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**CONSTITUTIONAL ASSEMBLY**

**CONSTITUTIONAL COMMITTEE  
SUB-COMMITTEE**

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**DOCUMENTATION  
RESEARCH DEPARTMENT:  
SURVEY ON FOREIGN  
CONSTITUTIONS**

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**RESEARCH DEPARTMENT:**  
**SURVEY OF FOREIGN CONSTITUTIONS**

**1. INTRODUCTION**

1. The sub-committee requested a comparative survey of foreign constitutions. In this report we examine the following matters -
  - \* The Appointments procedures for the foreign equivalents of the Auditor General, Human Rights Commission and Public Protector. **(Part A).**
  - \* General principles applying to foreign equivalents of the Auditor General, Human Rights Commission and Public Protector, of the type contained in the draft text on these institutions, with special reference to constitutional provisions protecting the Auditor General and his/her assignees from liability during the discharge of his or her office. **(Part B)**
  - \* Constitutional provisions governing the reporting function of foreign equivalents of the Public Protector. **(Part C)**

**PART A: APPOINTMENTS PROCEDURES**

2. The following countries were examined...

Namibia  
Hungary  
India  
Germany  
Portugal  
Japan  
Jordan  
Malawi  
New Zealand  
Spain

3. Not all of these countries provide for all of these institutions in their constitutions. Many countries provide for one or more of these institutions in legislation. Where it was possible to do so such legislation has been considered. The emphasis of the research, however, is on formal constitutional provisions
4. The countries selected are a representative sample of the world's

constitutions.

5. As far as possible, extracts were taken from these Constitutions, except where the provision concerned was excessively technical or long, in which case the provision is summarised (indicated by []).

#### **PART B: GENERAL PRINCIPLES**

The countries listed above were considered

#### **PART C: REPORTING PROVISIONS ON THE PUBLIC PROTECTOR**

In addition to the countries in Part A, the following systems were considered:

Papua New Guinea

Mauritius  
Zimbabwe

## PART A: APPOINTMENTS PROCEDURES

### NAMIBIA (Art 127)

#### 1. Office and appointment:

##### **Auditor General**

[Appointed by the President [for a period of 5 years] on the recommendation of the Public Service Commission and with the approval of the National Assembly].(article 127(1))

##### **Ombudsman**

Shall be appointed by Proclamation by the President on the recommendation of the Judicial Services Commission. (article 90(1)).

#### 2. Dismissal/suspension:

##### **Auditor General**

The AG shall not be removed from office unless a 2/3 majority of all the members of the national Assembly vote for his removal on the ground of mental incapacity or gross misconduct. (article 127(4))

##### **Ombudsman**

May be removed from office before the expiry of his/her term of office by the President acting on the recommendation of the JSC, but only on the grounds of mental incapacity or for gross misconduct. The JSC shall investigate whether or not the Ombudsman shall be removed from office on the grounds above and, if it decides that the Ombudsman shall be removed, it shall inform the President of its recommendation. (article 94).

While investigations are being carried out into the necessity of the removal of the Ombudsman., the President may, on the recommendation of the JSC and, pending the outcome of such investigations and recommendations, suspend the Ombudsman from office.(article 94(4)).

#### 3. Term of office

##### **Auditor General**

5 years(article 127(1))

## **Ombudsman**

The Ombudsman shall hold office until the age of 65 but the President may extend the retiring age of any Ombudsman to 70.(article 90(1))

### 4. **Qualifications/attributes**

#### **Auditor General**

The AG Shall not be a member of the Public Service. (article 127(3))

#### **Ombudsman**

The Ombudsman shall either be a judge of namibia, or a person possessing the legal qualifications which would entitle him or her to practise law in all the courts of namibia. (article 89(4)).

### 5. **Remuneration/terms of employment**

## **HUNGARY (1949)**

### 1. **Office and appointment**

#### **State Audit Office:**

State Audit Office is the financial-economic control organ of Parliament... The President and the Vice President of the State Audit Office are elected by Parliament, the auditors are commissioned by the President of the State Audit Office. (article 32/c)

Rules affecting the structure and the operation of the State Audit Office shall be provided by a Constitutional Act. (article 32/c)

#### **Parliamentary Commissioner of Citizens Rights**

The Parliamentary Commissioner is elected by Parliament upon the recommendation of the President of the republic. The Parliament may elect special commissaries for the protection of particular constitutional rights. Detailed rules concerning Parliamentary Commissioners shall be provided by a Constitutional Act. (paragraph 32/B).

