

Analysis and Recommended Amendments for:

The Ombudsman Bill, 2017

The proposed legislation for an Office of The Ombudsman represents a step forward in the establishment of more open, fair, and responsive governance in The Bahamas, and ORG commends legislators for recognizing the need to address maladministration in government and the grievances of the public they serve. Bahamas finds itself behind its peers in this regard, with Ombudsman Offices already established around the region in countries like Jamaica, Trinidad & Tobago, Barbados, Haiti, St. Lucia, Belize, and Antigua & Barbuda.

In its ideal form an Ombudsman acts as an arbitrator for the people and a protector of rights; it is a crucial stepping stone to ensuring the efficient, accountable, and equitable delivery of public services. However, while the current draft embraces numerous global best practices such as the establishment of a clear and easy pathway to seek resolution, its recognition of citizen's rights to involvement in governance, and the Office's reach across government offices and entities, the bill needs some key improvements to achieve international standards of openness, transparency and justice.

ORG's Accountable Governance Committee has benchmarked the Ombudsman Bill 2017 against regional and international examples and has compiled a section by section analysis of the Bill providing recommendations to increase the independence and effectiveness of the Ombudsman Office in line with best practice globally. Please find the resulting recommended amendments below for perusal. Any questions or feedback on the bill or these recommendations can be sent to:

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Recommended Amendments:

Section	Concern/Suggestion
Preamble	<p>1) A Preamble is suggested to ground the Bill in good governance, access to justice and human rights. This is important as The Bahamas has no standing, independent Human Rights Commission.</p> <p>EXAMPLE: "This Act is in furtherance of good governance, access to justice and human rights or words to that effect."</p> <p>This would empower the Ombudsman to voluntarily question a Minister: Although the Ombudsman may not compel a Minister under 15(3)(c), the Preamble may help the Ombudsman to persuade the Minister to provide evidence in furtherance</p>

	of good governance per the Preamble. Ministers should want to adhere to the spirit of the Act if they can be helpful in an investigation.
<p>Part I.3.(e) This Act applies to the following authorities —.... any other public body — (i) which is established by Act of Parliament or in any other manner by a Minister; or (ii) whose revenues derive directly from money provided by Parliament or a fee or charge of any other description authorized by Parliament; and...</p>	<p>2) We recommend that the application of the act be broadened to include anybody: (iii) “that performs a public function in furtherance of government policy or services”. If a government outsources certain public services to private companies they should be included in this section.</p>
<p>Part I.6.(2) Powers of the Ombudsman “For the purposes of this Act, the Ombudsman may at any time enter upon any premises occupied by any government department or division or statutory body and inspect the premises and conduct interviews or examine any document specifically relevant to the complaint.”</p>	<p>3) We recommend revising to: “For the purposes of this Act, the Ombudsman may at any time enter upon any premises occupied by any government department or division or statutory body or any other body to which this Act applies and inspect the premises and conduct interviews or examine any document specifically relevant to the complaint.”</p>
<p>Part II.6.(4) The Attorney-General may by notice to the Ombudsman exclude the exercise of the powers of the Ombudsman in whole or in part to any specific complaint being investigated by the Ombudsman, if in his opinion the application of subsection (1) might be prejudicial to the public interest.</p>	<p>4) This clause limits/diminishes the independence & authority of the Ombudsman. We recommend that it is omitted.</p>
<p>Part II.6.(5) Where a notice is given under subsection (4) and in the opinion of the Ombudsman, it is necessary to take an action apparently prevented by the notice, the Ombudsman may apply to a Justice of the Supreme Court for an Order, setting aside the notice in respect of such action and, where the judge is satisfied that such action would not be prejudicial to the public interest, he may make the order.</p>	<p>5) This attempts to address the matter of the previous concern by invoking a Supreme Court judge review. However, there is concern that such notice and subsequent Court hearing could diminish the independence and bring the Ombudsman institution into question and disrepute by having such a public encounter between the AG & Ombudsman. We maintain that both sections be eliminated.</p>
<p>Part II.4.(2) “The Ombudsman shall be appointed by the Governor-General acting</p>	<p>6) In Belize, Barbados, Australia and Antigua, the appointment of The Ombudsman is not directly influenced by the Prime Minister or Opposition Leader to avoid even</p>

