DANIEL FIKADU LAW OFFICE

A PROCLAMATION TO AMEND THE ESTABLISHMENT OF ETHIOPIAN INSTITUTIONS OF THE OMBUDSMAN

(DRAFT)



December 29, 2021

PROCLAMATION NO. …… / …..

A PROCLAMATION TO AMENED THEESTABLISHMENT OF ETHIOPIAN INSTITUTION OF THE OMBUDSMAN

WHEREAS, it is provided in the Constitution of the Federal Democratic Republic of Ethiopia the conduct of affairs of the government shall be transparent and that any public official shall be accountable for failure in official duties,

WHEREAS, the inter-linkage of the activities, and of decision-making powers of executive organs of government with the daily lives and the rights of citizens is an ever-increasing and widening circumstance and it is necessary to make sure that government Executive organs act within constitutional parameters,

Cognizant of the necessity of preserving and consolidating past achievements and positive practices pertaining to awareness creation, supervision and investigation while removing legal impediments that hinder executing remedies provided by the Ethiopian Institution of Ombudsman,

WHEREAS, it is also found necessary to make nomination and appointment process of ombudsman participatory and transparent in addition to making improvements to provisions related to the structure of the institution, hiring and management of staff and investigation procedure independent, in order to enhance public trust, acceptance and effectiveness of the institution;

Aware , engagement of private companies in the economic development of the country have been increasing through time and it is necessary to investigate cases lodged against private companies

NOW, THEREFORE, in accordance with sub-Articles (1) and (15) of Article 55 of the Constitution of the Federal Democratic Republic of Ethiopia; it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as the "The Ethiopian Institution of the Ombudsman Establishment (Amendment) Proclamation No……/……″

2. Definitions

Unless the context requires otherwise, in this Proclamation:

1/ **"House"** means the House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia;

2.**"Appointee"** means the Chief Ombudsman or the Deputy Chief Ombudsman or Women, Children, Persons with Disability and elderly Ombudsman and thematic area Ombudsman, appointed by the House, in accordance with this Proclamation;

3/″ **Institution"** means the Ethiopian Institution of the Ombudsman;

4/ **"Maladministration"** includes acts committed , decisions given or failure to givedecision, omission by executive organs or Public Development Enterprise, in contravening applicable laws related to administration;

5/ **"Law"** includes the Constitution of the Federal Democratic Republic of Ethiopia, the Constitution of a Region as well as federal or regional laws and regulations;

6/ **"Government"** means the Federal or Regional Government;

7/ **"Region"** means any of those specified under Article 47 of the Constitution of the Federal Democratic Republic of Ethiopia and, for the purpose of this Proclamation, includes the Addis Ababa and Dire Dawa City Administration;

8/**"Government Office"** means Ministry, Commission, Authority, Agency, Institute or any public enterprise;

9/ **"Public Enterprise"** means a production, distribution, service-rendering or other enterprise, under the ownership of the Government;

10/ **"Respondent organ"** includes government office or public enterprise or private companies as well as organs rendering administrative or related services within the judiciary or the legislature;

11/**"Official"** means an elected representative or an appointee or official of an executive government organ;

12/ **"Staff**"means employees of the institution, which includes Director General, directors, coordinator of branch office, team leaders, professionals and support staff of the Institution;

13/ **"Investigator"** means a staff assigned, by Chief Ombudsman or at the branch level by branch office ombudsman,to conduct an investigation on maladministration;

14/**Systemic Investigation**is the process of examining a maladministration concerning structure of executive organ, or a maladministration, which will affect a group of people.

15/"Family Member" means a person related to each other by consanguinity or affinity, in accordance with the Federal and Regional Family laws;

16/"**Third party"** means a person who is elected represent a group orassociation or recognized civic society (anon-governmental organization representing an individual or a group);

17/**"Person"** means any natural or juridical person;

3. Gender Expression

Provisions of this Proclamation set out in the masculine gender shall also apply to the feminine gender.

