpopular decision. Although the Ombudsman's findings are presented only after due consideration, no claim of infallibility is made and the Ombudsman's findings, conclusions and recommendations are always subject to criticism by government officials as well as members of the public. Since the Ombudsman has no enforcement power and any findings and recommendations are only advisory in nature, the courts should have no authority to order that an expression of opinion be changed.*
2. *Certain dealings that the Ombudsman has with complainants and witnesses may be confidential in nature. This subsection is intended to protect these confidential relationships so as to encourage complainants to avail themselves of the Ombudsman's services and witnesses to cooperate with the Ombudsman, where they may be otherwise reluctant to do so. In case of Ombudsman's staff breaches of general rules concerning confidential information, they are subject to criminal provisions of those laws.*

Article 17. Witnesses' Privileges

Any person who provides information under this Act may be accompanied and advised by counsel of his or her choice and shall be paid the same fees and travel allowances and accorded the same privileges and immunities as witnesses whose attendance has been required in the court. However, a representative of an organ providing information under this Act during business hours shall not be entitled to receive such fees and allowances.

COMMENT

Although investigations conducted by the Ombudsman are not concerning contested cases or adjudications of rights or interests, and although nearly all testimony will be private and confidential, witnesses who testify before an Ombudsman are given the same judicial privileges and immunities. Accorded in courts, witness fees and travel allowances are also required for persons who provide information to the Ombudsman under the Act. A provision that a representative of an organ during business hours shall not be entitled to such fees and allowances is included to avoid possible double payment of public servants during working hours by court, it means court of first instance, court of appeal or other courts which are existed in judicial system of each country and depending on the election of legislature, Ombudsman will be accorded the privileges of those witnesses.

Article 18. Obstruction

Any person who willfully obstructs or hinders the proper and lawful exercise of the Ombudsman's powers, or willfully misleads or attempts to mislead the Ombudsman in the Ombudsman's inquiries, shall be sentenced to [The sentence of a crime]

COMMENT

In those countries where there is a necessity for indicating the court in which proceedings are to be brought and upon whose initiative these requirement must be fulfilled. Since fines for offenses vary from country to country and may be subject to periodic changes, it is preferable to specify the offense rather than a set amount of fine for a violation.

Article 19. Reprisals Prohibited

- (a) No person who has filed a complaint or participates in any investigation or proceeding pursuant to this law, shall be subject to any penalties, sanctions or restrictions in connection with his or her employment or be denied any right, privilege, or benefit because of such action.
- (b) Any person who alleges a violation of terms this subparagraph may bring a civil action for appropriate injunctive relief, actual damages, and probable damages.

COMMENT

This section provides protection to complainants and witnesses from reprisals at their place of employment or the deprivation of other rights or privileges because of their participation in Ombudsman investigations.

Article 20. Relation to Other Laws

The provisions of this Act are in addition to provision of other laws and do not in any manner limit or affect any other provisions of law under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision of law to the effect that any administrative action shall be final or without appeal.

COMMENT

This article clearly sets forth that the Ombudsman office is a supplemental remedy and is in addition to other remedies or rights of appeal. This principle emphasized in article 1 with respect to purpose. This article also establishes the principle that the Ombudsman powers are not inhibited by statutory enactments providing that any administrative action shall be final or without appeal.

Article 21. Budget

Based on the proposition of Ombudsman, the budget will be adopted on a yearly basis by the Parliament. This budget must be adopted and appropriated in a way that is sufficient for continuing activities of Ombudsman and it mere be less than the budget of previous year. Budget will be made.

COMMENT

Before an Ombudsman statute can be implemented, funding needs to be made available to pay for the expense of the office. This section provides the mechanism to do this. This article provides the mechanism to do this. In some countries this article was required in the budget Act of that country. If inclusion of such article is not necessary, it can be omitted.