<p>on the recommendations of Prime Minister after consultation with the Leader of the Opposition.”</p>	<p>the appearance of political influence. We recommend the Ombudsman be appointed by the Governor General after a two-part process wherein a shortlist of nominees are provided by civil society and private industry which is then debated in both Houses of Parliament and a final recommendation resolved upon. 7) Nominees should be made public before tabled in Parliament for debate. (precedent: The Disabilities Commission)</p>
<p>Part II.10.(3) “Where the Ombudsman decides not to investigate or further investigate a complaint, he shall notify the complainant and the authority of his decision and give reasons in writing for the decision.”</p>	<p>8) We recommend revision to: “Where the Ombudsman decides not to investigate, he shall notify the complainant; and where the Ombudsman decides not to further investigate a complaint, he shall notify the complainant and the authority...” In some instances where the Ombudsman decides not to investigate it may be enough for the Ombudsman to decline without informing the authority of the complaint.</p>
<p>Part III.15.(3)(c) The Ombudsman shall not require (c) any Minister or Parliamentary Secretary to furnish any information or answer any question.</p>	<p>9) We note that the theory that Ministers cannot be compelled to furnish information is from parliamentary privilege which has already been up for scrutiny in Bahamian courts. However, if the purpose of the Ombudsman Act is good governance, then Ministers should be keen to abide by the spirit of the law and the intention of Parliament and should therefore provide evidence whenever such is unobtainable otherwise. We refer again to the suggestion for a preamble to reinforce the spirit of the law.</p>
<p>Schedule 1.(1) Subject to the provisions of this section, any person appointed as Ombudsman shall hold office for a period of five years and shall, at the expiration of such period, be eligible for reappointment.</p>	<p>10) We suggest this tenure go beyond five years to avoid the election cycle and avoid bias. A 7-8 year tenure is recommended, based on practice in the region (Jamaica, Bermuda, Cayman, amongst others).</p>
<p>Schedule 1.(8) “If the question of the removal of the Ombudsman from office has been referred to the tribunal under subparagraph (7), the Governor-General may suspend the Ombudsman from performing the</p>	<p>11) A consideration: How would this affect public trust and subsequent effectiveness of the Ombudsman if s/he were to be suspended then reinstated.</p>

<p>functions of his office and any such suspension may at any time be revoked by the Governor-general and shall in any case cease to have effect if the tribunal advises the Governor-General that the Ombudsman ought not to be removed from office.”</p>	
<p>Schedule 2.(1).(a) No person shall be qualified for appointment to the office of Ombudsman if he — (a) is a member of the House of Assembly or the Senate</p>	<p>12) We suggest that this be revised to exclude persons who have served in parliament within the last five years: e.g. “is a member of the House of Assembly or Senate, or has been a member of those bodies within five years prior to appointment”</p>
<p>Schedule 3.(1) When a vacancy arises in the office of Ombudsman, the Governor General acting on the recommendations of both Houses of Parliament may designate a person to act in that office during such vacancy, until a substantive appointment is made.</p>	<p>13) To avoid lengthy absences, we suggest limiting the term of the designation. e.g. “...may designate a person to act in that office for a term not exceeding x months during such vacancy, until a substantive appointment is made.” We recommend a time period of 6 months.</p>
<p>Schedule 6.(1) Without prejudice to subparagraph (2), there shall be appointed to assist the Ombudsman in the discharge of his functions such number of public officers as may be required.</p>	<p>14) We recommend that this be revised to give The Ombudsman discretion in staff appointments e.g. “Without prejudice to subparagraph (2), the Ombudsman shall appoint staff to assist him in the discharge of his functions who shall be deemed public officers.”</p>