4. Scope of Application

This Proclamation shall apply to maladministration committed by the government executive organs, private companies and officials thereof, of a Government.

PART TWO

THE ETHIOPIAN INSTITUTION OF OMBUDSMAN

5. Amending the Establishment Proclamation

1/The Ethiopian Institution of the Ombudsman (hereinafter referred to as "the Institution") is hereby re-established in accordance with theFederal Democratic Republic of Ethiopia Constitution Article 55 (1) and (15)as an autonomous organ having its own juridical personality.

2/ The Institution shall have its Head Office in Addis Ababa, and it may have branch offices or coordination centers in other places to be determined by the council.

6. Objective of the Institution

The objective of the Institution shall be bringing about good governance that is of high quality, efficient and transparent based on the rule of law, by way of ensuring that people's rights and benefits, provided for by a law are respected by organs of the executive.

7. Powers and Dutiesof the Institution

The Institution have the following powers and duties:

1/ to investigate and supervise regulations or administrative directives that issued by government executive organs or decisions given by executive organs and the practices thereof do not contravene the constitutional rights of citizens and a law as well;

2/ to conduct investigation on the basis of complaints submitted or on its own initiation on maladministration or conduct systemic investigation on important issues,

3/ to receive and conduct investigation on mal administration cases lodged against private companies

4/ to recommend appropriate remedies where it finds that maladministration has occurred and follow up its execution;

5/ conduct supervision, with a view to ensuring that the executive carries out its functions in accordance with the law and to prevent maladministration;

6/ undertake studies and finding solutions to take actions on maladministration and give recommendation;

7/ make recommendations for the revision of existing laws, practices or directives and for the enactment of new laws and formulation of policies, with a view to bringing about good governance;

8/ provide advice to the government on the issue of good governance;

9/ create awareness of good governance and on matters related to administrative justice;

10/ participate in international Good-governance related meetings or conferences or symposia,

11/ to follow-up the implementation of Chapter three of Media and Access to information law

12/ perform such other related activities as required for the attainment of its objectives;

8. Accountability of the Institution

The Institution shall be accountable to the House of People's Representatives

9. **Limitation of Power**

The Institution shall have no power to investigate:

1/ decision given by councils, established by election, in their legislative capacity;

2/decision given or cases pending in courts of law or quasi- judicial organs;

3/ decision given or cases pending on matters under investigation by the Federal or Regional Office of the Auditor-General; or

4/ decision given by police Forces or Defense Forces, in respect of matters of national security or defense.

PART THREE
ORGANIZATION OF THE INSTITUTION AND RESPONSIBILITIE

10. **Organization of the Institution**

The Institution shall have:

1. A council of the Ombudsman;

2. A Chief Ombudsman;

3. A Deputy Chief Ombudsman;

4. A deputy ombudsman heading the women, children and persons with disability;

5. Thematic area ombudsman

6. Head office General directors;

7. Branch office coordinator

8. Directors

9. The necessary staff.

11. Council of the Institution

1/ Council of Ombudsmen (hereinafter referred to as "the Council") is hereby re-established.

2/ The Council shall have the following members:

a) Chief Ombudsman ----------Chairperson

b) Deputy Chief Ombudsman ----------Deputy Chairperson

c) Women, children and persons with disabilities Ombudsman……member

d) Thematic Area Ombudsman ----------Member

3/ The Council may elect its secretary from members of the council.

4/ The Council may draw-up its own rules of procedure.

12. Powers and Duties of the Council

The Council shall have the following powers and duties:

1/ adopt directives and by-laws necessary for the implementation of this Proclamation;

2/ discuss on draft budget of the Institution;

3/ notwithstanding the Federal Civil Servants Proclamation, the council

A. may undertake and implement organizational structure study as may be appropriate for its functions;

B. shall study a special salary scale of the employees and submit the study to the House and implement the same up on approval

C. administration of the employees of the institution shall be governed by directives to be issued by the council

D. undertakes and implement employment benefits scheme for its employees

4/ appoint and remove General Directors, branch office coordinators and Directors;

5/ hear disciplinary cases relating to directors;

6/ examine and render a final decision on cases, petitions or complaints submitted to it in relation to staff administration;

13. Powers and Duties of Chief Ombudsman

1/ The Chief Ombudsman shall be accountable to the house and the superior head of the Institution and, as such, shall exercise the powers and duties of the Institution provided for under this Proclamation.

