

OMBUDSPERSON FOR CHILDREN ACT

Act 41 of 2003 – 20 November 2003

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OMBUDSPERSON FOR CHILDREN ACT

1. Short title

This Act may be cited as the Ombudsman for Children Act.

2. Interpretation

“child” means a person under the age of 18;

“Convention” means the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989;

“Minister” means the Minister to whom responsibility for the subject of child development is assigned;

“Ombudsman for Children” means the Ombudsman for Children whose office is established under section 3;

“public body” means—

- (a) a Ministry or Government Department;
- (b) a local authority;
- (c) a statutory corporation;

- (d) any other company, partnership or other entity of which Government is, by the holding of shares or some other financial input, or in any other manner, in a position to influence the policy or decision of such body.

3. Establishment of office of Ombudsperson for Children

(1) There is established for the purposes of this Act the office of Ombudsperson for Children.

(2) The Ombudsperson for Children shall be a person who has a wide knowledge of the issues and the law relating to children in Mauritius.

(3) The Ombudsperson for Children shall take before the President the oath specified in the Schedule before assuming the duties of his office.

4. Appointment of Ombudsperson for Children

(1) The Ombudsperson for Children shall be appointed by the President of the Republic, acting after consultation with the Prime Minister, the Leader of the Opposition, the Minister and such other persons as he considers appropriate.

(2) An appointment under subsection (1) shall be subject to such terms and conditions as the President may determine.

(3) The Ombudsperson for Children shall hold office for 4 years and shall be eligible for reappointment for only a second term of 4 years.

(4) The President may remove the Ombudsperson for Children from office for inability to perform the functions of his office, whether arising from infirmity of body and mind or any other cause, or for misbehaviour.

(5) The Ombudsperson for Children shall not engage in any trade, business, profession or political activity.

5. Objects of office of Ombudsperson for Children

The Ombudsperson for Children shall—

- (a) ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals;
- (b) promote the rights and best interests of children;
- (c) promote compliance with the Convention.

6. Functions of Ombudsperson for Children

In carrying out the duties of his office, the Ombudsperson for Children shall—

- (a) make proposals to the Minister on legislation, policies and practices regarding services to, or the rights of, children;

- (b) advise the Minister on public and private residential placement facilities and shelters established for the benefit of children;
- (c) advise public bodies and other institutions responsible for providing care and other services to children on the protection of the rights of children;
- (d) take such steps as he may deem necessary to ensure that children under the care of, or supervision of, a public body are treated fairly, properly and adequately;
- (e) propose measures to ensure that the legal rights of children in care are protected and that the placement facilities promote the safety of children and conform with such norms as the Ombuds-person for Children may, from time to time, recommend;
- (f) initiate an investigation whenever the Ombudsperson for Children considers that there is, has been or is likely to be a violation of the rights of a child;
- (g) investigate cases relating to the situation of children in the family, in schools and in all other institutions, including private or public bodies, as well as cases of abandoned children or street children;
- (h) investigate any suspected or reported case of child labour;
- (i) investigate any case concerning a child who is a citizen of Mauritius and who may be abroad at the time of the investigation, or a child who is not a citizen of Mauritius but who is residing in Mauritius;
- (j) investigate complaints made by a child, or any other person, in relation to the rights of any child;
- (k) advise the Minister on the establishment of mechanisms to afford children the ability to express themselves freely, according to their age and maturity, especially on all matters concerning their individual or collective rights;
- (l) advise the Minister on the creation of partnerships with parents, teachers, non-governmental as well as governmental organisations, local authorities and any other stakeholders committed to the promotion of children's rights.

7. Investigation

(1) Where the Ombudsperson for Children considers, either upon complaint made to him or on his own motion, that it is necessary to investigate a matter relating to the rights of a child, the Ombudsperson for Children shall investigate the complaint in such manner as he considers appropriate.

