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CHAPTER**THE OMBUDSMAN****Article 1 Establishment**

- (1) An Ombudsman shall be appointed by proclamation by the President after the confirmation of the nomination by the Senate. The Ombudsman shall be independent and shall have the powers and functions set out in this Constitution, and further shall have the immunities and privileges of judges of the Supreme Court. No 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 2 Functions

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

- (a) The investigation of alleged violations of fundamental rights and freedoms by governmental institutions, persons and public and private bodies, the abuse of power including unfair, capricious or discourteous treatment or abuse of power by an official in the employ of any organ of government, corruption, injustice or conduct by any office which would properly be regarded as unlawful, oppressive or unfair in a democratic society.

- (b) The duty to investigate complaints concerning the over-utilisation of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of eco systems and failure to protect the beauty and character of South Africa.

- (c) The power to take appropriate action to call for the remedying, correction and reversal of the practices specified in the preceding sub-articles through such means as are fair, proper and effective including -
 - (aa) negotiation and compromise between the parties concerned;

 - (bb) causing the complaint and his or her finding thereon to be reported to the superior of an offending person;

 - (cc) referring the matter to the Prosecutor-General;

 - (dd) bringing proceedings in a competent Court for an interdict or some other suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures;

 - (ee) bringing proceedings to interdict the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise *ultra vires*;

- (ff) reviewing such laws as were in operation before the date of independence in order to ascertain whether they violate the letter or the spirit of this Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon;
- (d) 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 relevant government department; the Prosecutor-General and the Auditor-General pursuant thereto;
- (e) the duty to report annually to the National Assembly on the exercise of his or her powers and functions.

Article 3 Powers of Investigation

The powers of the Ombudsman shall be defined by Act of Parliament and shall include the power to issue subpoenas requiring the attendance of any person before the Ombudsman and the production of any document or record relevant to any investigation by the Ombudsman.

Article 4 Meaning of 'Official'

For the purpose of this Chapter the word 'official' shall, unless the context otherwise indicated, include any elected or appointed official or employee of any organ of the

central or local government, any official of a para-statal enterprise owned or managed or controlled by the State, or in which the State or the Government has substantial interest, or any officer of the defence force, the police force or the prison service, but shall not include a Judge of the Supreme Court, or, in so far as a complaint concerns the performance of a judicial function, any other judicial officer.

Article 5 Removal from Office

- (1) The Ombudsman may be removed from office on the grounds of gross misconduct or mental incapacity before the expiry of his or her term office by the President acting on the recommendations of the Judicial Service Commission or the Senate and in accordance with sub-article (2).

- (2) A Judicial Committee of the Senate shall investigate whether or not the Ombudsman shall be removed from office on the grounds referred to in sub-article (2) hereof and, if it decides that the Ombudsman shall be removed, and whether pending a final decision, whether the Ombudsman should be suspended from office, it shall inform the President of its recommendations.

CHAPTER

PUBLIC SERVICE COMMISSION