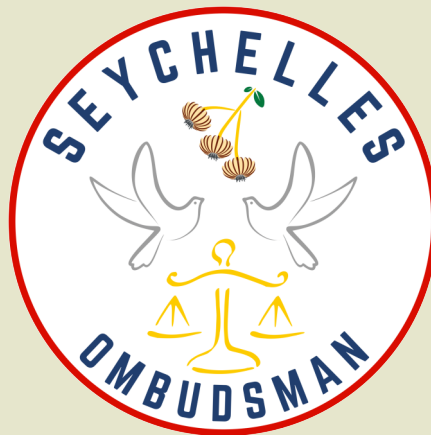




REPUBLIC OF SEYCHELLES

**ANNUAL REPORT
OF THE
OMBUDSMAN**



**“The Ombudsman —
Righting Wrongs”**

**FOR THE YEAR ENDING
31st December 2022**

Message from the Ombudsman

The Ombudsman – Righting Wrongs



A review of 2022 reveals much of the same issues identified in previous years since I started this journey in March 2017. While there have been many changes, significant and less significant, in the years in between, the one constant has been the persistent lack of understanding and appreciation of the role of the Ombudsman within our democracy.

Keeping the Office in the line of vision of citizens who may need its services and public officers who understand the value it adds to our modern democracy has remained an uphill battle. Informing and educating everyone on the Ombudsman's ability and ambition to right the wrongs suffered by citizens at the hands of public service providers has often seemed like a lost cause. The 2022 statistics indicate, yet again, that much work remains to be done on all fronts.

Despite the setbacks, I push ahead for '*a fair, open, accountable and effective public service*' and remain focused on our mission of promoting a transparent and accountable public service delivery, firmly based on the foundation stones of good governance.

Most people recognize the distinct roles of the executive, the legislature and the judiciary in our constitutional democracy. We appreciate how the checks and balances they maintain upon each other ensure that they operate independently. However, we sometimes fail to appreciate that the doctrine of separation of powers does not, of itself guarantee transparent, accountable and fair governance.



Public services are delivered to citizens and non-citizens, not by politicians or judges but by battalions of public officers operating within their respective ministries, departments, agencies and authorities. These public officers are not constrained by political commitments or by judicial considerations or rules. However, they are expected to deliver those public services in an open, transparent, fair and accountable manner. They are required to remain customer-focused and act fairly and proportionately, and, should things go wrong in their service delivery, they are expected to put them right as quickly and effectively as possible.

When the bad action or wrongful decision of the public officer impacts the citizen and the public authority does nothing to right the wrong, the citizen has several avenues from which to choose. Going to court is one option – often the sledgehammer to crack the nut. It is costly, time consuming and offers no guarantee of results. A second option to the citizen is to play the political card and complain directly to the minister or president. This choice opens up other considerations and criticisms.

Our Third Republic offered a *soft power* alternative by attributing a special supervisory role to the Ombudsman – an independent, apolitical and impartial fourth arm of the State operating above politics and judicial constraints.

This administrative watchdog looks at the complaint through 'human' eyes to identify and fix the problem. The Ombudsman ultimately builds trust in the State by enquiring into administrative actions of public officers who are alleged to have violated fundamental rights, acted contrary to law, made unreasonable, unjust, oppressive or discriminatory decisions or based their decisions and actions on mistake of facts or a wrongful assessment of facts.

Although my investigative powers are vast – the same as those of a Supreme Court judge – mine is an 'informal' extra-judicial function. My



findings and recommendations are set out in my investigation reports and are designed to pinpoint the administrative weakness or malpractice unearthed in the investigation and offer a soft remedy. They serve to right the wrong. The success of this soft power alternative depends on an admission that the public service provider was wrong and a conscious decision that it needs to and will right that wrong.

Denying liability, seeking legal advice and raising legal concepts to reject my recommendations may avoid the issue altogether. But in the final analysis, not admitting to having done wrong impedes the work of this Office with the soft power. It ultimately leaves the disgruntled public with trust issues against the State allowing the values of fair, open and transparent governance to continue evading our public service. The wrongs they cause will never be put right and governance will never be qualified as 'good'.

Nichole Tirant-Gherardi

Ombudsman

31st January 2023



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1 INTRODUCTION

This report covers the activities of the Office of the Ombudsman in the year 2022. It is drawn up in compliance with Paragraph 6 (6) of Schedule 5 of the Constitution which requires the Office to 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. The Report is submitted to the National Assembly and copied to the President.

Once laid before the National Assembly and submitted to the President, the Report becomes a public document. It is shared with all ministries, departments, agencies and public authorities as well as with fellow Ombudsmen around the world and is published and made readily available in an electronic format to anyone wishing to access a copy.

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

WHAT CAN THE OMBUDSMAN DO FOR ME?

- The Ombudsman can help you resolve conflicts with a public service institution or ministry.
- The Ombudsman is neutral, impartial, and does not take sides.
- Approach the Ombudsman after you have been unable to resolve the issue directly with the public service provider.
- Your dispute must be with a public service provider if the Ombudsman is to take it up. Parastatals and statutory corporations and agencies as well as government ministries and departments are defined as public authorities.
- The Ombudsman's services are free.

2 YEAR 3 OF THE ONGOING GLOBAL PANDEMIC

- 2.1** Acknowledged as Year 3 of the global COVID-19 pandemic, 2022 saw the country's economy practically return to normal as our frontiers re-opened to tourism and arrivals in the nation's number one economic activity resumed pre-COVID levels. The year ended with 332,068 visitor arrivals, exceeding the forecast of 258,000. In this re-invigorated environment, the challenge was learning to live with the virus as a large percentage of the population had either caught one of the many variants of the virus or had been fully vaccinated. By year's end, there were 19 50,355 cumulative confirmed cases with 172 confirmed deaths due to COVID compared to 134 by the end of 2021.
- 2.2** Despite the good performance of the tourism industry, the pandemic and its outfall continued to impact public sector budgets into 2022. The Ombudsman's budget was cut by SCR200,000 in September.
- 2.3** The Ombudsman was not called upon to answer questions from members of the National Assembly in their annual budget deliberations for the 2023 budget allocation in November and December. The allocated budget was approved without any amendments.

“The General Assembly ... strongly encourages Member States ... to endow the ombudsman ... with... 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...”

United Nations Resolution A/RES/75/186 of 16 December 2020 on the Role of Ombudsman & mediator institutions in the promotion and protection of human rights, good governance & the rule of law

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** The constitutional mandate of the Ombudsman remains unchanged notwithstanding the creation of other statutory bodies with wider powers. The [Seychelles Human Rights Commission \(SHRC\)](#) and the [Anti-Corruption Commission \(ACCS\)](#) have been granted wider powers and greater resources to deal respectively with violations of the fundamental rights enshrined in Chapter III of the Constitution and the corruption agenda. In view of this, the Office has adopted the practice to refer complaints relating to such issues to the respective statutory body for action despite the fact that the Ombudsman is still mandated to investigate instances of fraud and corruption and human rights violations by public officers.
- 3.3 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*”. Hence, the Ombudsman will only initiate an investigation upon an allegation of fraud or corruption being made in a complaint. In the absence of such complaint, no investigation can be launched. Furthermore, upon completion of any investigation for fraud or corruption, the Ombudsman is limited to forming an opinion that “*the allegation of fraud or corruption is well founded.*” (**Paragraph 6(1)(g)**). 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 carried out any such enquiries since its creation. Any issues of fraud and/or corruption identified in the course of an enquiry are referred to the ACCS for further action.
- 3.4 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)**). Where, upon conclusion of an investigation, 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” and become a party to proceedings relating to a contravention of the provisions of the Charter with the leave of the trial court. The Ombudsman does not have the in house investigative and legal capacity as well as financial resources linked to the costs of legal representation to be able to make use of these constitutional powers. No cases of this nature have been started during the period under review.

3.5 Cooperation with the new institutions – Although the interface between the new institutions and the Ombudsman remains an area of potential conflict, no direct conflict has been experienced between the Ombudsman and any of the new institutions in 2022. Memoranda of Understanding have been framed to cover the identified overlaps and ensure effective cooperation between us.

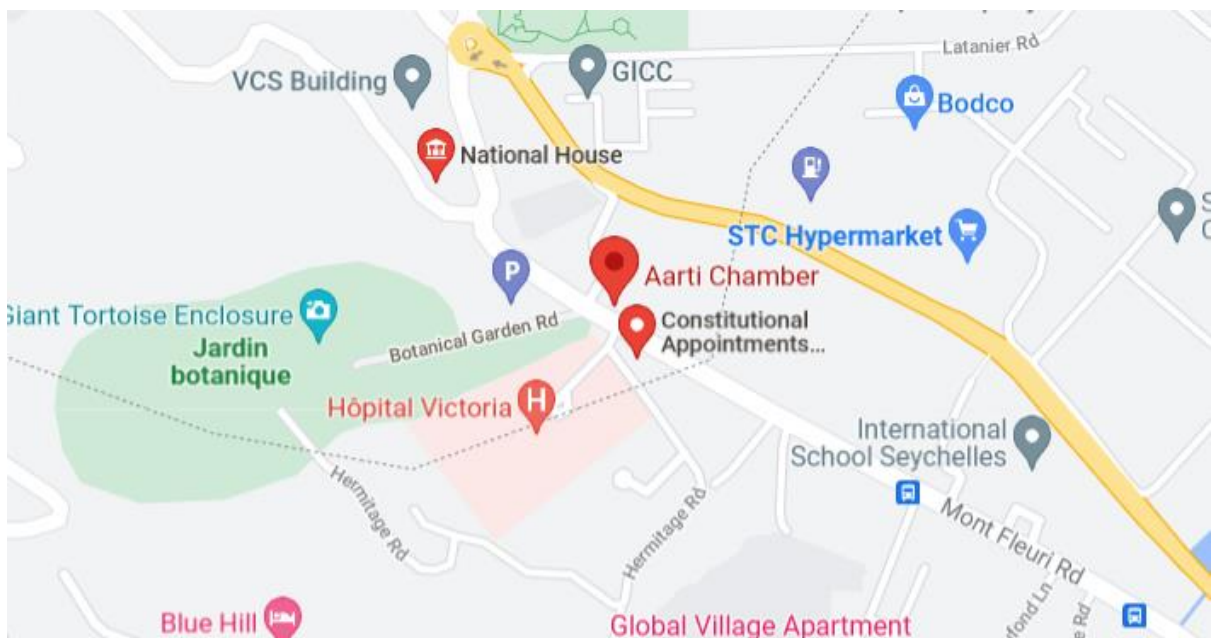


Figure 1: How to access our offices

“The General Assembly ... strongly encourages Member States ... 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 the Ombudsman and mediator institutions”.