## INDIA (Art 148)

### 1. Office and appointment:

#### **Comptroller and Auditor General [CAG]:**

The CAG is appointed by the President... (article 148(1))

#### **Human Rights Commission [HRC]**

Created by The Protection of Human Rights Act 10 1994

The central government shall constitute the HRC. (section 32(2)). The chairperson and other members shall be appointed by the President ...Provided that every appointment shall be made after obtaining the recommendations of a committee consisting of (a) the Prime Minister, Speaker of the House of the People; Minister of Home Affairs..; Leader of the Opposition in the House of the People.(section 4(1)).

### 2. Dismissal/suspension:

#### **CAG**

Shall only be removed, by the President, in like manner and on the like grounds as a Supreme Court judge, in terms of Art 124(4): by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than 2/3 of the members of that House present and voting has been presented to the President in the same session for such removal on the grounds of proved misbehaviour or incapacity.(article 148(1)).

#### **HRC**

The Chairperson or any other member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the SC, reported that the chairperson or member ought on such ground to be removed.(section 5(1)).

Notwithstanding anything in ss1, the President may by order remove from office the chair or any member if the chair or member -

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or
- (d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude. (section 5(2)).

**3. Term of office**

**CAG**

The CAG shall not be eligible for further office either under the Government of India or under the Government of any state after he has ceased to hold his office. (article 148(4))

**HRC**

Chairperson shall hold office for 5 years or until 70. members for 5 years, and are eligible for reappointment but cannot hold office after attaining 70. years. (section 6(1)and (2)). On ceasing to hold office, a chairperson/member shall be ineligible for further employment under the government of India or any state. (section 6(3)).

**4. Qualifications/attributes**

**HRC**

[the chairperson and members are required to hold or have held judicial office in the Supreme Court and or High Court.(article 3(2))

**5. Remuneration/terms of employment:**

**AG**

[Salary and conditions of service are to be specified by Parliament by law but until such time as that law is passed are as provided for in schedule 2. Provided that Salary nor rights in respect of leave of absence, pension or age of retirement shall not be varied to his disadvantage.(article 148(3))]

**HRC**

The salaries and allowances payable to, and other terms and conditions of service of, the members shall be as may be prescribed. Provided that neither the salary and allowances nor the other terms and conditions shall be varied to his disadvantage after his appointment.(article...)

## **GERMANY (Art 114)**

### **1. Office and appointment**

#### **Federal Court of Audit**

The Federal Court of Audit, whose members enjoy the same independence as judges, shall audit the accounts and determine whether public finances have been properly and efficiently administered. The Federal Court of Audit shall submit an annual report to the Federal Government as well as to the Bundestag and the Bundesrat direct. In all other respects, the powers of the FCA shall be regulated by Federal legislation.(article 114)

## **PORTUGAL (Art 110)**

### **1. Office and appointment**

#### **Court of Audit**

The implementation of the budget shall be supervised by the court of Audit and the Assembly of the Republic; upon the opinion of the former, the latter shall scrutinise and approve the general accounts of the state including the social security accounts. Art 136. The President shall appoint the President of the Court of Audit.(article 110)

#### **Ombudsman**

The Ombudsman shall be appointed by the Assembly of the republic.(article 23(3)).

## **JAPAN (Art 90)**

### **1. Office and appointment:**

#### **Audit Board**

Final accounts of the expenditures and revenues of the state shall be audited annually by a Board of Audit and submitted by the cabinet to the Diet, together with the statement of audit during the fiscal year immediately following the period covered. The organisation and competency of the Board of Audit shall be determined by law.(article 90)

## JORDAN (Art 119)

### 1. Office and appointment:

#### **Audit Office**

An Audit Office shall be constituted by law to audit the state's revenue and the manner of expenditure.

## MALAWI

### 1. Office and appointment:

#### **Auditor General**

The office of the Auditor General shall be a public Office. Appointment to the office of Auditor General shall be made by the President, but the Public Appointments Committee may at any time inquire as to the competence of the person so appointed to perform the duties of that office and as to the financial probity of a person so appointed, so far as it is relevant to the duties of that office.(article 184(3)).

#### **Ombudsman**

[The Ombudsman is a public office. Nominations for appointment to the office shall be received from the public by way of a public advertisement placed by the clerk to the National Assembly and the successful candidate shall be appointed by the Public Appointments Committee in accordance with requirements of this section. (article 122(1)).]

#### **Human Rights Commission**

[Members shall be nominated from organisations that are considered by the Law Commissioner and the Ombudsman to be reputable organisations representative of malawian society and that are concerned with the promotion of the rights and freedoms guaranteed by this Constitution. These persons shall be formally appointed by the President]. (article 131)

### 2. Dismissal/suspension

#### **Auditor General**

A person holding the office of AG shall be subject to removal by the President only by reason of that person being -  
(a) incompetent in the exercise of his or her duties;

- (b) compromised in the exercise of his or her duties to the extent that his or her financial probity is in serious question;
- (c) otherwise incapacitated; or
- (d) over the retirement age.(article 184(6)).

