

OFFICE OF THE OMBUDSMAN

REF: BC109/147/01(....)

31st December 2017

Honourable Speaker
Speaker of the National Assembly
Reverend Pye's Lane
Banjul

Honourable Speaker,

SUBMISSION OF 2017 ANNUAL REPORT

I have the esteemed honour and privilege to submit the 14th Annual Report of the Office of the Ombudsman covering the period 1st January to 31st December 2017.

The Report is submitted pursuant to Section 163 (2) (f) of the Constitution of the Republic of the Gambia 1997 and Section 15(1) of the Ombudsman Act 1997.

Please accept Madam, the assurance of my highest consideration.

Yours sincerely

.....
Mrs FatouNjie-Jallow
Ombudsman

CC: File

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Chapter 1

1.1 REMARKS BY THE OMBUDSMAN

The creation of an Ombudsman Office in the Gambia is a constitutional requirement, as stated in Chapter X (ten) Section 163 of the 1997 Constitution of The Republic of The Gambia which states ***“Subject to the provision of this Constitution, An Act of the National Assembly shall within six months of the coming into force of this Constitution establish the Office of the Ombudsman and provision of his or her functions and duties.”*** Thus, the 1997 Ombudsman Act establishes the Office of the Ombudsman and prescribed the powers and functions of the Ombudsman.

Honourable Speaker, since the creation of the Office of the Ombudsman, one of our major priorities has been to work towards fully realizing all the mandates of the Office. Great successes were registered but certain obstacles also existed. However, we never relented in that quest and today, in addition to our core mandate of complaints handling and investigations, we have been able to realize our objectives of visiting prisons and all detention centres and the implementation of the Assets declaration by public officers. We cherish this as a great opportunity to advance the cause of administrative justice in the Gambia. My office will continue to execute its mandate with unyielding commitment to the values that are characteristic of an impartial and reliable system of justice.

Honourable Speaker, a good chunk of my state will be directed to the new activities of the Office vis-a vis Assets Declaration by government Officials and visits conducted in police cells, prisons and all detention centres in which great strides have been made.

On visiting prisons and all detention centres, Section 3(b) of the 1997 Ombudsman Act mandates the Ombudsman “to investigate complaints concerning the functioning of the Public Service Commission, the Administrative and Security Organs of the State, The Gambia Police Force, and Prisons Service in so far as the complains relate to the failure to achieve a balanced structuring of the force and service or equal access by all to recruitment to the force and service or fair administration in relation to them.”

Section 11(2) of the Ombudsman Act 1997, further states that “Notwithstanding the provision of any written law, where a prisoner or any other person held in any institution makes an allegation or complaint to the Ombudsman, the allegation or complaint shall not be made through or subject to scrutiny of any other person. This section gives the Ombudsman the jurisdiction to receive complaints from prisoners and to start investigation on the lawfulness of the decision.”

Honourable Speaker, The Ombudsman was unable to execute the above functions since its inception in 1999 due to lack of the political will. However, with the coming of the New Gambia under the leadership of His Excellency the President Mr. Adama Barrow, the Ombudsman has been granted unrestricted access to prisons, police cells and all detention centres. We thank the government for granting the Ombudsman this deserve jurisdiction which we have been struggling to achieve for many years. In this

vein the Office had been visiting police cells and so far, a number of 23 Police Stations have been visited. In the same vein, the Ombudsman and team visited the main Prisons at mile two and the Prison at Jeshwang. All cells at mile two and Jeshwang Prisons were visited, including the kitchen, the clinic, food stores, the skill centre etc.

The Team interviewed prisoners and inspected various administrative records. Similar procedures were done at police stations. Hon .speaker an area of great concern is the state of the remind prisons in terms of the number of years that some of them have remain in custody without being judged and sentenced or acquitted. See attached appendix. The Ombudsman recognizes the importance of the protection of the fundamental rights and freedoms of all Gambians particularly those in prisons and all detention centres as set out in chapter !V of the 1997 constitution of The Republic of the Gambia . This mandate is spelt out clearly in Chapter X Section 163 of the 1997 Constitution.

The main objective of our visits to these detention centres is to conduct inspections and investigations which make prisons and all detention centres more transparent and to draw attention to problems and conditions endured by vulnerable prisoners. With this any unjust, unfair, unsound and illegal conditions will be discovered and recommendations made for corrective measures.

The Ombudsman will ensure that detainees are kept in a conducive environment and to report to Government its findings and make appropriate recommendations in line with the optional protocol on the convention against Torture and all degrading Acts. Thus the Ombudsman will be coming up with reports containing genuine evidences of conditions in Prisons, Police cells and all places of detention. In addition the Ombudsman will be receiving genuine complaints from prisoners and people in detention for appropriate action and recommendations

Hon speaker, to ensure that we achieve the above mentioned objectives, we have previously conducted workshops with all the security organs in the country that are working with detention centres namely the Police, Prisons, Immigration authorities a well as The Gambia Arm Force, The State Intelligence Service, The National Drug Law Enforcement Agency and The Customs Section of the Gambia Revenue Authority. They were sensitized on the Ombudsman's objectives of visiting prisons and all detention centres.

