



REPUBLIC OF SEYCHELLES

**ANNUAL REPORT
OF THE
OMBUDSMAN**



**“The Ombudsman—
An Institution in Jeopardy”**

**FOR THE YEAR ENDING
31st December 2021**



Message from the Ombudsman

The Ombudsman – An Institution in Jeopardy

The line of questions from the floor in the National Assembly's budget deliberations in December may have set the clock in respect of the future of the constitutional Office of the Ombudsman. The institution may well be in jeopardy in its twenty-ninth year of existence!

Members queried the relevance of the Ombudsman and whether it was worthwhile keeping now that several other statutory bodies exist, mandated with greater and more effective powers to deal with parts of the Ombudsman's original mandate.

The questions underscore the ignorance of the role of the Ombudsman at the highest echelons of our modern democracy. They summarise the neglect by the classic arms of the State of this constitutional office over the decades since its creation in our Third Republic.

The constitutional democracy established by the Constitution in 1993 provided for distinct separation of the powers of the executive, the legislature and the judiciary, presumably to guarantee the checks and balances essential for an effective democracy. We knew that separation of powers would not be enough as History has shown us. That weakness must have been why we adopted Article 143 to establish a fourth arm - the Ombudsman – an administrative watchdog.

Why else insist that the public sector's overseer be 'independent, apolitical and of proven integrity and impartiality'? Why else provide that the Ombudsman would not be under the direction or control of any person or authority, could not be a government minister, or a member of the National Assembly or the judiciary with no ties whatsoever to politics and the courts?

Why else lay out its mandate in an operating manual in the Constitution? In Schedule 5 we charged the Office with keeping a watchful eye on how the other arms of government and its army of public officers behaved in delivering the public services essential to the smooth running of that new democratic society established by the will of the People in 1993.



The establishment of the Office was a declaration that the Third Republic believed in the principles of fairness and good governance – that ours would be an open and accountable public administration, in which we would remain customer focused and act fairly and proportionately, and where, if things did go wrong, because they can and do, we would put them right. We were admitting that transparent, accountable and fair governance were best guaranteed, not only by the doctrine of separation of powers, but also by an independent fourth arm of the State operating above politics and judicial constraints.

In fact, we were *avant garde* in 1993. Autonomous Ombudsman and mediator institutions are today the international best practice norm in most modern democracies to deal with administrative issues and guarantee fairness, openness, accountability and effectiveness in the public service. On 28th December 2020 United Nations resolution A/RES/75/186¹ adopted the Venice Principles² and committed Member States, including Seychelles, to create or strengthen independent Ombudsman and give State support and protection to existing institutions. That included providing adequate finances for staffing and other budgetary needs. We undertook to ensure that the Ombudsman had the powers and tools to select issues, resolve maladministration, investigate thoroughly and communicate results, not to dismantle and do away with it altogether.

Removing the Ombudsman may seem easy at this juncture. A vote by a two-thirds majority in the National Assembly is all it would take to adopt a constitutional amendment to repeal Article 143. After all, absolute majorities have tinkered with the Constitution on several occasions in the past. Dissolution of the Office could save government less than SCR3 million, hardly a life-saving sum.

The Ombudsman can investigate any complaint received and even act on own motions where administrative actions of public officers and authorities violate fundamental rights, are fraudulent and corrupt, are contrary to law,

¹ <https://undocs.org/en/A/RES/75/186>

² [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e)



unreasonable, unjust, oppressive, discriminatory, based on mistake of facts or a wrongful assessment of facts; and the long list continues...

The Ombudsman intervenes as a last resort, when complainants have been unable to obtain any answers or fairness elsewhere.

The Ombudsman's investigative powers are vast – the same as those of a Supreme Court judge. However, while the court can order action and punish failure to act, the Ombudsman can only recommend remedies.

Consequently, the Ombudsman's investigative work can remain invisible and seemingly useless unless and until the public authorities act upon the remedial actions recommended.

Almost three decades into its existence, the institution has remained underfinanced, understaffed and misunderstood by the very arms of government and public authorities it was set up to watch over, as the National Assembly debates showed.

A diminishing operational budget now less than SCR3 million in 2022, increased 'competition' from other agencies set up with 'more teeth' to do the work already attributed to the Office, and a chronic shortage of qualified staff common to many other institutions combine to keep the Office small, insignificant, ineffective and invisible – hence the question about its relevance.

Since my mandate began in March 2017, I have vouched to build the institution and give it greater visibility. For the first time ever, the Office has a vision – *'a fair, open, accountable and effective public service'*. We have a mission – to promote a public service delivery that is transparent and accountable – the foundations stones of good governance

I am in the process of drafting a law, which I will submit for adoption in 2022, to give the Ombudsman the legal framework for those matters not provided for in the Constitution but necessary or expedient in ensuring the independence, impartiality and effectiveness of the Office.

Meanwhile, I forge ahead with investigations of the many bad administrative practices that continue to fester throughout our public service. The work is tedious and time-consuming. It requires attention to detail that itself needs expertise not always available. I need to hire the skills but that costs money.



Our annual budget reduced each year at the whim of the executive continues to negatively impact our own service delivery. It directly affects the Ombudsman's independence and autonomy.

The observations, findings and recommendations made in our reports at the end of each investigation are designed to remedy the administrative weakness or malpractice unearthed in the investigation. Through this 'informal' extra-judicial function, the Ombudsman holds a mirror to the public service so that they can check their reflection and fix it. By holding up that mirror to, the Ombudsman draws attention to the shortcomings in the public authority's service delivery. The authority must look into the mirror and examine the subject closely. It alone must do the fixing. The vision cannot be achieved without positive remedial action by the authority which must take on board the recommendations and act in a timely manner.

The Ombudsman's recommendations are not always acted upon. All too often public authorities seek 'legal advice' and raise legal concepts and "no liability" to reject the recommendations. Yet, if rejecting the Ombudsman's recommendations was an option, why, one might ask, have an Ombudsman in the first place? Why create the Office if it was to be limited by the same rules, procedures and considerations as a court of law?

I refute the argument that the work of this Office is futile. In obliging the public authority to look into the mirror, the Ombudsman does not do the fixing, much like an alarm system will not attack the danger. It simply warns that something is amiss. One doesn't remove the alarm system because it didn't bite the intruder or take evasive action. Surely!

Nichole Tirant-Gherardi
Ombudsman

31st January 2022



INDEX

MESSAGE FROM THE OMBUDSMAN

1	INTRODUCTION	1
2	THE ONGOING global pandemic	2
3	THE OFFICE	3
4	OFFICE ACCOMMODATION	6
5	STAFFING.....	7
6	OFFICE OPERATING BUDGET ALLOCATION.....	9
7	ACTIVITIES OF THE OFFICE.....	10
8	STATISTICS.....	13
9	CHALLENGES & plans for the future	15
10	PROMOTING GOOD GOVERNANCE & ACCOUNTABILITY IN THE PUBLIC SERVICE.....	19
11	ENQUIRIES & DEALINGS WITH PUBLIC AUTHORITIES & PARASTATALS	21
12	SYNOPSIS OF CASES in 2021	24
13	SAMPLE OF REPORTED COMPLAINTS – PREMATURE & OUTSIDE REMIT	36
14	STRATEGIC PARTNERSHIPS & MEMBERSHIPS.....	39
15	RELEVANT GENERAL RECOMMENDATIONS REVISITED	44
16	ACKNOWLEDGEMENTS.....	46
	FIGURE 1: CASES RECEIVED IN 2021	13
	FIGURE 2: CASES BY MONTH IN 2021	14

APPENDIX I

APPENDIX II

APPENDIX III

APPENDIX IV

APPENDIX V



1 INTRODUCTION

The Office of the Ombudsman shall make a general Annual Report on the exercise of the Ombudsman's functions during the previous year not later than the thirty-first January in each year to the National Assembly and copied to the President in compliance with paragraph 6 (6) of Schedule 5 of the Constitution. This report chronicles the activities of the Office in the year 2021.

Once laid before the National Assembly and submitted to the President, the Report becomes a public document. It can then be shared with all ministries and public authorities as well as with fellow Ombudsmen around the world and made readily available to anyone wishing to access a copy.

This year, once again, the Report will only be published in an electronic format as part of the Office's ongoing cost-cutting efforts in face of the COVID-19 pandemic.

Soft copies are available upon request by electronic mail to: info@ombudsman.sc or can be accessed on our website: www.ombudsman.sc

THE GENDERLESS OMBUDSMAN

People often ask, "Should I address you as *Ombudsman*, *Ombudswoman* or (the androgynous) *Ombudsperson*?" My short answer is "*Ombudsman*". For good reason!

The word "*Ombudsman*" is genderless and despite popular belief, is definitely not sexist! The word along with its concept of a defender of the citizen against the maladministration of the state were imported into English and other languages from Old Norse (Scandinavia).

The "*Man*" part of the Swedish word means '*agent*' – '*who protects the citizen*'. The plural of *Ombudsman* remains simply *Ombudsman* in the plural. "*Ombudsmen*" brings gender into the word and corrupts the word completely to rekindle the male-female debate of whether to use *Ombudswoman* or *Ombudsperson* instead.



2 THE ONGOING GLOBAL PANDEMIC

- 2.1** Year 2 of the global COVID-19 pandemic, 2021 began with the announcement of the first pandemic-related death on 3rd January 2021. The vaccination campaign began on 10th January 2021 with the Sinopharm vaccine being administered to the under 60's. The AstraZeneca COVIDSHIELD vaccine was rolled out for the 60+ age group with effect from 22nd January 2021. By 29th January 30,861 people had received their first inoculation. Numbers of COVID-19 cases continued to grow throughout the year even as international air travel resumed at the end of March with many of the traditional carriers returning by year's end. The virus transitioned through the Greek alphabet mutating from Alpha to Delta to end the year with the Omicron variant. By year's end, the surge associated with the Omicron variant was well underway despite over 70% of the population vaccinated. The death toll had reached 134.
- 2.2** The pandemic was blamed for more budget restrictions during the fiscal year and many institutions, including our own, made further cuts on expenditure.
- 2.3** The year ended with the Ombudsman invited to the National Assembly's annual budget deliberations to answer questions from members about sustainability and relevance of the Office now that much of its mandate was being handled by other statutory institutions with more budget and sharper teeth.
- 2.4** While cost-cutting and consolidation of competencies may be the galvanising factor behind this reasoning, it must be noted that ombudsman and mediator institutions remain unique in their capacity to deal with issues of maladministration in public service delivery. They are the only universally-recognised institutions to which United Nations Member States have committed to setting up where they do not exist and strengthening where they do.

SEE [APPENDIX IV and V](#) UN RESOLUTION AND THE VENICE PRINCIPLES.
<https://undocs.org/en/A/RES/75/186>

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e)



3 THE OFFICE

- 3.1** The constitutional Office of the Ombudsman provides citizens and residents of Seychelles with a forum in which to address issues of governance and maladministration, as well as human rights violations and fraud and corruption within the public service.
- 3.2** Although parts of its mandate have since been transferred to other statutory bodies with wider powers, the constitutional mandate of the Ombudsman remains unchanged and still provides for specified intervention in instances of fraud and corruption and in human rights violations by public officers.
- 3.3** The [Anti-Corruption Commission](#) and the [Seychelles Human Rights Commission](#) have been granted wider powers to deal respectively with violations of the fundamental rights enshrined in Chapter III of the Constitution and the corruption agenda.
- 3.4 Investigating Allegations of Fraud or Corruption – Schedule 5 paragraph 1(1)(b)** of the Constitution ([SEE APPENDIX I](#)) empowers the Ombudsman to “investigate an allegation of fraud or corruption in connection with the exercise by a person of a function of a public authority”. This is understood to mean that the Ombudsman can only initiate an investigation upon an allegation of fraud or corruption being made in a complaint. In the absence of such complaint therefore, no investigation can be launched. Furthermore, upon completion of any investigation for fraud or corruption, the Ombudsman is limited by virtue of **Paragraph 6(1)(g)** to forming an opinion that “*the allegation of fraud or corruption is well founded.*” Since its creation the Office has never carried out any such enquiries due to the limited scope of its intervention and, more importantly, the lack of highly specialised investigative capacity required to investigate fraud and corruption cases. The Office has never been able to build the capacity needed in this field.
- 3.5 Investigating actions that result in human rights violations** – The Ombudsman is obliged, upon receiving a complaint alleging a violation of the complainant’s fundamental rights or freedoms as guaranteed under the Charter, to investigate the action. (**Paragraph 1(2)(a)**). In relation to such an investigation where the Ombudsman forms an opinion that the action was wrong or unjustified, **paragraphs 1(1)(c) and (d)** enable the Ombudsman to “assist an individual complainant in respect of legal proceedings in relation to a



contravention of the provisions of the Charter," and become a party to proceedings relating to a contravention of the provisions of the Charter with the leave of the trial court.

- 3.6** The Ombudsman has not availed itself of either of these constitutional powers in the period under review, primarily because of the lack of in house investigative and legal capacity as well as limited financial resources linked to the costs of legal representation for such actions.
- 3.7 Cooperation with the new institutions** – The interface between the new institutions and the Ombudsman remains an area of potential conflict which has not been fully addressed in 2021. While I have not registered any direct conflict between the Ombudsman and any of the new institutions in 2021, overlaps have been identified. To address this ongoing challenge, we are working to subscribe to Memoranda of Understanding to frame our cooperation.
- 3.8 Formalising MOUs** – During 2021, the Office formalised memoranda with the Truth & Reconciliation and National Unity Commission and with the Anti-Corruption Commission. We have also started work on an MOU with the Human Rights Commission of Seychelles which memorandum is expected to be formalised early in 2022.
- 3.9 Referrals of complaints** – Where complaints submitted to the Ombudsman disclose elements of fraud and corruption or a human rights violation, my Office refers the matter to the relevant institution for possible follow up. However, there have been instances where the referred institution has not taken up the complaint, sometimes leaving dissatisfied and frustrated complainants unsure about the way forward. The MOUs are intended to address this aspect in as far as possible.
- 3.10 PUBLIC OFFICERS ETHICS COMMISSION** – Prior to the amendment of the **Public Officers Ethics Act 14 of 2008 in 2021**, the Ombudsman was an *ex-officio* member of the [Public Officers Ethics Commission](#) (POEC) along with the Auditor-General and the Chairman of the Constitutional Appointments Authority. Meetings of the POEC were held regularly every two months, upon notice of the POEC's Chief Executive Officer. The legal provisions creating the POEC were repealed by the **Public Officers Ethics (Amendment) Act 17 of 2021**, assented to by the President on 16th April 2021, effectively dismantling the

Commission. At the last meeting of the Commission held in March 2021, I raised concern that the Commission was being dismantled without any consultation with its members and expressed the view that a proper exit report should be prepared and submitted to the Executive ahead of the dissolution. No such report was finalised since our initiative was overtaken by events.