#### **Ombudsman**

The Public Appointments Committee can terminate the appointment before the expiry of the term of office only -

- (a) in such circumstances where had that person not been Ombudsman, that person would have been disqualified from being appointed;
- (b) for gross misconduct; or
- (c) on reaching the age of 65. (article 128(2)).

#### **Human Rights Commission**

Removal from office on grounds of incompetence, incapacity or in circumstances where the member is compromised to the extent that his/her ability to impartially exercise the duties of his/her office is seriously in question. (article 131(b)(3)).

### **3. Term of office**

#### **Auditor General**

The office of the Auditor General shall become vacant after the person holding that office has served for 5 years, but the person holding that office may be nominated for such further term, not exceeding 5 years, as the President deems appropriate. (article 184(4)).

#### **Ombudsman**

A person appointed to the office shall serve a term of not more than 5 years, provided that the Public Appointments Committee may appoint that person for such further terms of five years as it considers appropriate..(article 128(1)).

#### **Human Rights Commission**

[Appears to be for an indefinite period unless removed from office on the grounds mentioned in (2) above.]

### **4. Qualifications/attributes**

#### **Ombudsman**

The person appointed to the office shall -  
(a) have sufficient knowledge of the law;

- (b) be publicly regarded as a person who can make impartial judgments;
- (c) have sufficient knowledge of the workings of government;
- (d) not have had any criminal convictions and not have been a bankrupt;
- (e) be otherwise competent and capable of performing the duties of his or her office;
- (f) not be the President, Vice President, a Minister or Deputy Minister, a serving public officer or a member of Parliament; and
- (g) not hold any other public office unless otherwise provided for in this Constitution. (article 122(2)).

**Human Rights Commission**

Not specified

**5. Remuneration/terms of employment**

**Ombudsman**

Not specified

**Human Rights Commission**

Not specified

**NEW ZEALAND CONSTITUTION (1986)**

**1. Office and appointment**

**Controller and Auditor general (Public Finance Act )**

The CAG is appointed by the Governor General on behalf of her majesty. The AG cannot be a member of Parliament or of a local authority and cannot hold any office of trust or profit, or engage in any occupation for reward outside the duties of his office as AG. Neither the Minister of Finance nor the Minister in charge of the AG shall be responsible in any way for then carrying out or exercise by the AG of its functions, duties and powers.(section 16)

**Human Rights Commission (Human Rights Commission Act 49 1977)**

The Chief Human Rights Commissioner and the other Human Rights Commissioners shall be appointed by the Governor-General on the recommendation of the Minister of Justice. (section 7(2))

2. **Dismissal/suspension**

**Controller and Auditor General**

[The CAG may be removed or suspended from his office only by the Governor General, upon an address from the House of representatives, for disability, bankruptcy, neglect of duty or misconduct. However when Parliament is not in session the AG may be suspended from his office by the GG in council on the same grounds as above, proved to the satisfaction of the GG. Such suspension shall not continue in force beyond 2 months after the beginning of the next ensuing session of Parliament, and the salary of the AG shall continue to be paid to him notwithstanding any such suspension.(section 20).]

**Human Rights Commission**

An appointed Commissioner may at any time be removed from office by the Governor-General for disability, neglect of duty, or misconduct. (section 9).

3. **Term of Office**

**Controller and Auditor General**

No person can be appointed or can hold office of AG after attaining the age of 60 years. However where the person has held the office for less than 5 years when he attains the age of 60 then he may continue to hold such office until he has completed his 5 years.(section 17)

[Shall not hold any office of trust (other than in a private capacity) or profit or engage in any occupation for reward outside of his/her duties. (section 17)]

**Human Rights Commission**

Every appointed Commissioner shall hold office for such term as the Governor General on the recommendation of the Minister of Justice shall specify in his appointment, being a term not exceeding 5 years. he may from time to time be reappointed. (section 8).

4. **Qualifications/attributes**

**Human Rights Commission**

[Knowledge of or experience in the different aspects of matters likely to come before the Commission. (section 7(3)).]

5. **Remuneration/terms of employment**

**Controller and Auditor General**

The AG shall be paid a salary out of the Consolidated Account, at a rate to be determined by the GG from time to time, by Order in Council. The salary of the AG cannot be reduced by an Order in Council during the continuance of his appointment. The AG is also paid travelling and other allowances and expenses as if he were a permanent head appointed under the state Services Act 1962 and his entitlement to holidays and annual and special leave is also determined as if he were a permanent head..(section 18)

**Human Rights Commission**

Remuneration by way of fees, salary, wages or allowances shall be fixed from time to time by the Higher salaries Commission. (section 13).