Hon Speaker, the ombudsman is a member of the African Ombudsman and Mediators Association (AOMA) which consist of 40 Ombudsman Institutions in Africa. In a bid to protect the human rights of prisoners and people in detention, the African Ombudsman Association has recently passed a declaration called the **“Grand Bassam Declaration.”** In this vein, the African ombudsman Association AOMA has tasked all Ombudsmen institution in Africa to serve as National Preventive Mechanism(NPM) against torture and all forms of degrading acts in line with the OPCAT(Optional protocol to the convention against Torture}. As such there is the need to ratify the OPCAT in a bid to protect the human rights of prisoners and people in detention.

On Assets Declaration, Section 223 of the 1997 Constitution of the Republic of The Gambia requires all public officers to submit to the Ombudsman a written declaration of all property and assets owed by him or her and of liabilities owed by him or her whether directly or indirectly. The declaration of income and assets is a constitutional requirement. Chapter XX1 (Code of Conduct of public officers) Section 223 (Declaration of Assets) of the 1997 Constitution of the Republic of The Gambia requires public officers to declare to the Ombudsman a written declaration of all property and assets owned to him or her, and of liabilities owned by him or her, whether directly or indirectly. On assuming office, at the end of every two years and on ceasing to hold public office.

The 1997 Constitution of the Republic of The Gambia states that a false declaration in any such declaration shall be deemed to be a contravention of the code of conduct set out in chapter XX1. It further states that a declaration shall be produced if required by a proceeding before a court of competent jurisdiction other than a district tribunal and in proceedings before a commission of inquiry appointed in accordance with the constitution.

Any property or assets acquired by a public officer after an initial declaration of assets which is not attributed to his /her income from his/her public office or other permitted employment, personal gifts, as permitted by the code of conduct, inheritance or a loan or investment (including any saving scheme) or ordinary commercial terms, shall be prima facie (clear) evidence of having been acquired and in the absence of a credible explanation by the public officer concern may be deemed to have been acquired in contravention of the code of conduct and shall render the public officer liable to disciplinary action by the appropriate person or authority or removal from office or proceedings for removal as provided by the constitution or any other law.

Honourable Speaker, assets declaration is not a threat to privacy but instead it is a powerful tool to fight corruption which is a concern in most countries. It has immense benefits jurisdiction. The literature on asset declaration states many benefits of the process. Including the following:

- It increases transparency and the trust of citizens in public administration.
- It protects public officers from false accusation
- It enhances the legitimacy of government in the eyes of the public
- It stimulates foreign direct investment
- It is a tool for the exposure of substantial unjust enrichment
- It also help heads of public institutions prevent conflict of interest amongst their employees and to promote integrity within institutions.
- The principal goal of income and asset declaration is to fight corruption
- It dissuade public officers from misconduct or other illegal activity
- It promotes economic growth in a country.

Most countries have come up with new innovations and anti-corruption laws that require public Officials to declare their assets and income on assuming and leaving office.

Some laws even went further to demand for the declaration of assets and income of their spouses and dependents.

However, the Officers who are required to declare and the amount of details required vary from country to country. In the Gambia, There is a standard declaration form to be filled by the declarant. I am happy to report that the compliance rate so far is great. It is worth noting at this juncture that all honourable ministers have declared their assets to the Ombudsman through the directives of His Excellency the President of the Republic of the Gambia Mr. Adama Barrow .

Permanent Secretaries, Deputy Permanent Secretaries, Managing Directors, Deputy Managing Directors, Executive Directors, Deputy Executive Directors and Directors, from both government institutions and parastatals have started declaring their assets and the compliance rate is high. The process will be trickled down to all senior government officers and those in parastatals. Let me at this junction assured all and sundry that the information collected will be treated and tackled with confidentiality and strictly in according to the dictates of the 1997 Constitution of the Republic of The Gambia and the Ombudsman Act 1997. A cardinal principle of ombudmanship is to treat information with confidentiality, integrity, Justice and fair play. I will ensure that the fundamental rights and freedom of all citizens are safeguarded.

Honourable Speaker, please allow me to remind you that the Ombudsman serves as public protector, complaints commission, human rights protector and mediator. The Ombudsman also serves as a broker not only to articulate the rights of the ordinary citizen but to also act as a check on the administrative arms of government. Our services are free of charge, speedy and confidential.

The office remains independent with no interference from any external force as enshrine in the constitution. The office in turn continues to safeguard the integrity and impartiality of the Ombudsman. The popularity of the Office continue to increase as manifested by the number and type of complaints received from both the public, parastatals and private sectors The office has addressed numerous cases and gave advise to many whose complaints do not fall within its jurisdiction as to the appropriate place to seek redress.

1.2 THE REPORT

This is the 14th annual report of the Ombudsman and it covers the period 1st January to 31st December 2017. During the year under review, the Office registered cases from all regions of the country and continued to successfully settle cases registered. The compliance rate of the Ombudsman recommendations on cases investigated continued to be very high at a rate of over

A total number of 411 cases were registered in 2017. Out of these 376 cases were from the public sector and 35 cases from the private sector. The cases received from the private sector were given appropriate advice as to where to seek redress.

347 complaints were registered at headquarters, out of these 33 complaints were from the private sector 37 cases were satisfactorily resolved in favour of the complainants, 54 dismissed after full

investigation due to lack of merit, 81 discontinued due to the fact that they were frivolous and not made in good faith, 5 withdrawn, 5 sub judice and 130 still under investigation.