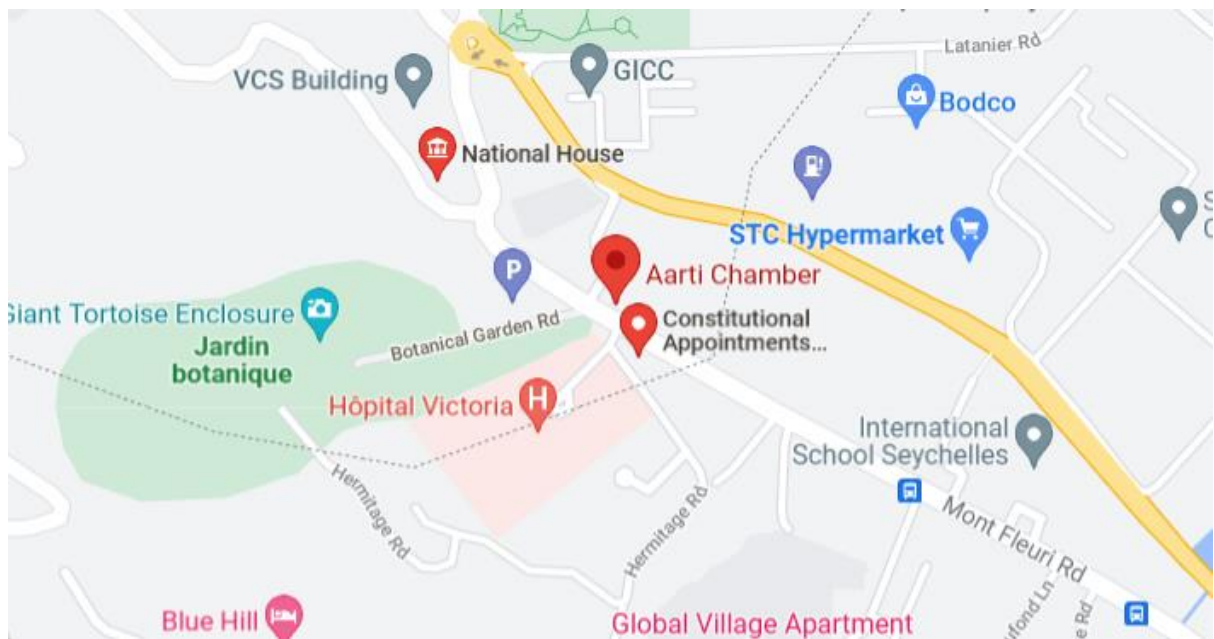


Figure 1: How to access our offices

“Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law, as we understand it, consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance”.

Nelson Mandela
(Conference of the International Ombudsman
Institute in South Africa in 2000)

4 OFFICE ACCOMMODATION

- 4.1 The Ombudsman operates from physical premises in Suites 206 and 306, Aarti Chambers at Mont Fleuri. The Office is situated on the Mont Fleuri road, opposite Seychelles Hospital and the Botanical Gardens and close to key ministries of Health, Education, Foreign Affairs and Tourism. The area is well served by public transport, making it readily accessible to the public. Suite 206 provides street level access for any physically challenged complainants attending our Offices. However, there were no recorded instances of such need in 2021.



Ombudsman Office in Aarti Chambers, Mont Fleuri

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e-mail: info@ombudsman.sc
website: www.ombudsman.sc



5 STAFFING

5.1 At the end of 2021, the Office of the Ombudsman comprised a complement of six persons, including the Ombudsman. The Office includes an 'investigations section' headed by a Senior Investigations Officer and two investigation officers, one of who is a law graduate (Legal/Investigations Officer), as well as an 'administration section' dealing with the administrative, financial, and human resources matters, comprising an Office Administrator and assistant.

5.2 Staffing for the period January to December 2020 was as follows:

Principal Investigations Officer	-	vacant
Senior Investigations Officer	-	Sylvette Gertrude
Legal/Investigations Officer	-	Sophie Lagrenade
Investigations Officer	-	Tressy Dine
Investigations Officer	-	vacant
Office Manager/Administrator	-	Marie-Paule Gertrude
Accounts Assistant	-	Wendy Michel

5.3 Information Officer – In accordance with its legal obligation under the **Access to Information Act**, the Office has nominated Sylvette Gertrude Information Officer under the Act.

5.4 Vacancies – Several positions remained vacant throughout the year. Efforts to recruit a principal investigations officer proved unsuccessful as no suitable candidate applied. The post remained vacant at the year's end.

5.5 Investigative Capacity – The Office's investigative capacity was able to deliver reasonably well with a Senior Investigations Officer and two Investigations Officers in the team. The Office has continued to register delays with producing final reports due to the lack of staff.

5.6 Staff Training – Each year the Office seizes every opportunity for short training sessions and workshops, either locally or offered through our membership of international ombudsman associations. In 2021, physical overseas training sessions by our partner institutions were mostly replaced by virtual sessions because of the ongoing COVID-19 pandemic and travel bans. Our lack of



financial resources also affected our ability to travel for such sessions. Consequently, only one member of staff travelled abroad at the end of November 2021 to attend a training workshop on data and case management in Brussels, Belgium. Several online webinars organised by our regional and international partners throughout the year were well attended by all staff members. These online sessions are elaborated on in **Chapter 14.7**.

5.7 Local training sessions – Staff also attended local training sessions organised by the Guy Morel Institute although some of the targeted training sessions were cancelled because of poor turn out and the COVID-19 pandemic restrictions. These included workshops listed in Chapter 5.8, 5.9 and 5.10 below.

5.8 Workshop on Transparency, Accountability and Good Governance – Legal/Investigation Officer Sophie Lagrenade attended a two-day workshop on Transparency, Accountability and Good Governance at the Guy Morel Institute in July 2021. The facilitated discussion was designed to help public officers look at good governance and the value and effectiveness of good decision-making, efficient use of resources in reinforcing accountability and the value addition of accountability and transparency in improving public services and outcomes for service users. Participants discussed best practices, good customer service, and transparency as the corner stones for an effective public service. Through activity groups, they identified risks and critically analysed existing governance practices with a view to helping service providers adjust and improve service delivery under their direct control. Improving internal communications and customer service, working on conflict management, maintaining a high level of work and personal discipline, adopting a positive mind-set, making optimal use of internal budgets were identified as areas that could be improved upon despite challenges

5.9 Workshop on Executive Development Leadership – Legal/Investigation Officer Sophie Lagrenade also attended a three-day workshop on Executive Leadership Development at the Guy Morel Institute in October 2021 with the aim of acquiring personal leadership tools and skills.

5.10 Diploma in Office and Record Management Level 1 – Administration Section's Wendy Michel began an 18-month course at the Guy Morel Institute designed to improve her capacity to manage the Office. The course is ongoing into 2022.



6 OFFICE OPERATING BUDGET ALLOCATION

6.1 Budget Allocation – The Appropriation Act 1 of 2021 approved for the Office of the Ombudsman for **2021 the following budget allocation:**

Compensation of Employees	SCR 1,584,000
Use of Goods & Services	SCR 1,182,000
Total	SCR 2,766,000

6.2 Reduction – During the year, the budget allocation for wages and salaries was revised downward to SCR 1,388,000 in view of delays in recruiting for vacant posts. From SCR 3,112,000 allocated in the revised budget for 2020 the Ombudsman's operational budget was reduced in 2021 to SCR 2,766,000. This reduction further aggravated the challenges already faced by the Office in previous years. It is of note that the budget allocation for 2017 was SCR 2,981,670, increased to SCR 3,222,270 in 2018 and to SCR 3,740,00 in 2019.

6.3 Programme Performance-Based Budgeting – The Office of the Ombudsman currently operates under a full PPBB (Programme Performance-Based Budgeting) which effectively means that the Office is expected to show performance-based results of all its activities. The services rendered by the Ombudsman make it difficult to set tangible measurable targets and indicators of performance. This challenge is addressed in greater detail in Chapter 10.6.

6.4 Challenge – Furthermore, the budgetary performance audits carried out by the Office each year is both daunting and time consuming with our limited human resources. It is also, in my opinion, an obstacle to the autonomy and independence of this constitutional body to have to follow the constraints of the PPBB. It needs to be addressed in the future.

"It is unrealistic in the extreme to suggest that politicians would bring public attention to the mismanagement or maladministration occurring under their watch."

Paul Dube, Ombudsman of Ontario Canada



7 ACTIVITIES OF THE OFFICE

7.1 CASE WORK

- 7.1.1 Investigating Complaints** – The Ombudsman enquires into complaints of grievances lodged by members of the public in respect of maladministration, unfair decisions, discriminatory practices, etc. In 2021, the office registered a total of ninety (**90**) complaints, a drop from the previous year when 166 complaints were recorded. The reason for this drop could be partly explained by the severe health restrictions imposed after recording the first COVID-19 related deaths in January and February. The complaints recorded show the same trend perceived since the start of my mandate in 2017. The large majority, eighty (**80**), were either ‘*premature*’ (**41**), where the complainant had not exhausted available avenues for seeking remedy, or ‘*outside remit*’ (**39**), where the matter falls within one of the exclusions contained in Paragraph 2 of Schedule 5, or because it involves actions between private persons or bodies.
- 7.1.2 Status of retained Complaints** – Out of the nine (09) complaints retained by the Office in 2021 seven (**07**) were still under investigation at the date of this report and two (**02**) have been closed. One complaint retained for mediation was unsuccessful and the complainant was referred to another administrative procedure that had not yet been used.
- 7.1.3 Spill over from previous years** – Complaints retained for investigation are often not completed in the year in which they are received. The lack of cooperation from the respondent authority, the complexity of the issues, shortage of staff combine to delay the investigations and final evaluation. Such cases are then carried over into the next year. At the end of 2021 there was a cumulative total of 79 cases still open whether for ongoing investigations, final evaluation or report-writing. One of the challenges experienced by the Office is the final report writing which continues to suffer from long delays.
- 7.1.4 Systemic Issues** – It is in addressing systemic administrative weaknesses across the public sector that the Ombudsman can have the most positive impact. By looking at the primary cause of the systemic dysfunction rather than at individual cases, the Ombudsman’s enquiry can focus on the bigger picture where the added value of the general recommendations becomes more apparent and effective across a wider section of the public service. However, investigations of systemic issues require more time and dedicated staff. To improve the efficiency and efficacy of systemic investigations, the Office must



increase its investigative capacity and provide more specialised training to existing staff. Systemic issues noted in 2021 included detention/remand centres and service contracts between public authorities and private contractors. The issue of Gainful Occupation Permits and Prohibited Immigrant Notices identified in 2020 remained under general enquiry.

7.2 ADVICE & ASSISTANCE

7.2.1 Ombudsman continues to be perceived as a ‘legal aid’ office – The services of the Ombudsman remain free and open to the general public. It is now a seemingly well-established but mistaken belief that the Office also offers free legal advice. The Office continued to receive requests for legal advice throughout 2021. However, these are no longer entertained and complainants are advised to contact lawyers of their choice. We may provide the complainant with a list of practising attorneys enrolled at the Seychelles Bar but we do not recommend any particular attorney or chambers in the spirit of independence and objectivity.

7.2.2 Ombudsman takes complaints as last resort – Paragraph 1(3)(d) of Schedule 5 of the Constitution requires that before investigating a complaint about an action taken by a public authority or officer in the course of his administrative capacity, the Ombudsman must be satisfied that the complainant does not have other remedies available to him under the Constitution or under any other law. In keeping with this constitutional requirement, our internal assessment process has the hardest task to consider whether complainants have cleared this hurdle and sought redress for the substance of their complaints before coming to us. Invariably, the complainant can take the matter to court for a judicial review or to seek damages, or to the constitutional court for redress, or to one of several statutory bodies set up in recent years. Although the Ombudsman now uses the referral process to guide complainants in what they can do, the Constitution allows the Ombudsman to take up the complaint where it would be unreasonable in the particular circumstances of the case to expect the complainant to exhaust the remedies available. This proviso is often used.

7.2.3 Referrals – Under the Ombudsman's standard operating practice, we determine ‘premature’ any complaint in which the complainant has other options for redress. In such instances, we advise them accordingly and

prepare, where necessary, referral letters to ease access to those services. We formally referred only two (2) complaints to other institutions in 2021.

7.2.4 Making referrals work – Referral letters are intended to assist the complainant in taking his complaint to the relevant public service institution where he will follow a specified complaints avenue for redress. The efficacy of the referral process continues to be tested. On the one hand, it requires significant resources and dedication within the Office of the Ombudsman to identify the issues involved and determine the elements to be referred. On the other hand, it needs direct cooperation from all public offices and state-owned enterprises through their own internal complaints' handling systems and procedures to deal with complaints from members of the public who use their services. Most do not have any clearly defined complaints' handling systems in place to address in-house complaints and often procedures are not known to the public and even to our Office. We therefore continue to recommend that greater attention is given to addressing and improving this weakness throughout the public service.

7.3 WEBSITE & REBRANDING EXERCISE

7.3.1 Part of our outreach undertakings aimed at providing real time information was to set up a good website. In March 2020, the Office applied to the AOMF for part-financing of a project to create a dedicated website to give maximum online visibility to the Office. The application was approved in the sum of **Euros 1,482**. However, due to setbacks caused by COVID-19, including budget constraints of the Ombudsman's operational budget, the project was delayed into 2021.

7.3.2 The website was completed in August 2021 and is now operational. It can be accessed at www.ombudsman.sc

7.3.3 REBRANDING OF OFFICE OF THE OMBUDSMAN – As part of the website project,



Figure 2: New Seal

the Office also undertook a re-branding exercise with the formulation of a new seal. The reasoning that went into the creation of the seal (pictured below) and the integration of the endemic Jelly Fish flower is explained in greater detail in [APPENDIX III](#)

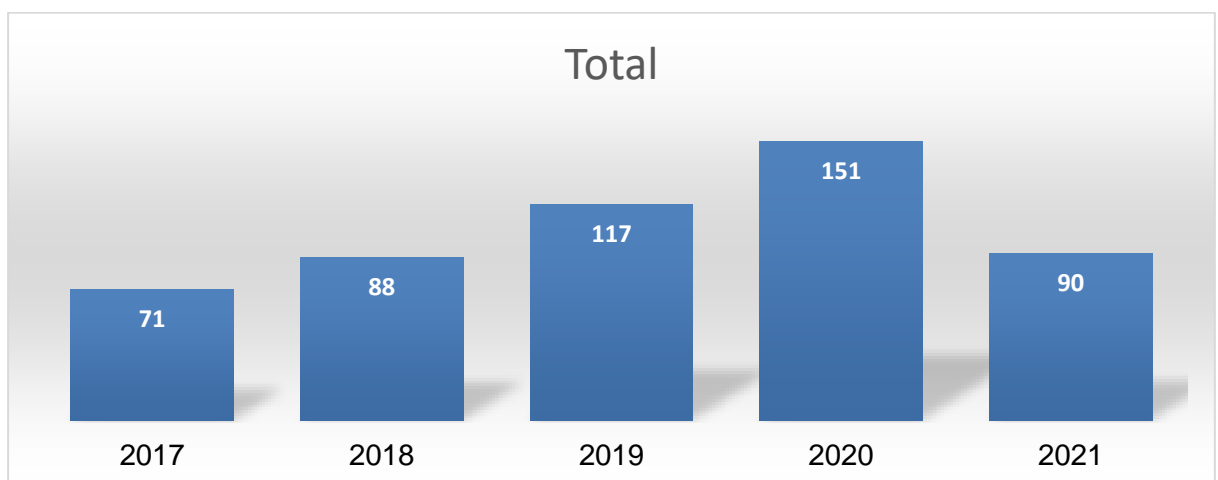
8 STATISTICS

8.1 Improving Data-Collection – I recognise the need to improve collection and treatment of statistics by the Office. Such improvement depends on quality and efficiency of the case management system that remains a major challenge for the Office but is being addressed. **(SEE Chapter 9.2)** In 2021, we set up a case recording system in a database.

8.2 Statistics for 2021– The statistics for complaints registered in the Office of the Ombudsman in 2021 are set out hereunder. They are organised according to month and subject matter respectively.

