



**REPUBLIC OF SEYCHELLES**

**ANNUAL REPORT  
OF THE**



**“The Ombudsman —  
A Quality Controller for Democracy”**

**FOR THE YEAR ENDING  
31<sup>st</sup> December 2023**

## Message from the Ombudsman

### The Ombudsman – A Quality Controller for Democracy

Good governance – the rallying cry of modern democracies – is the outcome of public administration that guarantees and offers transparency and accountability in its actions.



While conventional wisdom used to believe that elections alone served to keep public authorities in check, modern democracies have moved away from this theory towards constitutional and statutory institutions established to act as gatekeepers.

Our own multiparty democracy in 1993 set the pace by providing for other institutions of continuous accountability to operate alongside the courts. Institutions like the Auditor General, the PSAB and the Ombudsman, were set up to scrutinise and hold public authorities continuously accountable for their actions, calling them to account for their actions and to provide information, analysis and redress.

The constitutional Office of the Ombudsman was given the responsibility in the Third Republic for guaranteeing good governance and accountability and protecting citizens from abuse by civil servants who may not have fully appreciated that they and the public authorities in which they operate exist to serve the people and not the other way round.

In the task of keeping public authorities and public officers in check, the Ombudsman can be likened to the quality controller in a production process. In watching over the service delivery of public authorities, the Ombudsman, like the courts, can look into actions that may impact legal principles, such as proportionality, equality, legitimate expectations and impartiality. That same “legality” that, even when based on a concept of law, legal principles and



fundamental rights, must never ignore the basic concepts of good administration.

Like a court of law, the Ombudsman not only considers the individual case but also asks how similar cases should be treated by public authorities in the future so as to avoid a repeat of the faulty action.

Maladministration occurs when a public authority fails to act in accordance with a rule or principle which is binding upon it. This definition is broad enough to bring within the Ombudsman's oversight the respect for fundamental rights and for principles of administrative law and good administration. Hence, the public authority and its officers become more accountable and thereby more transparent.

Being accountable means to have the duty to provide an account – an explanation that can justify one's actions in terms of appropriate criteria and in sufficient detail.

The concept of accountability also implies liability to some form of sanction where the performance revealed by the account is considered unsatisfactory. That sanction may be legal or, in a broader sense, political. In a flourishing democracy, public criticism can be a significant form of sanction.

While the court can 'punish' by awarding damages to the aggrieved party, the Ombudsman can only recommend reparation. However, through those recommendations, the Ombudsman has a unique opportunity to prompt public authorities to establish guidelines for future conduct not only on a reactive, case-by-case basis, but also in a proactive way. By way of example, the Ombudsman may recommend the adoption of internal checklists, best administrative practices or codes of good administrative behaviour to tackle systemic maladministration.

True, the work of the Ombudsman is not legally binding on public authorities. That, in itself, is not a bad thing. Since the ultimate objective is to improve governance, the effectiveness of the Office is based on moral authority and,



ultimately, on publicity and the ability to persuade public opinion. Consequently, where democracy and the rule of law are strong, public authorities accept and embrace the Ombudsman's findings and recommendations, because that is the right thing to do.

Quality administration is the end product of this process, built through good practices and reasoned decisions resulting from a transparent process that can be seen, understood and followed by all. The quality controller succeeds when the shop floor not only appreciates the objective and purpose of the review, but is also determined to act in a better, fairer, more open and most effective way. Through this oversight role, the Ombudsman enriches the space in which citizens participate actively in the democratic process.

By promoting accountability and active citizenship, the Ombudsman contributes to reinforcing the rule of law and thus the balance between equality and liberty, salient features of the pluralist variant of democracy.

**Nichole Tirant-Gherardi**

**Ombudsman**

**31<sup>st</sup> January 2024**



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## 1 INTRODUCTION

This report covers the activities of the Office of the Ombudsman for the period of 1<sup>st</sup> January to 31<sup>st</sup> December in the year 2023. It is drawn up in compliance with Paragraph 6 (6) of Schedule 5 of the Constitution, which requires the Office to submit a general Annual Report on the exercise of the Ombudsman's functions during the previous year to the National Assembly and copied to the President not later than the thirty-first January in each year.

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.

It is of note that this is the last annual activity report in the mandate of the current Ombudsman whose term of appointment ends on 30<sup>th</sup> March 2024.

**Soft copies are available upon request by electronic mail to:**

[info@ombudsman.sc](mailto:info@ombudsman.sc) or can be accessed on our website: [www.ombudsman.sc](http://www.ombudsman.sc)

### THE OMBUDSMAN – A QUALITY CONTROLLER

- A **CONSTITUTIONAL OFFICE** and part of the system of Administrative Law that scrutinizes the work of the Executive acting through its Public Service.
- Acting with **Confidentiality, Informality, Impartiality, and Independence to uphold the Rule of Law** to ensure that public officers and authorities act fairly and in accordance with the laws and procedures and respect and promote the fundamental rights of people.
- A **FOURTH PILLAR** in the democratic system of checks and balances, the Ombudsman concept is included in the Constitution of the Third Republic, committed to preventing/avoiding maladministration that leads to injustice.
- A **QUALITY CONTROLLER** between the individual citizen and the State, standing up for the public's right to **good governance** by investigating instances of maladministration

## 2 VALUE OF ADMINISTRATIVE PROCEDURES

2.1 Administrative procedures are **a set of formal objective rules enacted by private or governmental organizations that govern management decision-making**. They help establish the legitimacy of management action by ensuring that management decisions are objective, fair, and consistent. They help ensure accountability. Administrative procedures lie at the heart of the work of the Office of the Ombudsman whose primary objective is to look at management actions through that lens.

### Importance of Administrative procedures

- ❖ **ADMINISTRATIVE PROCEDURES** are often found in the laws and regulations governing particular functions of government, such as taxation, public health, education, and town and country planning.

An orderly procedure is:

- ❖ **Efficient;**
- ❖ **Allows responsibility to be fixed** on a particular officer or body at each stage of the administrative process;
- ❖ **Safeguards the rights of citizens** and **protects the Executive** against the criticism of having acted in an arbitrary manner;
- ❖ Ensures **regularity and consistency** in the handling of individual cases.

But much depends on the **quality and purpose of the procedural requirements**.

**RULES OF ADMINISTRATIVE PROCEDURE** provide the administrative machinery for decision-making. These include:

- ❖ methods for lodging appeals;
- ❖ the rights of interested persons;
- ❖ time limits that must be observed;
- ❖ conditions to be satisfied by objectors;
- ❖ right to legal representation.

### 3 THE OFFICE

- 3.1** The constitutional Office of the Ombudsman is mandated to address issues of governance and deal with “*maladministration.*” Although the Constitution does not define “*maladministration,*” it does describe “*actions*” of public officers in terms of ‘*injustices*’, ‘*violations of fundamental rights and freedoms*’ and ‘*harsh and oppressive treatment*’ of citizens as well as persons subject to the law in Seychelles.
- 3.2** While its mandate remains unchanged, the Ombudsman has adapted its work in order to face the challenge of duplication that has become inevitable through the creation of other statutory institutions charged with parts of the same tasks given by the Constitution to the Ombudsman.
- 3.3** More specifically, the [Seychelles Human Rights Commission \(SHRC\)](#) and the [Anti-Corruption Commission \(ACCS\)](#) were created with wider powers and larger resources to deal respectively with violations of fundamental rights and freedoms and the corruption agenda. In order to avoid duplication and the resultant waste of resources, The Ombudsman has adopted a referral process of complaints falling in those two categories. Although the Ombudsman is still mandated to investigate instances of fraud and corruption and human rights violations, it has not done so in the light of the above.
- 3.4 Investigating Allegations of Fraud or Corruption – Schedule 5 paragraph 1(1)(b)** of the Constitution 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. No such cases were referred in the course of 2023.



**3.5 Investigating actions that result in human rights violations** – The Ombudsman is obliged, upon receiving a complaint alleging a violation of the complainant's fundamental rights or freedoms as guaranteed under the Charter, to investigate the action. **(Paragraph 1(2)(a))**. 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.

**3.6 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 2023. Memoranda of Understanding have been framed to cover the identified overlaps and ensure effective cooperation between us.



Figure 1: How to access our offices

***Transparency + Accountability =  
Good Governance***

## 4 OFFICE ACCOMMODATION

- 4.1 The Ombudsman operates from physical premises in Suites 206 and 306, on the second and third floors of 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. In 2023, one complainant benefitted from this special arrangement.
- 4.2 The Office also has an online presence with an interactive website: [www.ombudsman.sc](http://www.ombudsman.sc) through which details of our mandate and processes can be obtained and complaints can be lodged.
- 4.3 We are also present on social media with a page on Facebook.



*Ombudsman Office frontage in Aarti Chambers, Mont Fleuri*

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## 5 STAFFING & TRAINING

5.1 In 2023, the Office of the Ombudsman registered no changes in members of staff, ending the year with the same complement of six persons, including the Ombudsman. One important vacancy, the post of Principal Investigations Officer remained vacant throughout 2023. The post of Senior Administrative Officer, a key position in the Office's 'administration section' dealing with administrative, financial, and human resources matters, was filled at the end of the year from within the Office. 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	-	(Vacant)
Senior Investigations Officer	-	Sylvette Gertrude
Legal/Investigations Officer	-	Carmen Cesar
Investigations Officer	-	Tressy Dine
Assistant Investigations Officer	-	Lynn Jabbie
Senior Administrative Officer	-	Wendy Michel (from 01-11-2023)
Accounts Assistant	-	(Vacant)

5.3 **Information Officer** – During 2023 Legal/Investigations Officer, Carmen Cesar was nominated Information Officer in accordance with our legal obligation under the **Access to Information Act**. She replaced Ms Sylvette Gertrude who had held the role from 2018.