18 complaints were registered in Mansakonko Office. Out of these 17 cases were from the public sector and 1 case was registered from the private sector. 4 cases were settled in favour of the complainants, 2 dismissed after full investigation for lack of merit, 1 withdrawn and 10 pending.

27 complaints were registered in Basse Office out of these 26 cases were from the public sector and 1 case from the private sector 20 cases were settled in favour of the complainants, 3 dismissed due to lack of merit, 2 discontinued and 1 still under investigation.

21 complaints were registered in the Kerewan Office and investigations conducted on all the cases. Out of these ...were settled in favour of the complainants,... withdrawn and ... pending.

The institutions with the highest number of complaints during the period under review are:

- Gambia Ports Authority 37
- Gambia Armed Force 34
- Gambia Prisons Service 31

The report contains samples of cases investigated with summary of the cases. However, the Statistics depicts a true representation of the cases in 2017.

1.3 ACTIVITIES OF THE OFFICE

During the year under review, apart from the routine investigation activities and clinics conducted in the regions and headquarters office, the office accomplished series of activities as per the office's work plan and strategic plan 2012- 2017.

Sensitization

In the area of sensitization series of activities were conducted with public institutions and parastatals in preparation to our visits to police cell, prisons and all detention centres. Series of radio and television slots were also aired to sensitize and prepare the general public on the role of the Ombudsman especially its new functions. Series of workshops were also conducted to sensitize all stakeholders on the issue of visiting police cells, prisons and all detention centres as well as the declaration of assets by public officers.

As a follow up to the sensitization workshop for Ombudsman focal points in government institutions and parastatals, the office conducted a five days workshop and clinics/community Bantabas in 8 villages. Radio programs were conducted in Farafeni paradise FM radio station and Kerewan community radio.

Following the granting of unrestricted access to all police cells, prisons and detention centres by the honourable minister of interior, the office as part of its preparation for the visits conducted series of workshops for the police, prisons and immigration officers as

well as the Armed forces NDLEA, SIS and GRA. Representatives of all the security organs in all the administrative regions attended. Participants from all the regions as well as Banjul and the kombos were invited in preparation for a full coverage of the whole country. Officers from the media were also invited in a bid to sensitize them and for them to help disseminate the information through their various mediums.

Since sensitization is an on going activity ,the office held series of sensitization workshops to further raise awareness on the role and functions of the Ombudsman and to further sensitize public institutions , parastatals and all stakeholders on the role and functions of the office as well as on the new activities of the Ombudsman vis-a vis declaration of Assets as required by Section 223 Chapter XX1 of the 1997 Constitution and visits to prisons and all detention centres. As required by sections 11(2) and 3(1) b of the Ombudsman Act 1997.

In March 2017, the office organized a one day workshop with public institutions on the mandate of the ombudsman. This workshop was used to strengthen the bond between the ombudsman and all public institution by establishing focal points for ombudsman activities in each of the institutions to serve as a first point of call for any grievance sports of TV Adverts were carried out with GRTS within the news using Gold and Diamond sports to reach to more people.

Sensitization on assets declaration was also conducted. The office used both the print and electronic media to sensitize the general public on the procedures of assets declarations.

Investigations

On investigation and complaints handling, the office continued to receive increase number of cases especially after the impasse. The number of cases received doubled by over 100% by end 2017 and the highest number of complaints received were wrongful dismissal or termination followed by unfair treatment and injustice. The attached statistics showed a picture of the cases received and their nature The office has been struggling to complete the cases received which are over 300 due to the fact that most of the cases received were since 1997 and it was difficult to retrieve the data from institutions. However over 58% of cases have been settled successfully or dismissed after full investigations; however, investigations are still ongoing on 42% of cases.

1.4 CONSTRAINTS

All the three regional offices in Basse, Mansakonko and Kerewan are operating within other institutions premise. Both the Mansakonko and the Kerewan Regional Offices are operating from the Governor's Office. The Basse Office is operating within one of the Ministry of Agricultures complex .There is the urgent need for the office to have its own structures .The management has been submitting budget proposals to finance to the effect.

1.5 WAYFORWARD

- Visiting prisons and police cells and all detention centers in the whole country
- To execute Section 223 of the 1997 Constitution of Republic of The Gambia ,Declaration of Assets by Public Officials
- To expand the decentralization process to have satellite offices in Soma, Brikama, Farefeni and Janjanbury
- Continuous capacity building for both long term and short term and to conduct study tours to other Ombudsman Offices based on our new mandates
- Conducting more proactive investigations.
- Visiting mental health homes and hospitals
- Strengthening the website.
- Strengthening the Nation-wide sensitization to create more awareness on the role and functions of the Ombudsman using TV adverts, radio programs, clinics and “bantabas”
- Updating our brochure.
- Working on a strategic plan 2019-2023
- Creation of a Newsletter on activities of the Ombudsman
- Working on expanding the mandate of the Ombudsman to include the private sector

Chapter 2

2.1 AIMS AND OBJECTIVES

The Institution's main objectives are:

- To subject Government's use of power to close scrutiny and so help create an environment within the civil sector in which public officers, irrespective of their hierarchy, would refrain from unjust procedures.
- To play the balancing act not only to enable public servants to understand how they can do their job better and thereby improve the standard of services to the public, but also to enhance the public understanding why Government takes certain decisions.
- To dispense administrative justice through protocols that evolve to ensure fair, reasonable, expeditious administration of the Public Sector by using **the reactive model**, that is, wait for complaints and act on them, and **the proactive model**, that is, seek out matters of concern and initiate investigations.
- To put civility, reasonableness and procedural fairness at the centre stage of public officers' dealings with the citizen.
- To be accessible and responsive to the interests and complaints of all persons particularly those who are vulnerable to unfairness such as the poor, the physically handicapped, the incarcerated, the young, the old and women.
- To be seen to be transparent and, where necessary make public the findings and recommendation of its investigation.