United Nations Resolution A/RES/75/186 of 16 December 2020 on the Role of Ombudsman & mediator institutions in the promotion and protection of human rights, good governance & the rule of law

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, Transport, 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 2022.



Ombudsman Office frontage in Aarti Chambers, Mont Fleuri

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Tel: + (248) 422 51 47
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website: www.ombudsman.sc



5 STAFFING

5.1 Despite some staff movements with departures and new arrivals during the year, by the end of 2022, the Office of the Ombudsman still comprised a complement of six persons, including the Ombudsman. The Legal/Investigations Officer, Sophie Lagrenade, left for a new challenge on 4th February 2022, and the Office Manager, Marie-Paule Gertrude retired after 44 years of public service in October 2022. The Principal Investigation Officer, recruited in February 2022, resigned in September and the post remained vacant to the year's end. The Office ended 2022 with two important vacancies, the posts of Principal Investigations Officer and the Office Manager/Administrator. The latter post is a key position in the 'administration section' dealing with administrative, financial, and human resources matters. A new Legal/Investigations Officer joined us in October 2022. At year end, the 'investigations section' remained under the leadership of the Senior Investigations Officer.

5.2 Staffing for the period January to December 2022 was as follows:

| | | |
|----------------------------------|---|---------------------------------------|
| Principal Investigations Officer | - | Leslie Boniface (07-02 to 25-10-2022) |
| Senior Investigations Officer | - | Sylvette Gertrude |
| Legal/Investigations Officer | - | Carmen Cesar (from 19-10- 2022) |
| Investigations Officer | - | Tressy Dine |
| Assistant Investigations Officer | - | Lynne Jabbie (from 01-07-2022) |
| Office Manager/Administrator | - | Marie-Paule Gertrude (to 30-09-2022) |
| Accounts Assistant | - | Wendy Michel |

5.3 Departure on Retirement of Office Manager/Administrator – At the end of September 2022, the Office bade farewell to our longest serving officer, Mrs Marie-Paule Gertrude, who retired after 44 years of public service. Mrs Gertrude joined the public service on 1st February 1979, in the Ministry of Social Affairs and Employment. She joined the Office of the Ombudsman under the first Ombudsman Justice Bernardin Renaud on 5th August 2002. Her invaluable contribution to the administration and management of the Office over the last



twenty years has always been highly appreciated and I join the staff to thank her and wish her a pleasurable and restful retirement.

- 5.4 Information Officer** – Senior Investigations Officer, Sylvette Gertrude, remains the Office's nominated Information Officer in accordance with our legal obligation under the **Access to Information Act**.
- 5.5 Investigative Capacity** – The Office's investigative capacity was enhanced during the year although some delays persist in the report writing stage. This remains a high priority for the coming year.
- 5.6 Staff Training** – In 2022, as in previous years, staff members took up several training opportunities, both locally and through our membership of international ombudsman associations. With virtual sessions becoming the norm following the COVID-19 pandemic travel bans and our limited financial resources, all office staff were registered to follow the online training workshops and webinars organised by our regional and international partners in 2022. No members of staff travelled abroad throughout 2022. The online webinars attended by staff are listed in Chapter 12.8.
- 5.7 LOCAL TRAINING SESSIONS** – Staff also attended local training sessions organised by the Guy Morel Institute. The workshops are listed in detail in Chapter 5.8, 5.9 and 5.10 below.
- 5.8 REPORT WRITING SKILLS** – In November 2022, Assistant Investigation Officer, Lynn Jabbie, attended a three-day class on Report Writing Skills at the Guy Morel Institute in November 2022. The course was designed to empower participants with the knowledge, skills, and techniques necessary to write a wide range of reports for different purposes as well as how to present the information effectively and clearly so that the author of the report communicates effectively to the targeted audience. Through activity groups, the participant learned the various types and formats of reports. Participants discussed best practices and proper grammar for report writing and the different research methods.
- 5.9 Workshop on Executive Leadership Development** – Legal/Investigation Officer, Mrs. Carmen Cesar, attended a three-day workshop/training at The Guy Morel Institute in November 2022 to improve the working environment in workplaces, through leadership models and best practices for respective institutions. Participants looked at leadership qualities and how to inspire teamwork, how

to get the job done efficiently and how to identify and deal with challenges presented to institutions on a daily basis. Emphasis was placed on vision as well as having positive mind sets. Workplace productivity was also discussed as well as what could be done to improve it. Participants made group presentations on what makes a good leader and how this applied to their respective institutions.

5.10 Diploma in Office and Record Management Level 1 – In 2022, Administration Section's Wendy Michel continued an 18-month course which began in 2021 at the Guy Morel Institute designed to improve her capacity to manage the Office.

THE GENDERLESS OMBUDSMAN

Should we say *Ombudsman*, *Ombudswoman* or (the androgynous) *Ombudsperson*?" The short answer is "*Ombudsman*". For good reason!

The word "*Ombudsman*" is genderless. It is definitely not sexist! The word, along with its concept of the citizen's defender against the maladministration of the state, was 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* is simply *Ombudsman*. "*Ombudsmen*" brings gender into the word and corrupts the word completely to rekindle the male-female debate. Like "*furniture*", whether one or ten, ombudsman it remains!

6 OFFICE OPERATING BUDGET ALLOCATION

6.1 2022 Budget Allocation – The Office of the Ombudsman was voted the following budget allocation for 2022 in the Appropriation Act 1 of 2022:

| | |
|---------------------------|-------------------------|
| Compensation of Employees | SCR 1,607,460.20 |
| Use of Goods & Services | SCR 1,321,931.11 |
| Total | SCR 2,929,391.31 |

6.2 Budget Reduction in 2022 – By Memorandum of the Finance Department dated 29th September 2022, the budget allocation for 2022 was cut by SCR200,000 under the following expenditure heads:

| | |
|------------------------------|----------------|
| Basic Pay | SCR 120,000.00 |
| Allowances (excluding PSC) | SCR 50,000.00 |
| Returning Graduate Allowance | SCR 30,000.00 |

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 obliged to show performance-based results of all its activities. Internal budgetary performance analysis required of the Office each year is time consuming and impacts negatively on our limited human resources. Such audits by other government ministries are perceived as an obstacle to the autonomy and independence of this constitutional body. Furthermore, the nature of the services rendered by the Ombudsman continues to pose great difficulty in setting tangible measurable targets and indicators of performance. This challenge is addressed in greater detail in Chapter 9.

“Every Public Service Ombudsman Office has two core functions – resolving injustices suffered by individuals and improving public services through learning from the investigations it undertakes.”

Securing Effective Change – IOI Best Practice Paper



7 ACTIVITIES OF THE OFFICE

7.1 CASE WORK – THE OMBUDSMAN'S CORE ACTIVITY

7.1.1 Investigating Complaints – The Ombudsman's primary purpose is to enquire into complaints of grievances lodged by members of the public in respect of maladministration, unfair decisions, discriminatory practices, etc. by public officers and authorities. The Office registered a total of one hundred and seventy three (**173**) complaints over the period 1st January to 31st December 2022. This represented an increase of almost 100% on the previous year when 90 complaints were recorded. Viewed in perspective, the increase in 2022 continues the trend observed since 2017 at the start of the current mandate. (See Figure 3 above). The drop recorded in 2021 may have been due to the health restrictions imposed after the first COVID-19 related deaths were recorded in January and February of that year although this hypothesis has not been tested or verified. Again in 2022, the large majority of the complaints recorded were either '*premature*' (**55**), where the complainant had not exhausted available avenues for seeking remedy, or '*outside remit*' (**62**), where the matter falls within one of the exclusions contained in Paragraph 2 of Schedule 5, or where it involves actions between private persons or bodies. The standard operating guidelines adopted by the Office require that all complainants submit their complaints in writing through a completed complaints form. The Office does not begin work on a complaint until the completed complaints form is lodged. At year's end, there were twenty six instances where complainants had met with the staff to report a matter but had not returned their completed complaints form. These cases are recorded as '*pending*' in our statistics.

7.1.2 Status of retained Complaints – Out of the thirty (**30**) complaints retained in 2022, twenty (**20**) were still under investigation at the date of this report and ten (**10**) have been closed.

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 their final evaluation. Open 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 enquiry report-writing. One of the persistent challenges experienced by the Office is concluding investigation reports in a timely manner.

7.1.4 Systemic Issues – The Ombudsman's enquiry can have the widest and most positive impact and be more cost effective in terms of human resources by addressing the primary cause of the systemic dysfunction and administrative weaknesses across the public sector rather than focussing on individual cases. However, investigations of systemic issues require more time and dedicated staff. To this end, the Office needs to build its investigative capacity and provide more specialised training to existing staff in order to guarantee the success of this aspect of our work. Systemic issues noted in 2022 included public sector services contracts as well as the issuance of prohibited immigrant notices by the immigration authorities. These enquiries were still ongoing by the end of the year.

7.2 ADVOCACY ON CONSTITUTIONAL AMENDMENTS

7.2.1 Ombudsman's constitutional role and powers – Schedule 5 Paragraph 1(1)(e) of the Constitution gives the Ombudsman the power to “*initiate proceedings relating to the constitutionality of a law or of the provisions of a law.*” This power was used for the first time ever in 2022 to challenge the constitutionality of the Tenth Amendment to the Constitution that was passed by an absolute two-thirds majority in the National Assembly and assented into law by the President on 13th June 2022. The joint petition was filed in the Constitutional Court in September 2022 following close consultation with the Seychelles Human Rights Commission (SHRC) and the Bar Association of Seychelles (BAS). The Petition is asking the Constitutional Court to consider whether absolute majorities alone can lawfully change the Supreme Law or whether the basic constitutional structure of the democratic Third Republic ‘protects’ or saves certain constitutional institutions from change without changing the fundamental character of that democracy unless such change is endorsed by the people in a referendum.