COMPLAINTS RECEIVED BY OMBUDSMAN IN 2021	
TOTAL Complaints received	90
Cases Retained	09
Cases considered <i>Premature</i>	41
Cases found to be <i>Outside remit</i>	39
Cases reserved for mediation	1
Cases referred to other institutions (included in the total received)	2

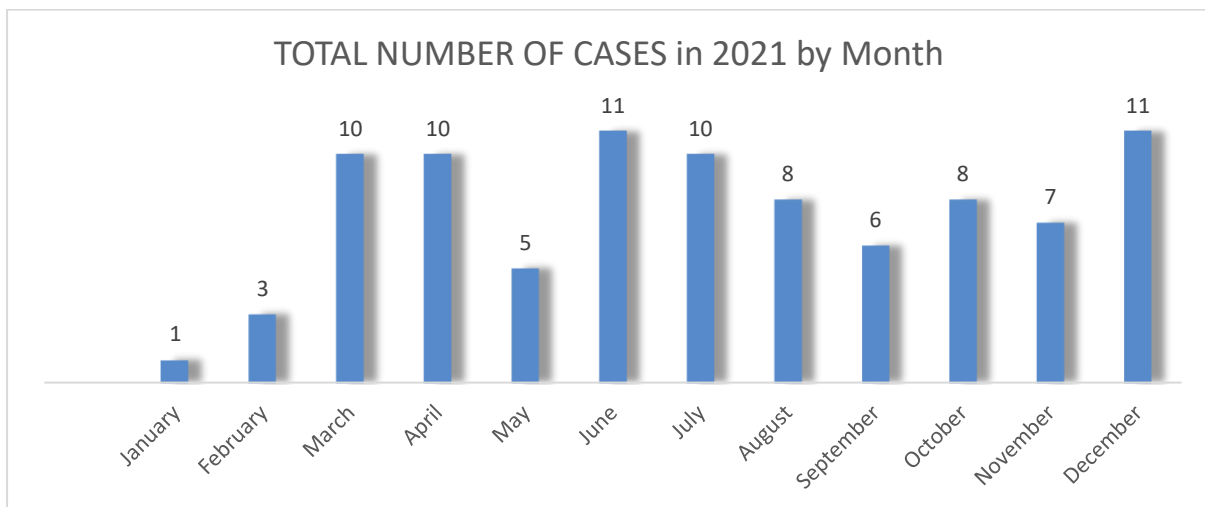
Figure 3: Cases received in 2021



8.3 COMPLAINTS RECEIVED IN 2021 (BY MONTH & SEX)

MONTH	TOTAL NUMBER OF CASES	SEX	
		F	M
January	01	-	01
February	03	01	02
March	10	03	07
April	10	05	05
May	05	01	04
June	11	04	07
July	10	05	05
August	08	02	06
September	06	04	02
October	08	05	03
November	07	03	04
December	11	04	07
GRAND TOTAL	90	37	53

Figure 4 : Cases by month in 2021





9 CHALLENGES & PLANS FOR THE FUTURE

9.1 REMAINING RELEVANT IN 2022 – This Chapter is intended as a reference for the planned activities and undertakings of the Office in reasserting its relevance and importance in the Third Republic.

9.1.1 REVIEW & UPDATE OF STRATEGIC PLAN – The Ombudsman's strategic plan ([APPENDIX II](#)) for the period of my mandate (March 2017 to March 2024) envisions '**A fair, open, accountable and effective public service**'. Our core mission is to continuously improve the level of service delivery across the public service.

9.1.2 The plan, drawn up in 2017 during the first year of my mandate, focused on institutional and capacity building over the first period from 2018 – 2021. It envisaged consolidation and possible readjustment in the period 2022 to the end of my mandate in March 2024 in preparation for the next Ombudsman.

9.1.3 This adjustment will be necessary in the coming year, particularly with respect to addressing and improving the institutional capacity to deliver on completed investigation reports. Efforts to recruit personnel for a stronger report-writing capacity met with no success in 2021. This will be taken up in earnest in 2022.

9.2 ESTABLISHING A CASE MANAGEMENT SYSTEM – Managing the status of year on year overruns on case files poses a perennial challenge that can only be addressed by a reliable and efficient case management system and fully trained and dedicated staff. Such a system also guarantees reliable data collection and treatment of statistics by the Office. However, the cost of such systems in both financial and human resource terms are not justifiable in our small office context. Hence, my motivation in approaching our strategic partners to explore the possibility of assistance with suitable case management software.

9.3 In 2021, the AOMF responded through a project to assist members in setting up case management systems that would bring uniformity and greater accuracy and efficiency to member Ombudsman and Mediator institutions. The project involves access to a shared case management software facilitated by the AOMF. A short-term training and sensitization session was held in Brussels from 30th November to 3rd December 2021, which was attended by a member of staff. It is expected that the project will be completed in 2022.



9.4 CREATING A NEW POSITION FOR A QUALIFIED LEGAL OFFICER – The Office continues to suffer from a lack of high level legal competence to deal with the complexity of complaints and the increasingly detailed reports of findings and recommendations that emerge from the investigation and evaluation processes. Additionally, this *one-man* institution does not have a deputy creating a challenge for a change in the person of the Ombudsman at the end of the mandate. While the Ombudsman's Act is being finalised, I intend to address this challenge by creating a new senior legal officer's position to assist in this task. Available funds already earmarked for other vacant posts are being retained while we continue to revise our institutional needs and identify a suitable candidate for the post.

9.5 ADDRESSING INCREASED BUDGET MANAGEMENT OBLIGATIONS –

9.5.1 The Office operates under a full PPBB (Programme Performance-Based Budgeting) which requires continuous overview and oversight of performance data designed to show how effectively the Office is using its budget allocation for its single programme, which is to carry out its constitutional mandate of investigating complaints, promoting good governance, improving administration and promoting and protecting human rights.

9.5.2 The type of services rendered by the Ombudsman make it difficult to set tangible measurable targets and indicators of performance under the PPBB exercises. The Office is required to carry out budgetary performance audits each year while also preparing its budgetary needs for the coming year. The limited human resources of the Office make this a daunting and time-consuming task, which, in my opinion, is an obstacle to the autonomy and independence of this constitutional body.

9.5.3 The demand for time and expertise generated by the annual budget preparation and reporting is met by a small but dedicated administration section run by an Office Manager and an assistant. However, it has proven challenging to rationalise new posts while maximising the work performed by the two staff members involved.

9.5.4 The Office's lack of administrative autonomy continues to hinder the completion of this exercise since the Department of Public Administration plays a direct role in the human resource management of the Office.



9.6 LOBBYING FOR FINANCIAL & ADMINISTRATIVE AUTONOMY –

The Ombudsman and other constitutional and autonomous statutory bodies lobbied the Ministry for Finance in 2019 for greater financial and administrative autonomy in the face of proposed legislation designed to 'improve' oversight of the financial management of constitutional bodies. The legislation was subsequently shelved, but the more central issue of greater financial and administrative autonomy remains outstanding. No steps were taken to revive the debate again in 2021, primarily because of the disruption caused by the COVID-19 pandemic. It is my intention in 2022, to take up the matter to lobby for the most suitable and cost effective solution for my Office to deliver our services efficiently and effectively while maintaining our financial and administrative autonomy and independence as guaranteed by **Article 143 (3)** of the Constitution.

9.7 DRAFTING A DEDICATED OMBUDSMAN ACT – Article 143(6) of the Constitution provided for a stand-alone Ombudsman Act that could provide for any matter not provided for in the Constitution but necessary or expedient for the purpose of ensuring the independence, impartiality and effectiveness of the Office. No such Act has been passed to date. The Ombudsman is currently working on a draft law that will be placed before the relevant authorities in the course of 2022.

9.8 OUTREACH PROGRAMME STILL IMPOSSIBLE – Without the finances and dedicated staff, the Ombudsman's outreach programme envisioned in the Strategic Plan remains elusive. The Mahe-based Office has not been able to take any of its services, as planned, to the other population-centres of Praslin or La Digue. However, this does not appear to have prevented complainants from those islands from accessing our services. The Office remains flexible to carry out *ad hoc* 'clinics' for residents of those islands should the need arise through first contacts with us. We addressed this weakness by accommodating all complainants from the islands by meeting them with short or no notice.

9.9 EDUCATING THE GENERAL PUBLIC ON THE ROLE OF THE OMBUDSMAN –

One of the major challenges to the work of the Office remains the time spent in receiving and dealing with complaints that are outside remit. Statistics for 2021 maintain the established trend that the majority of complaints received (80 out of a total of 90 complaints lodged in 2021), were either 'premature'

(41) or 'outside remit' (39). This indicates that the public remains largely ignorant or unclear of the role and mandate of the Ombudsman.

9.9.1 Public awareness programme – Addressing this weakness requires a specialised education and awareness programme designed to fully sensitise and educate the general public on the Ombudsman's mandate and work. As for the outreach programme, the lack of dedicated staff and budget will result in this major challenge continuing into 2022.

9.9.2 Messages & Social Media – Meanwhile, we have continued to make use of the most cost effective way to give some visibility to the Office through messages related to areas of interest for the Ombudsman issued on the occasion of national and international days. I thank all the media houses for their complicity in this process which has been at no cost to the Office. The Ombudsman also has a Facebook page used to share information on the Office and we now have a dedicated website from which the general public will be able to access all information on the work of the Office.

9.9.3 Information leaflets – The leaflets are readily available to the public in our Office and have proven highly effective in informing people of what the Ombudsman can and cannot do. We plan to deposit batches of the leaflets in public offices where they can be easily accessed. However, persistent budget cuts hamper this task as the volume of printing needed for large-scale distribution cannot be done on the office equipment.



Website Welcome page



10 PROMOTING GOOD GOVERNANCE & ACCOUNTABILITY IN THE PUBLIC SERVICE

10.1 ESTABLISHING RULES & PROCEDURES IN PUBLIC SERVICE DELIVERY – Good governance is the beating heart of the work of the Ombudsman. By keeping a keen eye on the ‘production line’ the State’s ‘*quality controller*’ makes sure that the decision-making process is fair, un-oppressive and transparent and that public officers are held accountable for any deviations or failings in their basic functions of Government implementing government policies and laws. When the new administration took office in late 2020, I made a point of meeting with all the incoming ministers to share the concerns and expectations of the Office on ‘good governance’. It was a good time as the ministers assumed their posts to sensitise them on managing the ‘army’ of public officers charged with regulating the economy, collecting revenue through taxation, safeguarding law and order or defending the country’s boundaries, protecting individuals and providing education, health, welfare and all those other services that make a modern society function. I stressed that it was the open, predictable and transparent nature of the decision-making process that determines ‘*good governance*.’ I pointed to the important role of public officers and authorities in delivering their services through the decisions and determinations they make and how these should be made in a fair and non-oppressive manner based on a set of rules known to both service provider and service user. To this end, I recommended that the ministers set in place mechanisms within their ministries to ensure that all their officers follow these rules and criteria with diligence to guarantee the transparency of the process and ensure that the public officer always remains accountable for his decisions and determinations.

10.2 REJECTING THE OMBUDSMAN’S WORK IS MISSING THE POINT – Good governance is guaranteed only if we continuously draw and learn from our mistakes; only if the public officer or authority is made ‘accountable’ at whatever degree for any failure. This remains fundamental to the Ombudsman’s work. When we refuse or fail to address what and where we went wrong, we can never improve on quality. Hence, when ministries and public authorities reject my recommendations or counter-recommend my findings they not only miss the point of this Office, but they also lose out on the opportunity to improve their service delivery. My task is to draw attention to what went wrong and to advocate the change that will set things right and

improve the public service. It is my firm belief that this should remain the focus of any institution receiving my investigation reports. I call on the Executive to take up the challenge to ensure that the Ombudsman remains not only relevant into 2022, but is given its full worth and effectiveness as that special 'fourth' arm of the State envisaged in the Constitution. More general proposals on this aspect will be included in a dedicated Ombudsman's Act under consideration.

10.3 PUBLIC AUTHORITIES MUST PROVIDE FOR COMPLAINTS' HANDLING – The fundamental purpose of the public service is to serve the public. A good public sector service must be economical, efficient, effective, fair, impartial, prudent, responsive and transparent in all dealings with citizens. Citizens and the public in general have a right to expect a quality service at all times. I have made general recommendations in previous Annual Reports that all public service authorities must set up internal complaints' handling systems. However, many public authorities are still not dealing effectively with in-house complaints either because they have no structure in place or because their process is unknown and not used by either side.

10.4 USING THE OUTCOME OF THE COMPLAINTS REVIEW TO IMPROVE SERVICES – Public officers and authorities should learn from their mistakes and make a lasting difference in efforts to create that effective, fair, impartial, prudent, responsive and transparent public sector to which we aspire. Public authorities should use complaints from those who use their services to determine what, if anything, may have gone wrong in their service delivery. The outcomes of this process should serve to not only satisfy the complainant but also to ensure it does not happen again. This process lies at the heart of the Ombudsman's constitutional obligation in the Third Republic.

"We were mindful from the very start of the importance of accountability to democracy. Our experience had made us acutely aware of the possible dangers of a government that is neither transparent nor accountable. To this end our Constitution contains several mechanisms to ensure that government will not be part of the problem; but part of the solution."

Nelson Mandela (1996)



11 ENQUIRIES & DEALINGS WITH PUBLIC AUTHORITIES & PARASTATALS

This chapter is dedicated to some of the more notable general matters emerging from enquiries and consultations with a selection of public authorities.

11.1 ENGAGING THE NATIONAL ASSEMBLY –

11.1.1 OMBUDSMAN'S ANNUAL REPORT – It is a constitutional requirement that the Ombudsman must submit to the Legislature with a copy to the President a general annual report on the exercise of its functions in the previous year by 31st January of each year. **(Paragraph 6(6) of Schedule 5)**. The schedule does not set any procedure for this process or with respect to the engagement and follow up on the report. When I submitted my annual report for 2020 to the National Assembly in 2021, I suggested establishing a working relationship with the National Assembly through meeting with the members to discuss the report and the role of this institution. It was suggested at the time that a select committee of the House may be more appropriate for this purpose. However, by the year's end when I appeared in the House to answer questions on Office's allocation in the Appropriation Bill, there had been no follow up on the proposal. In 2022, I will seek to establish this working relationship with the NA in order to ensure that the recommendations of this Office are taken up at the highest level by the Legislature.

11.1.2 INVESTIGATION REPORTS – Schedule 5 Paragraph 6(4) also provides for the Ombudsman's investigation reports to be laid before the President and the National Assembly where the recommendations made by the Ombudsman are not or inadequately acted upon by the respondent authority. There is no set procedure for this. I will seek to include a follow up procedure in the proposed legislation.

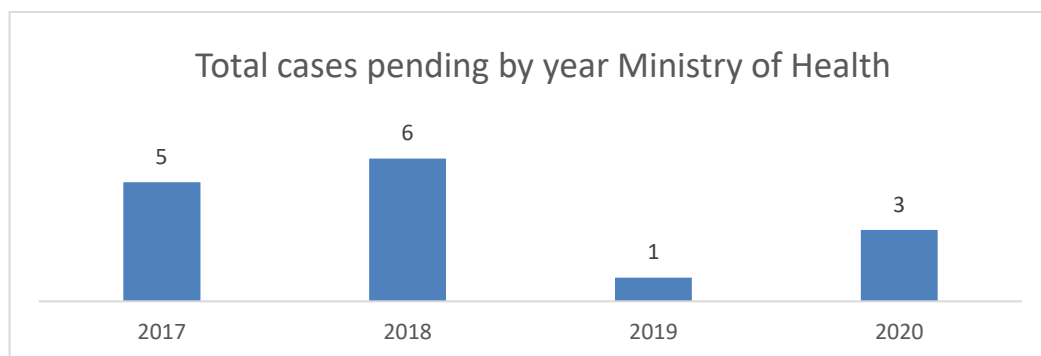
11.2 ENGAGEMENT WITH MINISTRY OF HEALTH & HEALTH-RELATED AGENCIES STILL INADEQUATE –

11.2.1 Again, in 2021, the Office experienced the same lack of cooperation from the ministry of health and the health-related agencies despite fresh efforts to establish an effective working relationship. Although in 2021 there were less complaints received against health institutions than in 2020 (a total of 7 compared to 11 in 2020), there was a backlog of cases carried over from previous years. (See Statistics Chapter). Latest efforts to address these issues

with the new minister in 2021 appear to have helped with a flood of information being received in the second semester. Complaints received in 2021 concerned employment issues such as unreasonable delays in issuing employment contracts, delays in following up on negotiations and failure to issue accurate medical information. Some outstanding complaints from previous years alleging medical malpractice and non-refund of overseas treatment costs were concluded.

