

**THE KHYBER PAKHTUNKHWA
PROVINCIAL OMBUDSMAN ACT, 2010.**

(KHYBER PAKHTUNKHWA ACT NO. XIV OF 2010)

CONTENTS

PREAMBLE

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Appointment of Provincial Ombudsman.
4. Tenure of the Provincial Ombudsman.
5. Provincial Ombudsman not to hold any other office of profit, etc.
6. Terms and conditions of service and remuneration of Provincial Ombudsman.
7. Acting Provincial Ombudsman.
8. Appointment and terms and conditions of service of staff.
9. Jurisdiction, functions and powers of the Provincial Ombudsman.
10. Procedure and evidence.
11. Implementation of findings.
12. Defiance of Findings.
13. Reference by Provincial Ombudsman.
14. Powers of the Provincial Ombudsman.
15. Power to enter and search any premises.
16. Power to punish for contempt.
17. Inspection Team.
18. Standing Committees etc.
19. Delegation of powers.
20. Appointment of Advisors, etc.
21. Award of costs and compensation and refund of amounts.

22. Assistance and advice to Provincial Ombudsman.
23. Conduct of business.
24. Requirement of affidavits.
25. Remuneration of advisers, consultants, etc.
26. Provincial Ombudsman and staff to be public servants.
27. Annual and other reports.
28. Bar of jurisdiction.
29. Immunity.
30. Reference by the Governor.
31. Representation to Governor.
32. Informal resolution of disputes.
33. Service of process.
34. Expenditure to be charged on Provincial Consolidate Fund.
35. Rules.
36. Act to override other laws.
37. Removal of difficulties.
38. Repeal.

SCHEDULE-I

SCHEDULE-II

**THE KHYBER PAKHTUNKHWA
PROVINCIAL OMBUDSMAN ACT, 2010.**

(KHYBER PAKHTUNKHWA ACT NO. XIV OF 2010)

[First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa (Extraordinary), dated the 6th October, 2010].

**AN
ACT**

*to provide for the establishment of the office of
Provincial Ombudsman in the Province of the Khyber Pakhtunkhwa.*

WHEREAS it is expedient to provide for the establishment of the office of the Provincial Ombudsman for protection of the rights of the people, ensuring adherence to the rule of law, redressing and rectifying any injustice done to a person through maladministration, suppress corrupt practices and to ensure good governance;

AND WHEREAS it is expedient to provide for means of effecting changes in policy, procedure and legislation, educating the public, investigating and reviewing actions of the Agencies;

AND WHEREAS it is expedient to provide for the protection of rights of the women and children and to ensure good governance in the working and conduct of children's protective services;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010.

(2) It extends to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.---In this Act, unless there is anything repugnant in the subject or context-

(a) "Agency" means a department, commission or office of Government or a statutory corporation or other institution established or controlled by Government, but does not include the High Court and Courts working under the supervision and

control of the High Court, and the Provincial Assembly of the Khyber Pakhtunkhwa and its Secretariat;

- (b) “aggrieved person” means any person including a public servant, civil servant, ¹[Deleted] aggrieved of any act of maladministration;

²[Deleted]

- (d) “Government” means Government of the Khyber Pakhtunkhwa;

- (a) “Governor” means the Governor of the Khyber Pakhtunkhwa;

- (f) “maladministration” includes-

- (i) a decision, process, recommendation, act or omission of a holder of a public office which-

(a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bonafide and for valid reasons; or

(b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or

(c) is based on irrelevant grounds; or

(d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses;

(e) has or have adversely affected a person; and

- (ii) neglect, inattention, delay, incompetence, inefficiency and inaptitude, in the administration or discharge of duties and responsibilities;

- (g) “Office” means the office of the Provincial Ombudsman;

¹Deleted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

²Deleted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

- (h) “Provincial Ombudsman” means the Provincial Ombudsman appointed for the Khyber Pakhtunkhwa under section 3 of this Act;
- (i) “prescribed” means prescribed by rules made under this Act;
- (j) “Public servant” means a public servant as defined in section 21 of the Pakistan Penal Code, 1860, and includes a Minister, Advisor, the Chief Executive, Director or any other officer, employee or member of an Agency;
- (a) “staff” means any employee of Government and includes co-opted members of the staff, consultants, advisors, bailiffs, liaison officers and experts etc.; and
- (l) “Schedule” means the Schedule appended to this Act.