Members shall be paid travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951. (section 13A).

**SPAIN**

1. **Office and appointment**

**Court of Accounts**

The Court of Accounts..shall be directly dependent of the Cortes Generales and shall exercise its functions through delegation by them in the examination and verification of the general accounts of the state.(article 136). An organic law shall regulate the composition, organisation and functions of the court of accounts.(article 136(4)).

**Public Defender**

An organic law shall regulate the institution of the Defender of the People as the high Commissioner of the General Cortes, appointed by them for the protection of the rights contained in this title, for which purpose he may supervise the activity of the administration, informing the general Cortes of it. (article 54)

## PART B: GENERAL PRINCIPLES

### NAMIBIA

#### Ombudsman

**Independence:** The Ombudsman shall be independent and subject only to this Constitution and the law. (article 89(3)).

**Non interference/Assistance:** No member of the cabinet or the legislature or any other person shall interfere with the Ombudsman in the exercise of his or her functions and all organs of the State shall accord such assistance as may be needed for the protection of the independence, dignity and effectiveness of the Ombudsman. (article 89(3)).

### MALAWI

#### Auditor General

**Non-interference:** Subject to [the removal provisions] in the exercise of the duties and powers vested in the office of the AG by this constitution or any other law, the person holding that office shall not be subject to the direction or control of any person or authority. (article 184(9)).

No person or authority may inhibit the AG in the conduct of his or her functions and duties. (article 184(8)).

#### Ombudsman

**Independence:** In the exercise of his or her powers and functions and duties the Ombudsman shall be completely independent of the interference or direction of any other person or authority. (article 121).

**Privileges and immunities:** A person holding the office..shall -

- (a) be provided with the necessary resources to discharge the functions of that office;
  - (b) be entitled to the fullest co-operation of any person or authority of whom he or she requests assistance in connection with the duties of that office;
  - (c) enjoy, with respect to his or her official functions, similar protection and privileges as are enjoyed by members of Parliament;
- and

(d) be paid a salary to be charged to the Consolidated Fund and which shall not be reduced without the consent of the office holder. (article 125).

## **SPAIN**

### **Court of Accounts**

**Immunities.** The members of the court of Accounts shall enjoy the same independence and irremovability and shall be subject to the same incompatibilities as the Judges.(article 136(3)).

## **PORTUGAL**

### **Ombudsman**

**Independence.** The activities of the Ombudsman shall be independent of any acts of grace or legal remedies provided for in the Constitution and the laws. (article 23(2)).

**Duty of assistance.** The organs and officials of the Public Administration shall co-operate with the Ombudsman for the carrying out of the latter's functions.

## **JORDAN**

### **Audit Office**

**Immunity:** The law shall make provision for the immunity of the Head of the Audit Office

## **PART C: REPORTING FUNCTION OF THE PUBLIC PROTECTOR**

## **NAMIBIA**

The functions of the Ombudsman shall be defined and prescribed by an Act of Parliament and shall include the following -

(f) the duty to investigate vigorously all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Prosecutor-General and the Auditor-General..

(g) the duty to report annually to the National Assembly on the

exercise of his or her powers and functions. (article 91)

## **MALAWI**

The Ombudsman shall lay, each year, before the national Assembly a report which shall include a record of all complaints and applications to the office of Ombudsman, a record of the exercise of powers in relation to applications, of the remedies afforded to applicants in respect of grievances and shall also include a record of the general recommendations of the Ombudsman in respect of grievances. (article 127).

## **HUNGARY**

The Parliamentary Commissioner shall report to the Parliament on the experience of its activity annually.(paragraph 32/B(4)

## **ZIMBABWE**

[Reporting is not specifically provided for in the Constitution, and is presumably contained in legislation]

## **PAPUA NEW GUINEA**

...the Ombudsman Commission's powers of enforcement are limited to publicity for its proceedings, reports and recommendations, to the making of reports and recommendations to the Parliament and other appropriate authorities as provided by an organic law..(article 219(7)

The Commission shall, at least once in each period of 12 months, at such time as it is fixed by or under an Act of Parliament or, subject to any such Act, by the Head of State, acting with, and in accordance with, the advice of the national Executive Council, give to the Head of State, for presentation to the Parliament, a report on the functions and workings of the commission...(article 220(1)).

## **MAURITIUS**

[The Ombudsman reports his opinion on a matter investigated to the principal officer of the affected authority or department, with a copy to the prime Minister and to any Minister concerned. Where no appropriate action is taken the ombudsman may report such to the prime Minister and Minister concerned, together with recommendations, and may submit a further report to the national Assembly.(article 100)]