2.2 STRATEGY

Objectives will be achieved by but not limited to the following means:

- Ensuring a culture of respect for the rights and obligations of all people in The Gambia.
- Dispensing and promoting justice in a free, informal and relatively expeditious manner.
- Ensuring fairness, efficiency, transparency, accountability and application of best practices.
- Using a well-trained motivated workforce and the most modern technology.

- Ensuring that the Ombudsman services are easily and freely accessible to all people in The Gambia.
- Creating awareness for the public to understand the role and function of the Ombudsman.

In carrying out all these activities the Office of the Ombudsman will be guided by the need for impartiality and independence and the importance of collaborating with other Government institutions as well as civil society.

2.3 TRAINING

Staffs training continue to be priority areas in the activities of the office as management is cognizant of the importance of training and capacity building in the effective implementation of an institutional mandate. During the year under review, two staff completed master's program on scholarship from international partners. Another two also completed their master's program on sponsorship from the office. A staff is currently pursuing an LLM on Human Rights and Humanitarian Law through distance education at Aberystwyth University in UK. Two other staff also completed the barrister at law at the Gambia Law School sponsored by the office. Another staff is currently pursuing an MSC program at the University of The Gambia on International Relations and Diplomacy.

On local short term training, the Accountant attended a capacity training program organized by GPPA for procurement officers. Two staff attended capacity development program organized by Personnel Management Office. In the same vein staff of the institution participated in training programs organized by the UTG, MDI and some government institutions and deliver papers on the role and functions of the Ombudsman

Schools and institutions also visited the office and were sensitized on the role and functions of the Ombudsman. Papers were delivered to university students at MDI on the role and functions of the office as well as good governance.

The office participated in an international workshop organized by the African Ombudsman Association on the prevention of torture in Ivory Coast. Another training program on strategic Planning and managing was attended by the Office held in Zambia.

OVERSEAS TRAINING 2017

<u>NAME</u>	<u>DESIGNATION</u>	<u>TRAINING COURSE</u>	<u>INSTITUTION</u>	<u>DURATION</u>	<u>SALARY STATUS</u>	<u>SOURCE OF SPONSORSHIP</u>
Nyimasata Dibba	Investigator	Master's in International Business	Chang Gung University (Taiwan)	Three years with effect from 24 th September 2013 – January 2017	Without Salary	Chang Gung University
Landing Bondi	Director of Human Rights	LLM Human Rights and Humanitarian	Aberystwyth (UK)	3 yrs commencing 1 st October 2015	N/A	Ombudsman

		Law				
Juma Camara	Director of Communication	Master's in Public Sector Management	GIMPA Ghana	January to December 2017	With salary	Ombudsman
Sanna Kolley	Senior Investigator	Master's in Public Sector Management	GIMPA Ghana	January to December 2017	With salary	Ombudsman
Edrissa Sallah	Complaints Officer	Masters in Development Economics	Ege University, Turkey	August 2014 to August 2017	Without salary	Turkish Burslari Scholarship

LOCAL TRAINING

<u>NAME</u>	<u>DESIGNATION</u>	<u>TRAINING COURSE</u>	<u>INSTITUTION</u>	<u>DURATION</u>	<u>SALARY STATUS</u>	<u>SOURCE OF SPONSORSHIP</u>
Nurudeen Mbye	Senior Investigator	Barrister at Law (BL) BAR programme	The Gambia Law School	One year 2016/2017	With salary	Ombudsman
Musa Touray	Investigator	Barrister at Law (BL) BAR programme	The Gambia Law School	One year 2016/2017	With salary	Ombudsman
Baboucar I. Touray	Investigator	Masters in International Relations & Diplomacy	University of The Gambia	Two years 2017-2019	With salary	Ombudsman

Chapter 3

3.1: FINANCIAL ALLOCATIONS

During the year ended 2017, the Ombudsman financial management plan was:

- To review and build on achievements gained over the years in relation to priorities identified.
- To foster good public administration that is accountable, lawful, fair, transparent and systematic.
- To improve on subsequent financial performances and to build on expertise and capacity of staff to meet current and future challenges.
- To ensure compliance and consistency in our procurement procedures according to the norms of the Gambia Public Procurement Act, 2003.

The approved financial allocation for the office in 2017 was D 17,106,339

The breakdowns of the allocations from January-December 2016 are as follows:

- | | |
|--------------------------|---------------------|
| a. Salaries etc. | D 11,618,339 |
| b. Other charges | D 5,488,000 |
| c. Total budget for 2016 | D 17,106,339 |

Table showing the trend of allocations from 2015 to 2017

YEAR	ALLOCATIONS	DISBURSEMENT	SHORTFALL	INCREMENT	VARIANCE
2017	D17,106,339	13,803,057	3,303,282	(2,645,432)	19.31%
2016	D19,751,771	17,067,203	2,684,568	2,015,591	13.59%
2015	D17,736,180	14,236,565	3,499,615	(575,000)	19.73%

Notes

Allocations: these are the amounts approved in the budgets for the office for the respective years.

