

PROTECTION OF THE INDEPENDENCE OF THE PUBLIC PROTECTOR SOUTH AFRICA

The International Ombudsman Institute (IOI) is the only global organization for the cooperation of more than 200 parliamentary Ombudsman worldwide. The IOI is comprised of Ombudsman institutions from six regions: Africa; Asia; Australasia and Pacific; Caribbean and Latin America; Europe and North America.

The IOI includes among its membership 38 Ombudsman institutions from the Africa region, including the Public Protector South Africa.

The Public Protector South Africa, Busisiwe Mkhwebane, was suspended from office on 9 June 2022. Advocate Mkhwebane is currently the subject of removal proceedings under Section 194 of the South African Constitution that could see her removed from office.

The Public Protector has been a loyal and respected contributor to the IOI Board and the work of the IOI. As colleagues of Public Protector Mkhwebane we are especially concerned that any hearings in the National Assembly are conducted in fairness to her and in line with the Venice Principles and Resolution of the UN General Assembly.

The Ombudsman institution plays a vital role in not only providing an impartial and independent mechanism for citizens to pursue their rights regarding wrongful government action, but also act as a vital means of promoting and protecting integrity in public institutions, good governance, the rule of law and fighting corruption. It is absolutely vital that the Ombudsman institution remain independent of governments and free from political interference.

While no Ombudsman in any country is beyond scrutiny or indeed action that may affect their period as the holder of the office of the Ombudsman, such scrutiny and action can and should only be taken in strict accordance with highly established law and internationally binding principles.

More specifically, any actions taken with regard to an Ombudsman can only be done in strict accordance with the rule of law of the Ombudsman's country and those actions are also in strict accordance with the United Nation's resolution on *The role of Ombudsman and Mediator Institutions in the promotion and protection of Human Rights, Good Governance and the Rule of Law (A/RES/75/186)*, and the Council of Europe's Principles on the protection and promotion of the Ombudsman Institution adopted by the European Commission for Democracy through Law and known as the Venice Principles. The Venice Principles make very clear that:

Article 24: States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning and shall effectively protect it from any such threats.

The right of the South African people, through their elected representatives, to govern their own affairs is absolute. The IOI respects this sovereignty while observing that the Parliament of South Africa needs to ensure that any action taken in relation to the Public Protector of South Africa complies with internationally accepted principles which form part of the international rules-based order that applies equally to all nations such as the United Nation’s resolution on *The role of Ombudsman and Mediator Institutions in the promotion and protection of Human Rights, Good Governance and the Rule of Law*, the OR Tambo Minimum Standards for Effective Ombudsman Institutions and the Venice Principles.

Strong and independent oversight bodies are a core element of democracy and an integral part of any State ruled by law. It is in the public interest to respect fully the independence of these institutions. They should not be hindered in their work, their investigatory powers should not be restricted, and their incumbents should not be removed from office without clear and reasonable conditions established by law and in accordance with that law, which law should meet the threshold of accepted international principles. On this point the Venice Principles state that:

Article 11. The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of “incapacity” or “inability to perform the functions of office”, “misbehaviour” or “misconduct”, which shall be narrowly interpreted.

The IOI stands ready, through the Office of the President and the Office of the Regional President, Africa, to provide further information on the Venice Principles and other relevant and internationally accepted resolutions on the position of the Ombudsman.



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