5.4 **STAFF TRAINING SESSIONS** – Throughout 2023, staff followed training opportunities, both locally and through membership of international ombudsman organisations. Virtual webinars and training sessions remained an integral part of the training landscape in 2023 with all Office staff registering to follow the numerous webinars organised by our international partners, the AOMF and the AOMA. We were also able to send three members of staff to Mauritius and Morocco to attend short training sessions organised under the auspices of the AOMF and the Mauritius Ombudsperson for Children. The training sessions, workshops and seminars are described in more detail in Paragraphs 5.5, 5.6 and 5.7 below.



**5.5 DIPLOMA IN OFFICE AND RECORDS MANAGEMENT LEVEL 1** – In September 2023, Administration Section's Wendy Michel completed an 18-month course with CREDIT that began in 2021 at the Guy Morel Institute designed to improve her capacity to manage the Office.

**5.6 ADVANCED LEVEL COURSE IN LAW** – In February 2023, Lynn Jabbie, Assistant Investigations Officer, began a two-year Advanced Level course in Law with the Seychelles Institute of Distance and Open Learning (SIDOL). Her training is being sponsored by the Office of the Ombudsman.

**5.7 LIST OF LOCAL & OVERSEAS TRAINING SESSIONS FOLLOWED BY STAFF IN 2023 –**

DATE	SUBJECT	ORGANISER	VENUE/DURATION
1 <sup>st</sup> March 2023	<p><b>Annual Convention for Information Officers:</b></p> <p><b>Key highlights:</b>            Increase knowledge and awareness of the Access to Information Act and progress of work of the Information Commission;            Foster connectivity and collaboration amongst Information Officers;            Share best practices and lessons learned;            Renew common shared values, community spirit and commitment towards sustaining a culture of good governance.</p>	Information Commission Seychelles	Eden Bleu Hotel Half day session
28 <sup>th</sup> April 2023	<p><b>Ombudsman's Retreat: Preparing for &amp; Embracing the Future</b></p> <p><b>Purpose:</b> to prepare for the transition of Ombudsman after March 2024.</p> <p><b>Key highlights:</b></p> <ul style="list-style-type: none"> <li>- Stock take of the work done by the incumbent Ombudsman to date;</li> <li>- Prepare a plan of action for the smooth handover in a year's time;</li> <li>- Outline contents of a handover report to facilitate continuity and clarity for the new Ombudsman.</li> </ul>	Office of the Ombudsman	Eden Bleu Hotel Whole day



<p>25<sup>th</sup> July 2023</p>	<p><b>Strengthening Cyber Security in Ombudsman Institutions</b></p> <p><b>Purpose:</b> To raise awareness about the importance of cyber security for Ombudsman institutions, provide practical insights on strengthening cyber security measures, and foster collaboration among Ombudsman offices to address cyber security challenges collectively.</p> <p><b>Key highlights:</b></p> <ul style="list-style-type: none"> <li>- Understanding the Importance of Cyber Security for Ombudsman Institutions;</li> <li>- Strategies for Building Resilience and enhancing Cyber Security Measures;</li> <li>- Strengthening Cyber Security in the Ombudsman Community</li> </ul>	<p>African Ombudsman Research Centre (AORC)</p>	<p>2-hour Online <b>Webinar</b></p>
<p>21<sup>st</sup> to 25<sup>th</sup> August 2023</p>	<p><b>Youth for Integrity -</b></p> <p><b>Purpose:</b> Awareness programme specifically designed for secondary school students to introduce constitutional and other statutory institutions and ministries, departments and authorities on government and public service operations and delivery.</p> <p>The Ombudsman joined other institutions, such as the Human Rights Commission, Antic-Corruption Commission (ACCS), Information Commission, Fair Trading Commission, a Media and Communications Expert, British High Commission, CEPS, Environment, Judiciary, Attorney General Office, in making presentations on the role of the Office in the Third Republic.</p>	<p>Transparency Initiative Seychelles</p>	<p>SITE Auditorium, Ministry of Education, Mont Fleuri</p> <p>1-week youth camp</p>
<p>29<sup>th</sup> August 2023</p>	<p><b>Addressing Gender-Based Violence &amp; Harassment: The Ombudsman's Role in Ensuring Women's Safety &amp; Empowerment</b></p> <p><b>Key highlights:</b></p> <ul style="list-style-type: none"> <li>- Reviewed the vital role of Ombudsman Institutions in combating gender-based</li> </ul>	<p>African Ombudsman Research Centre (AORC) and International</p>	<p>2-hour Online <b>Webinar</b></p>



	<p>violence and harassment across public and private spheres.</p> <ul style="list-style-type: none"> <li>- Consideration of effective legal frameworks, policies, and initiatives crucial for creating a safe environment for women.</li> <li>- Engaged with Experts providing profound insights, personal experiences and expertise on these critical matters.</li> <li>- Foster sharing and collaboration on most effective solutions through meaningful participation in discussions.</li> </ul>	Ombudsman Institute (IOI)	
5 <sup>th</sup> to 6 <sup>th</sup> September 2023	<p><b><i>The Role of Ombudsman &amp; Mediators in monitoring the situation of children in conflict with the law and deprived of their liberty</i></b></p> <p><b>Purpose:</b> Provide a platform for discussion on the role of Ombudsman and Mediators in monitoring the situation of children in conflict with the law and deprived of their liberty from a child rights perspective and to share experiences and best practices.</p> <p><b>Key Highlights:</b></p> <ul style="list-style-type: none"> <li>- Understand the issues of children in conflict with the law in line with the UNCRC and the UN Guidelines on Juvenile Justice;</li> <li>- Identifying threats and challenges in monitoring the implementation of the provisions of the convention instruments on the topic; and</li> <li>- Sharing experiences and best practice.</li> </ul>	Office of Ombudsperson for Children of Mauritius and the International Ombudsman Institute (IOI)	2-day workshop Mauritius
10 <sup>th</sup> October 2023	<p><b><i>Ombuds in the Digital Age: Navigating Challenges &amp; Opportunities</i></b></p> <p><b>Purpose:</b> To enable Ombudsman to explore implications of digital communication on privacy rights and confidentiality within the Ombuds process.</p>	African Ombudsman Research Centre (AORC) and the International	2-hour Online <b>Webinar</b>



	<p><b>Key Highlights:</b></p> <ul style="list-style-type: none"> <li>- Privacy Rights and Confidentiality in the Digital Era.</li> <li>- Technology and Tools for Secure Communication.</li> <li>- Legal and Ethical Considerations</li> </ul>	Ombudsman Institute (IOI)	
25 <sup>th</sup> to 26 <sup>th</sup> October 2023	<p><b>Open Government Partnership (OGP) training and sensitisation session</b></p> <p><b>Purpose:</b> To sensitise public institutions on Government's engagement under the OGP brings together government reformers and civil society leaders to create action plans that make governments more inclusive, responsive and accountable.</p> <p>Seychelles was admitted to the OGP in 2018 and had already developed and implemented its first National Action Plan (2019-2021). The country is now developing its Second National Action Plan for promoting open government in Seychelles.</p> <p><b>Key Highlights:</b></p> <ul style="list-style-type: none"> <li>- Raised awareness of the role of all organisations in the open government initiative;</li> <li>- Created understanding of the need to engage citizens for greater participation in Government's decision making and actions.</li> </ul>	Office of the President	ICCS - <b>Workshop</b> 9 am to 3 pm.
13 <sup>th</sup> November 2023	<p><b>Multi-Stakeholder Dialogue</b></p> <p>Key Highlights:</p> <ul style="list-style-type: none"> <li>- Understand national and international obligations under the Convention on the Rights of Persons with Disabilities.</li> </ul>	Family Department in collaboration with the Commonwealth	Eden Bleu Hotel <b>Whole day Workshop</b>



	<ul style="list-style-type: none"> <li>- Strengthen practice, policy and institutional frameworks relating to key concepts of discrimination on the basis of disability, accessibility and reasonable accommodation.</li> <li>- Understand the benefits of disability-inclusive action and share best practices.</li> </ul>	Human Rights Unit	
21 <sup>st</sup> to 22 <sup>nd</sup> November 2023	<p><b>Training: Whistle blowers Protection and the Fight against Corruption</b></p> <p>Key Highlights:</p> <ul style="list-style-type: none"> <li>- Defined concepts and common vocabulary – corruption, wrongful act, alert, whistle blower or disclosure, reprisals, protection guidelines, etc.</li> <li>- Support for the whistle blower in the disclosure process and during the investigation.</li> <li>- Ensure Confidentiality in the process – from disclosure to implementing recommendations.</li> </ul>		Rabat, Morocco 2-day Training Session
4 <sup>th</sup> to 5 <sup>th</sup> December 2023	<p><b>Development of the Migration Profile for Seychelles</b></p> <p><b>Purpose:</b> To update the Migration Profile for Seychelles while including latest migration data and key information related to migration management and governance. Updated Migration Profile to serve as a tool to enhance policymaking, improve programming and effectively mainstream migration into national development plans.</p>	EU Southern Africa Migration Management programme, UN International Organization for Migration and Seychelles National Bureau of Statistics (NBS)	Savoy Hotel 2-day <b>Workshop</b>
5 <sup>th</sup> December 2023	<p><b>Enhancing Productivity &amp; Safeguarding Confidentiality in Ombudsman Institutions: Leveraging Grammarly and ChatGPT for Quality Investigation Reports</b></p>	African Ombudsman Research Centre (AORC) and the International	2-hour Online <b>Webinar</b>





