



**PROVEDOR
DE JUSTIÇA**
Pelos Direitos dos Cidadãos

Ombudsman STATUTE

NATIONAL ASSEMBLY



Law n° 29/2003 of August 4

By the mandate of the people, the National Assembly hereby decrees, as per the terms of line *b*) of article 174 of the Constitution, the following:

CHAPTER I

General provisions:

Article 1

Definition

The post of Ombudsman is an entity independent of and auxiliary to political power, elected by the National Assembly, that has as its essential attribution the defense and promotion of citizens' rights, freedoms, guarantees and legitimate interests, ensuring, through informal means, the fairness, legality and regularity of the exercise of public powers.

Article 2

Scope of action

1. The actions of the Ombudsman are to be exercised namely in the scope of the activity of central and local Public Administration services, the Armed Forces, public institutes, public majority publicly-held enterprises or concessionaries of public services or that make use of assets in the public domain.
2. The actions of the Ombudsman may also address relations between private citizens involving a special relationship of domination within the scope of the protection of citizens' rights, freedoms and guarantees.

Article 3

Initiative

1. The Ombudsman carries out his or her functions based on complaints

presented individually or collectively by citizens regarding actions or omissions by public powers that in some way affect their rights, freedoms, guarantees or legitimate interests, with said complaints not dependent upon any deadline or time limitation.

2. The activity of the Ombudsman may also be undertaken on his or her own initiative and does not depend on the administrative or judicial means outlined in the Constitution and in laws.

Article 4

Nature of activity

It is incumbent upon the Ombudsman to provide recommendations to the bodies or services affected by the diligences thereof. The Ombudsman does not have decision-making powers.

Article 5

Relationship with the National Assembly

1. The Ombudsman is to send an annual report to the National Assembly by June 30 describing the activities and noting the initiatives thereof, the complaints received, the diligences carried out and the results obtained. The report is to be published in the National Assembly Gazette and on its Internet page.

2. The Ombudsman may take part in the work of pertinent parliamentary commissions whenever they request his or her presence or when his or her report is under review thereby.

CHAPTER II

Statute

Article 6

Election

1. The Ombudsman is elected by the National Assembly by a two-thirds majority of the legislators present, as long as this number is higher than the absolute majority of legislators in full exercise of their functions.

2. The election of the Ombudsman must take place during the thirty days preceding the end of the mandate of his or her predecessor.

3. When the National Assembly has been dissolved or is not in session,

the election shall take place within the first sixty days following the first meeting of the elected Assembly, or following the beginning of the new session.

Article 7

Eligibility

Only Cabo Verdean citizens of recognized merit with solid professional experience, acknowledged moral integrity and with full civil and political rights may be elected Ombudsman.

Article 8

Swearing in

1. The Ombudsman is sworn in before the Speaker of the National Assembly.

2. The deadline for being sworn in is thirty days from the date of the National Assembly Resolution on the act of election.

3. Upon being sworn in, the Ombudsman elect shall make the following oath:

«I hereby swear on my honor to faithfully perform the duties of the office of Ombudsman into which I am being invested, promoting and defending the rights, freedoms, guarantees and legitimate interests of citizens in strict respect for the Constitution and for the other laws of the Republic.»

Article 9

Duration of mandate

1. The mandate of the Ombudsman is five years, renewable once.

2. The Ombudsman shall continue to carry out his or her functions until his or her successor is sworn in.

Article 10

Termination of functions

1. Before the conclusion of his or her mandate, the Ombudsman's functions may only be terminated:

a) Due to death or permanent physical or psychiatric

incapacitation;

b) Due to the loss of eligibility prerequisites;

c) Due to supervening incompatibility;

d) As a result of a court conviction for crimes of dishonor or punishable by a prison sentence of two years or more;

e) Due to resignation;

f) Due to actions or omissions practiced with grave negligence in the fulfillment of his or her functions.

2. The facts determining the termination of functions outlined in lines a), b), c) and d) of point 1 are to be verified by the National Assembly as per the terms of its Regiment.

3. The declaration of resignation outlined in line e) of the preceding point is to be submitted to the Speaker of the National Assembly and shall become effective beginning on the day of the publication of the National Assembly Resolution taking note thereof in the *Official Gazette*.

Article 11

Vacating of post

In case of the vacating of the post, the election of the new office holder must take place within thirty days thereof or within the deadline established in point 3 of article 6, if the circumstances referred to therein are in effect.

Article 12

Independence, irremovability and incompatibility

1. The Ombudsman is independent and irremovable, with his or her functions unable to be terminated prior to the end of the period for which he or she has been designated, with the exception of the cases outlined in the present law.