7.2.2 Ombudsman's Opinion on the Bill – Prior to the presentation of the Bill in the National Assembly in June 2022, I had prepared an opinion on the bill which was submitted to the National Assembly and the President for consideration. Details of the Opinion are set out in the Synopsis Chapter 10.6 of this report.



7.3 ADVICE & ASSISTANCE

7.3.1 Ombudsman seen as a ‘legal aid’ office – The services of the Ombudsman are open to the general public and free. This has contributed to the mistaken belief that the Office can be consulted for free legal advice. Although the Office has in the past assisted complainants with basic legal advice, this practice is time consuming and to the detriment of the Office’s constitutional work and role. We now advise complainants to seek legal advice from practicing attorneys or seek legal aid.

7.3.2 Ombudsman takes complaints as last resort – 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. (**Paragraph 1(3)(d) of Schedule 5** of the Constitution). This constitutional requirement continues to pose difficulty to our internal assessment process. In evaluating whether to take up the complaint, we must consider whether complainants have first sought redress for the substance of their complaints before coming to us. In most cases, it can be argued that the complainant could file for judicial review or seek damages, or seek redress in the constitutional court, or from one of several other investigative statutory bodies set up in recent years. The referral process is followed to guide complainants on what to do. However, since the Constitution also 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, the proviso is often used to motivate our investigation into the complaint.

7.3.3 Referrals – Under the Ombudsman’s standard operating practice, complaints in which the complainant has other options for redress are determined ‘premature’. In such instances, we advise them accordingly and prepare, where necessary, referral letters to ease access to those services. We formally referred only four (4) out of the total complaints received in 2022 to other institutions. Three of those were outside our remit altogether, while the fourth, which we assessed as premature, was referred back to the institution against which the complaint was being made.

7.3.4 Making referrals work – The purpose of the referral letter is to assist the complainant in taking the complaint to the relevant public service institution

where it will follow a specified process. The efficacy of the referral process depends on cooperation from all public authorities and on the efficiency of their internal complaints' handling systems. Hence, the absolute necessity for all public authorities to have in place visible, working and effective complaints' handling systems to address complaints against their service delivery. Each public authority should also ensure that its system and procedures are known to the general public.

7.4 AWARENESS & VISIBILITY CAMPAIGN –

7.4.1 VISIONING EXERCISE – In March 2022, all staff members, including the Ombudsman attended a visioning exercise to review and update the Ombudsman's Vision and Mission statement and elaborate a motto as well as agree on a road map. Our core mission is to continuously improve the level of service delivery across the public service, including within our own institution. Interactive discussions around the Ombudsman's constitutional mandate and the shortcomings and challenges faced by the Office were lively and enjoyable, resulting in the adoption of a short term road map, covering the period March to December 2022. Points adopted as part of the road map included media outreach/awareness programmes, increasing stakeholder engagement, adoption of best practices and simplification of internal procedures. The exercise has fed into the Ombudsman's strategic plan ([APPENDIX II](#)) which envisions '**A fair, open, accountable and effective public service**'.

7.4.2 COMMEMORATING OMBUDSMAN'S DAY – The Office of the Ombudsman joined Ombuds offices around the world on 13th October 2022 to commemorate the first ever Ombudsman Day. For the occasion, the Office held an open day outside the Mont Fleuri offices where we invited passers-by to stop over to learn more about the work we do. Street banners were set up outside our offices as well as at the Taxi stand in Victoria. We handed out leaflets and small promotional items. The Office also prepared several television spots that ran on national television over the week of the 13th October as well as centre spread advertorials in the two dailies TODAY in Seychelles and the Seychelles Nation.

7.4.3 COMPLETING THE WEBSITE – By the end of 2022, the Ombudsman's website was fully operational. In order to ensure that it remains attractive and functional, we continue to add real time information and data. We continue to add content and are now working on adding Creole and French versions to the main pages

although the site will not be fully tri-lingual. The website can be accessed at www.ombudsman.sc

7.5 WORKING ON A CASE MANAGEMENT SYSTEM – At the start of my mandate in 2017, I identified the need for a case management system capable of managing the status of year-on-year overruns on case files and providing the Office with reliable data collection and treatment of statistics. It had not been possible to design and build a dedicated case management software nor could the Office envisage purchasing such a system which is very expensive. Consequently, I approached our strategic partners through the membership of ombudsman associations to explore the possibility of aid with suitable case management software used by other ombudsman institutions around the world.

7.5.1 The Association of French speaking ombudsman and mediators, AOMF, responded to my request. Our Office was invited to participate in an exercise that began with a workshop and sensitization session attended by a member of staff in Brussels, Belgium from 30th November to 3rd December 2021 organised by the AOMF to consider the benefits of the software. The session focused on a shared case management software developed by HURIDOCS (Human Rights Information and Documentation Systems), an international non-governmental organisation that accompanies rights-based institutions in improving information and documentation, which could be adapted for the specific needs of ombudsman institutions like our own.

7.5.2 In 2022, our Office was invited to participate in the AOMF-funded pilot project to facilitate setting up the shared case management software, UWAZI, developed by HURIDOCS. The pilot project involved needs-determination and induction sessions by the team of developers of the UWAZI web-based tool, as well as training for the elaboration and completion of the data management system over the period June to October 2022. All the sessions were done virtually online. The system is currently in place and is being fine-tuned as data is fed into it in real time. It is expected to be fully operational by the end of the second quarter of 2023. Once fully operational, the system will provide secure storage, tracking and analysis of complaints received by the Office and serve as archives for all materials received and retained by the Office in the course of its investigations.

7.5.3 On behalf of my Office, I express my deepest gratitude to the AOMF for their generous assistance in the realisation of this important project.

7.5.4 Promoting the Brand – The new seal of Office, adopted in 2021, featured highly



in the activities to commemorate the first ever Ombudsman's Day on 13th October 2022. The seal was printed on polo shirts worn by the staff, as well as on promotional merchandise, including mugs, key rings and carrier bags for distribution to members of the public during the open day.

Figure 2: Seal of the Office of the Ombudsman

8 STATISTICS

8.1 Improving Data-Collection – While data collection and treatment of statistics has remained a weak point in the course of 2022, the introduction of the UWAZI case management system is expected to address this weakness once it is fully operational in 2023. Until then, the case recording system set up in the Excel database has proven a good alternative from which the Office has been able to draw reliable statistics.

8.1.1 Statistics for 2022 – The Office of the Ombudsman registered a total of one hundred and seventy three (**173**) complaints over the period 1st January to 31st December 2022. This represented an increase on the previous year when 90 complaints were recorded. Viewed in perspective, the increase in 2022 continues the overall trend set since 2017 (first year of the current Ombudsman) when 71 complaints were recorded. The upward trend was broken in 2021 with 90 complaints recorded. (See *Figure 3*) The drop recorded in 2021 may have been due to the health restrictions imposed after the first COVID-19 related deaths were recorded in January and February of that year although this hypothesis has not been tested or verified.

8.1.2 Majority of complaints not retained – Again in 2022, the large majority (117 representing 67%) of the complaints recorded were either ‘*premature*’ (**55 cases**), where the complainant had not exhausted available avenues for seeking remedy, or ‘*outside remit*’ (**62**), where the matter falls within one of the exclusions contained in Paragraph 2 of Schedule 5, or where it involves actions between private persons or bodies. The standard operating guidelines adopted by the Office require that all complainants submit their complaints in writing through a completed complaints form. The Office does not begin work on a complaint until the completed complaints form is lodged. At year's end, there were twenty six instances (**26**) where complainants had met with the staff to report a matter but had not returned their completed complaints form. These cases are recorded as ‘*pending*’ in our statistics.

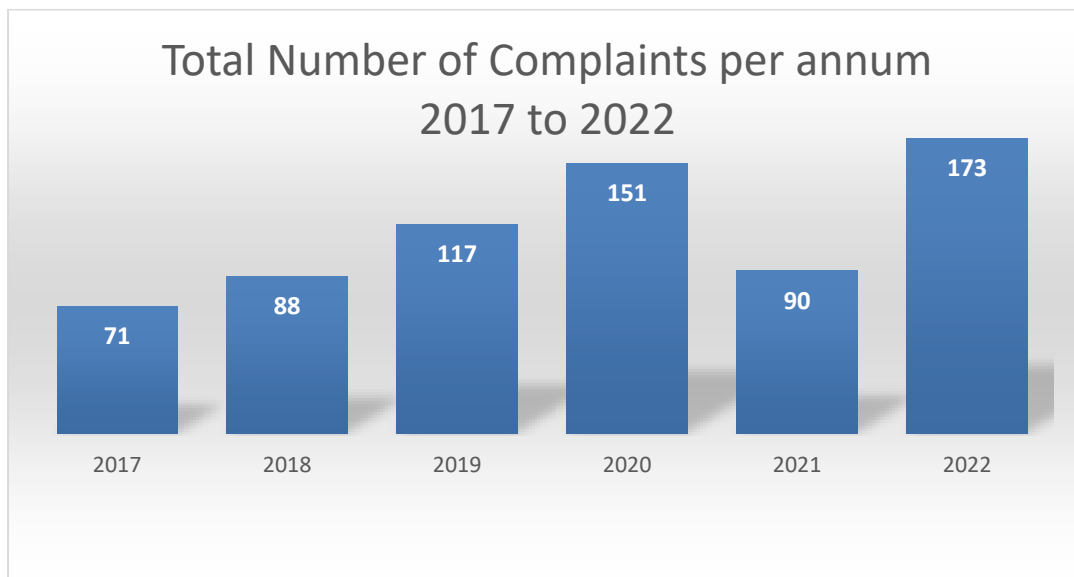
8.1.3 Status of retained Complaints – Out of the thirty (**30**) complaints retained in 2022, twenty (**20**) were still under investigation at the date of this report and ten (**10**) have been closed. Four (**4**) cases from previous years were closed in 2022.