	<p><b>Purpose:</b> To explore the possibility of using Artificial Intelligence in facilitating the Ombudsman's task of report writing.</p> <p><b>Key Highlights:</b></p> <ul style="list-style-type: none"><li>- Explored the use of <i>Grammarly</i> and <i>ChatGPT</i> software to enhance productivity in Ombudsman institutions.</li><li>- Considered the ability of AI to produce high-quality investigation reports that can withstand legal scrutiny.</li><li>- Addressed the importance of safeguarding confidentiality and mitigating institutional data breach risks.</li></ul>	Ombudsman Institute (IOI)	
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***“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*

## 6 OFFICE OPERATING BUDGET ALLOCATION

**6.1 2023 Budget Allocation** – The Office of the Ombudsman was voted the following budget allocation for 2023 in the Appropriation Act 1 of 2023:

Compensation of Employees	SCR 2,052,310.25
Use of Goods & Services	SCR 1,823,051.11
<b>Total</b>	<b>SCR 3,875,361.36</b>

**6.2 Budget Expenditure in 2023** – The Office did not make complete use of its allocated budget for 2023 for the reasons elaborated elsewhere in the present report. Expenditure was as follows:

Wages and Salaries	SCR 1,028,497.40
Use of Goods & Services	SCR 1,567,655.29
<b>Total</b>	<b>SCR 2,596,152.69</b>

**6.3 Programme Performance-Based Budgeting** – Operating under a full PPBB (Programme Performance-Based Budgeting), the Office of the Ombudsman is currently under the same obligation as any other MDA to show performance-based results of all its activities. As a constitutional Office, this auditing of its internal management is perceived as a direct interference with the autonomy and independence of the office as guaranteed under the Constitution. Additionally, the Office operates with a relatively small budget which makes it difficult and uneconomical to recruit the qualified staff needed to carry out the internal budgetary performance analysis required by this process. Moreover, the nature of the services rendered by the Ombudsman make it difficult to set tangible measurable targets and performance indicators. This challenge is addressed in greater detail in Chapter 9.2.

***“The Ombudsman is like the fire alarm system in a building. At first sign of smoke, the alarm will go off, warning everyone of a fire in the building. To ignore the signal will allow the fire to burn down the house. Responding with the best firefighting equipment will save it. No one will think to do away with the alarm system because it does not put out the fire!”***

*Nichole Tirant-Gherardi, Ombudsman of Seychelles Message for Ombudsman Day 2023*

## 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 sixty-two (**162**) complaints over the period 1<sup>st</sup> January to 31<sup>st</sup> December 2023 – a slight drop in comparison to 2022 when 173 complaints were recorded. Again in 2023, the large majority of complaints recorded were either '*premature*' (**52**), where the complainant had not exhausted available avenues for seeking remedy, or '*outside remit*' (**92**), 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 Office's standard operating guidelines require complainants to submit complaints in writing through a completed complaints form before commencing any consideration of the grievance. At year's end, five (**5**) cases had been recorded as '*pending*' where complainants had met with the staff to report a matter but had not returned completed complaints form.

**7.1.2 Systemic Issues** – It is recognised that enquiries by the Ombudsman can have the widest and most positive impact and be more cost effective in terms of human resources when they address the primary cause of the systemic dysfunction and administrative weakness identified across the public sector. However, investigations of systemic issues require more time and dedicated staff. To this end, the Office needs to continue building its investigative capacity and provide more specialised training to existing staff in order to guarantee the success of this aspect of our work. Although several systemic issues were noted in 2023, no formal enquiries were launched due to the lack of resources.

### 7.2 ADVOCACY ON CONSTITUTIONAL AMENDMENTS –

**7.2.1 Ombudsman's Constitutional Court Challenge of 10<sup>th</sup> Amendment** – In September 2022, a joint petition was filed in the Constitutional Court in collaboration with the Seychelles Human Rights Commission (SHRC) and the Bar Association of Seychelles (BAS) challenging the constitutionality of the Tenth Amendment to the Constitution, passed by the National Assembly and

assented into law by the President on 13<sup>th</sup> June 2022. This petition was filed in exercise of the Ombudsman's power to *"initiate proceedings relating to the constitutionality of a law or of the provisions of a law"*. (**Schedule 5 Paragraph 1(1)(e) of the Constitution**). The Petition seeks a declaration of the Court that the 10<sup>th</sup> Amendment is inconsistent with the Constitution. The Constitutional Court is being invited to declare whether a qualified or two-thirds majority in the National Assembly suffices to lawfully change any part of the Supreme Law not protected by the requirement of a referendum. The Petition is based on the argument that the basic constitutional structure of the democratic Third Republic 'protects' certain chapters governing the constitutional democratic institutions from change because such change would modify the fundamental character of that original democracy. It is being argued that amendments to these 'protected' parts should only be effected by popular endorsement by the people in a national referendum and not, as in the case of the 10<sup>th</sup> Amendment, by parliament.

**7.2.2 Status of the Case** – When the petition was first called before the Constitutional Court, the Petitioners objected to the panel of judges nominated to hear it and requested their recusal on grounds that the Judiciary had been involved in the process of adopting the law and could therefore not guarantee a fair hearing. The request was denied by the Court. That decision was appealed against and at the date of the present report, the appeal against the Constitutional Court judges refusal to recuse themselves remains to be heard by the Seychelles Court of Appeal. The main petition is on hold in the Constitutional Court pending the Appeal Court's decision.

### **7.3 ADVICE & ASSISTANCE –**

**7.3.1 Ombudsman still seen as a 'legal aid' office** – The services of the Ombudsman are open to the general public and are free. Perhaps because of this, the general public continue to consult the Office for free legal advice. We try to discourage the practice by advising 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**). 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 petition 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 two **(2)** out of the total complaints received in 2023 to other institutions.

**7.3.4 Making referrals work** – The referral letter is designed to help the complainant find an issue to the grievance by presenting it to the relevant public service institution where it can be effectively dealt with. To succeed, all public authorities must cooperate and must, preferably have in place an efficient internal complaints' handling system. Hence the need 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 the general public knows of its system and procedures.

## **7.4 AWARENESS & VISIBILITY CAMPAIGN –**

**7.4.1 COMMEMORATING OMBUDSMAN'S DAY** – For the second year running the Office of the Ombudsman joined Ombuds offices around the world on 12<sup>th</sup> October 2023 to commemorate Ombudsman Day. For the occasion, the Office organised a series of events to promote public awareness and sensitise the public on the importance of the Office and the Ombudsman's role in promoting good governance and upholding human rights.

**7.4.2 Radio Interviews** – The Ombudsman took part in two radio interviews – at 10:30 am on Wednesday, 11<sup>th</sup> October hosted by Queenly on Paradise FM, and

again at 9:00 am on Thursday, 12<sup>th</sup> October, hosted by Ms Marie-Claude D’unienville on Radyo Sesel. Both interviews were followed by a quiz of general knowledge questions on the work of the Office.

**7.4.3 Quiz Questions for Public Engagement** – Prize-winning participants were invited to a short prize-giving ceremony on 20<sup>th</sup> October 2023 at the Office of the Ombudsman at Aarti Chambers, Mont Fleuri, where they each received a branded tote bag of small promotional items of pens, pen drives, key rings, and a leaflet as a token for taking part in the quiz.



**7.4.4 Celebratory Lunch & Dialogue with Youth** – On Ombudsman’s Day, the Office staff convened for lunch at Vye Marmit, in the Domaine de Val des Près at Au Cap. The serene ambiance facilitated debriefing, team-bonding, and further consolidation of our working dynamic. Making the most of the opportunity to meet with students of the Seychelles Tourism Academy (STA) on work attachment at the restaurant, the Ombudsman’s team presented the students and management the role and mandate of the Ombudsman. The students tested their knowledge in a quiz and received a promotional keyring and pen as a token of appreciation for correctly answering questions.





**7.4.5 Ombudsman's Message for the Day** – The Ombudsman also released a dedicated message on the chosen theme for the day – *“The Ombudsman – Diverse in Role, United in Service”* – which message was published widely and aired on national broadcast media and in print and also posted to our social media pages and website.

**7.5 VISITS TO NATIONAL INSTITUTIONS** – As part of its visibility campaign, the Ombudsman continued the programme of visits to other institutions over 2023. In September, we visited the Public Service Appeals Board (PSAB), another constitutional body set up under Chapter XI, Article 145 of the Constitution, as well as the Police Force created by Chapter XIII.

**7.5.1 Visit to the Central Police Station/Headquarters** – On 15<sup>th</sup> September 2023, the Ombudsman and delegation visited the Police Headquarters in Victoria where they were received by ASP Marcus Jean. The delegation regretted the absence of the Commissioner of Police for the visit. The aim of the visit was to give the Ombudsman's investigating team an insight into the work settings of the Police, how complaints are received and dealt with and also view the detention cells to understand any constraints. We could not view the cells because they were occupied. Several issues were raised during the visit and suggestions made for improving performance. The delegation considered the Police Force's complaints handling mechanism, both for internal investigations into grievances in respect of the conduct of police officers, and for criminal complaints from the general public. The delegation queried the current system of records management used by the Police administration and shared ideas on the need to set up and maintain effective protocols and procedures for all Police activity. The delegation was particularly interested in the police procedure currently followed for handling lost or stolen property and objects identified as possible exhibits for future and ongoing criminal prosecutions as this subject had arisen in complaints handled by the Ombudsman during the year. The delegation was also briefed on the procedure for handling enquiries emanating from the Office of the Ombudsman. The Ombudsman noted that the offices visited were overcrowded with spill overs from filing cabinets and files. In particular, we noted that the work environment of the Internal Affairs Office was unsuitable, being too small and badly ventilated and lit to be conducive towards the welfare of the dedicated staff sharing the office space.