3. Appointment of Provincial Ombudsman.---(1) There shall be a Provincial Ombudsman, for the Province of the Khyber Pakhtunkhwa, who shall be appointed by the ¹[Government].

²[(2) The Provincial Ombudsman shall be a person, who is, or has been, or is qualified to be judge of a High Court or any other person of known integrity.]

(3) Before entering upon office, the Provincial Ombudsman shall take an oath before the Governor in the form set out in the Schedule to this Act.

(4) The Provincial Ombudsman shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and independently of the Executive, and all executive authorities throughout the Province shall act in aid of the Provincial Ombudsman.

4. Tenure of the Provincial Ombudsman.---³[(1) The Provincial Ombudsman shall hold office for a period of four years or till the age of sixty-two years, whichever is earlier and shall not be eligible for any extension in his tenure or for re-appointment as Provincial Ombudsman under any circumstances.]

(2) The Provincial Ombudsman may resign his office by writing under his hand addressed to the ⁴[Government].

¹Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

²Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

³Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

⁴Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

5. Provincial Ombudsman not to hold any other office of profit, etc.---(1) The Provincial Ombudsman shall not occupy any other position carrying the right to remuneration for the rendering of services.

(2) The Provincial Ombudsman, shall not hold any office of profit in the Service of Pakistan or the Province before the expiration of two years after he has ceased to hold that office nor shall he be eligible during the tenure of office and for a period of two years thereafter for election as a member of Parliament or a Provincial Assembly or any local body or take part in any political activity.

6. Terms and conditions of service and remuneration of Provincial Ombudsman.---(1) The Provincial Ombudsman shall be entitled to such salary, allowances and privileges and other terms and conditions of service as Government may determine and these terms shall not be varied during the term of his office.

(2) The Provincial Ombudsman may be removed from office by the ¹[Government] on the ground of misconduct or of being incapable of properly performing the duties of his office by reason of physical or mental incapacity. Government shall provide the Provincial Ombudsman a copy of charges before such an order of removal is made:

Provided that the Provincial Ombudsman may, if he thinks fit and appropriate to refute all or any of the charges, request for an open public evidentiary hearing before a Division Bench of the High Court and if such hearing is not held within thirty days from the date of the receipt of such request or not concluded within ninety days of its receipt, the Provincial Ombudsman will stand absolved of all the charges whatsoever. In such circumstances, he may choose to leave his office and shall be entitled to receive full remuneration and benefits for the remaining term.

(3) If the Provincial Ombudsman makes a request under the proviso to sub-section (2), he shall not perform his functions under this Act until the hearing before the Division Bench of the High Court has concluded or he has been absolved of the charge or charges, as the case may be.

(4) A Provincial Ombudsman removed from office on the ground of misconduct shall not be eligible to hold any office of profit in the Service of Pakistan or the Province for election as a Member of Parliament or a Provincial Assembly or any local body.

7. Acting Provincial Ombudsman.---At any time when the office of the Provincial Ombudsman is vacant, or the Ombudsman is absent or is unable to perform his functions due to any cause, ² [Government] appoint an acting Ombudsman during the intervening period.

¹Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

²Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

8. Appointment and terms and conditions of service of staff.---(1) The members of the staff of the office of a Provincial Ombudsman and ¹[such other offices shall be appointed by the Government in consultation with the Provincial Ombudsman.]

(2) It shall not be necessary to consult the Provincial Public Service Commission for making appointment of the members of the staff or on matters relating to qualifications for such appointment and method of their recruitment.