8.1.4 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. Open 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 enquiry report-writing. One of the persistent challenges experienced by the Office is concluding investigation reports in a timely manner.

| COMPLAINTS RECEIVED BY OMBUDSMAN IN 2022 | |
|---|------------|
| TOTAL Complaints received | 173 |
| Cases Retained | 30 |
| Cases considered <i>Premature</i> | 55 |
| Cases found to be <i>Outside remit</i> | 62 |
| Cases pending submission of complaints form | 26 |
| Cases referred to other institutions (included in the 'premature'/'outside remit' total) | 4 |

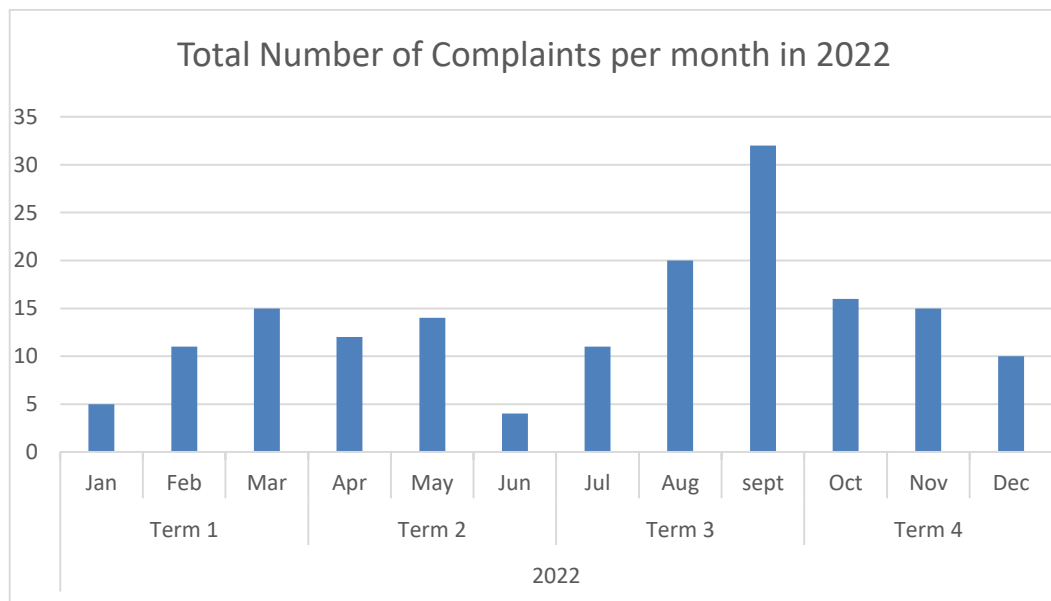
Figure 3: Trend of Complaints received per year over period 2017 to 2022



8.2 COMPLAINTS RECEIVED IN 2022 (BY MONTH & SEX)

| MONTH | TOTAL NUMBER OF CASES | SEX | |
|--------------------|-----------------------|-----------|-----------|
| | | F | M |
| January | 05 | 02 | 03 |
| February | 10 | 04 | 06 |
| March | 15 | 07 | 08 |
| April | 12 | 06 | 06 |
| May | 15 | 08 | 07 |
| June | 04 | 01 | 03 |
| July | 10 | 06 | 04 |
| August | 17 | 10 | 07 |
| September | 33 | 14 | 19 |
| October | 16 | 09 | 07 |
| November | 19 | 07 | 12 |
| December | 17 | 03 | 14 |
| GRAND TOTAL | 173 | 77 | 96 |

Figure 4



9 CHALLENGES

9.1 BUILDING CAPACITY – The Office must continue to build capacity of existing staff and recruitment of additional skills to enable it to meet the increased demand for its services and deliver more efficiently and effectively on its mandate. I envisage a review of the current Office set up with the creation of new positions for a legal officer, a deputy ombudsman, and an administrative and finance officer to address the lack of specialised skills. A deputy Ombudsman position will provide for a smooth transition from one Ombudsman to the next upon completion of the seven-year mandate. With my mandate due to expire in March 2024, the matter of succession becomes urgent.

9.2 ADDRESSING INCREASED BUDGET MANAGEMENT OBLIGATIONS –

9.2.1 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.

9.2.2 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 specialised skill is presently not available in the Office. Moreover, this requirement adds an additional burden to the existing budget preparation exercises, budgetary performance audits and statutory reports required each year. It also makes for duplication of the work related to activity reporting and additionally, makes this constitutional office subject to the complete oversight of the Ministry of Finance.

9.3 LOBBYING FOR FINANCIAL & ADMINISTRATIVE AUTONOMY – The debate for greater financial and administrative autonomy and independence for the Ombudsman was not revived as planned in 2022 for numerous reasons. However, new administrative rules and practices introduced by the newly created Public Service Bureau during 2022, added to those already practiced by the Ministry of Finance, have increased the urgency for discussion and resolution of the question of whether the Office is to maintain its financial and administrative autonomy and independence as guaranteed by **Article 143 (3)** of the Constitution. The Ombudsman intends to lay out the terms of and launch



this discussion in the first term of 2023. As a member state of the United Nations, the relevance of the UN Resolution A/RES/75/186 of 28th December 2020 remains relevant and pertinent. (See Appendix IV).

9.4 DRAFTING A DEDICATED OMBUDSMAN ACT under Article 143(6) of the Constitution – Work is still in progress on a stand-alone draft Ombudsman Act to provide for matters not provided for in the Constitution but necessary for the purpose of ensuring the independence, autonomy and effectiveness of the Office of the Ombudsman. The delay in this project was caused by the Ombudsman's involvement in the preparation for and research involved in the Constitutional Court challenge of the Tenth Amendment of the Constitution. Work on the draft will continue in 2023.

9.5 FOLLOWING UP ON OMBUDSMAN'S REPORTS – The Constitution requires that the Ombudsman's general annual activity report for the previous year must be submitted to the Legislature with a copy to the President by 31st January. **(Paragraph 6(6) of Schedule 5). 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. However, the schedule sets no procedure for either process nor does it provide for any engagement or follow up on the report. I have noted over the years since I started my mandate, that there has not been any follow up whatsoever on any of the reports with the National Assembly. My efforts to establish a working relationship with the National Assembly members to discuss the annual report and the role of this institution remain in vain. A suggestion in 2022 to set up a select committee of the House to initiate discussions has not been followed up.

9.6 DRAWING UP AN EFFECTIVE PUBLIC AWARENESS PROGRAMME –

9.6.1 Public awareness programme – In 2022, we started working on an education and awareness programme designed to sensitise and educate the general public on the Ombudsman's mandate and work. However, by the year's end it was evident from the statistics that the programme had not achieved its objectives since the large majority of complaints received in 2022 remained '*outside remit*' or '*premature*'. Out of a total of 173 complaints lodged in 2022, 117 (broken down as 55 premature and 62 outside remit) were not within our mandate. This compares to the 2021 statistics when out of a total of 90 complaints lodged, 80 were not within our mandate. The lesson drawn from this

is that the public still is not aware of the mandate and role of this Office. Consequently, the sensitization programme will have to return to the drawing board for review. The challenge will be finding the communication skills and expertise required for such action.

9.6.2 Messages & Social Media – In 2022, we 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. All local media houses have given free coverage to these messages and I thank them for their complicity in this process. The Ombudsman also has a Facebook page used to share timely 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. However, keeping the website and social media pages relevant and updated remains a challenge with our limited human resources.

9.6.3 Information leaflets – These leaflets explain the work of the Ombudsman and are available to the public in our Office and may be downloaded from our website. We plan to revisit the format and publish a Creole version in 2023.



Website Welcome page

10 SYNOPSIS OF CASES IN 2022

10.1 Ensuring adequate supplies of vital medication –

- 10.1.1** B complained that the Health Care Agency (HCA) had failed to ensure an adequate stock of vital non-substitutable medication needed to treat a graft patient and that the supply of the medication which had to be taken daily to avoid a rejection of the graft was down to five days only. The complainant, who was very distraught at the time of filing this complaint, claimed that the HCA regularly ran out of supplies of the medication. B also criticized the lack of privacy in how the HCA engaged on the issue.
- 10.1.2** Upon receiving the complaint, the Ombudsman focused, in the first instance, on ensuring that the patient was not left without the critical medication and contacted the HCA directly to ensure that every step was taken to avoid this occurrence. The HCA management were very proactive in responding to our queries and arrangements were made to get a supply for the patient through contacts.
- 10.1.3** The HCA explained the difficulties it was encountering in procuring and maintaining supplies of the non-stock medication that was not only expensive, but also subject to heavy export restrictions in the country of production. This was aggravated by the fact that the medication in question could not be sent by DHL and had to be sent as an airfreight consignment making it even more expensive. The HCA explained that they were working on improving the overall management of procurement of non-stock medicines in order to avoid shortages of these medicines in the future. Mitigating the risk of not being able to source these medicines included implementing measures to increase the re-order level for branded medicines from 3 to 4 months' stock, and also requesting doctors prescribing medication to identify appropriate generics in case sourcing of any branded medication became absolutely impossible.
- 10.1.4** In the instant case, the HCA was of the view that the patient could be safely prescribed a generic medication although it was evident from the medical report that the specialist surgeon involved had prescribed the specified brand with specific instructions that the medication was 'non-substitutable'. The patient was highly reticent about using a generic in view of this instruction in the medical report. The Ombudsman recommended that this technical matter could and should be taken up with the specialist who would be in the best

position to prescribe a generic or other cheaper medication for the patient and whose complicity could also help reassure the patient.

10.1.5 While the Ombudsman did not find any wrongful action on the part of the HCA in respect of the 'shortage' of the medication, we did take into account that the complainant had been caused considerable concern and stress that could have been avoided if the procurement process is revisited. To this end, the Ombudsman made several specific recommendations to the HCA to address and improve upon the deficiencies observed in their procurement process.