11.2.2 The multiplicity of health-care-related institutions with converging or overlapping administrative roles – Health Care Agency, the Public Health Authority, the Medical and Dental Council and the Ministry of Health –continue to pose a challenge to determining the most effective communication channel for the Ombudsman's enquiries.

11.2.3 The ministry's latest proposal of several persons across the agencies and departments to deal with our queries is not a workable solution and will remain an issue to be addressed in 2022. I maintain my recommendation that the Ministry of Health nominate a single officer to deal with all enquiries from the Ombudsman and any other investigative institutions.



11.3 MINISTRY OF HABITAT, LAND, INFRASTRUCTURE & LAND TRANSPORT – A total of six (6) complaints involving land use, road access, housing or planning issues were received in 2021 – a significant drop in comparison with 21 in 2020. In completed enquiries, the Ministry has sought legal advice in respect of recommendations aimed at ensuring a fair and transparent decision-making process. It is my opinion that this approach is self-defeating and puts into question the very essence of the Ombudsman's role in alternative dispute resolution. I urge serious review of this practice in the future since it renders futile the exercise of this Office on finding and addressing maladministration.

11.4 THE JUDICIARY – The Office recorded a total of six **(6)** complaints against the Judiciary and legal officers (compared to 15 in 2020). Most of the complaints were outside remit, involving dissatisfied or disgruntled clients seeking redress against their lawyers or a second opinion on advice already given to them or complaining about delays in the legal process. Complaints against the judiciary are considered in accordance with **Paragraph 2(b) of Schedule 5**, which prevents me from investigating an action “concerning the performance of a judicial function or a Justice of Appeal, Judge or person performing a judicial function.” In my standard operating procedures, I distinguish between the Judiciary’s judicial function and its administrative actions. While I acknowledge that I have no powers of oversight over any legal finding, court order, ruling or judgment, I do assume oversight over the judiciary’s administration. This interpretation may be put to the test in the future and I would welcome the opportunity to defend the position.

11.5 SEYCHELLES POLICE FORCE – Eight **(8)** complaints were received against the police in 2021, ranging from employment-related issues of police officers to allegations of assault by police, failure to follow police procedure and violations of rights. A meeting with the incoming Police Commissioner and his Deputy at the end of 2021 provided the opportunity to renew my recommendations for establishing or strengthening police protocols and procedures. I reiterated a previous concern about the perceived weakness in the Police Force’s internal complaints handling mechanism and recommended a dedicated and well-publicised complaints bureau, independent of the main police complaints and reporting offences function to deal with complaints against police officers.

“Every one of you (ombudsman) here today is entrusted with the very important task of serving the citizens of your countries with diligence. It is thus incumbent upon you to expose every wrong you find committed in the public administration, without fear or favour. This means that the role of ombudsman is sometimes a lonely one, often the only voice of the public in the face of opposition from powerful officials.

**Nelson Mandela – African Regional Workshop,
International Ombudsman Institution (1996)**

12 SYNOPSIS OF CASES IN 2021

12.1 OVERSEAS DIAGNOSIS & TREATMENT BOARD NOT UNFAIR IN REFUSING TO REFUND EXPENSES FOR OVERSEAS MEDICAL TREATMENT_–

- 12.1.1** B complained that the Overseas Diagnosis and Treatment Board (ODTB) had unfairly refused to refund medical expenses incurred for a surgical operation overseas. Following a clinical examination by the public health authorities, H had been informed that he needed surgery that could be performed in Seychelles. He claimed to have been placed on the surgery waiting list but complained that the health authority failed to contact him for the operation. After waiting for two months, he sought a medical opinion of a visiting consultant at a private clinic in Victoria in February 2020 when he was allegedly informed that his condition needed urgent surgery. Acting on this advice, he left Seychelles several days after the visit at his own expense for the operation.
- 12.1.2** He applied for a refund of the expenses incurred. The board informed him six months later, that his application was unsuccessful, as it did not “*meet the strict criteria for refund as per the Overseas Treatment Act, 2018*”. The letter did not specify the ‘strict criteria’. B appealed the decision to the Overseas Diagnosis and Treatment Appeals Board and was informed by letter one month later that his appeal had been rejected as the “*surgery could have been done in Seychelles*”.
- 12.1.3** The Ombudsman enquired into the procedure adopted by the ODTB in dealing with refund applications; the manner in which the Board determines what circumstances warrant/do not warrant refunds; and how this process was applied in the complainant's case.
- 12.1.4** The ODTB explained the procedure for surgery, which involved booking a surgery appointment for the patient supported by a theatre slip with details of the planned operation. B had not been listed for surgery, nor were there any entries relating to surgery in the complainant's medical notes. There was no record of any referral to the general surgeons or that B had been seen by any member of the general surgery team. The Board did not consider B's medical condition an emergency and insisted that it could have been operated on in Seychelles.
- 12.1.5** The ODTB had received a refund application from B and had rejected it in accordance with Section 12 of the Overseas Treatment Act on the grounds

that B had not made use of the local health services to attend to his medical problem. Section 12 provides that a person who chooses to seek overseas diagnosis or treatment “on [their] own initiative without prior approval shall **not** be eligible for refund for expenses incurred for overseas diagnosis or treatment”.

12.1.6 The Ombudsman found that the Board had followed its set procedures in dealing with the refund application drawn up in accordance with the ODTB’s functions under Sections 6 and 7 of the Overseas Treatment Act. They were also in line with the ‘Guidelines for Overseas Diagnosis and Treatment.’ B had decided on his own initiative seek the treatment overseas. On the evaluation of the application in terms of whether the particular condition warranted overseas treatment, the Ombudsman acknowledged that the medical board was better placed to decide what surgical treatment could or could not be done locally.

12.1.7 The Ombudsman found no evidence of maladministration on the part of the ODTB with regard to their decision not to refund B. However, the Ombudsman did find that the ODTB was under a duty to inform B in detail of the reasons for rejecting the application. This was not done until the appeal. During the enquiry, the Ombudsman identified areas for improvement in the administration of the Act and the transparency of the process. General recommendations were submitted to the Ministry of Health in September 2021 with respect to the need for statutory instruments to regulate matters under the **Overseas Treatment Act 5 of 2018**.

12.2 STATUTORY LICENSING REQUIREMENTS NOT FULLY CONSIDERED IN ASSESSING APPLICATION FOR ARCHITECT’S LICENCE –

12.2.1 G complained of the SLA’s inconsistency and lack of transparency in dealing with his application for an Architects’ Licence and in their decision to grant him a Draughtsman’s Licence instead. He claimed that the SLA had acted unfairly in disregarding his acquired skills and qualifications in consideration of his application. Our enquiry called for the published qualifications and skills criteria required to qualify for an Architect’s Licence and a Draftsman’s licence; application procedures and requirements to operate as an architect or draftsman in Seychelles; and G’s applications to the SLA.

12.2.2 The SLA explained that the Town and Country Planning Authority (PA) is involved as the regulatory body in the process of issuing business licenses for building contractors, draughtsmen, architects, quantity or land surveyors and engineers. The PA assesses and recommends whether a licence may be issued or not. According to the SLA, the Planning Authority had recommended that because G did not meet the qualifications criteria for an architect's licence, he could progress through examinations through the echelons of a Draughtsman's licence starting from Class IV. G had been unsuccessful in his first attempt at the examination and the PA had recommended he re-sit. However, SLA claimed that he had been unwilling to do so. He had contested the outcome of his applications and appealed several times, but the refusal to issue the architect's licence was maintained, with the recommendation that he be issued a Draughtsman's licence.

12.2.3 Under the **Licences (Professional Services) Regulations, Regulations 6(k)**, the Licencing Authority must consult the ministry or department regulating the services. Under **Schedule 3** of the Licences Act 2010, (CAP 113), Regulation 6(e), the Town & Country Planning Authority is listed as the authority responsible to cover licences for draughtsmen.

12.2.4 In G's case, the PA had not recommended that he be issued with an architect's licence as he did not meet the criteria on qualifications. He "*did not complete his Degree in Architect, hence does not possess any relevant certificate*". However, the PA did recommend a draughtsman's licence Class IV, which was granted by the SLA.

12.2.5 Regulation 5 of the Licences (Professional Services) Regulations (Cap 113) provides specifically that for an architect's licence to issue, there **must be proof** of "***a degree or diploma in architecture ... from an institution of international repute ...***" **or** "***documentary proof that the applicant has the necessary competence, experience and skill to provide services...***" The Ombudsman found that the use of "**or**" in Regulation 5 introduces an alternative qualifying criterion for an architect's licence, namely, "***documentary proof that the applicant has the necessary competence, experience and skill to provide services***". This did not appear to have been taken into consideration by the relevant authorities in assessing G's application.

12.2.6 The Ombudsman noted the question that arises on whether and how 'documentary proof' is to be assessed in determining qualification, in the absence of a certificate/degree/diploma; and what level and type of



experience constitute 'having sufficient experience' to qualify for an Architect's licence. The SLA did not present any explanation on this aspect.

12.2.7 It was evident from the enquiry that G did not obtain a degree in Architecture having not completed the university course. Without any certificate of the degree, he did not meet the first limb of the qualification criteria for an architect's licence. The Ombudsman found that neither the Planning Authority nor the licensing authority in their respective assessment of G's application appeared to have considered the second limb of qualification under Regulation 5 which could be fulfilled through the work experience and other documents submitted with the application. I recommended that G's application should be reconsidered under the second limb of Regulation 5 of the Licences (Professional Services) Regulations by the two authorities.

12.2.8 I also stressed that G had applied for an Architect's licence and not for a Draughtsman's licence, although he had been issued a Draughtsman's licence. I was of the opinion that good administrative practice required that his application should have been rejected outright since he had not met the qualification criteria for an Architect's licence. He may have then been advised to submit a fresh application specifically for a draughtsman's or other licence fitting the qualifications and experiences he had.

12.2.9 I made several general recommendations to enforce best practices and improve the service going forward. These included establishing criteria and definitions for "*documentary proof*" and "*sufficient experience*", as well as a recommendation that the SLA review their Regulation 5 to establish the standard practice of dealing with applications received to include specific instructions to avoid attempts to accommodate applicants.

12.3 UNFAIR 'SECRET' INVESTIGATIONS OF ALLEGATIONS OF LAND OWNERSHIP BY MINISTRY OF HOUSING AND LAND (MHL)

12.3.1 K complained that the ministry responsible for land use (MHL) had acted unfairly and abusively in halting the transaction to purchase state land on grounds that they were investigating allegations that K already owned land and was therefore not qualified to buy land from the State.

12.3.2 K and her spouse, both returning graduates, had applied separately to purchase state land under the Land Points system. Their individual applications

were later combined and, after several years, a parcel was identified. An offer was made and accepted subject to conditions that precluded the conclusion of a contract for sale until certain matters had been finalised. Upon visiting the land, K had observed a road encroachment on the allocated portion. After raising the matter with MHL, she was informed by the Infrastructure Department that the road construction had been approved and the Land Department was aware of its existence. However, instead of offering K an alternative plot, Land Department officials informed her in a meeting that she would not be allocated an alternative plot because MHL had received reliable information that she and her husband already owned property and they would therefore conduct an investigation. Ownership of land was a condition for disqualification.

12.3.3 The Ombudsman's enquiry disclosed that the spouse has first applied to purchase land in 2013. Correspondence between MHL and the couple showed that a letter of offer was sent but retracted after the road encroachment had been brought to the Ministry's attention. I found no mention of the investigation into whether the couple owned other land in any of several correspondences viewed. It was only in a later meeting with the parties that the MHL informed K that the deal was off and no other plot would be proposed to them until the ministry had completed its investigation into the allegation that they owned land. This decision was never reduced to writing nor was K formally informed of the substance of the allegation against her.

12.3.4 As part of my enquiry, I asked to see the minutes of the meeting. I was informed that the minutes were not on file and would not be added until the investigation was over. In fact, I was refused any information on the status of the investigation on the grounds that the investigation was ongoing.

12.3.5 I found that the ministry officials' action to not inform K of the substance of the allegation and to refuse to give her access to the minutes of meeting and all other related information until their investigation was completed was unfair and amounted to an abuse of their authority. Furthermore, I found that no time frame had been set for the investigation and evidence had still not been compiled months after the investigation had supposedly begun. During my enquiry, I was alerted that the Land Department would present the case to the Land Allocation Committee in mid-March 2021. However, this was not done. In fact, throughout the time the Ombudsman's investigation report was being written, our Office continuously queried the status of the land department's

investigation. In January 2022, we were informed by the new PS for Land that K's case had been reviewed and that she would be allocated a plot of land. The Ministry stated that this decision was "*in line with the principle that 'hearsay' does not represent tangible evidence [for which the Complainants] case was previously denied*" – an unequivocal admission that the ministry had acted unfairly.

12.3.6 Notwithstanding the resolution of this complaint, I have made several recommendations to improve the service delivery of the MHL in respect of all applications to purchase state land. I have recommended that the MHL define the term "ownership of property" in the context of applications and policies to facilitate a layperson's understanding of the term. Applicants should also be required to make "good faith" declarations that they do not own other land in their applications and upon which they may be held liable.

12.3.7 I also recommended that in any case where the MHL stops an allocation process to investigate allegations that the applicant may already own land or any other allegation, all the circumstances of such allegations should be made available to the applicants under investigation so that the latter may explain and/or defend themselves. I also called for due diligence and effective communication channels between all departments within the Ministry to ensure there are no over sights that may affect applicants before any state land is offered for purchase to avoid any issues as identified in this case.

12.4 NOTICE TO PROHIBITED IMMIGRANT ADDRESSES BREACHES OF EMPLOYMENT LAW –

12.4.1 M complained that her spouse, a foreign national, who was in possession of a valid dependant's permit, had been served a '*Notice to Prohibited Immigrant*' ordering him to leave Seychelles within 48 hours. He had appealed the prohibition notice to the Minister and was awaiting the outcome at the time the complaint was lodged.

12.4.2 In assessing the merits of this complaint, my Office requested a report from the Immigration Department on the specific criteria applied and circumstances in which the decision to declare M's husband a Prohibited Immigrant had been taken. According to the Immigration Department, the man had been working illegally in Seychelles, without a Gainful Occupation Permit, contrary to the conditions of his dependant's permit. Based on the Complainant's own admission that her spouse had been working illegally without a work permit, I

initially found no wrongful action on the part of the Department in their strict application of the Immigration Decree in issuing the Prohibited Immigrant notice and the deportation order.

12.4.3 However, before completing the preliminary enquiry, I was informed that the Prohibited Immigrant Notice, which had been served on M's spouse, had been lifted after the Complainant's appeal to the Minister had been successful and the Department had met with the couple and cautioned the spouse about the importance of all foreign nationals complying with the law and not engaging in activities that are incompatible with issued immigration permits. The matter having been resolved to M's satisfaction, the Ombudsman took no further action in the complaint.

12.5 STATE EXTENDED A ROAD ON PRIVATE PROPERTY –

12.5.1 J co-owned property on La Digue Island purchased in the early 1970's under the 'old' land registration system. The title deeds made no reference to any public road or pathway across the land although JL did acknowledge that the *semen Belle Vue* passed in front of the property. It is trite knowledge that there were no hard surfaced 'roads' on La Digue Island in the 1970's and until the first decade of 2000. Moreover, no public road has been proclaimed on La Digue Island under the Roads Act, which legislates public roads.