(3) The members of the staff shall be entitled to such salary and allowances and shall be governed by such terms and conditions of service as may be prescribed, having regard to salary, allowances and other terms and conditions of service that may for the time being be admissible to other employees of Government in the corresponding basic pay scales.

(4) Before entering upon office a member of the staff mentioned in sub-section (1) shall take an Oath before the Ombudsman in the form set out in the Second Schedule to this Act.

9. Jurisdiction, functions and powers of the Provincial Ombudsman.--- (1) The Provincial Ombudsman may, on a complaint made by any aggrieved person, or on a reference by the Governor or the Government or the Provincial Assembly, or on a motion of the Supreme Court or the High Court made during the course of any proceedings before it, or of his own motion, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees:

Provided that the Provincial Ombudsman shall not have any jurisdiction to investigate or inquire into any matter which-

- (a) is subjudice before a court of competent jurisdiction or judicial tribunal on the date of the receipt of a complaint, reference or motion by him; or
- (b) relates to the external affairs of Pakistan or the relations or the dealing of Pakistan with any foreign state or government; or
- (c) relates to or is connected with the Defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.

(2) Notwithstanding anything contained in sub-section (1), the Provincial Ombudsman shall not accept for investigation any complaint by or on behalf of a public

¹Corrected vide corrigendum dated: 25th November, 2010.

servant or functionary concerning any matter relating to the Agency in which he is, or has been working, in respect of any personal grievance relating to his service therein.

(3) ¹[Deleted]

(4) ²[Deleted]

(5) The principal seat of the Office of Provincial Ombudsman shall be at Peshawar but he may set up such other offices at places he thinks appropriate for proper implementation of the provisions of this Act.

10. Procedure and evidence.---(1) A complaint shall be made on solemn affirmation or oath and in writing addressed to the Provincial Ombudsman by the person aggrieved or, in the case of his death, by his legal representative and may be lodged in person at the office or handed over to the Provincial Ombudsman in person or sent by any other means of communication to his Office.

(2) No anonymous or pseudonymous complaints shall be entertained.

(3) A complaint shall be made not later than six months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Provincial Ombudsman may conduct any investigation pursuant to a complaint which is not within the time-limit, if he considers that there are special circumstances which make it necessary to do so.

(4) Where the Provincial Ombudsman proposes to conduct an investigation, he shall issue to the principal officer of the Agency concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, a notice calling upon him to meet the allegations contained in the complaint, including rebuttal:

Provided that the Provincial Ombudsman may proceed with the investigation if no response to the notice is received by him from such principal officer or other person within thirty days of the receipt of the notice or within such longer period as may have been allowed by the Provincial Ombudsman.

(5) Every investigation shall be conducted informally, but the Provincial Ombudsman may adopt such procedure as he considers appropriate for such investigation and may obtain information from such persons and in such manner and make such inquiries as he thinks fit.

(6) A person shall be entitled to appear in person or be represented before the Provincial Ombudsman.

¹Deleted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

²Deleted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

(7) The Provincial Ombudsman shall, in accordance with the rules made under this Act, pay expenses and allowances to any person who attends or furnishes information for the purpose of any investigation.

(8) The conduct of an investigation shall not affect any action taken by the Agency concerned, or any power or duty of that Agency to take further action with respect to any matter subject to the investigation.

(9) For the purpose of an investigation under this Act the Ombudsman may require any officer or member of the Agency concerned to furnish any information or to produce any document which in the opinion of the Ombudsman is relevant and helpful in the conduct of the investigation and there shall be no obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation:

Provided that the Government may, in its discretion, on grounds of its being a State secret, allow a claim of privilege with respect to any information or document.

(10) In any case where the Provincial Ombudsman decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.

(11) Save as otherwise provided in this Act, the Provincial Ombudsman shall regulate the procedure for the conduct of business or the exercise of powers under this Act.