10.2 Failure to recover exhibit following conclusion of criminal prosecution –

10.2.1 'A' complained that the Police Force had not returned a sum of money which had been seized from him and held as evidence in a criminal matter involving a third party two years previously. 'A' had been arrested by the Police and detained overnight at a police station in relation to an offence for which a third party was charged. In the process, several personal items, including a sum of money, were taken from him. Although the personal items were returned to him upon his release from police custody the following day, the money was not. He was informed that the money was being retained as an exhibit and would be returned after the prosecution was completed. 'A' also complained that the police officers he had dealt with at the police stations had always refused to identify themselves even when he specifically asked them to do so.

10.2.2 Despite A's regular requests for updates from the police, he was informed that the case was still in court. The money was not returned. Over thirty months after his arrest 'A' had still not heard from the Police, but found out that the case had been disposed of and that the third party had been convicted. He contacted the police station again and was told he would be contacted by phone. Not having heard from them a month later, he was again informed that they would contact him. He had not heard from them by the date he filed his complaint with the Ombudsman in November 2022.

10.2.3 The Police Force was invited to comment on this complaint, and submit details of protocols followed in the course of criminal investigations when seizing and detaining property and personal items from suspects for use as evidence as well as recording, identification and recovery procedures for 'exhibits' upon completion of the court prosecution or upon a decision not to continue prosecution. The enquiry was still ongoing.

10.3. Conditions of Detention & Remand –

10.3.1. B was remanded by the court in a criminal matter upon refusal of his bail application. He complained that his continued incarceration was unfair because he had not committed any offence having followed lawful orders in the course of his employment and because of his advanced age and poor health. He also complained about the conditions of his detention which he alleged amounted to a violation of his constitutional rights. The Ombudsman was of the view that she was not mandated to investigate and/or interfere with the decision of a judge exercising a judicial function, namely, to remand a suspect or person charged with a criminal offence. B had been formally charged and as such the decision to remand remains a judicial prerogative that can only be reviewed by a superior court on appeal. Therefore, the Ombudsman had no mandate to investigate that aspect of his complaint. He was advised to discuss the matters with his defence attorney who would decide on their relevance to his defence and also instruct his defence attorney to make a formal bail application to the trial judge. The application for bail was made and B was released on bail pending the trial.

10.3.2. The Ombudsman focused the enquiry on the part of the complaint that involved the conditions of detention, to determine whether B's constitutional right to decent conditions and facilities was respected. To this end, the Ombudsman visited B at the detention centre where he was being held. It was found that the conditions of accommodation were adequate and comfortable and did not fall short of the norms and standards contained in both our international commitments and constitutional undertakings.

10.3.3. In view of this finding, and since B was on bail pending trial, the Ombudsman did not proceed any further with the complaint other than to make a recommendation to the Commissioner of Police in respect of the conditions of detention in the case of suspects and accused persons on remand. Further, in response to the report of the Human Rights Commission on the subject of detention facilities at the Central Police Station, the Ombudsman strongly recommended that the Police Force act urgently ensure that all detention facilities of non-convicted persons meet the standards and norms required both in our international commitments and in our own Charter of Fundamental Rights.



10.4. Decision to refuse employment in the public service on grounds of nationality

–

10.4.1. D, a Seychelles national, alleged a violation of the constitutional right to family and inequality before the law because his spouse, was refused employment as a medical professional by the Health Care Agency (HCA) on the grounds of being a foreign national. The refusal to employ was based on a health cooperation agreement between Seychelles and a third country. The cooperation agreement between the parties was still valid. It specifically provided that the Seychelles government cannot employ a national of the other contracting state without the agreement of the authorities of that state.

10.4.2. The cooperation agreement was submitted to our enquiry along with evidence that permission to employ D's spouse had been sought in line with the agreement but that the other contracting state had refused. From this information, the Ombudsman was unable to find any wrongful action on the part of the HCA. The complainant's spouse could seek employment in any private sector firm subject to obtaining a Gainful Occupation Permit (GOP); or could apply for Seychelles nationality before re-applying for a position with the HCA.

10.5. Unfair tender evaluation process –

10.5.1. B lodged a complaint against the Public Utilities Corporation (PUC) alleging irregularities in the tender process for a major utilities project. The complainant also complained of the handling by the Office of the Auditor General (OAG) of a Special Audit ordered by the Finance and Public Accounts Committee (FPAC) of the National Assembly.

10.5.2. B, a foreign company with Seychelles-registered subsidiaries, had a history of working in Seychelles since 1999. They responded to an open tender by the PUC for a large scale two-site utilities project. The tender process adopted involved a two-envelope system in which a Technical Bid, which included the bidder's qualifications and Technical Proposal, would be opened first. Only after Technical Bids had been assessed and found to meet all technical and qualifications requirements would the second envelope containing the Price Bid be considered for opening.



10.5.3. Three bidders responded to the tender, one of which was disqualified by the PUC Evaluation Committee for not being responsive upon opening of the Technical Bids. Of the two remaining bidders, B's technical submissions were considered far superior and very well designed when compared to the other bid. However, although it did not fulfil all the conditions, the other technical bid was retained. B complained that the other bidder's price bid should not have been opened.

10.5.4. Having found that the two price bids exceeded the available funds for the two-site project, PUC decided to downscale the project to only one site and proceeded to negotiate for a revised price from only the other bidder who they had deemed the most competitive, and to who they gave a "Notice of Award". B challenged the award, following the procedure set out in the public procurement legislation, arguing that the other bidder had not met the qualifications requirement in the Tender Documents. One requirement was that the bidder must have completed two projects of similar size and nature within the last five years and in which the bidder's participation must have been at a fixed sum quoted in foreign currency. PUC rejected B's challenge, stating that it had found the other bidder "qualified". PUC maintained this position that the other bidder was "qualified" or "technically qualified" throughout the course of B's challenge which lasted until a contract was signed with the other bidder in January 2019.

10.5.5. B appealed PUC's decision under the statutory appeals process and the Procurement Review Panel (PRP) ordered the re-tender of the revised project. The other bidder contested the review panel's decision and took both the panel and PUC to court to force them to award the contract. The Supreme Court dismissed the case in the first instance and the bidder appealed to the Court of Appeal, by which time PUC had declared a national emergency, the use of which enables flexibility in the tender process.

10.5.6. Although the Court of Appeal did not adjudicate on the question of whether the PUC's determination of the qualification of the bidders was correct since it was not a matter before it, the Court did refer to exceptional "preliminary hearings in order to resolve the matter expeditiously". Statements from the bar indicated that PUC had found the other bidder to be "technically qualified",

implying that this was the criteria for qualifying for the project. By the time the Court of Appeal delivered its ruling, over a year had passed and the emergency declaration had been made. In the interest of time, the Court ordered the PUC to request only price bids for the revised project from both bidders and did not require that technical bids be submitted. Consequently, since the bidder's qualifications are set out in the technical bid, which was not required for the revised project, the Court's decision meant that the technical qualifications of the other bidder would not come under closer scrutiny. However, the invitation to submit revised price schedules for the same project stated that the technical requirements remained unchanged from the original tender. Therefore, the bidders still had to meet the original qualifications requirements even though only the price bid was to be submitted.

10.5.7. B asked PUC whether bidders were required to meet the qualifications in the tender documents, and stated that it would not submit a price bid if the requirement was not respected. PUC again maintained that it had found that both bidders had met "*technical and other requirements*". On the basis of this response, B did not tender, and the project was awarded to the sole bidder who signed a contract.

10.5.8. B then submitted a report to the FPAC of the National Assembly of allegations of serious irregularities in that and other tender processes carried out by the utilities corporation. B's report to the FPAC also referenced a previous OAG Performance Audit of the corporation which had recorded major shortcomings with other projects. Findings in the report, which had been acknowledged by the PUC chief executive at a previous FPAC hearing, had included overshooting delivery deadlines by more than two years, providing substandard and old equipment and overcharging. Following receipt of B's report, the FPAC asked the OAG to look into the matter. The OAG's Special Audit Report endorsed the PUC's decision as a result of which the FPAC gave no further attention to the complaint.

10.5.9. The complaint to the Ombudsman of the actions of both the PUC and the OAG followed that outcome. The complaint against the OAG was that it had failed to independently investigate the irregularities in the Tender Process, focusing instead on procedural issues and information provided by PUC. The



Ombudsman launched an enquiry, inviting the two institutions to respond to the specific allegations made against them and carried out a lengthy and detailed review of all the information and reports submitted to the enquiry.

- 10.5.10. **Respondent Corporation had wrongly assessed the bids** – The Ombudsman concluded that PUC's decision to accept the other bid as being substantially responsive was based on a wrongful assessment of the facts that were within the knowledge of the assessors on the PUC Evaluation Committee at the time, and that the other bidder should have been disqualified and their price bid returned to them unopened. The Ombudsman specifically found that the other bidder did not meet the qualification requirements in the Tender Documents, and that the PUC Evaluation Committee had failed to take into account the other bidder's well-documented and recorded history of poor performance in Seychelles.
- 10.5.11. **Tender process was unfair** – The Ombudsman further found that PUC had wrongfully maintained that the other bidder was qualified throughout the course of the challenges by B, resulting in signing a contract with the other bidder for the project. The Court of Appeal's decision to submit only a price bid did not excuse the bidders from having to meet the qualification requirements in the tender documents. Consequently, the tender process and evaluation of the tender was unfair and resulted in an injustice and significant loss to the Complainant who was the only responsive bidder.
- 10.5.12. **OAG had failed to fully evaluate information** – In respect of the complaint against the OAG, the Ombudsman found that in its Special Audit, the OAG had failed to fully evaluate all the information and factors available from both sides to this dispute and draw an independent conclusion thereon. As a result of such failure, the OAG's report provided a limited perspective of the issue, based primarily on information from PUC, with findings that appeared to absolve the PUC of any wrongdoing upon which the FPAC and, by extension, the National Assembly, chose to take no further action. This affected B's challenge of the award by further delaying a resolution. The serious anomalies in the PUC's tender process are very similar in nature to anomalies on previous public works tenders, as described in a previous OAG Performance

Audit of PUC. The Ombudsman recommended that the well-documented problem in the management of this public authority be addressed and fixed.