**7.5.2 Visit to the Public Service Appeals Board headquarters** – On 13<sup>th</sup> September 2023, the Ombudsman and delegation paid a courtesy visit to the Public Service Appeals Board (PSAB) in Premier Building, Victoria. The delegation was met by the Chairman and topics discussed included the need to strengthen and assert the autonomy and independence of all the country's democratic institutions through collaboration and cooperation. Noting that the new PSAB had been appointed in February 2022, the Ombudsman suggested that all institutions should prepare hand over reports at the end of any mandate. This would ensure continuity and good governance within all institutions. In respect of the work relationship between the PSAB and the Ombudsman, the parties discussed improving their cooperation on referrals and in responding to grievances and delivering orders in a timely manner. The Ombudsman urged the PSAB to compile and publicise its procedural guidelines both for the public and for its board members. There was also a suggestion that the PSAB qualify all its decisions and rulings to show how it had reached its decision for the sake of transparency and good governance.

**7.6 THE OMBUDSMAN'S WEBSITE** – The Ombudsman's website is now fully operational. We continue to keep it updated and dynamic adding information and data in real time. It can be used by the public to file submit complaints directly online. It can be accessed at [www.ombudsman.sc](http://www.ombudsman.sc)

**7.7 THE CASE MANAGEMENT SYSTEM (UWAZI)** – In 2022, the Office of the Ombudsman participated in a pilot project to install a shared case management software to handle all the grievances and complaints received by the Office. Our international partner, the Association of French Speaking Ombudsman and Mediators, **AOMF** funded the project. The software, by the name **UWAZI**, was developed by **HURIDOCS**, (*Human Rights Information and Documentation Systems*) (a Swiss-based NGO that supports human rights groups in building strategies and tools to facilitate monitoring and documentation work and improve access to and sharing of information). The pilot project specifically streamlined and adapted the software for an Ombudsman's institution and our special needs in Seychelles. The project also involved online virtual training of our staff over a six-month period. The resulting document management system is fully operational since the end of 2023. It provides secure storage, tracking and analysis of complaints received by the Office and serves as a digital archive for all materials received and retained by

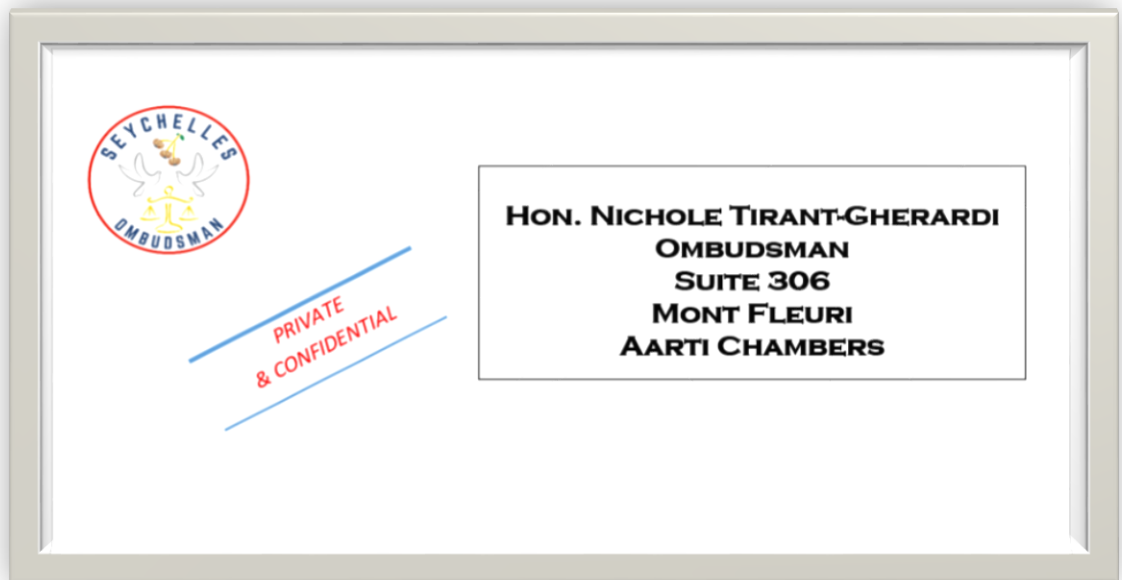


the Office in the course of its investigations. The Office is deeply grateful to the AOMF for their generous assistance in the realisation of this important project.

**7.8 PROMOTING THE BRAND** – The seal of Office, adopted in 2021, continued to feature in all activities of the Office. It is now printed on a wide range of promotional merchandise, including mugs, key rings, pens, pen drives and carrier bags for distribution to members of the public as well as on polo shirts worn by the staff. It is also visible on the street front window of the Office.



Figure 2: Seal of the Office of the Ombudsman



## 8 STATISTICS

- 8.1.1 Statistics for 2023** – The Office of the Ombudsman registered a total of one hundred and sixty-two (**162**) complaints over the period 1<sup>st</sup> January to 31<sup>st</sup> December 2023. This represented a slight decrease from 2022 when 173 complaints were recorded.
- 8.1.2 Majority of complaints not retained** – As in previous years, the large majority of complaints brought to the Office in 2023 were not retained for further action. Out of the **162** cases brought, a total of **144** (representing **89%**) were recorded as either 'premature' (**52 cases**), or 'outside remit' (**92**). By the end of 2023, five (**05**) cases were recorded as 'pending' in our statistics where complainants had not returned their completed complaints form despite having met with the staff to report a matter. Additionally, (**01 case**) was successfully mediated, resulting in a satisfactory resolution for both the complainant and the public service provider involved.
- 8.1.3 Status of retained Complaints** – Out of the twelve (**12**) complaints retained in 2023, eight (**08**) were still under investigation at the date of this report and two (**02**) have been closed while two (**02**) have been referred to other institutions.
- 8.1.4 Spill over from previous years** – Complaints retained for investigation are often not completed in the year in which they are received. Delays in closure can be due to various reasons including delays in responses received from respondent authorities, lack of cooperation of respondents, the complexity of the case as well as shortage of report-writing staff. All open cases are carried over into the following year. The Office continues to experience major challenges with completing investigations, carrying out final evaluations and preparing enquiry reports to effectively reduce the number of cumulated cases from one year to the next.



<b>COMPLAINTS RECEIVED BY OMBUDSMAN IN 2023</b>	
<b>TOTAL Complaints received</b>	<b>162</b>
Cases Retained	12
Cases considered <i>Premature</i>	52
Cases found to be <i>Outside remit</i>	92
Cases pending submission of complaints form	05
Case retained for mediation	01
Cases referred to other institutions <i>(included in the 'premature'/'outside remit' totals above)</i>	<b>12</b>

## 8.2 COMPLAINTS RECEIVED IN 2023 (BY MONTH & SEX)

MONTH	TOTAL NUMBER OF CASES	SEX	
		F	M
January	26	13	13
February	21	05	16
March	18	09	09
April	13	05	08
May	17	11	06
June	14	06	08
July	07	04	03
August	06	03	03
September	09	02	07
October	13	07	06
November	08	02	06
December	10	06	04
<b>GRAND TOTAL</b>	<b>162</b>	<b>73</b>	<b>89</b>

## 9 CHALLENGES

**9.1 BUILDING CAPACITY** – Shortage of staff remains one of the greatest challenges to a more efficient and effective service delivery on the Office's mandate. The Office must continue to build capacity of existing staff and recruit additional specialised skills. The cost is presently prohibitive as the Office does not have the budget or the liberty to pay the salaries commensurate with the skills. More immediately, the Office requires the creation of a post of deputy ombudsman to provide for a smooth transition from one Ombudsman to the next upon completion of the seven-year mandate. The matter of succession had been stressed in the Ombudsman's 2022 activity report. With the expiry of the current mandate scheduled for March 2024 the urgency is now evident.

### **9.2 ADDRESSING INCREASED BUDGET MANAGEMENT OBLIGATIONS** –

**9.2.1** Operating under the full PPBB (Programme Performance-Based Budgeting) the Office is now subject to the continuous oversight by the Ministry of Finance in all matters financial and administrative. The overview and oversight of performance data is 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 LOBBYING FOR FINANCIAL & ADMINISTRATIVE AUTONOMY** – The Ombudsman has found it difficult to set tangible measurable targets and indicators of performance under the PPBB exercises in respect of the services and mandate of the Ombudsman. The Office does not have the specialised skill required to guarantee this activity which adds a further burden to the existing budget preparation exercises, budgetary performance audits and statutory reports required of the Office each year. We have taken and continue to take exception to the complete and invasive oversight of the Ministry of Finance in the internal administration of this constitutional office. It is vital that consideration be given to how the autonomy and independence of this and other constitutional bodies can be better and more effectively guaranteed going forward.

**9.2.3** With administrative rules and practices now emanating from the Public Service Bureau adding to the budgetary rules already practiced by the Ministry of



Finance, the urgency for discussion and resolution of the question of whether the Office can maintain its financial and administrative autonomy and independence as guaranteed by **Article 143 (3)** of the Constitution has become even more urgent. The outgoing Ombudsman did not resume the debate for greater financial and administrative autonomy and independence in 2023. It will be an imperative for the next Ombudsman. It is of note that as a member state of the United Nations, the UN Resolution A/RES/75/186 of 28<sup>th</sup> December 2020 remains highly relevant and pertinent (See Appendix IV) to this debate.