11. Implementation of findings.---(1) If, after having considered a matter on his own motion, or on a complaint or on a reference by Government or the Provincial Assembly of the Khyber Pakhtunkhwa, or on a motion by the Supreme Court or the High Court, as the case may be, the Provincial Ombudsman is of the opinion that the matter considered amounts to maladministration, he shall communicate his finding to the Agency concerned-

- (a) to consider the matter further;
- (b) to modify or cancel the decision, process, recommendation, act or omission;
- (c) to explain more fully the act or decision in question;
- (d) to take disciplinary action against any public servant of any Agency under the relevant laws applicable to him;
- (e) to dispose of the matter or case within a specified time; and
- (f) to take any other steps specified by him.

(2) The Agency shall, within such time as may be specified by the Provincial Ombudsman, inform him about the action taken on his direction or the reasons for not complying with the same.

(3) If after considering the reasons of the Agency in respect of his recommendations under clause (2), the Provincial Ombudsman is satisfied that no case of mal-administration is made out he may alter, modify, amend or recall the recommendations made under clause (1).

(4) In any case where the Provincial Ombudsman has considered a matter, or conducted an investigation, on a complaint or on reference by the Government or the Provincial Assembly or on a motion by the Supreme Court or the High Court, he shall forward a copy of the communication received by him from the Agency in pursuance of sub-section (2) to the complainant or, as the case may be, Government, the Provincial Assembly, the Supreme Court or the High Court, as the case may be.

(5) If, after conducting an investigation, it appears to the Provincial Ombudsman that an injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been or will not be remedied, he may, if he thinks fit, lay a special report on the case before Government.

(6) If the Agency concerned does not comply with the findings of the Provincial Ombudsman or does not give reasons to the satisfaction of the Provincial Ombudsman for non-compliance, it shall be treated as “Defiance of Findings” and shall be dealt with as hereinafter provided.

12. Defiance of Findings.---(1) If there is a “Defiance of Findings” by any public servant in any Agency with regard to the implementation of findings given by the Provincial Ombudsman, he may refer the matter to the Government to direct the Agency to implement the findings and inform the Provincial Ombudsman accordingly.

(2) In each instance of “Defiance of Findings” a report by the Provincial Ombudsman shall become a part of the personal file or character roll of the public servant primarily responsible for the defiance:

Provided that the public servant concerned had been granted an opportunity to be heard in the matter.

13. Reference by Provincial Ombudsman.---Where, during or after an inspection or an investigation, the Provincial Ombudsman is satisfied that any person is guilty of any allegation as referred to in sub-section (1) of section 9, he may refer the case to the concerned authority for appropriate corrective or disciplinary action,

or both and the said authority shall inform the Provincial Ombudsman within thirty days of the receipt of reference, or within such shorter period as the Provincial Ombudsman may direct, keeping in view the urgency of the matter, of the action taken. If no information is received within this period, ¹[the Provincial Ombudsman may bring the matter to the notice of Government for such action as he may deem fit.]

14. Powers of the Provincial Ombudsman.---(1) The Provincial Ombudsman shall, for the purposes of this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the matter, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commission for the examination of witnesses ²[.]

³[Deleted]

⁴[Deleted]

(3) The Provincial Ombudsman shall have the power to require any person to furnish information on such points or matters as, in the opinion of the Provincial Ombudsman, may be useful for, or relevant to, the subject-matter of any inspection or investigation.

(4) The powers referred to in sub-section (1) may be exercised by the Provincial Ombudsman or any person authorised in writing by the Provincial Ombudsman in this behalf while carrying out an inspection, investigation or implementation of findings under the provisions of this Act.

(5) Where the Provincial Ombudsman finds the complaint referred to in sub-section (1) of section 9 to be false, frivolous or vexatious, he may award reasonable compensation to the Agency, public servant or other functionary against whom the complaint was made, and the amount of such compensation shall be recoverable from the complainant as arrears of land revenue:

¹Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

²Replaced vide Khyber Pakhtunkhwa Act No. XXVI of 2013

³Deleted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

⁴Deleted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

Provided that the award of compensation under this sub-section shall not debar the aggrieved person from seeking any other remedy.