10.5.13. **Recommendation for compensation** – The Ombudsman recommended that the PUC pay compensation to B and further recommended that compensation should cover costs and loss with respect to preparing the bid, challenging the award, and loss of profit.

10.5.14. The Ombudsman's enquiry report was also sent to the FPAC with a recommendation that they review the tender in that case and that they evaluate the roles played by all the public bodies involved in the case as identified in the report, and make changes in the procurement process for public works projects. This would help improve the procurement process going forward and prevent the recurrence of the serious anomalies identified in this tender process. To improve the procurement process, the Ombudsman also recommended an independent expert review of tenders for all large scale specialised public works projects to ensure that the country gets the best value for money, as well as the best technical solution, not just the lowest initial price.

10.5.15. The Ombudsman also submitted a copy of the report to the Anti-Corruption Commission of Seychelles (ACCS) with a recommendation to investigate the case further.

10.6. **Challenging the Tenth Amendment of the Constitution –**

10.6.1. In March 2022, following an invitation from the Office of the Attorney General, I wrote an Opinion on the draft bill to amend the mandate of the armed forces contained in Article 163 of the Constitution of Seychelles to give the army permanent policing powers.

10.6.2. The main issue identified was whether the proposed amendment was in line with the spirit and letter of the Constitution and could withstand the constitutionality test. I considered whether what I perceived as a fundamental change to the constitutional provisions governing the armed forces and the police was in conformity with the principles of a modern constitutional democracy, which generally recognises that the police serve and protect civilians, while armed forces serve military purposes relating to territory.

10.6.3. The amendment would technically be possible by an absolute majority of not less than two-thirds of members in the National Assembly voting in favour of the bill. I expressed the opinion that despite the regularity, the bill's provisions re-allocating the functions and powers of the Coast Guard to give it permanent and unlimited powers "*to assist the Police Force in carrying out its functions under Article 161*" was a fundamental departure from the letter and spirit of the 1993 Constitution and was fraught with danger to our democracy. Those provisions had been drawn from the socio-political context in which the police and armed forces operating under the Second Republic had misused and abused their powers, as well as the relationship of mistrust that existed between the police and the military of the time. Deliberations at the Truth and Reconciliation and National Unity Commission set up in 2019 had disclosed significant human rights violations allegedly perpetrated by the defence forces during the one-party state and well into the Third Republic. Many of these violations had continued in impunity and many had involved collaboration between the armed forces and the Police. The changes, therefore, were not in conformity with the democratic basic structure principles adopted in 1993 to retain separate and distinct Defence and Police forces.

10.6.4. The Constitution of the Third Republic, passed in a national referendum on 18th June 1993, had been endorsed by 73.9% of the voting population. It had ended the one-party socialist Second Republic which had effectively begun with the coup d'état of 5th June 1977. That event had violently ended the First Republic which had begun with Seychelles' accession to independence from the United Kingdom on 29th June 1976.

10.6.5. Notably, the First Republic of Seychelles did not have an army at independence but only a national police force. The Defence Act (Chapter 58 of the Laws of Seychelles), creating the armed forces, was only promulgated on 1st January 1981. I considered that the 1993 Constitution had introduced a new Republic based on the rule of law and the respect of fundamental human rights and freedoms.

10.6.6. **Amending article 163** – Considering Article 5 which establishes the Constitution as *the fundamental and supreme law of our Sovereign and Democratic Republic*" above all laws and from which they derive their power (Article 5), I

recalled that “any law found to be inconsistent with the Constitution is, to the extent of the inconsistency, void.” I considered the Tenth Amendment’s stated purpose – “to make it clear in the Constitution that the Defence Forces can exercise powers to assist any public authority in the enforcement of any written law in relation to matter such as public security, environmental security or maritime zones.” This was elaborated in the explanatory statement of the proposed draft amendment bill. It drew from the 2008 Constitutional Review Committee’s report which had recommended amending Article 163 “to crystallise the functions and powers of the Defence Forces”, and allow them “to police and enforce our laws in those waters where Seychelles has jurisdiction”, as well as protect the waters against pirates and prevent illegal drugs-smuggling into the country. The statement continued: “The Government wishes to make it clear that the Defence Forces will only be called upon in certain circumstances to assist a public authority.” These circumstances would be set out in protocols and memoranda of understanding to be developed with “certain public authorities and bodies.”

10.6.7. What is the mischief being addressed? – From the explanatory statement, I deduced that the amendment would regularise a perceived or real conflict and/or illegality created by direct involvement of the defence forces in police force activities. This involvement had arisen out of the incapacity or inability of the Police Force to deliver on its constitutional mandate and effectively fight the war on the illegal drugs trade in our country. However, the proposed bill did not state this explicitly. The expressed intention of the amendment, on the other hand, was to grant to the Coast Guard the legal power to use its specialised capacity to enable it to carry out the Police Force’s constitutional obligations and responsibilities in view of the latter’s lack of capacity.

10.6.8. What changes did the amendment envisage – The amendment sought to remove the ‘state of emergency’ provision, thereby enabling the cross-assistance of Defence Forces-Police Force to apply on a permanent basis. I felt that this removal would fundamentally change the present constitutional guarantee that provides that the Defence Forces can only be called out to assist the civil authority in a state of emergency, which must first be declared and proclaimed in accordance with Article 41. Moreover, the power to “assist

the Police Force in carrying out (all) its functions under Article 161” at any time is granted not only to the Coast Guard, but the entire Defence Forces.

10.6.9. **Ombudsman’s observation & findings** – I concluded that the amendment was a violation of the letter and spirit of the Constitution for the following reasons:

10.6.10. **The rational of the amendment is based on a fundamentally wrong premise** since it sought to bring the Constitution in line with the reality created by a statute, the Defence (Amendment) Act of 2020, which had given the Coast Guard policing powers which were in conflict with the constitutional powers of the Police. Amending a Constitution to bring it in conformity with an inferior law flies in the face of all recognised principles of Constitutional Law.

10.6.11. **The proposed change departs from letter and spirit of Constitution** – The role of the Police Force is to *preserve public order and tranquillity, promote public health, safety and morals, and prevent, detect and help punish crimes* to ensure that the rule of law is enforced in any democracy. Therefore, granting powers to maintain law and order to members of the defence forces does not sit well as a cornerstone of our constitutional democracy. Furthermore, the proposed changes had a real potential to open the door to serious violations by any future administration.

10.6.12. **Constitutional powers of the Police** to enable the Defence Forces to assist the Police Force in carrying out its functions under Article 161 were granted to all Defence Forces and not confined to the Coast Guard thereby doing away with the autonomy and independence of the Police Force

10.6.13. **The power given to the Defence Forces covers all functions of Police Force.** Despite the stated intention to restrict the use of the Defence Forces to assisting a public authority only in “*certain circumstances*”, listed in the explanatory statement as “*enforcement of any written law in relation to matters such as public security, environmental protection, maritime security or maritime zones*”, the amendment did not cite any such restrictions. It effectively gives *carte blanche* to all the Defence Forces to “*assist the Police Force*” in carrying out any and all of the latter’s constitutional functions. Consequently, the Police Force could well find all its activities and functions impacted by all the forces within the armed forces and not just the Coast Guard. Such impact

may also be of a permanent nature and not confined to only periods of a state of emergency as provided for presently. Furthermore, despite the undertakings given by the present administration in the explanatory statement, it was evident that such undertakings had no force of law and could not bind the present or any future administration.

- 10.6.14. **Amendment did not address issues of civil liability and responsibility that may arise out of police/army cooperation** – In a modern democracy, maintaining law and order is the primary responsibility of the civilian Police Force. If the responsibility for this was being given completely or partly to the army, serious consideration should also be given to resolving the issues that may result from actions of defence force personnel within the civilian community, such as death or serious injury. An intention to clarify the roles and status of members of the Forces and their relationship with civilians through protocols and memoranda of understanding was mentioned only in the explanatory note. Such frameworks are essential in an Act and not through administrative arrangements.
- 10.6.15. **Alternative options that could resolve the mischief were proposed.** These included building capacity in the Police Force so that it could carry out those aspects of its work that only the Coast Guard could effectively carry out. A more immediate and economically viable solution would be to absorb the Coast Guard into a special unit within the Police Force. Special units could be trained to conduct high-risk operations in areas highlighted in the amendment. This system exists in Singapore where the Police Coast Guard is a fully equipped and functional unit of the Police force combining marine police and coast guard functions of law enforcement duties and search and rescue operations.
- 10.6.16. **Placing the Question before the Constitutional Court** – I notified the Executive and the Legislature that I would decide whether to place a question before the Constitutional Court of Seychelles to determine the constitutionality of the Tenth Amendment. My Opinion was submitted in an advisory capacity to both the Executive and the Legislature prior to the Bill being presented to the National Assembly. Before the vote only one MNA called to discuss my opinion over the telephone. The Tenth Amendment was passed by the National Assembly on 1st June 2022 and assented to by the President on 14th

June 2022. Following this, I entered discussions with the Human Rights Commission and the Bar Association of Seychelles to consider what action, if any, we could take. We decided to file a petition before the Constitutional Court to challenge the constitutionality of the law. The petition was still before the Constitutional Court by the end of the year.

10.7. State encroachment of private property –

10.7.1. This case was reported in the 2021 Ombudsman's Annual Report and is revisited in the present report as an example of how recommendations from the Office of the Ombudsman are not attended to as should be expected of this constitutional institution. As at the date of the present report, and this despite regular requests for an update on the status of this case, the Complainant had not received any compensation. The latest information was that the Lands Department surveyor was to survey the parcel with a view to subdividing it.

10.7.2. The case involved J, co-owner of property purchased on La Digue Island under the 'old' land registration system in the early 1970's. The original title deeds made no reference to any public road or pathway across the land, although the complainant acknowledged that the *semen Belle Vue* passed in front of the property. However, like all other roads on the island at the time, the 'road' had no hard surface until the first decade of 2000. In fact, no public roads had been proclaimed on La Digue Island as required under the Roads Act. In 2010, J's land was surveyed, attributed a title number and placed on the New Land Register. On the cadastral plan, the surveyor showed the 'main road' from La Passe to Belle Vue as cutting across a corner of the title. Consequently, J 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'. Additionally, with the increase of vehicular traffic on La Digue Island (previously confined to bicycles and ox-carts) following the lifting of the complete ban on ownership of private vehicles, the road had become busier and had been widened bringing it closer to J's house, which she said caused her distress and inconvenience. She had never authorised the State to build or widen the road.