**9.3 DRAFTING A DEDICATED OMBUDSMAN ACT under Article 143(6)** of the Constitution – Significant work has already been done on a stand-alone draft Ombudsman Act under Article 143(6) of the Constitution although this remains unfinished at the end of the mandate of the incumbent. The Act is designed 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 lack of dedicated resources delayed the finalising of this project before the end of the current mandate. The work done on the draft to date will be left to the next Ombudsman.

**9.4 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 31<sup>st</sup> 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 that since the start of my mandate, 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 members of both the Sixth and Seventh National Assembly to discuss the annual report and the role of this institution have remained in vain. A suggestion in 2022 to set up a select committee of the House to initiate discussions was raised again in 2023 but has not materialized as at the date of the present report.

## 9.5 DRAWING UP AN EFFECTIVE PUBLIC AWARENESS PROGRAMME –

**9.5.1 Public awareness programme** – Without the adequate human and financial resources needed, the Office was unable to draw up a public awareness programme for 2023 as envisaged. Instead, the Office focussed on collaborating with other institutions in their awareness campaigns. This method is cost-effective but remains to be developed further.

**9.5.2 Messages & Social Media** – In 2023, the Office issued several messages related to areas of interest for the work of the Ombudsman on the occasion of national and international days. These messages are shared with the local media houses and posted on our website and social media pages. They remain the most cost effective way to raise awareness and maintain visibility of the Office. Updating the social media platforms remains a challenge with the limited human resources.

**9.5.3 Information leaflets** – The leaflets provide a brief overview of the work of the Ombudsman and are available to the public in our Office and may also be downloaded from our website.



Website Welcome page

## 10 SYNOPSIS OF CASES IN 2023

### 10.1 Expenses incurred for overseas medical treatment not refundable –

**10.1.1** B lodged a complaint against the Overseas Diagnosis and Treatment Board, and subsequently, the Appeals Committee, for unfairly denying a request for refund of expenses incurred for overseas medical treatment in respect of a minor child. The child's ailment had been ongoing despite continuous local treatment over a period of several years. The Complainant's decision to take the child overseas for a second opinion at her own cost had been motivated by the alleged failure of the Health Care Agency to correctly diagnose and treat the child.

**10.1.2** In evaluating the complaint, the Ombudsman noted that the child had been referred to several specialists over several years during which various medical tests were carried out. The condition was diagnosed only after some four years. By the time the Health Care Agency had determined the medical problem and had started the specialised treatment, the Complainant had already started pressing the authorities to send the child for overseas treatment.

**10.1.3** In considering the request for overseas treatment or a second opinion from an overseas specialist, the local doctor had stated that he was comfortable with his diagnosis and that there were no grounds upon which to support the request for overseas treatment. Despite this, B travelled abroad with the child. Upon their return, the application for a refund for expenses for the treatment was not approved by the Board.

**10.1.4** In considering whether the Overseas Diagnosis and Treatment Board had acted unfairly in rejecting the claim for reimbursement, the Ombudsman viewed the minutes of the Board's meeting in which the application was considered.

**10.1.5 Provisions of the Overseas Treatment Act –** According to the Overseas Treatment Act under which the Complainant's claim for refund was considered, a person who chooses to undergo overseas diagnosis or treatment **on his/her own initiative without prior approval by the Board is not eligible for a refund of expenses incurred.** The law does provide for expenses to be refunded in certain cases provided the Board approves the refund. These cases are listed as: where the person falls ill overseas and there was an urgent need for treatment; where the person travelled overseas for a second opinion and was



diagnosed with a disease which was **not diagnosed in Seychelles** but which needed urgent treatment; and where a person goes overseas for a routine medical check-up and is diagnosed with a disease that requires urgent treatment.

**10.1.6** The Ombudsman's enquiry found that the Board had followed the law and the procedural guidelines as set out in the Overseas Treatment Act, 2018 in considering the application for refund. Since the Complainant's case did not fall in any of the possible instances listed in the law, the Board had been left with no option but to reject the application. Consequently, the Ombudsman could not find any unfairness in the evaluation and determination of the application for reimbursement by the Overseas Diagnosis and Treatment Board.

**10.1.7** Although the Ombudsman found no issues of maladministration in this case, the public authority was reminded of previous recommendations submitted on the subject of the Overseas Treatment Act. Those recommendations were aimed at improving the efficacy and efficiency of the Act, through regulations governing the evaluation process of applications for reimbursement. Such regulations would ensure greater transparency and uniformity in the Board's decisions and reduce significantly the subjectivity inherent in the current application of the law.

**10.1.8** The Recommendations are detailed in Paragraph 10.6 below.

## **10.2 Public Authorities must perform due diligence when advertising United Nations Posts –**

**10.2.1** 'C' complained of having fallen victim to a scam after having responded to an advertisement for recruitment promoted by the Ministry of Foreign Affairs. The ministry had caused to be published in the Seychelles Nation newspaper an advertisement/call for candidates on behalf of a United Nations (UN) agency in which Seychellois nationals were invited to apply for several posts within the agency. The advertisement directed interested and qualified applicants to the ministry's website for additional information on the posts and instructed them to send detailed resumes and CVs to the email address provided. A short deadline for submission of candidatures was given in the advertisement and C submitted an application via email to the email address provided. C was sent an acknowledgement of receipt of the application from



an address purporting to be the UN agency's "Information & Logistics Department". Shortly after, C received an 'Offer of Employment' purportedly from the UN agency for a specified post at a specified grade for a specified period of five years and was informed that the work station would be in a named city in China. C accepted the offer and signed and returned the relevant documents. Following this, C was asked to pay a certain sum of money up front to 'secure accommodation' close to the work station. In response to this request a sum of money was transferred to the bank details sent by the "agency". C had fallen victim to a scam and complained to the Ombudsman that the ministry was responsible for the personal loss incurred because they had endorsed the scam by advertising it officially.

**10.2.2** The Ombudsman enquired into the case and concluded that the advertisement was a scam and that the complainant had clearly fallen victim to it. We noted that the list of vacancies purportedly provided by the United Nations agency should have raised several red flags for all parties involved, including the ministry. For example, it was apparent from a cursory review of the list of vacancies, which was also posted on the Ministry's website, that the lay out of the list was defective with the UN agency's details insufficiently displayed. We noted that the several posts advertised all referred to the same grade salary band despite the fact that the post titles and levels of responsibility were quite obviously different. They all cited the same very short closing date, just four days after the Seychelles Nation publication of the advertisement. Moreover, all the vacancies referred to "*multiple*" duty stations, although the post descriptions were clearly intended for specific stations. The fact that any potential applicant could not know before applying exactly where the work station would be was in itself suspect.

**10.2.3** In response to our enquiry, the ministry confirmed that advertising in this way for UN agencies was standard practice since it helped make potential Seychellois candidates aware of the work opportunities that exist. They explained that, in this case, they had received the list of vacancies from what they believed was a genuine source and submitted the general advertisement for publication in the Seychelles Nation as a matter of urgency because of the short deadline. However, the ministry stressed that they always warn potential candidates against sending money in such process and request that all candidates keep them posted on their actions.

**10.2.4** In this case, we noted that while C had kept the Ministry informed by way of copies of most correspondence with the agency, no information was given at the time of negotiating accommodation options. C did not inform the Ministry of the request to pay money or that money had been transferred. The Ombudsman noted further that the official UN agencies' advertising process specifically states that no money should be advanced prior to taking up employment. This warning was set out in capital letters under the heading 'No Fee' as follows: "*THE UNITED NATIONS DOES NOT CHARGE A FEE AT ANY STAGE OF THE RECRUITMENT PROCESS (APPLICATION, INTERVIEW MEETING, PROCESSING OR TRAINING). THE UNITED NATIONS DOES NOT CONCERN ITSELF WITH INFORMATION ON APPLICANTS' BANK ACCOUNTS.*"

**10.2.5** In analysing the ministry's role in the complaint, the Ombudsman found that the ministry had advertised the existence of the vacancies and included and published them on their website, albeit purportedly on behalf of the UN agency. The vacancies and contacts as advertised were blatantly fake and part of a scam. Despite this, the ministry had not played an active role in the recruitment process. They had not induced or actively encouraged C's decision and subsequent action to submit an application and subsequently respond directly to the fraudulent claim for money for accommodation. However, the ministry had effectively endorsed the fraudulent advertisement by having it published in the local press and by posting it on their website. That, in itself, had served to drop the level of care that the complainant would have otherwise taken.

**10.2.6** The ministry offered C an *ex gratia* payment on humanitarian grounds to mitigate part of the sustained loss. This offer was accepted and brought the matter to a satisfactory conclusion. The main recommendation that emerged from the Office of the Ombudsman in this case was that all public authorities should avoid endorsing any advertisements that do not emanate from their institutions. Where they do so, they should carry out all due diligence at all times and ensure that any advertisements contain a clear and unequivocal waiver of all responsibility in respect of any applications submitted.

### **10.3. Only sea journeys on EU-owned fishing vessels qualify for employment compensation under the European Partnership Agreements –**

**10.3.1.** D complained that the Seychelles Fishing Authority (SFA) had not paid the full employment compensation due for the periods that he worked as a seaman on several sea-faring vessels, including state-owned vessels. He alleged he had been unfairly treated by the SFA, which, he alleged had paid much more compensation to other seamen in the same position. He wanted the SFA to address this discrepancy and review his compensation.

**10.3.2.** The main issue for consideration was whether all the sea journeys B had undertaken had been recorded and included in the compensation payment schedule drawn up by the SFA. Documentation submitted by D to the enquiry included a Seaman's Record/Log Book in his name. This document is an official record of all sea journeys carried out by the seaman and contains start and end dates of sea journeys, as well as details of the vessels and signatures of the vessels' captains by way of proof of the journey.