2. The Ombudsman is subject to the same incompatibilities as judges in full exercise of their functions.

Article 13

Identification, free access and transit

1. The Ombudsman is entitled to a special identity card, the model of which is approved by the National Assembly and signed by the Speaker thereof.

2. This identity card permits free access and transit through all public places of restricted access, namely central or local Public Administration, public services, public enterprises and other legal persons governed by public law.

Article 14

Immunity and inviolability

1. The Ombudsman may not be persecuted, investigated, arrested, detained or tried because of the opinions issued or acts practiced thereby in the exercise of his or her functions.

2. The Ombudsman may not be arrested or detained without the authorization of the National Assembly, except in the case of being found in the act of committing a crime corresponding to a prison sentence whose maximum limit is more than two years and, when not found in the act of committing a crime, for crimes whose corresponding sentences have a maximum limit of more than eight years in prison.

Article 15

Employment stability and guarantee

1. The Ombudsman may not be jeopardized in his or her placement, career, employment or public or private activity, nor in the social benefits to which he or she is entitled.

2. The time served as Ombudsman counts, for all intents and purposes, as having been served in the office holder's job or origin, as well as for the purposes of retirement.

Article 16

Retirement and social security regime

1. The Ombudsman is not subject to legal provisions regarding retirement due to age limits.

2. The Ombudsman enjoys the social security regime applicable to public sector civil workers, if he or she is not already covered by another more favorable one.

Article 17

Honors, privileges and rights of the Justice Ombudsman

The Ombudsman has honors, privileges and rights identical to those of a Cabinet Minister.

Article 18

Criminal Responsibility

1. The Ombudsman shall respond before the Supreme Court of Justice for the crimes committed in the exercise of his or her functions under the following terms:

a) In cases of crimes punishable with a prison sentence whose maximum limit is no more than two years, it is incumbent upon the National Assembly to request the Attorney General's Office to bring proceedings against the Ombudsman and, once this has definitively been undertaken, to decide if the Ombudsman should be suspended for the purposes of pursuing proceedings;

b) In cases of crimes punishable with a prison sentence whose maximum limit is more than two years, it is incumbent upon the National Assembly to request the Attorney General's Office to bring proceedings against the Ombudsman and, once this has definitively been undertaken, the Speaker of the National Assembly shall immediately suspend the Ombudsman from his or her functions for the purposes of pursuing proceedings.

2. For crimes committed outside of the scope of the exercise of his or her functions, the Ombudsman shall respond before common courts, with the provisions contained in lines *a)* and *b)* of the preceding point observed.

Article 19

Assistants to the Justice Ombudsman

1. The Ombudsman may freely name and exonerate one or two Assistant Ombudsmen, as well as the coordinators and aides that prove necessary to the full performance of his or her functions.

2. The Assistant Ombudsmen are considered public authorities, including for criminal purposes.

3. The coordinators are considered law enforcement agents.

Article 20

Assistant Ombudsmen

1. The Assistant Ombudsmen are named from among individuals who have completed courses of higher study in appropriate areas and are of reputed merit and moral integrity.
2. The provisions contained in articles 12 to 16, 30 and 31 are applied to the Assistant Ombudsmen.
3. The Assistant Ombudsmen shall be paid a monthly salary equivalent to ninety percent of the salary of the Justice Ombudsman.

Article 21

Substitution

The Justice Ombudsman is substituted, in case of absence or impediment, by the Assistant Ombudsman designated thereby.

CHAPTER III

Competencies and powers of the Ombudsman

Article 22

Authorities

1. Within the scope of his or her attributions, it is up to the Ombudsman, in particular, to:

a) Promote the dissemination of citizens' fundamental rights, freedoms and guarantees, their content and meaning, as well as the purpose of the Ombudsman's Office, its means of action and how to use its services;

b) Make recommendations to competent bodies with the aim of making reparations for illegal or unjust administrative acts and improving administration services;

c) Propose solutions to the competent bodies he or she deems the most appropriate to the defense of citizens' legitimate interests and to the perfecting of administrative actions, in collaboration with said competent bodies;

d) Point out shortcomings in legislative documents, formulating recommendations for the better interpretation, alteration or even revocation thereof, indicating suggestions for the elaboration of new legislation, if deemed pertinent;

e) Intervene, under the terms of applicable law, in the enforcement of collective or diverse interests, whenever public entities are at stake;

f) Issue an opinion, when so requested by the National Assembly, on any issue related to the activities thereof.

2. Any proposal for the modification or alteration of a law must be sent to the Speaker of the National Assembly, to the Prime Minister or to the Cabinet Minister directly responsible and, in case of pertinence, to Municipal Bodies.