(6) If any Agency, public or other functionary fails to comply with the direction of the Provincial Ombudsman, he may, in addition to taking other actions under this Act, refer the matter to the appropriate authority for taking disciplinary action against the person who disregarded the direction of the Provincial Ombudsman.

(7) If the Provincial Ombudsman has reason to believe that any public servant or other functionary has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by him.

(8) The staff and the nominees of the office may be commissioned by the Provincial Ombudsman to administer oaths for the purposes of this Act and to attest various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under this Act without proof of the signature or seal or official character of such person.

15. Power to enter and search any premises.---(1) The Provincial Ombudsman, or any member of the staff authorised in this behalf, may, for the purpose of making any inspection or investigation, enter any premises where the Provincial Ombudsman or, as the case may be, such member, has reason to believe that any article, books of accounts, or other documents relating to the subject-matter of inspection or investigation may be found, and may-

- (a) search such premises and inspect any article, books of accounts or other documents;
- (b) take extracts or copies of such books of accounts and documents;
- (c) impound or seal such articles, books of accounts and documents; and
- (d) make an inventory of such articles, books of accounts and other documents found in such premises.

(2) All searches made under sub-section (1) shall be carried out *mutatis mutandis*, in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898).

16. Power to punish for contempt.---(1) The Provincial Ombudsman shall have the same powers, mutatis mutandis, as the High Court has to punish any person for its contempt who-

- (a) abuses, interferes with, impedes, imperils, or obstructs the process of the Provincial Ombudsman in any way or disobeys any of his orders;
- (b) scandalizes the Provincial Ombudsman or otherwise does anything which tends to bring him, his staff or nominees or any person authorised by the him in relation to his office, into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Provincial Ombudsman; or
- (d) does anything which, by any other law, constitutes contempt of Court.

(2) Any person sentenced under sub-section (1) may, notwithstanding anything herein contained, within thirty days of the passing of the order, appeal to the High Court:

Provided that fair comments made in good faith and in public interest on the working of the Provincial Ombudsman or any of his staff, or on the final report of the Provincial Ombudsman after the completion of the investigation shall not constitute contempt of the Provincial Ombudsman or his office.

17. Inspection Team.---(1) The Provincial Ombudsman may constitute an Inspection Team for the performance of any of the functions of the Provincial Ombudsman.

(2) An Inspection Team shall consist of one or more members of the staff and shall be assisted by such other person or persons as the Provincial Ombudsman may consider necessary.

(3) An Inspection Team shall exercise such of the powers of the Provincial Ombudsman as he may specify by order in writing and every report of the Inspection Team shall be first submitted to the Provincial Ombudsman with its recommendations for appropriate action.

18. Standing Committees etc.---The Provincial Ombudsman may, whenever he thinks fit, establish standing or advisory committees, at specified places with specified jurisdiction for performing such functions of the Provincial Ombudsman as are assigned to them from time to time and every report of such committees shall be first

submitted to the Provincial Ombudsman with its recommendations for appropriate action.

19. Delegation of powers.---The Provincial Ombudsman may, by order in writing, delegate any of his powers as may be specified in the order to any member of his staff, Inspection Team or to a standing or advisory committee, to be exercised subject to such conditions as may be specified and every report of such member, Inspection Team or committee shall be first submitted to the Provincial Ombudsman with his or its recommendations for appropriate action.

20. Appointment of advisers, etc.---The Provincial Ombudsman ¹[in consultation with Government] may appoint on such terms and conditions, competent persons of integrity as advisers, consultants, fellows, bailiffs, interns, commissioners and experts to assist him in the discharge of his duties.

21. Award of costs and compensation and refund of amounts.---(1) The Provincial Ombudsman may, where he deems necessary, call upon a public servant, other functionary or any Agency to show cause why compensation be not awarded to an aggrieved party for any loss or damage suffered by him on account of any mal-administration committed by such public servant, other functionary or Agency, and after considering the explanation, and hearing such public servant, other functionary or Agency, award reasonable costs or compensation and the same shall be recoverable as arrears of land revenue from the public servant, functionary or Agency.