**10.3.3.** In the Ombudsman's preliminary inquiry, the SFA responded to the allegations, explaining the importance of the Seaman's Log Book and the important role of this "passport" in providing irrefutable proof of all navigational journeys made by any seaman. They further clarified that the "compensation" that was being claimed in this case was payable only to seamen who had served on board tuna fishing vessels under the European Union Fisheries Partnership protocols to which Seychelles subscribes. The compensation is paid exclusively for sea journeys on European-owned purse seiners and not for any time sailing on any other vessels. In this case, the onus lay on D, as the claimant, to prove that he had indeed sailed on other occasions that had not been included in his logbook. However, he had been unable to provide any proof of periods of navigation other than those recorded in his logbook. The SFA had therefore compensated him for only the 'trips' included in the Seaman's' Logbook.

**10.3.4.** The Ombudsman noted that in one of the trips recorded in the log book, D had embarked on a named vessel on a stated date, but the vessel's captain had not signed off on or stated the date he had disembarked. Consequently, in the absence of the captains' signature as proof of that navigational period, he was not paid any compensation under the EU fisheries protocol for that trip.

**10.3.5.** The Ombudsman further noted that D's logbook entries also included several trips that were not on EU-owned fishing vessels but on state-owned transport



vessels. These trips, although recorded in the logbook, were not accepted for payment of compensation on the grounds that the vessels were non-European-owned and therefore, any seafaring time on them did not qualify for payment of compensation under the EU Fisheries Partnership Agreement. This had been explained to D who had been advised to seek possible redress from a different authority in respect of his seafaring journeys on those state-owned vessels.

**10.3.6.** The Ombudsman was satisfied that D had been paid compensation for all the navigational periods on EU-owned fishing vessels as covered in his log book with the exception of one period. That period was not supported by the requisite proof of the captain's signature and, its rejection was therefore justified. Furthermore, the Ombudsman was satisfied that the SFA had informed D that they would consider other claims for compensation if D could provide any documentation or records to prove other seafaring periods and journeys for which he may not have been compensated.

**10.3.7.** To this end, the Ombudsman had suggested that the SFA could assist D, in as far as is practical, with contacts, either in local vessel management companies or at the Seychelles Ports Authority, to explore the possibility of obtaining relevant information through their archives or other records. A general recommendation emerging from this case was that archives in respect of seamen should ensure that records are available for future reference. However, in view of the time lapse involved, with sea journeys dating back over forty years old, it is very difficult to find official records.

#### **10.4. Failure to Fulfil Promise of Salary Adjustment –**

**10.4.1.** F lodged a complaint against his employer, a statutory authority, alleging financial loss as a result of the authority's failure to deliver on its undertaking to review his salary upwards. As a result of the alleged failure, F's end-of-contract payments were directly impacted having been based on the unchanged basic salary. F submitted to the Ombudsman's enquiry copies of correspondence between himself and the authority which showed that the issue was still on going and that salary adjustment proposals had been made.

**10.4.2.** However, since the matter had not been resolved, F had lodged an internal grievance with the authority as a result of which the decision was taken to put

F's claim before the authority's Board of Directors. Having confirmed that this was the position, the Ombudsman discontinued the enquiry and informed F that the complaint would be treated as "*premature*" and held in abeyance while the authority's internal review process of the grievance was being followed. F then informed the Ombudsman that he had already sought legal representation on this matter as he foresaw the matter being taken to court.

**10.4.3.** The Ombudsman strongly recommended that the statutory authority address F's grievance and expedite the decision-making process in respect of the salary adjustment as a matter of urgency as this would be to the mutual benefit of both parties. The Ombudsman also urged that the statutory body give due consideration to the pecuniary losses which F may have suffered as a result of the significant delays in concluding this matter, since such delays had not been caused by or attributed to D in any way.

**10.4.4.** Additionally, F was advised to await the outcome of the review process before taking the matter further.

**10.5. A Person under Investigation MUST be Informed of the Accusation/Allegation against Him/her –**

**10.5.1.** D&M, the expatriate owner-operators of a locally-registered business, resident and working in Seychelles under Gainful Occupation Permits (GOPs), complained that the Department of Immigration (DOI) had unfairly and unreasonably withheld the renewal of their GOP applications for over one year, on grounds that the applicants were under 'investigation' by the Immigration and employment authorities for matters or reasons of which they were not made aware.

**10.5.2.** The complainants had already renewed GOPs for two-year periods on previous occasions. Since their business activity was well received by local clients and had even received positive publicity in the local media, they wanted to continue. Consequently, well ahead of the expiry date of their GOPs, they had applied for renewal. After submitting their renewal applications, they reported that a spot check and search was carried out on their premises by officials from the DOI and employment ministry. The complainants had fully cooperated even though the officials had refused to state the purpose or reason for the search and questions. Although they had been told that they would be

officially informed of the outcome of the search, they heard nothing more for several months.

**10.5.3.** Having been informed that the extensions would be granted, they submitted the relevant paperwork and paid the fees. The GOPs were not issued. By then, their last GOPs had expired. They were now in the country without lawful visas. They were then informed that they would have to leave the country to regularise their “illegal” status. To cover the period in which they were in the country without valid visas, and clearly, in acknowledgment that this was through no fault of theirs, the DOI issued retroactive GOPs for the period.

**10.5.4.** D&M left the country and returned a week later only to be detained at the airport for some two hours before eventually being allowed into the country. Three months later, they were still awaiting the outcome of their applications for renewed GOPs. They then lodged this grievance with the Ombudsman.

**10.5.5.** The Ombudsman launched a preliminary enquiry into the matter, calling upon the DOI for access to the complainants' file. The DOI responded that they were investigating allegations of misconduct by the applicants and could not provide the file at that critical stage of the investigations. The Ombudsman agreed to hold down its enquiry to allow the DOI time in which to complete its investigation. However, the Ombudsman noted that the complainants were being “investigated” by the Immigration authorities for over a year already, over which time they were never informed of the allegations against them, contrary to their constitutional right to know and the right to due and fair process of law. The Ombudsman stressed that such investigations could not be carried out in a vacuum and that the subjects of the investigation had a right to know what was being held against them. Moreover, they had a right to expect that such investigations or enquiries took place within a reasonable timeframe.

**10.5.6.** The Ombudsman expressed the view that such a lack of transparency in the application of the immigration laws and regulations is evidence of harsh, oppressive and unfair administration and bad governance, which the Ombudsman is empowered to review and set right. The GOPs were issued following these exchanges.

**10.5.7.** The issues that arose in this case were similar to those reviewed in several other complaints lodged with the Ombudsman for which a general report is being processed with more generalised recommendations for improving the service.

**10.6. Addressing Systemic Issues and Improving Management of the Overseas Treatment Act 5 of 2018 through Regulations –**

**10.6.1.** In September 2021, the Office of the Ombudsman submitted a set of recommendations to the Ministry of Health on improving the efficacy of the Overseas Treatment Act in respect of assisting and reimbursing citizens for medical treatment overseas. The recommendations resulted from a review of several complaints to the Ombudsman alleging unfairness, bias and improperly-based decisions of the Overseas Diagnosis and Treatment Unit in refusing applications for refunds of self-financed overseas medical treatment by citizens. In reviewing these complaints, the Ombudsman considered the systemic issues arising out of the application of the **Overseas Treatment Act 5 of 2018** and the current practices adopted by the Overseas Diagnosis and Treatment Unit of the Health Care Agency in dealing with applications for reimbursement under the Act. We also considered the non-statutory ‘Guidelines’ followed by the Unit in respect of overseas treatment and diagnosis.

**10.6.2.** The Ombudsman found a need to generally improve the manner in which the Overseas Diagnosis and Treatment Unit currently operates and applies the legislation in order to effectively address the systemic issues identified in the management of the Act and ensure greater transparency in the process and uniformity and fairness in the outcome. The Ombudsman submitted several recommendations designed to address the identified shortcomings. These were as follows:

**10.6.3. Passing Regulations under the Act –** Although the Minister responsible for health had power to “*make regulations for carrying out the provisions of this Act*”, no such regulations had yet been passed since the Act came into force on 8<sup>th</sup> October 2018. Noting that the current ‘*Guidelines for Overseas Diagnosis and Treatment*’ submitted by the health care authorities to the Ombudsman’s enquiries were purely administrative tools with no force of law, the Ombudsman recommended that the Ministry draw up regulations, many of which were already included in the guidelines. Regulations are the more effective legal instrument for dealing with matters relating to the programme

for overseas treatment and diagnostics as they are more visible and easier to access.

#### **10.6.4. Processing Applications for refund by the Overseas Diagnosis & Treatment Unit**

– Where citizens use their own funds and seek refunds for expenditure for overseas treatment or diagnosis, under Section 6(i) and Section 12 of the Act, the Act gives the Board the specific power to “*make recommendations on policies and guidelines to be followed in considering the application for refund.*” The basic principle set out in the Act (Section 12) is that any expenditure for non-approved overseas treatment will not be refunded. However, the Act provides for circumstances in which a refund of expenses may be considered. Three specific situations are set out in Section 12(2), where (a) a person falls ill abroad and requires urgent treatment; (b) a person travels overseas for a second opinion and is diagnosed with a disease not seen in Seychelles but requiring urgent treatment; and (c) a person has opted to undergo routine medical check-up overseas and is diagnosed with a disease that requires urgent treatment. An applicant who falls in one of the three circumstances must also obtain the Board’s approval to refund in compliance with Section 12(2)(d). However, the Act does not provide the criteria under which to evaluate the three sets of circumstances. In the absence of clear written criteria on which to base such evaluation, it is unclear how the Board can remain objective and impartial in determining eligibility for a refund. Consequently, the Ombudsman recommended that clear parameters and criteria be established, again preferably through regulations to the Act, to avoid an inevitable process of subjective decisions by Board members.