2/ without prejudice to the generality stated under sub-Article (1) of this Article, the Chief Ombudsman shall:

a) Employ and administer the staff, in accordance with the directive to be adopted by the Council.

b) Prepare draft budget which is consulted by the council, directly submit to the House and implement same upon approval;

c) Transfer a case, where he has sufficient grounds, from one investigation section or investigator to another or, himself, investigate a case of maladministration occurring anywhere; if necessary render suspension orders on any measures taken by respondent related with the case under investigation.

d) Undertake study of recurrent cases of maladministration and forward together with remedial proposals to the House;

e) Prepare and submit draft administrative legislations, give his opinion on those prepared otherwise;

f) Submit a report to the House on matters of maladministration and on the activities of the Institution;

g) Take part in meetings by way of representing the Institution, establish working relations with Federal and Regional government organs as well as with non-governmental organizations;

h) Organize,coordinate, follow up and monitor the activities of branch offices;

i) Undertakesuch other activities as are assigned to him by the House.

3/ If it is believed that the complaintwill bring unreplaceable damage on the compliant, the Chief Ombudsman shall give order to injunction.

4/The chief ombudsman may, to the extent necessary for the efficient performance of the Institution, delegate part of his powers and duties, other than those specified under sub-Article (2) (b),(c] (e) and (f) of this Article and under Article 38(2), to Ombudsmen or to other staff members of the Institution.

14. Powers and Duties of the Deputy Chief Ombudsman

The Deputy Chief Ombudsman shall be accountable to the chief Ombudsman and have the following powers and outies,

1/ Assist the Chief Ombudsman in planning, organizing, directing and coordinating the activities of the Institution;

2/ Undertake the activities of the Chief Ombudsman, in the absence of the latter;

3/ Carry out such other activities as may be assigned to him by the Chief Ombudsman.

15. Powers and Duties of Women, Children, Persons with Disabilities ,Elders Ombudsman

The women children, persons with disabilities and Elders Ombudsman shall be accountable to the chief Ombudsman and have the duties,

1/Assist the chief ombudsman in planning, organizing, directing and coordinating the activities of Women, Children and persons with disabilities.

2/Carry out such other activities as may be assigned by the chief ombudsman.

16. Powers and Duties of Branch office Coordinator

The Branch ombudsman shall be accountable to the chief ombudsman and have the following powers and duties in addition to exercising, within the local jurisdiction of a branch office, the powers and duties of the Institution specified

under Article 5(2) of this Proclamation; an Ombudsman shall, as the superior head of a branch office, have the following powers and duties:

1/ to ensure that administrative and other laws, regulations and directives are observed;

2/ to transfer an administrative case from one investigation section or investigator to another or to conduct investigation himself, where necessary;

3/ to submit detail report on matters of maladministration to the Chief Ombudsman, andnotify to the Council of the Region in written form;

4/ to forward proposals for the revision of laws and practices inconsistent with principles of good governance;

5/ to direct the branch office, in accordance with directives issued from theCouncil of the Institution;

6/ to effect payments in accordance with the budget allocated to the branch office;

7/ to establish working relations, as a representative of the branch office, with Regional government organs and non-governmental organizations operating within its local jurisdiction;

8/ to perform such other functions as are assigned to him by the Chief Ombudsman.

PART FOUR
ETHIOPIAN INSTITUTION OF THE OMBUDSMAN APPOINTEES, APPOINTMENT

17. Appointment

1/ The Appointees of the Institution shall be appointed by the House.