Disbursement: these are the actual cash amounts disbursed by the Directorate of National Treasury to the Office of the Ombudsman during the years.

Shortfall: these comprised the difference of the approved budget and the actual amount disbursed to the office.

Increment: these are the additional funding in the approved budget for the current year over the previous year.

Variance: these are the percentage representation of the shortfall over the approved budget for the year.

3.2: STAFFING 2017

PARTICULARS OF POSITION	NUMBER OF STAFF	GRADE	ANNUAL SALARY D
OMBUDSMAN	1	FIXED	170,556
DEPUTY OMBUDSMAN	2	FIXED	274,872
DIRECTOR OF INVESTIGATION	1	12	84,912
DIRECTOR OF HUMAN RIGHTS	1	12	76,277
DIRECTOR OF COMMUNICATION	1	12	78,005
FINANCIAL CONTROLLER	1	12	76,272
PRINCIPAL INVESTIGATOR	1	11	73,901
PRINCIPAL INVESTIGATOR - (Legal Officer) *	1	11	68,357
PRINCIPAL INVESTIGATOR - HUMAN RIGHTS	1	11	66,139
SENIOR INVESTIGATOR - ANTI CORRUPTION	1	10	58,651
SENIOR INVESTIGATOR	1	10	64,195
COMPLAINTS OFFICER	1	10	58,651
INVESTIGATOR	1	8	45,000
ADMIN MANAGER	1	11	70,574
PRINCIPAL PRIVATE SECRETARY	1	9	55,384
ACCOUNTANT	1	8	43,128
PROCUREMENT OFFICER	1	8	44,064
SECRETARY	1	7	36,893
RECORDS CLERK	1	6	32,083
RECORDS SUPERVISOR	1	5	24,054
DRIVER	4	3	64,008
GARDENER/CARE TAKER	1	3	16,992
MESSENGER	1	3	16,992
CLEANER	2	3	30,744
WATCHMAN	2	3	30,384
IT SUPPORT TECHNICIAN(ADVERTISE)	1	5	21,672
KEREWAN REGIONAL OFFICE			
SENIOR INVESTIGATOR	1	10	59,760
INVESTIGATOR	1	8	42,192
SENIOR TYPIST	1	5	25,632
DRIVER	1	3	16,272
NIGHT WATCHMAN	1	3	14,832
CLEANER / MESSENGER	1	3	16,272
MANSAKONKO REGIONAL OFFICE			
SENIOR INVESTIGATOR	1	10	59,760

INVESTIGATOR	1	8	42,192
SENIOR TYPIST	1	5	27,216
DRIVER	1	3	16,632
CLEANER / MESSENGER	1	3	16,632
BASSE REGIONAL OFFICE			
SENIOR INVESTIGATOR	1	10	64,195
INVESTIGATOR	1	8	42,192
SENIOR TYPIST	1	5	27,216
DRIVER	1	3	16,632
CLEANER / MESSENGER	1	3	16,632
OVERALL TOTAL BASIC SALARY			2,185,219

Chapter 4

4.1: CASES BROUGHT FORWARD

COMPLAINT NO: 72/2015
NATURE OF COMPLAINT: Claiming Social Security Benefits

COMPLAINT

The complainant stated that he worked for a private company from 2005 to 2013 and that in 2014 the company's ownership changed. He alleged that he had applied for social security benefits since 2014 and had exhausted all the processes but could not get his money. He also alleged that any time he made enquiries he was told that the machines had problems. The complainant urged the Ombudsman to intervene so that he could get his benefits.

FINDINGS

The company was in arrears in making contributions towards the complainant's social security benefits.

The complainant was paid D7, 449.03 by cheque numbered 03349629 dated 11 April 2018 as his social security benefits.

CONCLUSION

The complainant was paid his social security benefits and the case was closed.

COMPLAINT NO: 18 /2016
NATURE OF COMPLAINT: Claiming Contract Gratuity

COMPLAINT

The complainant was appointed by a public institution effective 1 August 2008. After serving her seven years contract, two letters reference AGJ 0710586693 and PR/C/74/VOL.74 (18-15) dated 10 August 2015 and 18 August 2015 respectively were issued to her stating that her term of office had ended effective 1 August 2015.

She alleged that as a contract employee, she wrote a letter dated 13 October 2015 claiming her annual gratuity of 25% of her annual income but to no avail. She further alleged that her gratuity was supposed to have been paid to her annually during her seven years contract as stated in section 6 of the institution's service code which states:

- (a) "The commission's members are appointed for a seven-year period in accordance with the constitution. They are expected to report on duty almost every working day, to oversee regional offices and perform regional duties. Their

allowances are determined by the Office of the President and they are eligible for ex-gratia or gratuity payments annually, equivalent to 25% of their annual emolument.”

And section 6.2.1 of the code under contract employment which states:

- (b) “A contract employee is one who is over retirement age but is engaged on full or part-time and whose terms of service are similar to those of a permanent employee except that in lieu of pensions he/she receives a gratuity, annually, of 25% of his /her annual income.”

FINDINGS

A meeting was held with the head of the institution and he gave assurance that he would look into the matter in a bid to reach an amicable resolution.