12.5.2 J's land was surveyed in 2010 and placed on the New Land Register with an attributed title number. The surveyor recorded on the cadastral plan what is referred to as the '*main road*' from La Passe to Belle Vue as traversing a corner of the title. It was at that point that JL became aware that part of the land over which the road ran was effectively 'lost' to the State along with a small triangle on the other side of the now-surveyed 'road'. By the date of the survey, vehicular traffic on La Digue Island (previously confined to bicycles and ox-carts) had increased after the complete ban on ownership of private vehicles on the island had been lifted. JL complained that the vehicular traffic had increased exponentially over recent years and the now very busy and widened 'road' ran closer to her house. She claimed she had never authorised the State to build or widen the road and that it was now causing her distress and inconvenience.

12.5.3 JL had written to the Ministry responsible for land use claiming compensation for loss of her land and for the discomfort and inconvenience caused by the

increased traffic flow. Six months later, she had received an e-mail acknowledgement that her complaint was being 'assessed'. Two years later, having not received any substantive reply from the Ministry, she had instructed an attorney to write to the Ministry claiming compensation. A year later the Ministry had not replied and she complained directly to the President about her unanswered claim.

12.5.4 Following the President's intervention, the Ministry had informed her attorney that their research had shown that the road had been built 40 years previously by the government Public Works Department; that the way leave process granting permission for public roads did not exist at the time; that all the inhabitants had been in favour of a road; and that at the date that her title number had been registered in the Complainant's name, the road was already in place and featured on the cadastral plan. On this basis, the Ministry concluded that JL was not entitled to any compensation. The complaint to the Ombudsman was against that decision which she claimed was wrong in all the circumstances, unreasonable and unjust and violated her constitutional right to property.

12.5.5 The Ombudsman's enquiry looked at the ministry's files and requested information on the road construction. A file had been opened with JL's original claim for compensation. It contained background on the Ministry's research on the road construction, which included a black and white aerial photograph of La Digue Island in which the Ministry claimed the road was visible, as well as the cadastral plan of the complainant's title drawn up on the 2010 land survey. The ministry had erroneously assumed that JL had bought the land in 2010 and had failed to consider that she had bought and occupied the land since the early 1970's.

12.5.6 I found that the Ministry had rejected the claim for compensation having wrongly concluded that JL had bought the land in 2011 with the road *in situ*. The Ministry had not given any consideration to the fact that the road had changed over the years since the early '70's and even since 2010. It had evidently been widened and given a hard surface. I recommended that the Ministry pay JL compensation for the loss of use of the portion road although I did not propose a sum. The Ministry had still not finalised this case by the end of 2021 having sought the opinion of the Attorney-General on my recommendations.



12.6 UNFAIR REFUSAL BY LAND TRANSPORT AUTHORITY TO GRANT SPECIAL LICENCE –

- 12.6.1** A, an owner-operator of a self-catering establishment on La Digue applied in early 2014 for a special permit to own and operate an electric-powered golf club cart for his business, since his establishment is situated outside the island's main administrative and commercial centre. The application, made in the form of an ordinary letter addressed to the Department of Transport (DOT), had followed a media announcement by the then tourism minister that electric vehicles would soon be allowed on the island. A received no reply to his application although around the same time the DOT did give permission for at least one special permit to use a golf cart on the island. A letter to that effect seen in the Ombudsman's enquiry contained several conditions for the special permit which mirrored all the road licensing regulations covering the use of any vehicle on public roads anywhere in the country.
- 12.6.2** A renewed his application in August 2018. The DOT responded a month later informing him that approval had not been granted for the special permit in his case because a moratorium had been placed on golf carts on the island. A asked the DOT why his original application had not been dealt and had now been refused, while the special permit had been granted to others. The requested information was not forthcoming and consequently A lodged a complaint with the Ombudsman. He complained that this was unfair, unequal and discriminatory treatment by the public authority.
- 12.6.3** My enquiry initially involved the DOT and the Road Transport Commissioner as well as the SLA. As the enquiry advanced, it became clearer that the main issue related more to the refusal to grant the special permit under the policy and the Road Transport Act rather than the road licence or vehicle registration under the Licenses Act. The enquiry disclosed that although the Road Transport Act has a special legal provision (Section 8) controlling the use of vehicles on La Digue, there are no regulations or even an administrative framework or directives in place as to application procedures and processing. The enquiry found that this provision, which had been introduced in the early 1980's at a time when the policy may have been to keep to a minimum vehicular traffic on the island and allow certain vehicles access for a limited time and reason only, was now being used to grant special permission to operate all and any type of vehicle on the island.

12.6.4 With the exponential growth of vehicular traffic on the island, (stated by DOT in the course of the enquiry as 'over 100 vehicles'), the Cabinet of Ministers of the last administration had adopted a policy, the *La Digue Land Transport Policy*, in August 2018 in which a moratorium was placed only on golf club carts on the island. The DOT justified its decision to reject the Complainant's application for a special permit based on of this policy, which, it argued, had been adopted because 'there were too many golf club carts on the island'. However, while the policy had set the number of commercial vehicles on the island as 60 in 2018, there were over 100 vehicles by the time of the enquiry – a clear indication that the policy and moratorium were being flaunted anyway. The adoption of the policy was not followed by any attempt to introduce legal provisions as are necessary in a democratic society to restrict the constitutional right to own property guaranteed in Article 26 of the Constitution.

12.6.5 I considered whether the provisions of Section 8 of the Road Transport Act, a law pre-dating the Seychellois Charter of Fundamental Rights and Freedoms contained in Chapter III of the Constitution, as well as the Road Transport (Prohibition of use of buggies and golf carts) Order 2020 (S.I. 21 of 2020) sufficed to restrict the rights to property and to equal treatment under the law. I concluded that they did not. I consequently found that by rejecting the Complainant's application for a special permit the DOT had acted unfairly and in a discriminatory manner and that the DOT had failed to justify its decision which was not based on any legal provisions.

12.6.6 My main recommendation was that A should be permitted to own and operate a golf club cart subject to the road traffic laws and licensing provisions applicable to all citizens, including those living and doing business permanently on La Digue Island. I also recommended that Section 8 of the Road Transport Act be revised to bring it in line with the Constitution. Such an exercise should include a wider consideration of the policy and the legislative requirements to effectively introduce any restrictions deemed necessary for the island. Nothing had been done by the date of this report.

12.7 REMEDYING AN UNFAIR DECISION RESULTING FROM MISSING DOCUMENTATION –

12.7.1 R complained to the Ombudsman that she had been refused compensation claimed from her employer for an injury sustained while doing community services for her employer because the employer had relied on a medical

report from the Health Care Agency to her employer stating that her injury was an old one which they claimed was not covered under the employer's insurance. Her grievance was lodged against the HCA which she claimed had wrongly acted in finding that the injury was an 'old' one after she had been diagnosed with a foot injury on the day she sustained it.

12.7.2 It was apparent early in the enquiry that I did not have the mandate to address the core issue of the complaint, which was the employer's refusal to consider paying compensation for an employment-related injury. I could not look at the employer's actions because it is not a public authority subject to the supervisory mandate of the Ombudsman as defined in Paragraph 1(4) of Schedule 5 of the Constitution of Seychelles.

12.7.3 The Ombudsman launched a preliminary enquiry against the HCA, requesting the records on which the medical report had been based. The HCA claimed that the X-rays taken on the day of the injury and a few weeks later were missing. It is reasonable that the records would have contained a history of the 'old' injury, which the doctor should have included in his medical report. However, without the records there was no way of checking the doctor's conclusion on the 'unremarkable' X-ray or understand the basis for his decision to set the limb in a back slab. It was therefore impossible to verify the basis for the doctor's conclusions in respect of the old injury. The full extent of the complainant's injury may never be fully elucidated in the absence of the records on which the medical report had been made.

12.7.4 Acting on the medical report, R's claim for compensation for the injury was rejected at the outset. The employer's insurance company refused to entertain the claim against their insurance policy relying on the statement in the HCA's medical report that the injury was an old one and that the pain she was experiencing was due to "*a pre-existing condition that could not be covered under the policy.*"

12.7.5 The HCA was uncooperative in this enquiry. As a result, the matter dragged on over several years. While my enquiry was still ongoing, R filed a court action against the HCA. She alleged *faute* by the HCA in providing her with an ambiguous medical report and for failing to keep proper medical records, thereby depriving her of the opportunity to seek compensation against the employer. That action was dismissed.

12.7.6 It was evident from my enquiry, that R had undeniably sustained an injury while doing community work for her employer. It was also established that she was

seen on the day by an emergency doctor who, following his medical diagnosis, had deemed her condition serious enough to prescribe an X-ray. Although he had reportedly found the X-ray to be 'unremarkable', he had nevertheless, set her limb in a back slab and sent her home on crutches on three weeks' sick leave. She was X-rayed again several weeks later and this time, according to the HCA, an old fracture was seen. The HCA suggested in the medical report that the injury may have aggravated a previous 'old fracture'. In my opinion, that would make it all the more fair that R should have received some reparation for the injury sustained on the day since without that injury, her 'old fracture' would not have been 'aggravated'. The fact that the injury sustained did not leave R with permanent disability should not distract from the fact that she was injured.

12.7.7 I concluded that R had been treated unfairly when the employer decided not to pay her any compensation based on the medical report only and the fact that the injury which she had sustained had not left any residual incapacity. In view of the relationship between the State and the employer, I submitted to the Ministry of Finance a proposal to get the company to make an *ex-gratia* payment to R that could be confined to the injury sustained on the day of the community service, taking into account that the injury had left no residual incapacity. I made no recommendation with regard to quantum since this is not a matter for my Office.

“Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law, as we understand it, consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance”.

**Nelson Mandela - Conference of the
International Ombudsman Institute in South
Africa (2000)**



13 SAMPLE OF REPORTED COMPLAINTS – PREMATURE & OUTSIDE REMIT

NATURE OF COMPLAINTS	RESPONDENTS
<p>Expediting a land exchange deal –</p> <p>The complainant had been approached by the District Administrator to acquire part of his land for construction of a road on Praslin. He had not objected to this acquisition on condition that, in exchange, the government agreed to give him a piece of land of equal size on Mahe.</p> <p>He claimed he was aggrieved by the lack of communication from the two ministries involved and the delay in finalising the exchange, especially as the road construction had gone ahead anyway.</p> <p>Our preliminary enquiry disclosed that the District Administrator had informed the complainant that the land to be acquired would be surveyed to determine the size and that the public authority needed time to undertake this exercise. In light of the above, we referred the complaint to the respondent Ministries with a request that they finalise the negotiation for the exchange.</p>	<p>Ministry of Lands & Housing & Ministry of Local Government & Community Affairs</p> <p>Outcome – Premature</p>
<p>Addressing an alleged failure to act to protect a community –</p> <p>A petition signed by several residents of Grand Anse district addressed to a list of government ministries was copied to the Ombudsman. The residents petitioned for urgent action by the ministries alleviating their health and safety concerns caused by water, air and noise pollution which they alleged resulted from large-scale commercial livestock farming and agro-industrial activity within their residential area.</p> <p>The residents claimed that their constitutional and human rights under the Fundamental Charter of Rights and Freedoms contained in the Seychelles Constitution were being violated and that the ministries had done nothing to protect them.</p>	<p>Seychelles Police Force</p> <p>Outcome – Premature</p>



<p>The Ombudsman opined that the ministries were capable of addressing and dealing with the subject matter of the complaint through the public services they provide.</p> <p>As the correspondence was copied to the Ombudsman, the latter recommended that the respondents individually or collectively enquire into the issues raised by the petitioners and seek a pragmatic and expeditious solution that will be to the satisfaction of all parties concerned.</p>	
<p>Reviewing a compensation award –</p> <p>The complainant's spouse had died from a work-related disease in 1997 and compensation was paid by the Public Utilities Corporation in 1998. The complainant sought an increase in the sum, arguing it was insufficient for the loss incurred.</p> <p>The preliminary enquiry showed that the complainant had accepted SCR 50,000 as compensation and had signed a Form of Discharge in "full and final settlement" "made without prejudice and admission of liability". The Ombudsman concluded that the discharge precluded any fresh legal action against the corporation. The Ombudsman was not empowered to determine whether the discharge was defective in law. It could only be challenged in a court of law.</p> <p>However, litigation was now prescribed by the passage of 23 years since the death. Moreover, the Ombudsman is also prescribed from enquiring into complaints that have occurred more than 12 months before. Consequently, the complaint was not accepted.</p>	<p>Public Utilities Corporation</p> <p>Outcome – No further action</p>
<p>Reviewing delays in employment contract renewals –</p> <p>A medical doctor complained that the Health Care Agency had acted unreasonably in failing to renew his two-year employment contract with the agency. The contract had ended a year before.</p>	<p>Health Care Agency (HCA)</p> <p>Outcome – Referred to the Agency for action</p>



<p>The complainant has raised the matter with the Agency's Director of Human Resources for resolution of his complaint. Subsequently, he was informed that the issue was receiving attention and that he would receive a reply. Dissatisfied with the wait, he had complained to the Ombudsman.</p> <p>The subject matter of the complaint, i.e. contract renewal, was clearly still under consideration by the HCA. Therefore, the Ombudsman did not proceed with an enquiry but referred the complaint to the agency for urgent action</p>	
<p>Reviewing a certificate of employment –</p> <p>A complainant alleged unfair termination of his employment by the Seychelles Public Transport Corporation. He complained that the Corporation had qualified his conduct as "fair" in their Certificate of Employment. He wanted this to be amended to "good". The same complaint was already being addressed by the Public Service Appeals Board. The Complainant was advised to await the outcome of the hearing by that body.</p>	<p>Seychelles Public Transport Corporation.</p> <p>Outcome – Premature pending decision by PSAB</p>
<p>Seeking backdated payments of pension –</p> <p>Having attained the pension age of 63 years, the complainant had applied to the Seychelles Pension Fund (SPF) for his pension and also claimed arrears to when he had turned 60. He believed that he was entitled to receive his pension upon turning 60 but had not applied at the time "for personal reasons."</p> <p>He claimed he was aggrieved by the SPF's refusal to 'back pay' him the three-years' arrears. The Ombudsman explained the principle of early retirement to the complainant and informed him that his complaint was not justified.</p>	<p>Seychelles Pension Fund</p> <p>Outcome – Rejected on grounds of 'No merit'</p>



14 STRATEGIC PARTNERSHIPS & MEMBERSHIPS

14.1 AOMF (ASSOCIATION DES OMBUDSMAN & MEDIATEURS DE LA FRANCOPHONIE)

– The Ombudsman is a member since 1999 of the [Association des Médiateurs et Ombudsman de la Francophonie](#) (AOMF), the international body comprising Ombudsman institutions and its equivalent (*médiateurs*) in French-speaking states. The AOMF's primary role is to promote the development and consolidation of independent mediation institutions with a view to enabling democratic best practices, social peace and the protection and advancement of human rights. Its significant research and training capabilities help member institutions train staff and develop the highest professional standards of ombudsman and mediator institutions. The Office benefits from training sessions, workshops, meetings and conventions organized by the AOMF. Although physical travel was limited in 2021, the Executive Committee on which I represent the Indian Ocean region, met online in June. My mandate ended at the AGM held online in November 2021 when I was elected to the Membership Committee for a further two years which will take me through just short of the end of my mandate in March 2024. **Membership fees** – Membership fees are paid annually in the sum of Euros 1,000. The Office was up-to-date with its subscription in 2021

14.2 AOMF EXECUTIVE COMMITTEE MEETINGS – As the elected representative for the Indian Ocean islands sub-group on the executive committee of the AOMF ([Association des Ombudsman et Médiateurs de la Francophonie](#)), I attended one virtual executive committee meeting of the AOMF on 17th June 2021.

14.3 AOMF ASSEMBLEE GENERALE (AGM) – The COVID-19 pandemic once again impacted the work of our association. The AGM is held every two years and was scheduled for November 2021 when elections are held to replace the management and other committees. Due to the travel restrictions, the AGM was held virtually by videoconference on 25th November 2021. My term as elected representative for the Indian Ocean islands sub-group on the executive committee came to end and I stepped down to be replaced by the Mediator of Madagascar, Mr. Lala RATSIRAHONANA. I was elected to the Membership Committee for the Indian Ocean region in which capacity I will seek to increase membership of the association from within our sub-region.