(2) In cases involving payment of illegal gratification to any employee of any Agency or to any other person on his behalf, or misappropriation, criminal breach of trust or cheating, the Provincial Ombudsman may order the payment thereof for credit to Government or pass such other order as he may deem fit.

(3) An order made under sub-section (2) against any person shall not absolve such person of any liability under any other law.

22. Assistance and advice to Provincial Ombudsman.---(1) The Provincial Ombudsman may seek the assistance of any person or authority for the performance of his functions under this Act.

(2) All officers of an Agency and any person whose assistance has been sought by the Provincial Ombudsman in the performance of his functions shall render such assistance to the extent it is within their powers or capacity.

(3) No statement made by a person or authority in the course of giving evidence before the Provincial Ombudsman or his staff shall subject him to or be used

¹Inserted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

against him in any civil or criminal proceedings, except for prosecution of such person for giving false evidence.

23. Conduct of business.---(1) The Provincial Ombudsman shall be the chief executive of the Office.

(2) The Provincial Ombudsman shall be the principal Accounts Officer of the Office in respect of the expenditure incurred against budget grant or grants controlled by the Provincial Ombudsman and shall, for this purpose, exercise all the financial and administrative powers delegated to an Administrative Department of Government.

24. Requirement of affidavits.---(1) The Provincial Ombudsman may require any complainant or any party connected or concerned with a complaint, or with any inquiry or reference, to submit affidavits duly attested by an authorized officer of the office of the Provincial Ombudsman, in that behalf within the time prescribed by the Provincial Ombudsman or his staff.

(2) The Provincial Ombudsman may take evidence without technicalities and may also require complainants or witnesses to take lie detection tests to examine their veracity and credibility and draw such inferences that are reasonable in the circumstances of the case especially when a person refuses, without reasonable justification, to submit to such tests.

25. Remuneration of advisers, consultants, etc.---(1) The Provincial Ombudsman¹ [in consultation with Government] may, in his discretion, fix an honorarium or remuneration of advisers, consultants, fellows, experts, interns and other persons engaged by him from time to time for the services rendered under section 20.

²[Deleted]

26. Provincial Ombudsman and staff to be public servants.---The Provincial Ombudsman, the employees, officers and all other staff of the Office shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

27. Annual and other reports.---(1) Within three months of the conclusion of the calendar year to which the report pertains, the Provincial Ombudsman shall submit an Annual Report to the Governor.

(2) The Provincial Ombudsman may, from time to time, lay before the Governor such other reports relating to his functions as he may think proper or as may be desired by the Governor.

¹Inserted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

²Deleted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

(3) Simultaneously, such reports shall be released by the Provincial Ombudsman for publication and copies thereof shall be provided to the public at reasonable cost.

(4) The Provincial Ombudsman may also, from time to time, make public any of his studies, research, conclusions, recommendations, ideas or suggestions in respect of any matter being dealt with by the Office.

(5) The report and other documents mentioned in this section shall be placed before the Provincial Assembly, as early as possible.

28. Bar of jurisdiction.---No court or other authority shall have jurisdiction -

- (i) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Act; or
- (ii) to grant an injunction or stay or to make any interim order in relation to any proceeding before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Provincial Ombudsman.

29. Immunity.---No suit, prosecution or other legal proceeding shall lie against the Provincial Ombudsman, his staff, Inspection Team, nominees, member of a standing or advisory committee or any person authorized by the Provincial Ombudsman for anything which is in good faith done or intended to be done under this Act.

30. Reference by the Governor. ---(1) The Governor may refer any matter, report or complaint for investigation and independent recommendations by the Provincial Ombudsman.

(2) The Provincial Ombudsman shall promptly investigate any such matter, report or complaint and submit his findings or opinion within a reasonable time.

31. Representation to Governor.---Any person aggrieved by an order of the Provincial Ombudsman may, within thirty days of the order, make representation to the Governor who may pass such order thereon as he may deem fit.