2/ the appointment of the Appointees shall be made as under the following procedure:

a) The appointees shall be recruited based upon public nomination by a Nomination Committee to be formed pursuant to Article 18 hereunder;

b) The nominees shall have to receive the support of a two-thirds vote of the members of the Committee;

c) The list of nominees shall be presented to the House, by the Speaker, for it to vote upon;

d) The nominees shall be appointed upon receipt of a two-thirds vote of the House.

18. **Composition of the Nomination Committee**

The Nomination Committee shall have the following members:

1. the Speaker of the House …… Chairperson
2. the Speaker of the House of Federation …… Member
3. five members to be elected from among members, by the House …… Member
4. two members of the House to be elected by joint agreement of competent political parties having seats in the House ……..Member
5. The President of the Federal Supreme Court…….. Member
6. one from chamber of commerce…….. Member
7. one from civil society organization representatives…….. Member

19. **Criteria for Appointment**

Any person who may be appointed as an Ombudsman:

1. is an Ethiopian national;
2. is loyal to the Constitution of the Federal Democratic Republic of Ethiopia;
3. holds degree in law, public administration or other relevant discipline from recognized university with extensive work experience;
4. be neutral from any political party;
5. is reputed for his diligence, honesty and good conduct;
6. has not been convicted for a criminal offence other than petty offence;
7. be in a good health condition to carry out his duties; and
8. is above thirty-five years of age.

20. **Term of the Office**

1/The term of office of appointees shall be six years.

2/up on expiry of the term of the office specified under sub-Article (1) of this rticle, the appointees may be re-appointed only for one additional term.

21. Salary and their Benefits

1/the salary and other benefits of the appointees shall be determined in accordance with the law issued to provide for the benefits of government Appointees.

2/ An appointee discharged from responsibility or removed from office, as under Article 21 (1) hereunder, shall not unless re-appointed, assume a post in legislative, executive and judicial organs for about six months thereafter.However, the appointee will get the previous salary and benefits for six months.

22. Grounds for Removal of an Appointee

1/ An appointee may be removed from office or discharged from responsibility upon the following circumstances:

a) upon resignation, subject to a three-month prior written notice; or

b) where it is ascertained that he is incapable of properly discharging his duties, due to illness; or

c) where he is found to be corrupted or to have committed other unlawful act; or

d) where it is ascertained that he is of manifest incompetence; or

e) upon termination of his term of office.

2/ Within three months of the removal or discharge of an appointee, as under sub-Article (1) of this Article, there shall be replaced another appointee shall be made to replace him.

23. Procedure for Removal of an Appointee

1/ An Appointee shall be removed from appointment, upon the grounds specified under Article 21 (1) (b – d) herein, subsequent to investigation of the matter by a Special Inquiry Tribunal to be formed under Article 23 hereof.

2/ An Appointee shall be removed from appointment, where the House finds that the recommendation submitted to it, as supported by the majority vote of the Special Inquiry Tribunal, is correct and where it upholds same by a two-thirds majority vote.

24.Composition of the Special Inquiry Tribunal

The Special Inquiry Tribunal shall have the following members:

1. the Deputy Speaker of the House ……..Chairperson
2. the Deputy Speaker of the House of Federation……..Member
3. three members to be elected by the House ……..Member
4. a member of the House to be elected by joint agreement of competent parties having seats in the House ……..Member
5. the Vice-President of the Federal Supreme Court …… Member
6. one from chamber of commerce …… Member
7. one from civil society organization representatives……..Member

25. Prohibition to Engage in Other Employment

1/ An appointee shall not be allowed to engage in other gainful, public or private employment during his term of office.

2/ Notwithstanding the provisions of sub-Article (1) of this Article, the House may allow otherwise in consideration of the particular profession in which the appointee is required to make contribution.

PART FIVE

LODGING COMPLIANTS AND INVESTIGATION PROCEDURES

26. The Right to Lodge Complaints:

1/ A complaint may be lodged by a person, claiming to have suffered from maladministration or by a third party.