14.4 AOMA (ASSOCIATION OF OMBUDSMAN AND MEDIATORS OF AFRICA) – The Office is also a member of the [African Ombudsman and Mediators Association](#)



(AOMA) since its creation in 2003. AOMA's objectives are to encourage the establishment and promotion of Ombudsman institutions in Africa; foster mutual support, co-operation and joint activity through information sharing, training and development of Ombudsman and staff; promote good governance, transparency and administrative justice; and support and promote the autonomy and independence of Ombudsman offices. Our Office has participated in meetings, workshops and training sessions organized by AOMA and its research arm the African Ombudsman Research Centre (AORC) based in Durban, South Africa. I was elected as Deputy Secretary General of AOMA in November 2019. In recognition of the pioneering role of the Seychelles Ombudsman in hosting the 7th African Regional Ombudsman Conference in July 2001 which paved the way for the establishment of AOMA, I intend to propose that Seychelles hosts the 20th anniversary of the creation of AOMA in 2023. However, this project may have to be put on hold in view of the current financial and economic situation caused by the COVID pandemic.

Membership fees – Membership fees are paid annually in the sum of US\$ 1,000. The Office was up to date with its subscription in 2021

14.5 AOMA EXECUTIVE COMMITTEE MEETINGS – The AOMA executive committee met online on 17th May 2021. One of the matters discussed at the meeting was the Annual General Meeting of the group of 47 members which had been scheduled for the last term of 2021. I had proposed in 2020 that Seychelles could host the AGM depending on the cost to my Office since I had no specific budget for this. I informed the Exco meeting that I was retracting my offer. It was agreed that an alternative venue would be considered before the year was out. Egypt offered to host the next AGM which was postponed to March 2022. It is with regret that the Office has lost on this opportunity to not only host the AGM in Seychelles twenty years after the organization was formed in Seychelles in 2001, but also the financial advantage to the country of delegations from the 47 members of the AOMA.

14.6 INTERNATIONAL OMBUDSMAN INSTITUTE (IOI) – This is the only major global Ombudsman institution of which the Office is not currently a member. The IOI regroups more than 198 independent Ombudsman institutions from more than 100 countries worldwide in six regional chapters (Africa, Asia, Australasia & Pacific, Europe, the Caribbean & Latin America and North America). The IOI's objectives focus on capacity building and good governance, and it provides technical support to its members in training, research and regional subsidies for

projects. As the main international institution to which Ombudsman across the world are affiliated, I believe it is in the best interests of the Office to join as a member as soon as our finances permit. Plans to submit a membership application in 2020 were put on hold due to the COVID-19 pandemic. However, I will submit our application for membership in 2022.

14.7 MAINTAINING DIALOGUE DURING THE PANDEMIC – WEBINAR DISCUSSIONS –

The global pandemic continued to affect our relations with our international partners into its second year. To meet the new challenge, training sessions by our strategic partners, the *Association des Ombudsman et Médiateurs de la Francophonie* (AOMF) and the African Ombudsman and Mediators Association (AOMA) were adapted to face the travel constraints caused primarily by budget restrictions. Online webinars became the norm throughout 2021.

14.7.1 Webinar Discussions Organised by African Ombudsman Research Centre

(AORC) – The AORC, the resource and training arm of AOMA based in Durban, South Africa, organized several webinar discussions on selected subjects during the course of the year. The Office attended the following sessions all of which were particularly pertinent to the work of our Office.



14.7.2 UN Resolution on Ombudsman & Mediators – 23rd February 2021 –

This session was designed to introduce all Ombudsman and mediators and their staff to United Nations Resolution A/RES/75/186 of 28th December 2020 <https://undocs.org/en/A/RES/75/186> and the Venice Principles CDI-AD(2019)005 [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e) that have set the first global standards for the protection and promotion of ombudsman institutions. SEE **APPENDIX V**



14.7.3 Concept of the Ombudsman – 30th March 2021 – The discussion focused on understanding the concept of the Ombudsman and how the institution can be used as a tool to strengthen government and public institutions to provide a more efficient service that is responsible and responsive to the needs of the citizens. In this way, Ombudsman institutions play a major role in strengthening democracy in Africa.

14.7.4 Systemic Investigations – 8th June 2021 – The session looked at how investigations of individual complaints can sometimes show a pattern of conduct that can negatively affect more than an individual complainant. Systemic investigations look into such patterns, often on an own motion by the Ombudsman. The webinar explained the methodology for systemic investigations as well as the outcome, which is often in general recommendations aimed at improving public service delivery across the sector or ministry.

14.7.5 Quality Assurance Mechanisms – 24th August 2021 – The webinar focused on practical quality assurance mechanisms that Ombudsman institutions can use to ensure that their investigation reports can withstand scrutiny. Topics covered included definition of quality assurance, its importance to the work of the Office as well as the process. I presented a paper on the checklist used by our institution to ensure that we follow the process.

14.7.6 Effective Tools to Strengthen the Mandate of the Ombudsman – 21st September 2021 – The facilitated discussion recognized the need to strengthen the mandate of Ombudsman institutions in the face of formidable challenges arising from changes in communications, conflict and the environment. The session looked at practical and effective ways to strengthen the Ombudsman's mandate to enhance accountability and good governance and to optimize the work of the institutions.

14.7.7 Conflict Resolution & Management – 2nd November 2021 – This webinar focused on addressing disagreements and conflictual situations to diffuse potential conflicts. Speakers discussed the value of facilitators and recognize inhibitors to communication, and how to deal with resistance and difficult people. It also provided an insight into dealing with volatile interviews to avoid situations getting out of hand.

14.7.8 Ethical, Transparent & Accountable Leadership – 14th December 2021 – The discussion considered the role Ombudsman institutions play in delivering



openness and transparency and promoting ethics and accountability in government. The session also considered whether there was a need for a general code of ethics for Ombudsman institutions. The 2018 OECD Report on the “Role of Ombudsman Institutions in Open Government” was presented³.

14.7.9 SOUTH AFRICAN ‘FORUM FOR INSTITUTIONS SUPPORTING DEMOCRACY – held a marathon 4-hour videoconference on 11th November 2021 to consider “the need for collaboration in promoting good governance and ethical leadership in responding to the impact of COVID-19 and corruption on Constitutional Democracy.

³ <https://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.pdf>

15 RELEVANT GENERAL RECOMMENDATIONS REVISITED

Several general recommendations made by the Ombudsman over previous years and reported in previous annual reports remain relevant into 2022 and are cited here as a reminder for all public authorities.

15.1 INCOMPLETE PUBLIC & OFFICIAL DOCUMENTS – I continue to note a general weakness across many public authorities in respect of important official documents, such as job descriptions, position papers, reports, and sometimes even official and statutory forms. Documents that are incomplete, lack the date, signature or other identifications cannot serve their intended purpose to fix the time and identify their provenance. This observation is particularly true in the case of statutory forms that often bear no reference to the law or regulation under which they are drawn up. All public authorities **MUST** review all their official documentation and statutory forms to ensure that this anomaly is fully addressed and that all official statutory forms carry the correct formulation in accordance with the relevant regulations.

15.2 ESTABLISHING POLICY & PROCEDURES FOR EARLY RETIREMENT/TERMINATION ON GROUNDS OF ILL HEALTH – A case outlined in my 2020 report raised procedural issues in respect of public officers considered for early retirement or termination on grounds of ill health. I had recommended adopting a best practice across the public service in cases where ill health affects a public officer's capacity to deliver and the public officer is considered for termination upon medical grounds but is deemed capable of other work. In such cases, before any decision to terminate is taken, all public service employers should consider a transfer within the service or alternative employment firstly, within the ministry, agency or authority, or where this is not possible, within the public service generally especially where the public officer's age and length of service warrant such justice. I called for all ministries, agencies or public authorities to ensure that clear procedures are set and followed with respect to early retirement in cases where a medical board makes any recommendation for early retirement or termination of appointment of an employee on medical grounds.

15.3 CONTINUITY & AVOIDANCE OF LOSS OF INSTITUTIONAL MEMORY – Again in my 2020 report, I had made reference to a previous recommendation in respect of institutional memory, especially in the transitional period of government when there may be rotation of public officers throughout the service. I repeat



this recommendation that all ministries and departments ensure continuity of all public services, especially where senior staff transfers are considered. In such instances a designated person must be appointed and remain fully apprised of any ongoing matters within that public service before the transfer is made.

15.4 CLOSURE OF STATUTORY BODIES – In an enquiry involving the lease of state land in Providence Industrial Estate, I found that a failure to ensure a proper handover from one statutory body upon its dissolution had resulted in the loss of files, including valid long-term registered lease agreements. I was unable to determine whether the statutory authority had been liquidated upon its 'closure' and found no information on what had been decided in respect of the body's memory bank. I reiterate the recommendations that any statutory body should be properly liquidated and any assets and liabilities duly disposed of within good time of its closure. I also recommended that ownership of state land should not be granted to statutory authorities since transfers to third parties could be completed without the full consensus of the state.

15.5 REVIEW OF PUBLIC AUTHORITIES & STATUTORY BODIES – I note that the overlaps of portfolios and portfolio responsibilities caused by the creation of statutory bodies over recent years has been addressed by the Executive and the Legislature in the past year by the repeal of constitutive legislation of several statutory bodies. However, I have also noted in 2021 that there has not always been a clear liquidation of the outgoing institution which could impact institutional memory in the future.

15.6 ADDRESSING THE LACK OF SUPPORT FROM SOME PUBLIC AUTHORITIES – The failure of public authorities to accept and follow up on recommendations proposed by the Ombudsman will be brought to the attention of both the Executive and the Legislature immediately after any deadline for implementation has passed. In this way the Ombudsman will keep the two arms of State fully apprised of the work of this Office. The Ombudsman formally calls upon the Office of the President and the National Assembly to secure greater compliance with the recommendations to guarantee an improved public service.

15.7 SETTING UP CUSTOMER COMPLAINTS HANDLING MECHANISMS – All public authorities (ministries, departments, agencies and state-owned enterprises) must set up effective internal complaints' handling mechanisms to deal with complaints and grievances and improve their service delivery.



16 ACKNOWLEDGEMENTS

- 16.1** In conclusion, I acknowledge and thank the citizens of Seychelles for the trust they continue to place in this institution in their search for fairness and justice. In this second year of the COVID-19 pandemic, not enough has been said about building back better. In 2022, we should focus on the process of rebuilding. A good resolution is to take time to explain and show empathy when dealing with the people we serve.
- 16.2** I must also acknowledge those complainants who have experienced and continue to experience delays in the handling of their complaints by my Office. We continue to address this weakness, especially at the report-writing stage. However, delays continue and I thank complainants for their patience.
- 16.3** I am deeply grateful for the relentless support of my small and fully committed team without whose devotion and dedication this Office would not have accomplished what we have this far. We continue to build our internal capacity to improve our efficiency across all the areas of our mandate. We collectively pledge to continue working towards making a substantive and real difference in the public administration.
- 16.4** Finally, I thank the public officers across many institutions who fully cooperated and worked with my Office in this past year and whose participation has helped make a difference, not only to the complaining citizens, but also to their ministries and agencies and the public service as a whole. Indeed, they have looked in the mirror and seen the defects that only they can fix. Their willingness to rectify administrative errors and improve public services takes us all a step closer to that vision of a fair, open accountable public service to which we all aspire.

Nichole Tirant-Gherardi
Ombudsman



APPENDIX I

LEGISLATIVE FRAMEWORK

The legislative framework for the Institution of the Ombudsman is contained in **Chapter X** of the **Constitution of Seychelles**, more specifically in the following articles:

Article 143 – Ombudsman

- (1) There shall be an Ombudsman who shall be appointed by the President from candidates proposed by the Constitutional Appointments Authority.
- (2) A person is qualified for appointment as Ombudsman if –
 - (a) the person is a citizen of Seychelles;
 - (b) the person is of proven integrity and impartiality;
 - (c) the Constitutional Appointments Authority is of the opinion that the person possesses demonstrated competence and experience and can effectively discharge the functions of the office of Ombudsman; and
 - (d) the person is not a member of the National Assembly or Judiciary or a Minister or the President or a candidate in an election under this Constitution.
- (3) Subject to this Constitution, the Ombudsman shall not, in the performance of the office of Ombudsman, be subject to the direction or control of any person or authority.
- (4) The person holding office as Ombudsman shall not hold any other public office of emolument or engage in any occupation for reward outside the functions of the office of Ombudsman which might compromise the integrity, impartiality and independence of that office.
- (5) **Schedule 5 shall have effect with regard to the Ombudsman.**
- (6) An Act may provide for any matter, not otherwise provided for under this article, necessary or expedient for the purpose of ensuring the independence, impartiality and effectiveness of the office of Ombudsman.



Article 144 – Tenure of office of Ombudsman

- (1) A person shall be appointed to the office of Ombudsman for a term of seven years, and is eligible for reappointment at the end of the term.
- (2) A person holding the office of Ombudsman shall vacate the office on death, if the person, by writing addressed to the President, resigns, if the person is removed from office or at the end of a term of office.
- (3) Where a person holding office as Ombudsman resigns, the resignation has effect on the date it is received by the President.
- (4) The salary, allowances and gratuity payable to the Ombudsman shall be prescribed by or under an Act and the salary, allowances or gratuity so payable shall be a charge on the Consolidated Fund.
- (5) Subject to article 166, the salary, allowances or gratuity payable to and the term of office and other conditions of service of the Ombudsman shall not be altered to the disadvantage of the Ombudsman after appointment.

Schedule 5 of the Constitution

Functions of the Ombudsman

1. (1) Subject to this Schedule, the Ombudsman may
 - (a) investigate an action taken by a public authority or the President, Minister, officer or member of the public authority, being action taken in the exercise of the administrative functions of the public authority in the circumstances specified in subparagraph (2);
 - (b) investigate an allegation of fraud or corruption in connection with the exercise by a person of a function of a public authority;
 - (c) assist an individual complainant in respect of legal proceedings in relation to a contravention of the provisions of the Charter;
 - (d) with leave of the Court hearing proceedings relating to a contravention of the provisions of the Charter, become a party to the proceedings;



(e) Initiate proceedings relating to the constitutionality of a law or of the provisions of a law.

(2) The Ombudsman shall investigate an action under subparagraph (1) (a) –

(a) where the Ombudsman receives a complaint from a person or body alleging that the complainant has suffered a violation of the complainant's fundamental rights or freedoms under the Charter, or an injustice, in consequence of a fault in the administration of a public authority or has been treated harshly or oppressively by the authority or the President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority;

(b) where the President or a Minister or member of the National Assembly requests the Ombudsman to investigate the action on the ground that the person or body specified in the request –

(i) has or may have suffered a violation of the person's or body's fundamental rights or freedoms under the Charter, or an injustice, in consequence of a fault in the administration of a public authority or of a fault of the President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority;

(ii) has been treated harshly or oppressively by the authority or the President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority,



or on the ground that the practices or patterns of conduct of a public authority or the President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority appear to result in injustices or harsh, oppressive or unfair administration; or

- (c) where the Ombudsman considers that it is necessary to investigate the action on the grounds specified in subparagraph (b), and an allegation under subparagraph (1)(b).

(3) The Ombudsman shall not investigate or may discontinue an investigation of a complaint relating to an action referred in subparagraph (1)(a) or an allegation under subparagraph (1)(b) where it appears to the Ombudsman that –

- (a) the complaint or allegation is frivolous, vexatious or trivial or not made in good faith;
- (b) the making of the complaint or allegation has, without reasonable cause, been delayed for more than twelve months;
- (c) in the case of a complaint relating to subparagraph (1)(a), the complainant does not have sufficient interest in the subject matter of the complaint;
- (d) in the case of a complaint relating to subparagraph (1)(a), the complainant has or had, by way of remedy under this Constitution or any other law, a right of appeal, objection or review on merits and the complainant has not exhausted the remedy, unless the Ombudsman believes that in the particular circumstances it is or was not reasonable to expect the complainant to exhaust or to have exhausted the remedy.