32. Informal resolution of disputes.---(1) Notwithstanding anything contained in this Act, the Provincial Ombudsman and a member of the staff shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice.

(2) The Provincial Ombudsman may appoint for purpose of liaison, counsellors, whether honorary or otherwise, at local level on such terms and conditions as the Provincial Ombudsman may deem proper.

33. Service of process.--- (1) For the purposes of this Act, a written process or communication from the Office shall be deemed to have been duly served upon a respondent or any other person by, inter alia, any one or more of the following methods, namely:

- (i) by service in person through any employee of the Office or by any special process-server appointed in the name of Provincial Ombudsman by any authorized staff of the Office, or any other person authorized in this behalf; or
- (ii) by depositing in any mail box or posting in any post office a postage prepaid copy of the process, or any other document under certificate of posting or by registered post acknowledgement due to the last known address of the respondent or person concerned in the record of the Office, in which case service shall be deemed to have been effected seven days after the aforesaid mailing; or
- (iii) by a police officer or any employee or nominee of the Office leaving the process or document at the last known address, abode, or place of business of the respondent or person concerned and, if no one is available at the aforementioned address, premises or place, by affixing a copy of the process or other document to the main entrance of such address; or
- (iv) by publishing the process or document through any newspaper and sending a copy thereof to the respondent or the person concerned through ordinary mail, in which case service shall be deemed to have been effected on the day of the publication of the newspaper.

(2) In all matters involving service, the burden of proof shall be upon a respondent to credibly demonstrate by assigning sufficient cause that he, in fact, had absolutely no knowledge of the process, and that he actually acted in good faith.

(3) Whenever a document or process from the Office is mailed, the envelope or the package shall clearly bear the legend that it is from the Office.

34. Expenditure to be charged on Provincial Consolidated Fund.---The remuneration payable to the Provincial Ombudsman and the administrative expenses of

the Office, including the remuneration payable to the staff, nominees and grantees, shall be an expenditure charged upon the Provincial Consolidated Fund.

35. Rules.---The Provincial Ombudsman may, with the approval of the ¹[Government], make rules for carrying out the purposes of this Act.

36. Act to override other laws.---The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

37. Removal of difficulties.---If any difficulty arises in giving effect to any provision of this Act, the ²[Government] may make such order, not inconsistent with the provisions of this Act, as may appear to him to be necessary for the purpose of removing such difficulty.

38. Repeal.---The Khyber Pakhtunkhwa Provincial Ombudsman Ordinance, 2010 (Khyber Pakhtunkhwa Ordinance No. V of 2010) is hereby repealed.

¹Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

²Substituted vide Khyber Pakhtunkhwa Act No. XXVI of 2013

SCHEDULE-I
[See Section 3(3)]

I, _____, do solemnly swear that I will bear true faith and allegiance to Pakistan;

That as Provincial Ombudsman I will discharge my duties and perform my functions honestly, to the best of my ability, faithfully, in accordance with the laws for the time being in force in the Province without fear or favour, affection or ill-will;

That I shall not allow my personal interest to influence my conduct or official decisions;

That I shall do my best to promote the best interest of Pakistan and the Province of Khyber Pakhtunkhwa;

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me, as Provincial Ombudsman, except as may be required for the due discharge of my duties as Provincial Ombudsman.

May Allah Almighty help and guide me (Aameen).

SCHEDULE-II
[See Section 8(4)]

I, _____, do solemnly swear that I will bear true faith and allegiance to Pakistan;

That as an employee of the office of the Ombudsman for the Province of Khyber Pakhtunkhwa, i will discharge my duties and perform my functions honestly, to the best of my ability, faithfully, in accordance with the laws for the time being in force in the Province, without fear or favour, affection, or ill-will;

That I will not allow my personal to influence my official conduct or my official decisions;

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration, or shall become known to me, as the employees of the office of the Ombudsman;

May Allah Almighty help and guide me (Ameen).