CONCLUSION

The head of the institution informed the Ombudsman in a letter reference AGD3/189/01 Part 6(124) dated 13 December 2017, that the complainant had been paid nine years contract gratuity.

COMPLAINT NO:

12/2016

NATURE OF COMPLAINT:

Claiming Social Security Benefits

COMPLAINT

The complainant alleged that he was employed by a company as a night security effective 2 February 2013. On 4 February 2016, he was dismissed. The following day on 5 February 2016, he went to an institution to claim his benefits. It was discovered that his employer did not register him with the national provident fund. The institution contacted his former employer but the company informed them that they had been paying his contributions through a member of staff of their institution.

He was given a form by the institution to fill and forward to his former employer to be registered but he refused because according to him his colleagues had followed the same procedure and nothing came out of it. He urged the Ombudsman to intervene for redress.

FINDINGS

The institution confirmed that the complainant’s former employer had not registered him. One of the officers promised to send a member of their staff to the said company so that the complainant could be registered.

On 7 May 2016, the officer informed the Ombudsman that they could not locate the complainant’s workplace. He asked the Ombudsman to contact the complainant to help locate his place of work. The complainant was contacted on his phone on several occasions but could not be reached.

CONCLUSION

Since the complainant could not be reached on his phone and all efforts to locate his place of work proved futile, the case was discontinued.

COMPLAINT NO:

18/2016

NATURE OF COMPLAINT:

Requesting Permanent Appointment

COMPLAINT

The complainant said that he started work as volunteer nursery attendant at a department in 1992. In 1998, he was appointed on daily wages on the same position. He alleged that he had been on daily wages and had made several appeals to the department to consider giving him permanent appointment but to no avail. He also alleged that he usually received his salary very late.

FINDINGS

The department informed the Ombudsman that the issue of daily-paid staff had been a challenge and a great concern. They promised that by January 2017, thirty daily-paid staff would be appointed and the remaining seventeen staff would be appointed in 2018.

CONCLUSION

The department finally sent a letter to the complainant ref: ATK 56/261/01 (232) dated 20 June 2017, appointing him as nursery attendant.

COMPLAINT NO:

20/2016

NATURE OF COMPLAINT:

Injustice

COMPLAINT

The complainant said that he purchased a plot of land in Makumbaya Village, Kombo North District. He started building on it ten years ago but only stopped at foundation level. During his visit to The Gambia in December 2015, he discovered that someone was erecting a fence on his land. He then immediately reported the matter to the government department in Brikama responsible for such matters via one of officials of that department.

Thereafter, the official assigned two personnel of the department to visit the plot of land with him. When they visited the said land, they met masons building a fence on the land without a clearance from the department. He added that the masons said they were contracted by a man to build a fence on the plot of land. The personnel of the department then advised the masons to stop work on the plot of land and issued them with a notice for them to give to the man. On the notice, they were not only asked to stop work on the land but also required to provide valid documents to prove ownership

of the land within two weeks failure of which the department would authorize the demolition of any unauthorized structure built on the plot of land.

He also said that he was introduced to someone as head of the department who also advised him to exercise patience for two weeks so that the man could be given the chance to produce documents to prove his ownership of the land. He alleged that the person gave him his phone number and promised to get in touch with him but to no avail. Further, he had since then been pursuing all parties involved in the matter for a resolution but all his efforts proved futile.

FINDINGS

It was confirmed that the department had received the complainant at Brikama office that he had a plot of land at Mamouda village, instead of Makoumbaya village, measuring 50m by 250m which someone was developing. A team from the department was sent to find out if those at work on the said plot of land were issued with a development permit. Since they could not produce a development permit, they were asked to stop work which they did. The department further asserted that the issue of eviction was a mandate of the courts.

It was established that the complainant had purchased a plot of land in Mamouda village in Kombo South District, measuring 25m by 35m in exchange for a car brand BMW500 plus D5,000 from a resident of the village in 2005. The man from whom he got the land said the disputed land was lent to his father by a “kabilo” in Jambur village. He further asserted that the portion of land sold to the complainant was allocated to his family by that “kabilo” through a brother of the Alkalo.

On the other hand, it was also revealed that the man, whose men were caught building on the plot of land measuring 25m by 35m, had purchased it for D30, 000 from a resident of the village in 2015. The resident affirmed that she had inherited the plot of land from her mother who is a member of the “kabilo” that owned the said land. It was also established that the said resident had once taken the matter before the Gunjur District Tribunal and Brikama High Court over the said plot of land and judgement was passed in her favour.

The brothers of the alkalo, who were mentioned in connection with the complainant’s claim over the land, confirmed that the land in dispute traditionally belonged to the latter “kabilo”. A member of the “kabilo” in connection with the man, said to have been illegally developing the land, also agreed with what the alkalo’s brothers had said. It was established that an area measuring about 25m by 40m was fenced by him thus encroaching on the land sold to the complainant. At the same time, a building foundation was also seen erected by the complainant on another portion of the land.

CONCLUSION

Since the Ombudsman does not have the jurisdiction to determine the rightful title deed bearer or handle land disputes, the complainant was therefore advised to take the matter before the courts.