(4) In this Schedule –

“**action**” includes a failure to act, an advice or a recommendation;

“**body**” means a body of persons whether corporate or incorporate;

“**investigation**” means an investigation in terms of this Schedule;

“**public authority**” means a Ministry, a department, division or agency of the Government or a statutory corporation or a limited liability company which is directly or ultimately under the control of Government or any other body which is carrying out a governmental function or service or a person or body specified by an Act.

Excluded matters

2. The Ombudsman shall not investigate an action referred to in paragraph 1(1) (a) –

(a) in respect of a subject matter which the President or the relevant Minister certifies may affect the relation or dealing between the Government of Seychelles and any other Government or international organisation, the security of the Republic or the investigation of crime;

(b) concerning the performance of a judicial function or a Justice of Appeal, Judge or person performing a judicial function;

(c) taken with respect to orders or directions to a disciplinary force or a member of the force; or

(d) unless the person aggrieved is resident in Seychelles or the action was taken in respect of the person aggrieved while the person was present in Seychelles or in respect of rights or obligations that arose or accrued in Seychelles.



Investigative power of Ombudsman

3. Subject to this Schedule, the Ombudsman has the same power as a judge of the Supreme Court in respect of the attendance of a person before the Ombudsman, the examination of any person in relation to an investigation, the production of a document or record relevant to an investigation and the inspection of premises relevant to an investigation.

Privileged information

4. **(1)** Subject to this paragraph, a person shall not refuse to answer any question or withhold any document, information, record or thing or refuse to make available to the Ombudsman any document, information, record or thing or refuse access to the Ombudsman to any premises relating to an investigation, on the ground that the answering of the question or disclosure of the document information, record or thing or making available of any document, information, record or thing or the granting of access to any premises would be injurious to the public interest, contrary to a law or in breach of a privilege or an obligation, whether contractual or otherwise.
- (2)** Where a certificate certifying that the answering of a question, the disclosure of document, information, record or thing, the making available of a document, record or information or thing or the granting of access to any premises would be contrary to public interest is issued by –
 - (a) the President –



- (i) because it might prejudice the security of the Republic or international relations between the Government of Seychelles and any other Government or international organization; or
 - (ii) because it involves the disclosure of the proceedings of the Cabinet;
- (b) the Attorney-General because it might prejudice the investigation or detection of crime,

the Ombudsman shall not require a person to answer the question, disclose the document, information, record or thing, make available the document, information, record or thing or grant access to premises, as the case may be.

Investigation

- 5. (1)** The Ombudsman shall, when carrying out an investigation, act fairly and judicially and shall, in particular, afford any public authority or person alleged to have taken or authorised an action or responsible for the administration of the public authority which is the subject of an investigation an opportunity to be heard.
- (2)** Subject to subparagraph (1), the Ombudsman shall determine the procedures to be followed when conducting an investigation.

Report

- 6. (1)** Subject to subparagraph (7), where after an investigation the Ombudsman is of the opinion that –
- (a) the action which was the subject of the



investigation –

- (i) was contrary to law;
 - (ii) was unreasonable, unjust, oppressive or discriminatory;
 - (iii) was based on a mistake of facts or a wrongful assessment of facts;
 - (iv) was based partly on a mistake of law and facts;
 - (v) was based on an improper exercise of a discretionary power or an exercise of a discretionary power based on irrelevant considerations;
 - (vi) was an improper refusal to exercise a discretionary or power;
 - (vii) was based on an exercise or improper use of authority or power;
 - (viii) was in accordance with law but the law is unreasonable, unjust, oppressive or discriminatory;
 - (ix) was otherwise, in all circumstances, wrong;
 - (x) should be cancelled, varied or given further consideration; or
-
- (b) reasons for the action which was the subject of the investigation should have been given;
 - (c) there was unreasonable delay before the decision or action which was the subject of the investigation was taken;
 - (d) there was an omission which needs to be rectified;
 - (e) the law or practice on which the action which is the subject of the investigation is based should be reconsidered;



- (f) the practice or pattern of conduct of a public authority or the President, a Minister, officer or member of the public authority which is the subject of the investigation is contrary to law or unreasonable, unjust, harsh, oppressive or discriminatory; or
- (g) the allegation of fraud or corruption is well founded,

the Ombudsman shall report the opinion and reasons together with any recommendation or remedy the Ombudsman considers fit to make to the President, Minister, officer, member or chief executive officer of the public authority, as the case may be.

- (2)** The Ombudsman shall, where the report is not required to be sent to the President or Minister, send a copy of the report to the President and any relevant Minister.
- (3)** The Ombudsman may specify in the report referred to in subparagraph (1) a time limit within which it is reasonable for the report to be acted upon.
- (4)** Where a report submitted under subparagraph (1) is not, in the opinion of the Ombudsman, adequately acted upon –
 - (a) within the time specified in the report; or
 - (b) if no time has been specified, within such reasonable time as the Ombudsman is of the opinion is reasonable,

the Ombudsman may submit the report and recommendation together with such further observations the



Ombudsman thinks fit to make to the President and the National Assembly.

- (5) The Ombudsman shall attach to every report submitted to the President and the National Assembly under subparagraph (4) a copy of any comments made thereon by or on behalf of the chief executive officer of the public authority concerned or the President, Minister, officer or member of the public authority, as the case may be.
- (6) The Ombudsman shall not later than the thirty-first January in each year make a general report to the National Assembly with a copy to the President on the exercise of the functions of the Ombudsman under this Constitution during the previous year.
- (7) The Ombudsman shall, in every case where a complaint is received by the Ombudsman, inform the complainant of the result of the complaint.

Miscellaneous provisions relating to Ombudsman

- 7. (1) For the purposes of the law of defamation, absolute privilege is attached to the publication of any matter by the Ombudsman or any other person acting under the authority of the Ombudsman.
- (2) The Ombudsman or any other person acting under the authority of the Ombudsman shall not be liable for anything done or omitted to be done in good faith in the performance or purported performance of the functions of the Ombudsman.

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APPENDIX II

Strategic Statement for period 2018 - 2021

Established under the 1993 Constitution of Seychelles, the Ombudsman's core activity is to examine and investigate complaints about administrative actions, delays, or inaction adversely affecting persons or bodies in their dealings with public service providers.

The Office is also empowered to investigate allegations of fraud or corruption in connection with the exercise by a person of a function of a public authority, assist an individual in legal proceedings where there has been a contravention or violations of the provisions of the Charter of Fundamental Rights and Freedoms, become a party to such proceedings with the leave of the court and initiate proceedings relating to the constitutionality of a law or provisions of a law.

If the Ombudsman finds, upon completing an investigation in any complaint or in an own motion, that a person has been treated unfairly or improperly and has been adversely affected as a result, then she will suggest an appropriate redress to remedy, mitigate or alter the adverse effect suffered.

In dealing with and resolving individual complaints, the Ombudsman always strives to bring about improvements in the administration and service delivery of public sector organizations based on lessons drawn from those individual complaints.

Vision

'A fair, open, accountable and effective public service'

Our vision is of a public service that is fair, open, accountable and effective and the Office of the Ombudsman has a central role to play in ensuring that public service decision-making processes are applied properly, transparently and equitably and with consistency across all public services.

Mission

We aim to achieve this vision by seeking to extend and improve the impact of our Office on the wider public service, by continuously improving the level of services we provide for those persons who bring their grievances to us. We also strive to ensure that our systems and processes are as effective and efficient as they can be.



To achieve this we must, firstly, build up the institution by recruiting trained and qualified personnel capable of fully delivering on the services expected of the Ombudsman.

Values

As a constitutional body, we preach, follow and adopt the fundamental principles of good administration, namely:

- Get it right
- Be customer orientated & show empathy
- Be open and accountable
- Act fairly and proportionately
- Deal with errors effectively
- Seek continuous improvement

More than a checklist, these principles provide a valuable framework to which all public service providers, including our own staff, should adhere in carrying out their duties.

Organisational Values

Our organisational values describe the qualities that our staff are expected to demonstrate when carrying out their functions. We expect all public service providers to have integrated similar values into their own decisions, actions, policies, processes, and systems and will consequently apply these same standards in reviewing any of their decisions and services.

- 1. Independence** - We examine complaints, conduct reviews, and make decisions in a fair, objective, and impartial manner.
- 2. Customer Focus** - We aim for excellence and professionalism in delivering our services. We strive to meet defined quality standards and continuously review our own performance to ensure that the customer remains at the heart of everything we do.
- 3. Fairness** – We treat everyone with respect, dignity and fairness – values that are fundamental to our relationships with all our stakeholders and which also contribute to a healthy work environment that promotes engagement, openness and transparency.
- 4. Empathy** – We understand that complainants come to us after having exhausted all other avenues open to them. Consequently, they may sometimes be angry and frustrated. We listen to them carefully to understand and remain sensitive to their concerns.
- 5. Innovation** – We continuously review our performance and avail of best practices to improve and deliver a first class service and, thereby, enhance confidence in public service delivery.



Strategic Objectives for 2018-2021

The following three key objectives for the Office have been identified as primary enablers in the achievement of our vision.

- We will lead by example and drive improvements in the wider public service.
- We will deliver a customer-focused service that reflects our core values and of which we can be proud.
- We will develop and enhance our management and administrative frameworks to enable and underpin our objectives of improving the wider public service and delivering an excellent customer-focused service.

Key actions

The Office will achieve its objectives through the following key actions:

Building an Ombudsman institution

- Recruit trained and qualified investigators.
- Create the space and the institutional units that can better deliver the constitutional objectives of the Office.
- Provide advanced training for our staff in all fields of expertise within the limits of our financial resources, through stakeholders and external and local partners, to help us maximize our engagement with public service providers and improve the standards of administration.

Improving Public Services

- Influence improvements in public services by carrying out systemic investigations and raising awareness of service failure based on our findings/casework.
- Engage with all stakeholders through multiple approaches to improve the standards of administration in public service providers.
- Offer our perspective to public service providers through shared learning.
- Secure effective outcomes and change for complainants.

'Customer'-Focused Service

- Further develop our investigation/complaint handling skills in order to deliver the best service to our 'customers'.
- Simplify/increase options available to complainants for interacting with our Office, including improved online access.



- Ensure our quality standards are effectively measured using best practice metrics.
- Ensure that our communications with our 'customers' reflect our core values.

Enhanced Management and Administrative Frameworks

- Ensure we are working in the most effective way in terms of structures, processes, and procedures.
- Develop more effective use of digital technology to simplify the public's experience of public services, including our own and share information.
- Develop and implement case management systems that will support the delivery of effective and efficient services.
- Be recognised by others as a source of expertise in all of our areas of operations.

APPENDIX III

Seal of Office of the Ombudsman for Seychelles

The seal comprises three main elements that depict the work of the Ombudsman.



- The **doves** signify peace and the peaceful approach of mediation in dispute resolution.
- The **scales of justice** are etched into the background to signify the need for fairness and justice in dealing with the complaints that affect people.
- The **flowers of the endemic and endangered Jelly Fish plant**, one of the rarest plants in the world, depict the unique and fragile nature of the Office that works towards beating all the odds in what can be a hostile environment where its work is often misunderstood by both complainant and public service provider and sometimes not fully appreciated or accepted.

The symmetry adopted in the logo depicts the balance and discretion with which the work of the Ombudsman is carried out in an effort to achieving fairness, openness, accountability and effectiveness in the public service.



THE FLOWER OF THE JELLY FISH TREE

The name *Medusagyne oppositifolia*

English botanist, John Gilbert Baker, named the tree '*Medusagyne oppositifolia*' because the female reproductive parts of the flower resemble the snakes that form the hair of the monstrous *Medusa* of Greek mythology.

The plant's common name '*Jellyfish tree*' was not of Baker's doing. It came much later, probably because the fruits resemble a jellyfish in structure, but also because the Kreol Seselwa name *Bwa Mediz*, itself derived from the French word *méduse* meaning *jelly fish* in English, may have been Anglicized to produce the current vernacular.

Where does it grow?

This unique and critically endangered species is endemic to Seychelles. It is found on exposed massive granite outcrops at 150–500m altitude now confined to inaccessible sites at low and intermediate altitudes only on Mahé Island. There are presently only some 30 catalogued specimens spread over four different parts of Bernica, Mont Sébert, Mont Copolia and Mont Jasmin within the Morne Seychellois National Park.

Conservation story

The Jellyfish tree is currently one of the rarest plant species in the world and is listed as 'endangered' by the International Union for Conservation of Nature.

It went missing for almost seventy years and was long thought to be extinct when scientists rediscovered a tiny population at a few places on Mahé Island in the 1970s.

Given its various properties seen only in dry climate plants species, scientists speculate that the plant originated from the Gondwana continent of which Seychelles' granitic islands remain mid-ocean vestiges. Most of the known plants today grow on granite slopes just a few miles from the sea.

The fruits produce seeds that are dehisced in structure - a fissure opens up to release seeds that are dispersed by the wind. This is uncommon among plants on small oceanic islands as the seeds can easily be wasted if blown into the sea. Additionally, the seeds have a very short lifespan; adding to the plant's endangered status.

Scientists and botanists are working to keep this unique species alive and avoid its extinction. Hand pollination experiments have produced numbers of viable seeds and local conservationists are hopeful that the Jelly Fish tree will continue to grace our unique natural environment for many more years.



The flower of the Jelly Fish Plant or Bois de Méduse' (Medusagyne oppositifolia)



APPENDIX IV

United Nations

A/RES/75/186



General Assembly

Distr.: General

28 December 2020

Seventy-fifth session

Agenda item 72 (b)

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Resolution adopted by the General Assembly on 16 December 2020

[on the report of the Third Committee (A/75/478/Add.2, para. 89)]

75/186. The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law

The General Assembly,

Reaffirming its commitment to the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights,¹

Recalling the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,² in which the Conference reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights,

Reaffirming its resolutions [65/207](#) of 21 December 2010, [67/163](#) of 20 December 2012, [69/168](#) of 18 December 2014, [71/200](#) of 19 December 2016 and [72/186](#) of 19 December 2017 on the role of the Ombudsman and mediator institutions in the promotion and protection of human rights,

Recalling the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), welcomed by the General Assembly in its resolution [48/134](#) of 20 December 1993 and annexed thereto,

Acknowledging the principles on the protection and promotion of the Ombudsman institution (the Venice Principles),

¹ Resolution 217 A (III).

² A/CONF.157/24 (Part I), chap. III.