Article 23

Powers

The Ombudsman may at any time:

a) Carry out, with or without prior notice, visits to any central or local administration sector of activity, as well as to public enterprises, examining documents, hearing Administration bodies or agents or requesting any information he or she deems convenient;

b) Undertake any investigations he or she considers necessary or convenient, being able, in matters of the production of proof, to adopt any and all reasonable procedures, as long as said procedures do not collide with citizens' legitimate rights and interests.

Article 24

Delegation of powers

1. The Ombudsman may delegate the competencies and powers outlined in articles 22 and 23 to his or her Assistants.

2. The Ombudsman may delegate the powers outlined in article 23 to his or her coordinators.

Article 25

Limits of intervention

1. The Ombudsman does not have the authority to annul, revoke or

modify the acts of public authorities.

2. The organs of sovereignty and Municipal Assemblies, with the exception of their administrative activity and of the acts practiced in the superintendence of administration, are excluded from the Justice Ombudsman's powers of inspection and surveillance.

Article 26

Matters pending judicial decision and cases in which verdicts have been reached

The Ombudsman may not enter into the individual examination of complaints related to matters pending a judicial decision or that are the object of cases in which a verdict has been reached.

CHAPTER IV

Complaint procedure

Article 27

Legitimacy to present a complaint

1. Citizens, individually or collectively, and private collective entities have the legitimacy to submit complaints to the Justice Ombudsman.
2. The nationality, place of residence, legal incapacity of the individual in question, internment in a penitentiary or reclusion center or, in general, any special relationship of subjection or dependency on public powers, may not constitute an impediment to the provisions referred to in the preceding point.

Article 28

Complaints by way of other entities

The complaints may be presented to any agent of the Public Ministry, to any national legislator or to the Speaker of any Municipal Assembly, who shall immediately transmit them to the Ombudsman.

Article 29

Form of presentation of complaint

1. The complaints presented to the Ombudsman do not require representation by a lawyer, are exempt from costs and stamp taxes, and

may be presented orally or in the form of a simple letter, as long as they contain the identity and address of the complainant and, whenever possible, his or her signature.

2. When presented orally, the complaints shall be put into writing, after which they are to be signed by the complainant whenever he or she knows how and is able to do so.

3. When the complaint is not presented in adequate terms, it will be ordered replaced by a new one.

Article 30

Professional confidentiality

The Ombudsman maintains the facts of which he or she becomes aware in the exercise of his or her functions confidential, whenever such confidentiality is justified by the nature thereof.

Article 31

Confidentiality of communications

1. Correspondence addressed to the Ombudsman sent from any center for the detention, internment or custody of persons may not be the object of censorship.

2. Conversations between the Ombudsman and any person in the situations referred to in the preceding point may not be the object of wiretaps or interference.

Article 32

Refusal of complaints

1. The Ombudsman shall refuse anonymous complaints or complaints in bad faith that lack foundation, that are not under his or her authority and whose pursuance would jeopardize the legitimate rights of third parties.

2. The Ombudsman's decision to refuse a complaint is not open to appeal.

3. Without prejudice to the provisions outlined in point 1, the complainant may request his or her complaint to be dealt with confidentially.

Article 33

Complaints in bad faith

In the case of obvious bad faith in the presentation of a complaint, the Ombudsman shall report the fact to the competent Public Ministry official for the undertaking of criminal proceedings under the terms of the law.

Article 34

Complaints on judicial activity

Whenever the Ombudsman receives complaints related to the functioning and administration of Justice, and which by their nature fall outside of his or her scope of action, namely complaints focusing on allegations included in pending court cases or in cases on which a verdict has been reached, they shall be referred to the High Council of Judicial Magistrates or to the High Council of the Public Ministry, as is appropriate in each case.

Article 35

Closing of complaint cases

Complaints will be closed:

a) When the Ombudsman concludes that they have no foundation or that not enough elements exist to adopt any procedures;

b) When the illegality or injustice invoked therein has been redressed by Administration.

Article 36

Non-interruption of period of appeal

The complaints addressed to the Ombudsman do not suspend or interrupt any other deadlines, namely those of hierarchical and litigation appeals.

Article 37

Referral to other bodies

1. When the Ombudsman recognizes that the complainant has within his or her reach civil or judicial means of resolution, especially those outlined in the law, he or she may simply refer it to the competent entity.
2. Regardless of the provisions contained in the preceding point, the

Ombudsman must always inform the complainant of the means of litigation available thereto.

Article 38

Cases of limited severity

In cases of limited severity that are not continuous in nature the Ombudsman may simply choose to call the attention of the competent body or service, or consider the case closed with the information provided.

Article 39

Prior hearing

Apart from the cases outlined in the preceding articles, the Ombudsman should always hear the bodies or agents in question, allowing them to provide all necessary clarifications before drawing any conclusions.