COMPLAINT NO:
NATURE OF COMPLAINT:

23/2016
Claiming Payment of Leave Arrears

COMPLAINT

The complainant was appointed by an institution as junior engine hand effective 1 July 1984. In January 2015, he was notified of his retirement in a letter dated 27 January 2015. In the letter, he was informed that he would proceed on leave and retirement effective 2 February 2015. He alleged that at the time of his retirement, he was owed 212 working days as leave arrears but was later given four months' leave starting from 2 February 2015 to 5 July 2015. The complainant claimed that the four months' leave was not enough to cover up the 212 working days leave arrears the authority owed him. For this reason, he had a remaining balance of 112 working days. He further alleged that the remaining balance of 112 working days arrears at the time of his retirement was neither given to him nor was he compensated.

FINDINGS

The complainant was offered appointment by the institution as junior engine hand in a letter dated 29 October 1984, which was supposed to take effect from 1 January 1984. He worked for the authority until in 2015 when he was notified of his retirement in a letter dated 27 January 2015, reference PER/192/ (198). In the letter, he was informed that he had accrued 212 working days' leave and as a result, he was asked to proceed on leave and retirement effective 2 February 2015 rather than 5 July 2015, which was supposed to be his 60th birthday.

Upon lodging a complaint with the Office of the Ombudsman regarding the remaining balance of 112 working days, the institution's managing director was written to for reaction. He responded in a letter dated 29 July 2016 reference PER/192/ (220) stating that the complainant was scheduled for retirement on the eve of his 60th birthday on 5 July 2015 but a retirement notice was given to him on 27 January 2015 informing him that it was commencing on 2 February 2015. He further informed the Ombudsman that without the accumulation of any leave arrears, the complainant should have worked until his retirement date. Since he had some leave arrears, they decided to give him his 212 working days before his retirement date otherwise it would be forfeited at retirement. He also informed the Ombudsman that they would be very grateful if the complainant could come forward with any proof that he had been applying for the claimed leave arrears that was refused by the authority as a result of exigency of the service.

This information was communicated to the complainant but he was not able to provide any proof as per his claim. A search was made on his personal file too but nothing was found to prove his claim.

CONCLUSION

Since there was no proof to substantiate the complainant's claim, the case was discontinued.

COMPLAINT NO:

37/2016

NATURE OF COMPLAINT:

Claiming Social Security Benefit

COMPLAINT

The complainant stated that he was employed by different companies at different periods. In July 2014, his contract with the last company he worked for, ended and he went to process his retirement benefits. He alleged that he was told that he could only be paid some percentage of his contributions. He was also informed that he had some contribution gaps that needed to be settled. He further alleged that he was informed that he would be qualified to be paid all of his benefits come 2017, when all the contribution arrears are settled.

FINDINGS

The complainant was employed by a company as grader operator in 2010. His contract ended in July 2014, he went to process his retirement benefits and it was found out that in September 2014, the complainant was paid 100% of his contributions amounting to D85, 667.85.

It was found that there was a contribution gap from 1 July 1989 to 1 January 2017 amounting to D8,159.32.

CONCLUSION

Since it was discovered that the complainant had been paid a gratuity of D85, 667.85 on a Zenith Bank cheque number 00000448 dated 16 September 2014. The Contribution gap of D8,159.32 was paid on GTB cheque number 00000763 dated 24 March 2018. The case was settled.

COMPLAINT NO:

50/2016

NATURE OF COMPLAINT:

Unfair treatment

COMPLAINT

The complainant was appointed as security guard at a public institution in 2006 and rose to the position of senior security guard. On 21 March 2016, he was issued with a warning letter accusing him of being involved in a bribery incident at the airport terminal building during a flight from the United Kingdom.

He denied the accusation made against him and his defence was that on 17 February 2016, he was posted to the baggage screening cabin responsible for verifying passengers' passport and ticket before allowing them to the departure lounge. While

the said flight was checked in, a guard was collecting the trays in which passengers were emptying their pockets. The guard found two pounds sterling coins in one of the trays and notified him. He advised him to follow due procedures by either keeping it until there was a claimant or hand it over to the screening supervisor. He stated that he was not the screening officer and therefore knew nothing about the money.

FINDINGS

The complainant was appointed as security guard at the institution in 2006 and he later rose to the position of senior security guard.

A British national, in an email sent to the institution, alleged that he had bribed an official at the scanning desk with two pounds sterling and the officer allowed him to board the plane even though he was having restricted goods in his hand luggage which could have been detrimental to the safety of the passengers and crew.

An internal investigation was conducted by the institution's security management to address the matter. According to their findings two pounds sterling coins were found in a tray which was in the possession of the said guard who had informed the complainant that he found two pounds sterling coins on the tray but the complainant failed to report the incident to his supervisor. As a result, both of them were found guilty of accepting bribe and a recommendation was made that the complainant be dismissed.

The director general, his deputy and the director of human resources reviewed the investigation report of the security management and concluded that the complainant was found negligent in failing to report the incident to the authorities.

There was insufficient evidence that he and his junior actually accepted a bribe of two pounds sterling from a British national. They therefore concluded that it would be harsh to implement the recommendations of the security management to dismiss him from the service.

Since he was negligent in failing to report the incident to the authorities, the management of the institution implemented the following recommendations against him that: -

- His duties will remain on landside,
- He will also forfeit 3 year incremental points
- He would be re-issued a new identity card to reflect his current position.

He was finally warned that any recurrence of such unacceptable behaviour would lead to his dismissal.