(2) For the purposes of an investigation under this Act, the Ombudsperson for Children may—

- (a) request any person, including any public officer, to provide information concerning a child whose rights have been, are being or are likely to be violated;

- (b) enter premises where—
 - (i) a child is present, either temporarily or permanently, including an educational or health institution and a place of detention, in order to study the environment of such a place and assess its suitability;
 - (ii) a child may be in employment;
 - (iii) there is reasonable ground to believe that the moral and physical safety of a child may be in danger;
- (c) request the Commissioner of Police to enquire and report to the Ombudsperson for Children on any allegation relating to the breach of the rights of a child;
- (d) enter any licensed premises where the Ombudsperson for Children suspects that alcohol and tobacco may be handled, consumed or purchased by children;
- (e) record the statement of any person in connection with an investigation;
- (f) request the assistance of the Commissioner of Police and the officer-in-charge of any public body or institution, as the case may be, to facilitate any entry and effect, where appropriate, any seizure pursuant to paragraphs (b) and (d);
- (g) summon witnesses and examine them on oath;
- (h) call for the production of any document or other exhibit; and
- (i) obtain such information, file or other record, upon application to the Judge in Chambers whenever necessary under any law, as may be required for the investigation.

(3) Following an investigation under subsection (1), the Ombudsperson for Children shall—

- (a) act as a mediator to resolve any dispute relating to the rights of the child;
- (b) make a report to such person or authority as the Ombudsperson for Children considers appropriate;
- (c) make proposals of a general nature to the Minister on any matter which may have arisen in the course of the investigation.

(4) The Ombudsperson for Children shall not investigate any case which is pending before any Court but may refer any child involved in such a case to the Ministry for advice, assistance or counselling.

[S. 7 amended by s. 3 of Act 8 of 2005.]

8. Protection of witnesses

Notwithstanding any enactment, no statement made in good faith by any person by way of a written complaint, or by the giving in writing of a statement made in the course of an investigation, to the Ombudsperson for

Children, or any member of the staff of the Ombudsperson for Children, shall subject the maker of the statement to, or be used against him in, any civil or criminal proceedings.

9. Protection from liability

No liability, civil or criminal, shall lie against the Ombudsperson for Children, or any member of the staff of the Ombudsperson for Children, in respect of anything which is done, or purported to be done, in good faith under this Act or in respect of the publication, by or under the authority of the Ombudsperson for Children, of any report, proceedings or other matter under this Act.

10. Staff of Ombudsperson for Children

The Secretary to Cabinet and Head of the Civil Service shall make available to the Ombudsperson for Children such administrative and other staff as the Ombudsperson for Children may require.

11. Report of Ombudsperson for Children

(1) The Ombudsperson for Children shall, not later than 30 September in each year, submit a report on its activities during the preceding year, to the President.

(2) Notwithstanding subsection (1), the Ombudsperson for Children may at any other time, submit a special report on any matter which, in his opinion, is of such urgency or importance that it should not be delayed until submission of an annual report to the President.

(3) The President shall cause every report sent to him under this section to be laid before the Assembly within one month of its submission.

11A. Offences

(1) A person shall commit an offence—

(a) where he—

- (i) fails to attend before the Ombudsperson for Children;
- (ii) refuses to take the oath before the Ombudsperson for Children; or
- (iii) wilfully refuses to furnish any information or to produce any document, record, file or exhibit,

when required to do so under section 7;

(b) where he—

- (i) refuses to answer to the best of his knowledge any question lawfully put to him by the Ombudsperson for Children; or
- (ii) knowingly gives to the Ombudsperson for Children false evidence or evidence which he knows to be misleading,

in connection with an investigation under section 7;

- (c) where at any sitting held for the purposes of an investigation under section 7, he—
 - (i) insults the Ombudsperson for Children; or
 - (ii) wilfully interrupts the proceedings.

(2) Any person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

[S. 11A inserted by s. 4 of Act 8 of 2005.]

12. Regulations

The Minister may—

- (a) make such regulations as he thinks fit for the purposes of this Act;
- (b) after consultation with the Ombudsperson for Children, make regulations for the purpose of regulating the procedure to be applied for the investigation of complaints by the Ombudsperson for Children.

13. —

SCHEDULE

[Section 3]

I having been appointed to be the Ombudsperson for Children under the Ombudsperson for Children Act do swear/solemnly affirm that I shall faithfully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by such appointment and that I shall not, without reasonable cause, disclose any information imparted to me in the performance of such duties.

(S)

Before me,

Date:

(S)

President of the Republic