Article 40

Reporting of infractions

When during the process there arises sufficient evidence of the practicing of criminal or disciplinary infractions, the Ombudsman must make them known, as per the case, to the Public Ministry or to the competent entity for the initiation of disciplinary proceedings.

Article 41

Publicity

When circumstances so advise, the Ombudsman may order the publication of communiqués or information on the conclusions reached in the process or on any other issue related to his or her activity, making use, if necessary, of the state media and benefiting, in certain cases, from the legal regime of the publication of officious declarations under the terms of the pertinent laws.

Article 42

Investigation of complaints

1. In order better to respond to citizens' aspirations, the Ombudsman, within the scope of his or her attributions, may proceed with the investigation of complaints through requests for information,

inspections, examinations, inquiries or any other reasonable procedures that are not in conflict with citizens' fundamental rights and which will be carried out through informal and expedited means, without being subject to procedural rules regarding the production of evidence.

2. The diligences are carried out by the Ombudsman and his or her assistants, with their execution also able to be requested directly on the part of officials from the Public Ministry or any other public entities with the priority and urgency pertinent to the case in question.

Article 43

Duty of cooperation

1. The employees and agents of Public Administration and all other public authorities have the duty to provide the Ombudsman with all of the clarifications, information and cooperation he or she requests of them, namely the carrying out of inspections through the respective competent services and the provision of documents and cases for examination, sending them to the Ombudsman's office if so requested.

2. The provisions contained in the preceding point do not prejudice legal restrictions regarding legal confidentiality or the invocation of the higher interest of the State, in cases duly justified by the Government, on issues related to security, defense or international relations.

Article 44

Cooperation of services and depositions

1. In order better to determine the facts, the Justice Ombudsman may request the cooperation of other public services under the terms of the preceding article, or make use of depositions or information from any citizen, whenever these are deemed necessary.

2. In case of refusal to provide a deposition, the Ombudsman may, if the testimony in question is deemed indispensable, provide notification to the persons who are to be heard by way of registered letter, with the unjustified failure to appear or refusal to testify in this case constituting the crime of disobedience of authority.

Article 45

Refusal to cooperate

Any employee who hampers or impedes the Ombudsman's investigation

through refusal or negligence in the sending of information or hampers or impedes access to administrative archives or documentation necessary for the investigation will be liable to punishment for the crime of disobedience of authority.

Article 46

Travel expenses

The travel expenses undertaken by private citizens called upon to provide depositions before the Ombudsman's services are to be compensated under the same terms as are witnesses appearing for judicial proceedings.

CHAPTER V

Recommendations

Article 47

Communication of recommendations

1. The Ombudsman's recommendations are addressed to the competent body to correct the act or irregular situations in question, with a copy sent to the competent superior, when pertinent.
2. The recipient of the recommendation must communicate the position it has taken with regards thereto to the Justice Ombudsman within sixty days of receipt.
3. A decision not to comply with the recommendation must always be justified.
4. If the recommendations are not attended to, and whenever the Justice Ombudsman does not obtain due collaboration, he or she may contact the competent hierarchical superior.
5. If the executive body of a local municipality does not comply with the Ombudsman's recommendations, he or she may contact the respective deliberative assembly.
6. If administration does not act in accordance with his or her recommendations or refuses to provide the requested collaboration, the Ombudsman may contact the National Assembly, explaining the reasons for having taken such position.

7. The results of the investigations must always be communicated to the bodies or agents in question or, if originating from a complaint submitted, to the complainants.

CHAPTER VI

Ombudsman's Office

Article 48

Referral

The Organic Law to be approved by the government shall regulate the structural framework and the permanent staff.

Article 49

Budget

1. The Ombudsman's Office has an annual budget elaborated under the terms of its Organic Law.
2. The budget allocated to the Ombudsman's Office is outlined in the funding included in the National Assembly budget.
3. The Ombudsman has authorities identical to those of Cabinet Ministers for the purposes of authorization of expenditures.

Article 50

Administrative and disciplinary powers

1. It is incumbent upon the Ombudsman to practice all acts related to the provisioning and functional situation of the staff of the Ombudsman's Office and to exercise disciplinary authority over it.
2. The Ombudsman's administrative acts may be appealed to the Supreme Court of Justice.

CHAPTER VII

Final and temporary provisions

Article 51

Election of first Ombudsman

The election of the first Ombudsman shall take place within sixty days

after the present law enters into force.

Article 52

Entry into force

The present law enters into force on October 1, 2003. Approved on July 4, 2003.

The Speaker of the National Assembly, *Aristides Raimundo Lima*.

Signed into law on July 21, 2003. To be published.

The President of the Republic, PEDRO VERONA RODRIGUES PIRES.

Signed on July 22, 2003. The Speaker of the National Assembly,
Aristides Raimundo Lima.