Recalling its previous resolutions on national institutions for the promotion and protection of human rights, in particular resolutions [66/169](#) of 19 December 2011, [68/171](#) of 18 December 2013, [70/163](#) of 17 December 2015 and [74/156](#) of 18 December 2019, as well as Human Rights Council resolutions [23/17](#) of 13 June 2013,³ [27/18](#) of 25 September 2014,⁴ [33/15](#) of 29 September 2016,⁵ [39/17](#) of 28 September 2018⁶ and [45/22](#) of 6 October 2020,⁷

Reaffirming the functional and structural differences between national human rights institutions, on the one hand, and Ombudsman and mediator institutions, on the other, and underlining in this regard that reports on the implementation of General Assembly resolutions on the role of the Ombudsman and mediator institutions by the Office of the United Nations High Commissioner for Human Rights should be stand - alone reports,

Acknowledging the long history of Ombudsman institutions and the subsequent extensive developments throughout the world in creating and strengthening Ombudsman and mediator institutions, and recognizing the important role that these institutions can play, in accordance with their mandate, in the promotion and protection of human rights and fundamental freedoms, promoting good governance and respect for the rule of law by addressing the imbalance of power between the individual and the providers of public services,

Welcoming the rapidly growing interest throughout the world in the creation and strengthening of Ombudsman and mediator institutions, and recognizing the important role that these institutions can play, in accordance with their mandate, in support of national complaint resolution,

Recognizing that the role of Ombudsman and mediator institutions, whether they are national human rights institutions or not, is the promotion and protection of human rights and fundamental freedoms, promotion of good governance and respect for the rule of law, as a separate and additional function, but also as an integral part to all other aspects of their work,

Underlining the importance of autonomy and independence from the executive or judicial branches of Government, its agencies or political parties, of Ombudsman and mediator institutions, where they exist, in order to enable them to consider all issues related to their fields of competence, without real or perceived threat to their procedural ability or efficiency and without fear of reprisal, intimidation or recrimination in any form, whether online or offline, that may threaten their functioning or the physical safety and security of their officials,

Considering the role of Ombudsman and mediator institutions in promoting good governance in public administrations and improving their relations with citizens, in promoting respect for human rights and fundamental freedoms and in strengthening the delivery of public services, by promoting the rule of law, good governance, transparency, accountability, and fairness,

³ See *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 53 (A/68/53)*, chap. V, sect. A.

⁴ *Ibid.*, *Sixty-ninth Session, Supplement No. 53A and corrigenda (A/69/53/Add.1, A/69/53/Add.1/Corr.1 and A/69/53/Add.1/Corr.2)*, chap. IV, sect. A.

⁵ *Ibid.*, *Seventy-first Session, Supplement No. 53A and corrigendum (A/71/53/Add.1 and A/71/53/Add.1/Corr.1)*, chap. II.

⁶ *Ibid.*, *Seventy-third Session, Supplement No. 53A (A/73/53/Add.1)*, chap. III.

⁷ *Ibid.*, *Seventy-fifth Session, Supplement No. 53A (A/75/53/Add.1)*, chap. III.



**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**

Considering also the important role of the existing Ombudsman and mediator institutions in contributing to the effective realization of the rule of law and respect for the principles of justice and equality,

Acknowledging the importance of affording these institutions, as appropriate, the necessary mandate, including the authority to assess, monitor and, where provided for by national legislation, investigate matters on their own initiative, as well as protection to allow action to be taken independently and effectively against unfairness towards any person or group and the importance of State support for the autonomy, competence and impartiality of the Ombudsman and of the process,

Stressing the importance of the financial and administrative independence and stability of these institutions, and noting with satisfaction the efforts of those States that have provided their Ombudsman and mediator institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role,

Stressing also that these institutions, where they exist, can play an important role in advising Governments with respect to drafting or amending existing national laws and policies, ratifying relevant international instruments and bringing national legislation and national practices into line with their States' international human rights obligations,

Stressing further the importance of international cooperation between Ombudsman offices and mediators, and recalling the role played by regional and international associations of Ombudsman and mediator institutions in promoting cooperation and sharing best practices,

Noting with satisfaction the active continuing work of the global network of Ombudsmen, the International Ombudsman Institute, and the close cooperation with the active regional Ombudsman and mediator associations and networks, namely, the Association of Mediterranean Ombudsmen, the Ibero -American Federation of Ombudsmen, the Association of Ombudsmen and Mediators of la Francophonie, the Asian Ombudsman Association, the African Ombudsman and Mediators Association, the Arab Ombudsman Network, the European Mediation Network Initiative, the Pacific Ombudsman Alliance, the Eurasian Ombudsman Alliance, and other active Ombudsman and mediator associations and networks,

1. *Takes note* of the report of the Secretary-General;⁸
2. *Strongly encourages* Member States:

(a) To consider the creation or the strengthening of independent and autonomous Ombudsman and mediator institutions at the national level and, where applicable, at the regional or local level, consistent with the principles on the protection and promotion of the Ombudsman institution (the Venice Principles), either as national human rights institutions or alongside them;

(b) To endow Ombudsman and mediator institutions, where they exist, with the necessary constitutional and legislative framework, as well as State support and protection, adequate financial allocation for staffing and other budgetary needs, a broad mandate across all public services, the powers necessary to ensure that they have the tools they need to select issues, resolve maladministration, investigate thoroughly and communicate results, and all other appropriate means, in order to ensure the efficient and independent exercise of their mandate and to strengthen the legitimacy and credibility of their actions as mechanisms for the promotion and

⁸ A/75/224.
20-17331

A/RES/75/186

protection of human rights and the promotion of good governance and respect for the rule of law; Where they exist, to take the appropriate steps to ensure that the means of appointment of the Ombudsman or mediator respect the full independence and State recognition of, as well as respect for, the Ombudsman and mediator institutions and their work;

(c) To provide for the clear mandate of Ombudsman and mediator institutions, where they exist, to enable the prevention and appropriate resolution of any unfairness and maladministration and the promotion and protection of human rights, and to report on their activities, as may be appropriate, both generally and on specific issues;

(d) To take the appropriate steps to ensure that adequate protection exists for Ombudsman and mediator institutions, where they exist, against coercion, reprisals, intimidation or threat, including from other authorities, and that these acts are promptly and duly investigated and the perpetrators held accountable;

(e) To give due consideration to the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) ⁹ when assigning to the Ombudsman or the mediator institution the role of national preventive mechanisms and national monitoring mechanisms;

(f) To develop and conduct, as appropriate, outreach activities at the national level, in collaboration with all relevant stakeholders, in order to raise awareness of the important role of Ombudsman and mediator institutions;

(g) To share and exchange best practices on the work and functioning of their Ombudsman and mediator institutions, in collaboration with the Office of the United Nations High Commissioner for Human Rights and with the International Ombudsman Institute and other international and regional Ombudsman organizations;

3. *Recognizes* that, in accordance with the Vienna Declaration and Programme of Action, it is the right of each State to choose the framework for national institutions, including those of the Ombudsman and the mediator, which is best suited to its particular needs at the national level, in order to promote human rights in accordance with international human rights instruments;

4. *Recognizes* that the practical effectiveness of the chosen framework for such national institutions should be monitored and assessed, consistent with internationally accepted and recognized standards, and that this framework should neither threaten the autonomy nor the independence of the institution nor diminish its ability to carry out its mandate;

5. *Welcomes* the active participation of the Office of the High Commissioner in all international and regional meetings of Ombudsman and mediator institutions, whether in person or, alternatively, by electronic means;

6. *Encourages* Member States and regional and international Ombudsman and mediator institutions to regularly interact, exchange information and share best practices with the Office of the High Commissioner on all matters of relevance;

7. *Encourages* the Office of the High Commissioner, through its advisory services, to develop and support activities dedicated to the existing Ombudsman and mediator institutions and to strengthen their role within national systems for human rights protection;

8. *Encourages* Ombudsman and mediator institutions, where they exist:

⁹ Resolution 48/134, annex.



**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

- (a) To operate, as appropriate, in accordance with all relevant international instruments, including the Paris Principles and the Venice Principles, in order to strengthen their independence and autonomy and to enhance their capacity to assist Member States in the promotion and protection of human rights and the promotion of good governance and respect for the rule of law;
- (b) To request, in cooperation with the Office of the High Commissioner, their accreditation by the Global Alliance of National Human Rights Institutions, where the Ombudsman or mediator institution is the national human rights institution, in order to enable them to interact effectively with the relevant human rights bodies of the United Nations system;
- (c) To publicly report, in the interests of accountability and transparency, to the authority that appoints the Ombudsman or the mediator of Member States on their activities at least annually;
- (d) To cooperate with relevant State bodies and develop cooperation with civil society organizations, without compromising their autonomy or independence;
- (e) To conduct awareness-raising activities on their roles and functions, in collaboration with all relevant stakeholders;
- (f) To engage with the International Ombudsman Institute, the Global Alliance of National Human Rights Institutions and other regional networks and associations, with a view to exchanging experiences, lessons learned and best practices;

9. *Requests* the Secretary-General to report to the General Assembly at its seventy-seventh session on the implementation of the present resolution, in particular on the obstacles encountered by Member States in this regard, as well as on best practices in the work and functioning of Ombudsman and mediator institutions.

46th plenary meeting

16 December 2020



APPENDIX V

Strasbourg, 3 May 2019

CDL-AD(2019)005

Opinion No. 897 / 2017



EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

PRINCIPLES

ON THE PROTECTION AND PROMOTION OF THE OMBUDSMAN INSTITUTION ("THE VENICE PRINCIPLES")

Adopted by the Venice Commission
at its 118th Plenary Session
(Venice, 15-16 March 2019)

Endorsed by the Committee of Ministers at the 1345th
Meeting of the Ministers' Deputies (Strasbourg, 2 May
2019)

on the basis of comments by

Ms Lydie ERR (Member, Luxembourg)

Mr Jan HELGESEN (Member, Norway)

Mr Johan HIRSCHFELDT (Substitute Member, Sweden)

Mr Jørgen Steen SØRENSEN (Member, Denmark)

Mr Igli TOTOZANI (Expert, Albania)



PRINCIPLES ON THE PROTECTION AND PROMOTION OF THE OMBUDSMAN INSTITUTION (The Venice Principles)

The European Commission for Democracy through Law (“the Venice Commission”)

Noting that there are presently Ombudsman Institutions in more than 140 States, at the national, regional or local level, with different competences;

Recognising that these Institutions have adapted into the legal and political system of the respective States;

Noting that the core principles of the Ombudsman Institution, including independence, objectivity, transparency, fairness and impartiality, may be achieved through a variety of different models;

Emphasising that the Ombudsman is an important element in a State based on democracy, the rule of law, the respect for human rights and fundamental freedoms and good administration;

Emphasising that long-standing constitutional traditions and a mature constitutional and democratic political culture constitute an enabling element to the democratic and legal functioning of the Ombudsman Institution;

Emphasising that the Ombudsman plays an important role in protecting Human Rights Defenders;

Emphasising the importance of national and international co-operation of Ombudsman Institutions and similar institutions;

Recalling that the Ombudsman is an institution taking action independently against maladministration and alleged violations of human rights and fundamental freedoms affecting individuals or legal persons;

Stressing that the right to complain to the Ombudsman is an addition to the right of access to justice through the courts;

Stating that governments and parliaments must accept criticism in a transparent system accountable to the people;

Focusing on the commitment of the Ombudsman to call upon parliaments and governments to respect and promote human rights and fundamental freedoms, such a role being of utmost importance especially during periods of hardship and conflicts in society;

Expressing serious concern with the fact that the Ombudsman Institution is at times under different forms of attacks and threats, such as physical or mental coercion, legal actions threatening immunity, suppression reprisal, budgetary cuts and a limitation of its mandate;



Recalling that the Venice Commission, on different occasions, has worked extensively on the role of the Ombudsman;

Referring to the Recommendations of the Committee of Ministers of the Council of Europe R(85) 13 on the institution of the Ombudsman, R (97)14 on the establishment of independent national institutions for the promotion and protection of human rights, R (2000)10 on codes of conduct for public officials, CM/Rec(2007)7 on good administration, CM/Rec(2014)7 on the protection of whistle-blowers and CM/Rec(2016)3 on human rights and business; to the Recommendations of the Parliamentary Assembly of the Council of Europe 757 (1975) and 1615 (2003) and in particular its Resolution 1959 (2013); as well as to Recommendations 61(1999), 159 (2004), 309(2011) and Resolution 327 (2011) of the Congress of Local and Regional Authorities of the Council of Europe; to ECRI General Policy Recommendation No. 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017;

Referring to United Nations General Assembly Resolution 48/134 on the principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”) of 20 December 1993, Resolution 69/168 of 18 December 2014 and Resolution 72/186 of 19 December 2017 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, Resolution 72/181 of 19 December 2017 on National institutions for the promotion and protection of human rights, the Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 18 December 2002, the Convention on the Rights of Persons with Disabilities adopted by the General Assembly on 13 December 2006;

After having consulted the United Nations Human Rights Office of the High Commissioner, the UN Special Rapporteur on the situation of human rights defenders, the Council of Europe Commissioner for Human Rights and the Steering Committee for Human Rights of the Council of Europe (CDDH), the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the European Union Agency for Fundamental Rights, the European Ombudsman of the European Union, the International Ombudsman Institute (IOI), the Association of Mediterranean Ombudsmen (AOM), the Association of Ombudsman and Mediators of the Francophonie (AOMF), the Federation of Ibero-American Ombudsman (FIO), the European Network of National Human Rights Institutions (ENNHRI);

has, at its 118th Plenary Session (15-16 March 2019), adopted these Principles on the Protection and Promotion of the Ombudsman Institution (“the Venice Principles”)

1. Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms. While there is no standardised model across Council of Europe Member States, the State shall support and protect the Ombudsman Institution and refrain from any action undermining its independence.
2. The Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level.
3. The Ombudsman Institution shall be given an appropriately high rank, also reflected in the remuneration of the Ombudsman and in the retirement compensation.
4. The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. The Ombudsman Institution may be organised at different levels and with different competences.



5. States shall adopt models that fully comply with these Principles, strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country.
6. The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution.
The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.
7. The procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law.
8. The criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates. The essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms.
9. The Ombudsman shall not, during his or her term of office, engage in political, administrative or professional activities incompatible with his or her independence or impartiality. The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics.
10. The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman's mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.
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 parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law.
12. The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms.
13. The institutional competence of the Ombudsman shall cover public administration at all levels.

The mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities.
The competence of the Ombudsman relating to the judiciary shall be confined to ensuring procedural efficiency and administrative functioning of that system.
14. The Ombudsman shall not be given nor follow any instruction from any authorities.
15. Any individual or legal person, including NGOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint.



16. The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies. The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. This includes the right to unhindered access to buildings, institutions and persons, including those deprived of their liberty.

The Ombudsman shall have the power to interview or demand written explanations of officials and authorities and shall, furthermore, give particular attention and protection to whistle-blowers within the public sector.

17. The Ombudsman shall have the power to address individual recommendations to any bodies or institutions within the competence of the Institution. The Ombudsman shall have the legally enforceable right to demand that officials and authorities respond within a reasonable time set by the Ombudsman.
18. In the framework of the monitoring of the implementation at the national level of ratified international instruments relating to human rights and fundamental freedoms and of the harmonization of national legislation with these instruments, the Ombudsman shall have the power to present, in public, recommendations to Parliament or the Executive, including to amend legislation or to adopt new legislation.

19. Following an investigation, the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts.

The Ombudsman shall preferably be entitled to intervene before relevant adjudicatory bodies and courts.

The official filing of a request to the Ombudsman may have suspensive effect on time-limits to apply to the court, according to the law.

20. The Ombudsman shall report to Parliament on the activities of the Institution at least once a year. In this report, the Ombudsman may inform Parliament on lack of compliance by the public administration. The Ombudsman shall also report on specific issues, as the Ombudsman sees appropriate. The Ombudsman's reports shall be made public. They shall be duly taken into account by the authorities.

This applies also to reports to be given by the Ombudsman appointed by the Executive.

21. Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate.
22. The Ombudsman Institution shall have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, appointed by the Ombudsman. The Ombudsman shall be able to recruit his or her staff.
23. The Ombudsman, the deputies and the decision-making staff shall be immune from legal process in respect of activities and words, spoken or written, carried out in their official capacity for the Institution (functional immunity). Such functional immunity shall



apply also after the Ombudsman, the deputies or the decision-making staff-member leave the Institution.

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.
25. These principles shall be read, interpreted and used in order to consolidate and strengthen the Institution of the Ombudsman. Taking into consideration the various types, systems and legal status of Ombudsman Institutions and their staff members, states are encouraged to undertake all necessary actions including constitutional and legislative adjustments so as to provide proper conditions that strengthen and develop the Ombudsman Institutions and their capacity, independence and impartiality in the spirit and in line with the Venice Principles and thus ensure their proper, timely and effective implementation.