10.7.3. J had laid a claim for compensation with the Ministry responsible for land use for loss of the land and for the discomfort and inconvenience caused by the increased traffic. The ministry acknowledged receipt of the claim six months later. It was being 'assessed'. After two years of no reply, J instructed an

attorney to formally claim compensation from the Ministry. A year later the Ministry had still not replied and she complained directly to the President.

10.7.4. Following the President's intervention, the Ministry had informed J's attorney that J was not entitled to any compensation. According to their research, (i) the road had been built by the government Public Works Department 40 years previously; (ii) the way leave process granting permission for public roads did not exist at the time; (iii) all the inhabitants had been in favour of a road; and (iv) the road was already in place and featured on the cadastral plan at the date that the title number had been registered in J's name. She complained to the Ombudsman against that decision, which she claimed was wrong in all the circumstances, unreasonable and unjust and violated her constitutional right to property.

10.7.5. The Ombudsman's enquiry reviewed the ministry's files and sought information on the road construction. A ministry of land use file had been opened with J'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. I found that the ministry had wrongly concluded that J had bought the land in 2011 with the road *in situ*. They had not checked her title deeds. The Ministry had failed to consider that the road had changed over the years since the early '70's and even since 2010 when it had been widened and given a hard surface. The Ministry had therefore erroneously rejected the claim for compensation. I recommended that the Ministry pay the complainant compensation for the encroachment and loss of use of the portion road that was now part of the road although I did not propose a sum. I recommended that the compensation be paid within three months of my recommendation being submitted. The Ministry had insisted on seeking the opinion of the Attorney-General on my recommendations and had not acted on them by the end of 2021. Nothing had been finalised by the end of 2022.

10.8. Unfair refusal by land transport authority to grant special licence –

10.8.1. This complaint was also reported in the 2021 Ombudsman's Annual Report. It is reproduced as an example of how the respondent public authority can ignore the outcome of the work of this Office and not take any remedial action as recommended. In this case, X, an owner-operator of a self-catering

establishment on La Digue complained of unfair, unequal and discriminatory treatment by the Department of Transport (DOT). He had applied in early 2014 for a special permit to own and operate an electric-powered golf club cart for his business, situated outside the island's main administrative and commercial centre. The application, made in the form of an ordinary letter addressed to the DOT, had followed a media announcement by the then tourism minister that electric vehicles would soon be allowed on the island. X 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 seen in the Ombudsman's enquiry contained several conditions for the grant of a special permit, which mirrored all the road licensing regulations covering the use of any vehicle on public roads anywhere in the country.

10.8.2. The Complainant renewed his application in August 2018. The DOT responded a month later to say that the special permit would not be granted in his case because a moratorium had been placed on golf carts on the island. Having asked the DOT why his original application had not been dealt with and had now been refused, while the special permit had been granted to others, and not having received the requested information, he lodged a complaint with the Ombudsman.

10.8.3. 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. I found that section 8, 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 arbitrarily to grant special permission to operate all and any type of vehicle on the island.

10.8.4. With the exponential growth of vehicular traffic on the island, ('over 100 vehicles', according to the DOT to the enquiry), 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, I noted that 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 flouted anyway. No attempt was made following the adoption of the policy 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.

10.8.5. I considered 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) to determine whether they 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 X'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.

10.8.6. My main recommendation was that the complainant 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 the revision of Section 8 of the Road Transport Act 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.

10.8.7. The Ministry of Transport have not followed up my recommendations. When queried about the status of this case in April 2022, the ministry of land transport responded in an email in May 2022 with a copy of the updated La Digue Land Transport Policy 2022 and an undertaking that the ministry *“shall begin to transform the policy into appropriate legal instrument”* and would keep the Office of the Ombudsman updated on the progress. No indication was given as to the action being proposed to redress the unfairness to the Complainant. There has been no further action from the Ministry to the date of this Annual Report.

“While we do not have the power to compel acceptance and implementation of our recommendations, we do have an important and effective tool in the power to publish. Ultimately, our power is in our voice.”

Ombudsman Ontario, Canada



11. SAMPLE OF REPORTED COMPLAINTS – PREMATURE & OUTSIDE REMIT

| NATURE OF COMPLAINTS | RESPONDENTS |
|--|--|
| <p>Delays/Failure to Complete Employment Dispute –</p> <p>The complainant lodged a grievance with the Employment department against a private security firm more than a year before submitting to the Ombudsman. Although a mediation session had been held to address the grievance, the complainant had received no communication whatsoever from the Department or update on the outcome. The complainant was advised to raise the matter with the Employment Department in writing to request that they look into the shortcomings of the department.</p> | <p>Ministry of Employment & Social Affairs</p> <p>Outcome – Premature</p> |
| <p>Unprofessional Conduct by Legal Practitioners –</p> <p>A complainant complained about substandard and mediocre service from three legal practitioners retained and instructed to take up litigation in three different matters. The complainant had been dissatisfied with all three attorneys, alleging that they had failed to properly file the cases and represent the complainant. The complainant was advised to file a formal complaint with the Chief Justice under the Legal Practitioners Act as is required by law.</p> | <p>Private parties – legal practitioners</p> <p>Outcome – Outside Remit.</p> |
| <p>Reviewing failure to implement an order of the PSAB –</p> <p>The complainant, a public officer, alleged unfair termination of employment by the Road Transport Commission and filed a grievance with the Public Service Appeal Board. The PSAB made an order in October 2021 that the complainant be reinstated in employment with salary with effect from the date of the termination. However, the RTC had not implemented the PSAB's</p> | <p>Public Service Appeal Board</p> <p>Outcome – Premature</p> |



| | |
|--|---|
| <p>order. The complainant was advised to follow up with the PSAB which would have to enforce its own judgment/order.</p> | |
| <p>Seeking Guidance on Private Property Matters –</p> <p>The complainant claimed to have been living on and occupying a private land parcel for over sixty (60) years, claiming that he had been granted written permission by the owners to occupy the land until his death. He sought advice from the Ombudsman on property matters, specifically whether his children could ‘inherit’ the land he occupied upon his death. The complainant was advised to seek legal advice and guidance from a legal practitioner.</p> | <p>Private matter</p> <p>Outcome – Outside Remit</p> |
| <p>Investigating an incident of death by Hanging –</p> <p>A complainant reported that his son had died by hanging seven years prior and that the Police at the time had said they would carry out an investigation into the death but that they had never done so. The complainant had lodged a complaint on the same subject with the Seychelles Human Rights Commission two years prior and was still awaiting the outcome.</p> <p>As the complaint was still under consideration by the SHRC, the complainant was advised to follow up with the Commission, in writing. He was also advised that the Ombudsman is prescribed from enquiring into complaints that have occurred more than twelve (12) months prior.</p> | <p>Police Force & Seychelles Human Rights Commission.</p> <p>Outcome – Out of remit & Out of time</p> |

“The Ombudsman is like a canary in the mine of democracy. If democracy is healthy, the Ombudsman sings and the future and health of the country is good.”

Dean M. Gottehrer, former President United States Ombudsman Association

12. STRATEGIC PARTNERSHIPS & MEMBERSHIPS

- 12.3. **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. **Membership fees** – are paid annually in the sum of Euros 1,000 through the Ministry of Foreign Affairs. The Office was up-to-date with its subscription in 2022.
- 12.4. **AOMF 11th CONGRESS ON THE ROLE OF THE OMBUDSMAN & MEDIATOR IN DIGITAL TRANSFORMATION AND ACCESS TO RIGHTS** – The AOMF held its 11th Congress in Marrakech, Morocco between 16th and 19th May 2022 on the theme “Digital Transformation and access to rights – the Challenge common to all in the French speaking world – What role for the Mediators and Ombudsman?” (*“Transformation numérique et accès aux droits, enjeu commun dans l'espace francophone : Quel rôle pour les Médiateurs et Ombudsman?”*). However due to circumstances beyond my control as well as issues with respect to payment for overseas travel, I was unable to travel to Morocco for the Congress.
- 12.5. **AOMA (ASSOCIATION OF OMBUDSMAN AND MEDIATORS OF AFRICA)** – The Office is an active 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 both physically and, since the start of the COVID-19 pandemic, virtually. I was elected as Deputy Secretary General of AOMA in November 2019 and still hold the position. The pioneering role of the Seychelles Ombudsman in the creation of AOMA should be noted. Seychelles hosted the 7th African Regional Ombudsman Conference in July 2001 which paved the way for the establishment of AOMA. I had hoped to help bring greater recognition to this by offering to host the next AGM of the AOMA. The AGM, which had still not been held by the end of 2022, is now overdue. It could be interesting for Seychelles to host the next AGM which will be an occasion to celebrate the 20th anniversary of the creation of AOMA in 2023. **Membership fees** – Membership fees are paid annually in the sum of US\$ 1,000 through the Ministry of Foreign Affairs. The Office was up to date with its annual subscription in 2022.

12.6. **AOMA EXECUTIVE COMMITTEE MEETINGS** – Since 2020, the AOMA executive committee has held its meetings virtually online. In 2022, meetings were held on 13th January, 22nd March and 6th July 2022. The last meeting of the year was postponed twice due to a lack of quorum. One of the matters that remained high on the agenda of all three ExCo meetings was the delay experienced in holding the Annual General Meeting of the group of 47 members which had been scheduled for the last term of 2021. Egypt had offered to host the physical AGM on condition it was postponed to March 2022. However, since they had not confirmed, the decision was taken to accept Rwanda's offer to host. However, by the end of 2022, the AGM had not been held.

12.7. **INTERNATIONAL OMBUDSMAN INSTITUTE (IOI)** – The Ombudsman of Seychelles is now a voting member of the IOI since June 2022. Although a member of the IOI from the creation of the Ombudsman's office in 1994, we lost membership in 2004 after being unable to meet our membership financial obligations over several years during the national foreign exchange crisis. This major global Ombudsman institution 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, it is clearly in the best



interests of the Office to join as a member, more so since the cost of membership, US\$ 375 per annum, is nominal for Seychelles.