**10.6.5. Publicising Existing Policy and Guidelines** – On the Overseas Diagnosis and Treatment Board’s function to make recommendations on policies and guidelines to govern applications for refund, the Ombudsman drew attention to the need to give the existing policy and guidelines better publicity so that they can be seen and better understood by the general public. We suggested wider publication through the Ministry of Health’s website where everyone could be informed of how refunds for overseas treatment work.

**10.6.6. The ‘exceptional circumstances’ in which non-resident citizens can benefit under the Act** – We noted that the Act had been passed to provide a framework for the highly specialized diagnosis and treatment programme for citizens of Seychelles (as stated in its long title). The rule of thumb, as laid out in Section 1(2), states that the Act applies to citizens of Seychelles **domiciled in**



**Seychelles.** However, Section 1(3) provides that the Board “*may, in exceptional circumstances, consider applications from citizens of Seychelles who are not domiciled in Seychelles.*” This provision is supported by Section 14(h), which gives the Minister specific power to regulate the “*exceptional circumstances*” applicable under Section 1(3). However, there are currently no such regulations in force. Consequently, the determination of “*exceptional circumstances*” in which a non-resident Seychelles citizen may benefit under the Act are currently unspecified. Such a situation is fraught with uncertainty and leaves the matter of defining “*exceptional circumstances*” to a subjective approach. This may lead to a lack of transparency in the process and is not conducive with good governance. The Ombudsman recommended **regulations to provide a clear definition of “exceptional circumstances” as well as lay out the parameters by which “exceptional circumstances” could be determined** when dealing with overseas treatment and diagnosis for non-domiciled citizens.

**10.6.7. Eligibility for Access to Overseas Treatment & Diagnosis** – The procedure to be followed through the various levels of the medical service for referral to specialist overseas care, diagnosis and treatment programme is set out in Section 8 of the Act. Although the section makes several references to a “*referral form*”, no such form is provided either through a schedule or through subsidiary regulations. The Ombudsman recommended that regulations include a prescribed statutory referral form that is properly identifiable. This would ensure uniformity of treatment of all referrals for overseas treatment and diagnosis under the Act.

**10.6.8. Giving the Board the tools with which to decide ‘case by case’** – Section 7(6) of the Act provides for the Board to decide on all matters placed before it on a ‘case by case’ basis. This is generally an open door to poor administration and opaque governance since it enables inconsistent, disparate and unfair outcomes. The Ombudsman recommended that specific guidelines and procedures for decision-making in all matters relating to access to overseas treatment and diagnosis as well as to dealing with applications for refunds of expenses made by citizens acting on their own initiative would ensure better governance and greater transparency.

**10.6.9. Providing for a clearly defined Appeals Process** – The Act provides an appeal process to any person aggrieved by a decision of the Board, whether this decision relates to a refusal to be sent for overseas treatment or to an

application for a refund of expenditure. The appeal is currently made to the Appeals Committee appointed by the Minister responsible for health and set up under Section 9 of the Act. The committee 'evaluate(s) the issues under consideration in the appeal.' Section 9(5) provides that the "procedure for submitting an appeal and the manner of its disposal **shall be such as may be prescribed.**" Section 14(2) specifically provides that regulations will be passed to provide "(a) the form and manner of submitting an appeal; (b) the grounds of appeal; and (c) the procedure to be followed by the Appeals Committee." However, despite the imperative for the appeal process, there are still no regulations governing it. The current practice is for appeals to be submitted in letters setting out information that may be incomplete and/or irrelevant. Consequently, with no statutory form for the appeal and for setting out the grounds of appeal, there is a lack of uniformity and a potential to be unclear. The Ombudsman recommended that regulations be drafted in line with the provisions of Act to facilitate and provide uniformity and transparency in the appeals process and provide the statutory format for appeals.

**10.6.10. Status of the Recommendations** – At the time that these recommendations were submitted in September 2021, the Office of the Ombudsman acknowledged the difficulties and delays that the Ministry of Health may face in following up on the recommendations and placed no deadline in which to implement the recommended remedial action.

#### ***What is maladministration?***

***Maladministration occurs when a public body fails to act in accordance with the rule or principle which is binding upon it.***



**11. SAMPLE OF REPORTED COMPLAINTS – PREMATURE & OUTSIDE REMIT**

NATURE OF COMPLAINTS	RESPONDENTS
<p><b>Request to renounce Seychelles nationality and burial outside Seychelles.</b></p> <p>D, a citizen of Seychelles, sought to renounce her Seychelles nationality and expressed the wish to be buried outside the Seychelles jurisdiction.</p> <p>The complainant was informed that the Ombudsman is not mandated to take up or otherwise deal with either of the two requests made out in her complaint. The complainant was advised to seek the advice of a private lawyer to guide her on how best to carry out her 'last' wishes.</p>	<p>Private matter</p> <p><b>Outcome – Outside remit</b></p>
<p><b>Allegation of violation of Human Right to privacy</b></p> <p>X alleged invasion of privacy and unlawful use and publication of image in the broadcast media by Police Officers who had conducted a search at X's home. During the search, X had noticed "small cameras" attached to the police officers' shirts. When questioned about these cameras, the officers had refused to respond. X had not been informed about and had not granted consent to being filmed nor to the publication of the images at any time. X became aware of the filming after the television documentary was aired on local and international mainstream media and widely circulated on social media. X claimed to have been easily identifiable and recognisable in the documentary and had suffered great distress from the exposure.</p> <p>X had filed a complaint with the Central Police Station seeking recourse but at the date of filing the complaint with the Ombudsman was still awaiting an outcome. The Ombudsman advised X to follow up on the complaint with the Commissioner of Police in writing with a view to resolving the matter before lodging a formal complaint to the Ombudsman. This had not been done as at the date of the current report.</p>	<p>Seychelles Police Force</p> <p><b>Outcome – Outside Remit.</b></p>
<p><b>Allegation that the Travisory border control system violates the constitutional rights to Dignity and Freedom of Movement</b></p> <p>T claimed to have been aggrieved by the introduction of the border control system, "Travisory", which prevented free</p>	



<p>movement of Seychellois citizens into and out of the jurisdiction. The “Travisory” system currently obliges all Seychelles citizens to seek travel authorisation for overseas movements. T was advised to seek legal advice on filing a constitutional petition before the Constitutional Court of Seychelles, which could determine whether the travel authorisation infringed the constitutional right to freedom of movement and, at the same time, order appropriate relief. T was advised to also consider lodging a complaint with the Human Rights Commission (HRC), which is better resourced to deal with such a complaint. To facilitate contact with the HRC, the Ombudsman formally referred the complaint to them.</p>	<p>Ministry of Transport &amp; Civil Aviation</p> <p><b>Outcome – Outside Remit</b></p> <p><b>Referral</b>-Seychelles Human Rights Commission</p>
<p><b>Allegation of failure on the part of the former Anti-Victimisation Committee of the National Assembly to provide an outcome of his grievance</b></p> <p>P had previously lodged a complaint with the former Anti-Victimisation Committee (AVC) in 2017. The Committee had acknowledged the complaint and advised that the complainant would be informed of the progress of procedure. However, despite persistent requests for the outcome over six years, P had not received any information from the committee and therefore complained to the Ombudsman. Since the original complaint by then related to facts that had occurred well over the 12-month time limit set by the Constitution in respect of investigations that can be made by the Ombudsman, the Ombudsman refused to enquire into the complaint first submitted to the Anti-Victimisation Committee. P was informed of this. Notwithstanding this decision, the Ombudsman referred the complaint back to the National Assembly for follow up, advising that the AVC should dispose effectively of the complaint since they had accepted it in 2017 and had not informed P of the outcome.</p>	<p>Anti-Victimisation Committee of the National Assembly</p> <p><b>Outcome – Outside Remit &amp; Out of Time</b></p> <p><b>Referral</b> – National Assembly</p>



### Challenging compulsory measures of care

S sought custody of a minor grandchild claiming that the Social Affairs Department had applied to the Family Tribunal to remove the grandchild from the care of its parents but had not considered the grandparent as the best person to be granted custody of the child. S alleged that the Social Affairs Department's failure to communicate and organise a care placement with her as grandparent, opting instead for alternative care placement in a Children's Home was wrong. S alleged that the Family Tribunal had made the Order to remove the child without carrying out due diligence and had not acted in the best interests of the child.

The Ombudsman did not take up the grievance, explaining to S that the Ombudsman is not an appeal body and is not mandated to review any decision of the Family Tribunal or any other tribunal or court of law. S was advised to seek legal advice with regard to appealing the decision or applying for a fresh custody order or a variation order.

Family Tribunal & Social Affairs Department

**Outcome – Outside remit**

### Seeking the removal of statues/monuments at the Peace Park in Victoria

H objected to the presence of statues of Mahatma Gandhi and Nelson Mandela in Victoria's Peace Park, alleging that "*the constitutional garden*" should be reserved only for what he termed "*Seychellois heroes of the Seychelles Independence.*" H sought the removal of the two above-mentioned statues from the Park. The Ombudsman rejected the grievance, informing H that the Peace Park has been designated by the Executive as a public park on State-owned land and that the decision of whose effigy was placed in the Peace Park was a policy prerogative of the government of the day and not a matter over which the Ombudsman has any power of review. Furthermore, the substance of the complaint was based on H's personal opinion of how he believes State-owned property should be used. H was advised that he may consider joining or creating a civil society pressure group that could promote his position through political engagement.