2/ The Institution may, in consideration of the gravity of the maladministration committed, receive anonymous complaints.

3/ Prior to lodging a complaint to the Institution, in respect of an act of maladministration from which he suffered, any person shall bring the complaint before the relevant organs.

4/without prejudice to the provisions of Article 8 hereof, the right to lodge complaints, as under this Proclamation, shall be no bar to the institution of criminal or civil proceedings over the same case.

5/ The Institution shall receive and investigate complaints, free of any charge.

27. Lodging Complaints

1/ A Complaint may be lodged with the Institution orally, in writing or in any other manner.

2/ Complaint shall, to the extent possible, be submitted together with supporting evidence.

3/ Complaint may be made in Federal or Regional working language.

28. Ordering the Production of Evidence

In order to undertake necessary examination, within a reasonable time, the Institution may order that:

1/ those complained against appear, at a specific time and place, for questioning or that they submit their defense;

2/ witnesses appear, at a specific time and place, and give their testimony;

3/ any person in possession of evidence, relevant to the case, produce same, at a specific time and place.

29. Remedies

1/ The Institution shall make all the effort it can summon to settle, amicably, a complaint brought before it.

2/ It shall notify, in writing, the findings of its investigation, and its remedies thereon, to the superior head of the concerned organ.

3/ The remedy proposed by the Institution, pursuant to sub-Article (2) of this Article, shall expressly state that the act or practice having caused the maladministration be discontinued or that the directive having caused same be rendered inapplicable and that the maladministration committed be rectified or that any other appropriate measure be taken.

4/ the institutions shall inform complainant on the results of the investigation in writing

5/ Complaints submitted to the Institution shall be accorded due response, within a short period of time.

30. Duty of Respondent Organs

1/Any individual, employees or officials up on request by investigator or appointee or any official of the Institution shall, forth with make relevant and necessary documents or response which the investigator, appointee or any official of Institution deemed it useful and necessary for investigation.

2/ The respondent are obliged totake corrective measures, within 30 days from the date of delivery, on findings and remedies sent to them by the Institution; if they are unable to take such measures, shall inform the same and the good reasons thereof to the Institution with in the period specified herein.

31. The Right to appeal

1/ Any complainant or respondent organ shall have the right to object to the appointee or director or investigator, next in hierarchy, where he is aggrieved by finding of investigation and remedy proposed by a subordinate appointee or director of the Institution, within 30 days from the time he is notified, in writing, of such proposed remedy.

2/ A director or an appointee who receives an objection, pursuant to sub-Article (1) of this Article, may modify, stay the execution of, reverse or confirm thefinding of investigation and remedy or decision having been proposed.

3/ The chief ombudsman shall give decision within 30 days and be final.

32. Penalty

1/Any person who;

a/has received summons from the Institution, or been called upon by it otherwise, does not appear; or

b/does not appear or respond to bring documents of investigation or supervision upon the request of the Institution ;or

c/ obstructs the proper carrying out of the investigation or supervision of Institution; or

d/causes harm to witnesses, complainants or any person that cooperates by any means with the institution; or

e/fails to take measures, on the findings of investigation or supervision of recommendationswithout good reasons , within 30 days from received findings of investigation or supervision and recommendations of the institution, shall be punishable with imprisonment from five to seven years or with a fine birr 10,000 (ten thousand birr) or with both.

2/ any person who has committed the offences mentioned pursuant to this Article sub-Article 1 (a) to (e), shall be made accountable by law, the institution shall report the

case with supportive evidences to the concerned attorney office. The attorney office, upon, receiving order from the institution, shall open criminal suite relying on legal procedures.

33. Duty to Notify

Where the Institution, in the process of conducting investigations, believes that a crime or an administrative fault is committed, it shall have the duty to, forthwith, notify same to the concerned organ or official.