12.8. MAINTAINING DIALOGUE DURING & AFTER THE PANDEMIC – WEBINAR DISCUSSIONS

Building back better clearly offered a more cost effective new way of staying in touch with our international partners even as the pandemic started to wind down and travel returned to normal the world over. Our strategic partners, the *Association des Ombudsman et Médiateurs de la Francophonie* (AOMF) and the African Ombudsman and Mediators Association (AOMA) continued to organise online webinars and meetings throughout 2022 which our staff attended with great enthusiasm.

12.8.1. 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 a range of selected subjects during the course of the year. The Office attended the following sessions.

12.8.2. AOMA, the IOI and the Value of Being a Member – 25th January 2022

This webinar considered the value of membership of AOMA and the IOI to African ombudsman as well as the roles and functions of both institutions in strengthening capacity of Ombudsman institutions to provide a service that is efficient and responsive to the needs of their citizens.

12.8.3. Handling Complaints – 8th March 2022

The discussion focused on giving participants the key skills and confidence to improve the handling of complaints and ensure satisfactory solutions to complaints received. It looked at the process and methodology needed to formulate effective complaints handling procedures. An effective complaints management system helps create trust between the Ombudsman's office, the institution under investigation and the complainant. Speakers shared experiences on how to identify the root cause of the problem and determine the action needed to resolve the complaint as well as how to transmit feedback to the complainant on the process. They also looked at how to use complaints to establish continuous improvements in public service delivery as well as the use of technology, the internet and social media in the complaints handling process.

12.8.4. Seeking Higher Ground; Values and Ethics of the Ombudsman – 30th March 2022

The discussion centred on whether there was a need to set up a general code of ethics for the Ombudsman. It was generally acknowledged that the

Office already promotes ethics and accountability in government and the public sector as a whole and in doing so embraces ethics.

- 12.8.5. **Managing Evidence – 19th April 2022** – The webinar focused on the different types of evidence and admissibility requirements as well as how to gather evidence, analyse and evaluate it and maintain its chain of custody and preservation throughout the process. Emphasis was placed on the fact that any investigation carried out by the Ombudsman has the potential of being challenged in a court of law. Hence, the importance of techniques for processing and managing evidence correctly to support good quality investigation reports that are able to withstand scrutiny in court.
- 12.8.6. **Effective Investigation Strategies – Building Blocks, Methods/Tools – 14th June 2022** – The facilitated discussion reviewed effective investigation techniques as well as organizing and managing investigations and drawing lessons from investigations on the best way forward.
- 12.8.7. **Document Storing and Archiving – 12th July 2022** – This webinar focused on the need to process and protect personal data received during the course of the Ombudsman's work. It also covered internal, legal and regulatory requirements as well as the length of time such information could be kept and how it could be properly disposed of once it is no longer needed.
- 12.8.8. **Showcasing Sectoral Ombudsman (Municipal, Police and Military Ombudsman) – 23rd August 2022** – The discussion considered the legal basis and mandate of the sectoral ombudsman, the relationship with the national Ombudsman as well as the process of appointment and removal of staff. Speakers discussed the independence and reporting structures of sectoral ombudsman and provided guidance on how to establish sectoral ombudsman offices as well as lessons learnt and advice from jurisdictions that had carried out the process. In the context of Seychelles, a Children's Ombudsman could make a lot of sense for the future of the National Council for Children now that that institution no longer plays a direct statutory role in protecting the rights of children.
- 12.8.9. **Dealing with Challenging Behaviour – 23rd November 2022** – This session gave participants an insight into how to deal with challenging behaviour from angry or frustrated complainants who approach and use the services of the ombudsman. As with all public institutions, people who handle complaints

often say the most challenging part of their job is managing the behaviour of some complainants even where the complainant has a legitimate grievance. The seminar discussed challenging behaviour, providing guidance to Ombudsman offices on how to effectively and productively deal with vulnerable or distressed complainants or those who refuse to accept final outcomes or listen to the advice provided, as well as those who, sometimes, demonstrate abusive or even threatening behaviour.

- 12.8.10. **Processus et Moyens d’Intervention des Institutions du Médiateurs et de l’Ombudsman – 22 au 23 novembre 2022** – This two-day training workshop was organised by the AOMF in collaboration with the Mediator of Morocco in Rabat Morocco. It was designed for Ombudsman staff involved in and carrying out investigations to provide them with investigative tools and techniques as well as research and report writing skills. However, since travel costs to and from the venue are to the charge of the Office, while the AOMF covers only accommodation and airport transfers, the Office could not avail of the training opportunity to send a candidate to Morocco.

“Courts of law are not unnaturally concerned for the most part with questions of legality. The fact that public officials have not acted contrary to the law does not mean, however, that they have adhered to the widely accepted principles of good administration. Bad administration is not always or necessarily unlawful.”

Righting Wrongs – The Ombudsman in Six Continents by Roy Gregory & Philip Giddings (Publication of International Institute of Administrative Sciences)



13. ACKNOWLEDGEMENTS

- 10.1** As I enter this final year of my seven-year mandate in March 2023, I once again acknowledge and thank the citizens of Seychelles for the trust they continue to place in this institution in their search for fairness and justice. While we may not have always succeeded in our endeavours to meet the high expectations of the public, we have always done our best to listen attentively, take time to explain and show empathy towards those who turn to us in their hour of need.
- 10.2** For many who have laid complaints upon our table and who continue to experience delays in our handling of their complaints, once again, I plead regret. I thank them for their patience and reassure them of our commitment to address this weakness.
- 13.3.** I acknowledge and am deeply grateful to my small and committed team for their relentless support. I know that without their devotion and dedication we would not have accomplished what we have this far. As 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.
- 13.4.** Finally, I thank the public officers whose cooperation and commitment to working with my Office in this past year has made a difference, not only to the complaining citizens, but also to their respective institutions and the public service as a whole. They have understood the value of using this quality control exercise to their advantage to improve their own service delivery. Because of their engagement in righting the wrong, the vision of a fair, open accountable public service is no pipe dream but a tangible reality achievable by all.

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

Medium Term Strategy for period 2022 - 2024

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 and/or become a party**, with the leave of the court, to legal proceedings where there has been a contravention of the provisions of the Charter of Fundamental Rights and Freedoms; 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'

To achieve our vision the Ombudsman plays a central role in ensuring that public service decision-making and processes are applied fairly, consistently, transparently and equitably across all public services and recommends remedies for administrative injustices while promoting good governance in public administration and the delivery of public services.



Motto

Righting Wrongs



Our Main Services

- Receiving and processing complaints from the public;
- Investigating complaints that raise prima facie issues of maladministration;
- Mediating, negotiating and adjudicating disputes and complaints, where possible;
- Referring complaints and disputes outside our remit to other institutions for action;
- Reviewing legislation to determine whether there are any constitutional conflicts and preparing opinions thereon for submission and advice to the executive and the legislature;
- Educating the public on the role of the Ombudsman and designing services aimed at fulfilling the mandate and mission of the Office as set out in the Constitution of Seychelles;
- Setting up and managing a national education programme, in collaboration with government ministries and other institutions, to educate the general public on the roles of the constitutional oversight institutions, including the Ombudsman.

Core Organisational Values

As a constitutional body, we preach, follow and adopt the fundamental principles of good administration. Our organisational values reflect the qualities that our staff are expected to demonstrate when carrying out their functions. More than a checklist, these principles provide a valuable framework to which all public service providers should adhere in carrying out their respective duties. We will consequently apply these same standards and values in reviewing any of their decisions and services. We expect all public service providers to have integrated similar values into their own decisions, actions, policies, processes, and systems.

1. **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.
2. **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.



3. **Independence** - We examine complaints, conduct reviews, and make decisions in a fair, objective, and impartial manner.
4. **Openness and accountability 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.
5. **Confidentiality** – We treat every complaint with the confidentiality that is expected of our Office.
6. **Innovation** – We continuously review our own performance and avail of best practices to improve our service delivery and, thereby, enhance confidence in public service delivery.

Strategic Directions over the Medium Term 2022-2024

Three main strategic directions identified:

- Increased visibility and engagement of the Office of the Ombudsman with the public;
- Proactive engagement in redressing individual organizational and systemic instances of maladministration and abuse of process resulting in human rights violations;
- Improve measures and enhance our management and administrative frameworks to engage more proactively with individuals and organisations to ensure that we conduct independent investigations of maladministration and unfair actions and practices that result in rights violations, by public officers and authorities in the delivery of their services.

Key actions

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

Visibility

- Improve the visibility of the organization through a series of mass and social media activities and outreach programmes targeting the public.
- Improve the signage to make the public more aware of the location of the Office.
- Provide the public with more information about the Office of the Ombudsman through the development of information, education and communication materials such as leaflets, booklets, bookmarks and posters.

Autonomy



- Increase the financial and administrative independence of the Office of the Ombudsman through greater autonomous decision-making on administrative and financial issues.
- Establish clear demarcations in authority and functions of all organisations working with human rights issues in Seychelles through engaged and significant dialogue with the executive and legislative branches of the country.

Institutional Capacity

- Improve the efficacy, efficiency and effectiveness of the organisation through capacity-building with sufficient and qualified staff to accomplish required tasks.
- 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.
- Develop structures, procedures and processes to facilitate the work of the organisation through the design and establishment of Standard Operating Procedures (SOPs).
- Improve data management systems for better monitoring, evaluation, learning and reporting of the functions, processes and results of the organisation.

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 resilience and the unique and fragile nature of the Office determined to beat all odds in a hostile environment where its role is often misunderstood by both complainant and public service provider and not always appreciated or accepted.
- The **symmetry** adopted in the logo depicts the balance and discretion in the Ombudsman's effort to achieving fairness, openness, accountability and effectiveness in the public service.

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.





20-17331 (E) 050121

**The role of Ombudsman and mediator institutions
in the promotion and protection of human rights,
good governance and the rule of law**

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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.



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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.



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.



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- (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.