Government of Seychelles

**Outcome: Outside remit**



**Asking the Ombudsman to intervene on behalf of a sick and elderly accused before court**

M sought the intervention of the Ombudsman to urge the Attorney General to either drop criminal charges and release a relative altogether or, at least, allow the accused relative to not have to attend court on “compassionate grounds” of the accused relative’s advanced age and poor health. M was informed that the Ombudsman has no power to intervene in any ongoing criminal prosecution, which action remains the prerogative of the Attorney General. Additionally, Schedule 5 Paragraph 2(b) of the Constitution of Seychelles precludes the Ombudsman from investigating an action concerning the performance of a judicial function or a Justice of Appeal, Judge or person performing a judicial function. Any application with respect to an accused in an ongoing trial remains a matter for a court of law and the Ombudsman cannot ‘review’ any court decision under any circumstances. M was advised to consider instructing the accused’s defence attorney to apply to the Court for the accused to be tried *in absentia* or permitted to be absent from some Court appearances due to ill health.

Attorney General

**Outcome: Outside remit**

**Work related issues including seeking to revise job description**

J contested a ‘final letter of warning’ received from his public authority employer arising out of the accusation of gross insubordination. This had led to J’s suspension without pay for a period of seven days. J was also accused of breach of the organisation’s Code of Conduct and had refused to sign a revised job description. The Ombudsman considered the substance of the complaint and formed the opinion that all the steps taken by the entity were within their powers under the national employment legislation and the Public Service Orders. The Ombudsman concluded that the disciplinary action taken or the action to amend the job description were employment-related. Therefore, the complaint would be more appropriately dealt with through the employment review mechanisms of the

National Assembly

**Outcome: Outside remit**



<p>Public Service Appeals Board or the Employment Department. J was advised accordingly.</p>	
<p><b>Ombudsman cannot deal with Private legal issues, such as establishing a right of passage over neighbouring land</b></p> <p>K had shared a driveway with a neighbour for an unstated period of years and more recently, the same neighbour had obstructed the entrance leading to both properties, including the neighbour's. K complained to the Planning Authority and the grievance was heard by the Planning Authority Appeals Board, which found that the neighbour was within his legal rights to erect posts and close off his property and that K had no right of way over the neighbour's property. The Ombudsman refused to take up the grievance since the complaint required the determination of a legal issue, namely, a right of passage over privately-owned land. The issue of whether K's property was <i>enclaved</i> as a result of the neighbour's action and whether justice required that a right of way be granted and if so, where could only be resolved by litigation in a court of law. K was advised to seek legal advice and informed of the possibility of applying to the Registrar of the Supreme Court for legal aid.</p>	<p>Seychelles Planning Authority</p> <p><b>Outcome: Outside remit</b></p>
<p><b>Overseas delivery and the return of an expired National Identity Card</b></p> <p>C, a Seychelles national resident abroad, had written by email to the Ministry of Internal Affairs (MIA) to inquire about renewing a National Identity Card (ID card) from abroad. The MIA notified C that an application could be submitted by email provided the MIA had a recent photograph of the complainant in their system. The MIA also informed the complainant that the ID card did not have to be collected in person but that a family member could bring the expired ID card to the MIA when collecting the new card on C's behalf, once it was ready for collection. C disagreed with the proposed procedure, insisting that the MIA arrange for</p>	<p>Ministry of Internal Affairs</p> <p><b>Outcome: Outside remit</b></p>



the new card to be delivered to a named person outside the MIA. C also objected to having to return the expired ID Card claiming that this had not been requested at the outset. C alleged unreasonable and unfair the MIA's refusal to follow instructions with regard to collection of the new card. Looking into the complaint, the Ombudsman found that the MIA's request to surrender the expired card was a statutory requirement contained in Section 8 (2) (b) of the National Identity Cards Act (Cap 294) which states: *"The holder of a National Identity Card shall – where the National Identity card is defaced or has ceased to be valid, surrender to the Chief Officer of the Civil Status before the issue of a new National Identity Card..."* Furthermore, the Ombudsman noted that the procedure, published on the MIA's portal, stated clearly that any applicant seeking the renewal of an ID Card must submit the expired card with the application for renewal. Since this process is governed by law, which law was available to the public along with the applicable procedures, the Ombudsman found no maladministration in the MIA's action relating to the renewal of the Identity Card.

"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."



## 12. STRATEGIC PARTNERSHIPS & MEMBERSHIPS

### 12.3. AOMF (ASSOCIATION DES OMBUDSMAN & MEDIATEURS DE LA FRANCOPHONIE)

– The [Association des Médiateurs et Ombudsman de la Francophonie](#) (AOMF) is an 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 Ombudsman has been a member of AOMF since 1999. The Office benefits from training sessions, workshops, meetings and conventions organized by the AOMF. The AOMF financed the Office's website as well as the setting up of the case management system. **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 2023.

### 12.4. AOMF ACTIVITIES WORKSHOP ON THE ROLE OF THE OMBUDSMAN & MEDIATOR IN CRISIS MANAGEMENT

– The AOMF held a workshop in Luxembourg from 23<sup>rd</sup> to 25<sup>th</sup> October 2023 on the theme “Crisis Management – What Role for the Mediators & Ombudsman?” (*“La Gestion des crises : Quel rôle pour les Médiateurs et Ombudsman?”*). The Ombudsman attended the session in her capacity as a member of the Membership Committee of the AOMF's executive board. It was also an opportunity to bid farewell to the other board members as it was the last official AOMF meeting before the end of the current incumbent's mandate.



**12.5. AOMA (ASSOCIATION OF OMBUDSMAN AND MEDIATORS OF AFRICA)** – The Office remained an active member of the [African Ombudsman and Mediators Association](#) (AOMA) throughout 2023. 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, virtually. The Ombudsman was elected Deputy Secretary General of AOMA in November 2019 and held the position until the last General Assembly held in Kigali, Rwanda in November 2023.



**12.6.** Foundations for the establishment of AOMA were laid in Seychelles in July 2001, when Seychelles hosted the 7<sup>th</sup> African Regional Ombudsman Conference. It had been my intention to mark the anniversary year of AOMA by focussing on the pioneering role of the Seychelles Ombudsman in the creation of AOMA in hosting the General Assembly in Seychelles in 2021. However, the COVID-19 pandemic and associated lockdown derailed the plans which were further aggravated by lack of funds. The offer to host the GA in 2022 was withdrawn and revived again in the course of 2023 for the first term of 2024. To meet the urgency of the overdue GA and since the funds were again not earmarked for 2024, Seychelles' offer was withdrawn and Rwanda stepped in to host the General Assembly from 28<sup>th</sup> to 29<sup>th</sup> November 2023 in Kigali. The Ombudsman declined all nominations for election to the Executive Committee due to the fact that her mandate ends in March 2024. **Membership fees** – Membership fees of US\$ 1,000 are paid annually through the Ministry of Foreign Affairs. The Office was up to date with its annual subscription in 2023.



**12.7. AOMA EXECUTIVE COMMITTEE MEETINGS** – The Ombudsman attended all meetings of the AOMA Exco virtually online throughout 2023. Meetings were held on 9<sup>th</sup> March, 5<sup>th</sup> October, and again on 15<sup>th</sup> November 2023 in preparation for the General Assembly at the end of November.

**12.8. INTERNATIONAL OMBUDSMAN INSTITUTE (IOI)** – The Ombudsman of Seychelles joined the IOI as a voting member in June 2022. 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 be a member, and to play an active role on the executive board as soon as the new Ombudsman takes over in 2024. The cost of membership, US\$ 375 per annum, is nominal for Seychelles.

**12.9. MAINTAINING DIALOGUE THROUGH WEBINAR DISCUSSIONS** – A positive aspect emerging from the COVID-19 pandemic has to be the more cost effective way of staying in touch with our international partners through webinars. Despite the resumption of travel, our strategic partners, the *Association des Ombudsman et Médiateurs de la Francophonie* (AOMF) and the African Ombudsman and Mediators Association (AOMA) have continued to organise online webinars and meetings throughout 2023 all of which were attended with enthusiasm by our staff. However, there is a major benefit to be derived from participating in person in such events where the human relationships are built through direct contact.

**12.9.1. 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. Details of these sessions are set out in the list in Chapter 5 above.



## 13. ACKNOWLEDGEMENTS

- 10.1** As I prepare to leave office at the end of March 2024, it is opportune to acknowledge and thank the citizens of Seychelles for the trust placed in this institution in their search for fairness and justice throughout the seven years of my mandate. Our service delivery may not always have met the high expectations of the public as all too often their grievances were not within our jurisdiction. However, we have always done our best to listen attentively, take time to explain and above all, show empathy towards everyone who has turned to us in their hour of need.
- 10.2** To many whose grievances remain outstanding because of delays in our enquiries and reports, I apologise. I thank them for their patience and reassure them of our commitment to address this weakness going forward as we seek additional resources.
- 10.3** I acknowledge and express deep gratitude to my small, dedicated and highly committed team for their relentless support over the last seven years. We could not have accomplished what we have this far without their devotion and dedication. I wish them a long and fruitful continuation in the Office under the leadership of the next Ombudsman in improving efficiency across all the areas of our mandate with the ultimate objective of making a real and sustainable difference in public administration.
- 10.4** Finally, I acknowledge and thank the public officers whose collaboration and understanding have made a positive change for the complaining citizens as well as their respective institutions and public service delivery as a whole. Understanding the value of using this quality control exercise to their advantage, these public servants have fixed the errors and in doing so, have shown accountability and directly contributed to greater transparency in their own improved service delivery. In righting the wrong, they have shown that our 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 organisations, 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.



## 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/he 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.