34. Overlap of Jurisdiction

1/ Where cases falling both under the jurisdiction of the Institution and of the Ethiopian Human Right Commission materialize, the question of which of them would investigate same shall be determined upon their mutual consultation.

2/ Failing determination of the matter, as under sub-Article (1) of this Article, the organ having pendency shall undertake the investigation.

35. Duty to Cooperate

Any person shall provide the necessary assistance and duty to cooperate with a view to helping the Institution exercise its powers and duties.

36. Reporting

1/ The Institution shall issue an official report on investigation, supervision and research findings through mass media as may be necessary.

2/ The Institution shall exercise transparency in respect of its mode of operation, including issuance of regular reports.

3/ If the any respondent fails or refuses to implement the findings of investigation and recommendation of the institution with in the specified time, the institution may prepare and submit to the House a special report detailing the failure or refusal to implement its recommendations and the House shall take appropriate action.

4/Notwithstanding the provisions of sub-Article (1) ,(2) and (3) of this Article, the Institution shall have the duty to exercise caution in respect of matters to be kept secret, with a view to not endangering national security and well-being or to protecting individual lives.

37. Non-Answerability for Defamation

1/ No complaint lodged pursuant to this Proclamation shall entail liability for defamation.

2/ No report of the Institution submitted to the House, on the findings of an investigation undertaken, nor any other correspondence of the Institution, relating to its activities, shall entail liability for defamation.

38. Immunity

No:

1/ appointee, or

2/ Director or investigator of the institution appointed to examine maladministration investigation may not be arrested , accused or detained without the permission of the speaker of the House or the Chief Ombudsman, respectively, except when caught in *flagrante delicto*, for a serious offence.

PART SIX
MISCELLANEOUS

39. Budget

1/ The budget of the Institution shall be drawn from the following sources:

a) Budgetary subsidy to be allocated by the government;

b) Assistance, grant and any other source.

2/ A proportionate quarterly appropriations of the operational budget of approvedbudget of the Institution shall be deposited in advance in the bank account opened in the name of the Institution.

40. Books of Accounts

1/ The Institution shall keep complete and accurate books of accounts.

2/ The accounts of the Institution shall be audited, annually, by an organ to be designated by the House.

41. Appeal

1/ Any director of the Institution aggrieved by administrative decisions rendered by the Council as per Article 11 (5)may appeal to the Speaker of the House within 30 days from the date such decision has been made.

2/ Decisions rendered by the Speaker of the House pursuant sub-Article (1) of this Article shall be final.

3/ A staff member dissatisfied by the final decision of the Council of ombudsman on administrative complaints may appeal to The federal High Court within 30 days from receipt of the decision.

42. Utilization of Outside Professionals

The Institution may utilize, for a specific task and for a definite duration, outside professionals necessary for its functions, subject to making appropriate remunerations.

43. Observance of Secrecy

Unless ordered by a court or otherwise permitted by the Chief Ombudsman, any appointee or Professional employed pursuant to Article 42 of this Proclamation or staff or any other person shall have the obligation not to disclose, at all times, any secret known to him in connection with his duty.

44.The power to issue Regulations and Directives

1/ The House may issue necessary Regulations for the implementation of this proclamation.

2/ The council may issue Directives for the implementation of this proclamation and regulation.

45. Transitory Provision

Complaints on maladministration that are under investigation by the Institution, prior to the enactment of this Proclamation, shall be investigated by the previous law of the Institution.

46. Inapplicable Laws

1/ The proclamation to established Ethiopian Institution of the Ombudsman proclamation No, 211/2000 is here by repealed.

2/No law or practice, inconsistent with this Proclamation, shall be applicable in respect of matters provided for in this Proclamation.

47. Effective Date

This Proclamation shall enter into force up on the date of publication in the Federal NegaritGazeta

Done at Addis Ababa, this …… day of ….., ……..

PRESIDENT OF THE FEDERAL DEMOCRATIC

REPUBLIC OF ETHIOPIA

DANIEL FIKADU LAW OFFICE