RECOMMENDATION

After a careful consideration of the evidence gathered, the Ombudsman concurred with the decision of institution's management that the allegation of accepting bribe levied against the complainant and his junior could not be established due to insufficient evidence.

However, the Ombudsman agreed with management's decision that the complainant was negligent in failing to report the incident to the authorities which was a security breach. We are now living in an era of terrorism and the safety of passengers and crew should not be compromised at the airport. In the light of the above, the decision of the institution was upheld.

COMPLAINT NO:

55/2016

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

The complainant said that he worked with an institution on contract as a freelance Disc Jockey (DJ) since November 2009. On 24 May 2016, he felt sick while at work and sought permission to go home from his supervisor which was granted. He resumed work on 26 May 2016 because 25 May 2016 was his off-day.

On Monday 30 May 2016, he did not report to work because he was still sick but assigned a colleague to cover up for him as was the norm. On 31 May 2016, he called a manager informing him of his inability to go to work on Monday 30 and Tuesday 31 May 2016.

On 21 June 2016, a senior manager gave him a letter dated 20 June 2016 suspending him indefinitely and restricting him from visiting any of the institution's premises. He reported the matter to their deputy director who told him that he was not aware of such development but advised him to write a letter of apology to the senior manager. He said that he had written an apology letter to him but did not receive any response.

FINDINGS

The complainant started working as a freelance DJ on contract for the institution in 2014. In 2016 he absented himself on two different occasions, one of which was when he went for leave without receiving management's formal approval letter and the other was when he was sick and did not inform the relevant authorities. In reaction, the institution's senior admin manager, wrote him a letter dated 15 June 2016 suspending him indefinitely effective 1 June 2016.

After several writings and follow-up with the institution regarding the complaint, he still remained indefinitely suspended from 1 June 2016 to June 2017 without management doing anything about his case. The management through a meeting with the Ombudsman was asked to finally decide on the complainant's case. The senior admin manager wrote to the complainant in a letter dated 25 July 2017 informing him that his contract with the institution was terminated with immediate effect. He was also promised that his remaining contract dues of seven months, which amounted to D17, 500, would be paid.

CONCLUSION

The complainant was paid D17, 500 on GTB cheque number 00002510 on 14 August 2017.

COMPLAINT NO:

63/2016

NATURE OF COMPLAINT:

Unfair treatment

COMPLAINT

The complainant stated that she was enlisted into a security institution in 2013 and posted to the head office in Banjul. She alleged that on 30 May 2016, she started training with the 2015 intake but she was recalled to the head office on 2 June 2016 by the head of the institution. She also alleged that on 3 June 2016, she was denied entry into the director's office by his orderly. She asked the orderly about the reason for not allowing her to meet him. The orderly responded it was an instruction from his boss.

She further alleged that on 30 June 2016, she went to the office to recover her debt from officers who took clothes from her. Again, she was denied entry. All her efforts to find an amicable solution failed. She urged the Ombudsman to intervene for redress.

FINDINGS

The complainant applied for the 2015 intake recruitment at the institution. She was shortlisted and sent for medical examination before she could commence the training.

A medical examination was conducted on her and it was found that she was not medically fit to undergo the training and as a result she was disqualified.

She had been voluntarily reporting to office and out of good gesture, the head of the institution used to give her breakfast, fares and even promised her a position of cleaner which she rejected.

CONCLUSION

In the light of the above, the investigation was discontinued under section 9(3)(a) of the Ombudsman Act 1997.

COMPLAINT NO:

69 /2016

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

Complainant was appointed on 10 November 2010 as director of finance at an institution for a period of three years subject to renewal by mutual agreement. The said contract elapsed and the institution allowed the complainant to continue working without the renewal of the contract.

On 9 November 2016 the institution reviewed the complainant's contract of employment dated 10 November 2010, informing him that his contract would not be renewed and that no notice was required to that effect.

FINDINGS

The investigation was in progress when the complainant filed a civil suit at the Kanifing Industrial Tribunal claiming damages of D800, 000 for wrongful termination of his employment.

On 27 February 2017 the industrial tribunal entered judgment in his favour awarding him damages for wrongful termination as follows D121, 898 plus D384,000 equalling to D505,898, plus 15% gratuity at the rate of 12% from the date of wrongful dismissal and an amount of D160,000 as part of the cost of the legal fees.

CONCLUSION

Since the complainant has taken the matter before the Kanifing Industrial Tribunal the Ombudsman refrains from proceeding with this matter for lack of jurisdiction. The case was sub-judice.

4.2: UNLAWFUL DISMISSAL

COMPLAINT NO:
NATURE OF COMPLAINT

2/2017
Wrongful Dismissal

COMPLAINT

The complainant was appointed by an institution as food inspector category I effective 3 February 2014. He alleged that on 15 December 2016, he was served with a disciplinary hearing notice scheduled for 30 December 2016 at 11:30 am on the allegation of unauthorized confiscation and disposal of eggs and issuance of destruction certificate. He explained that a businessman in Banjul asked him to help to dispose some bad eggs which he had imported from Poland and as well as issue destruction certificate. As food inspector, he therefore co-ordinated the disposal of the said bad eggs at Brikama Tambana dump.

He also alleged that the authority also suspended him for two weeks without pay on the same day he was issued with a disciplinary hearing notice. On 4 January 2017, he was issued with a letter dated 30 December 2016 informing him that he was dismissed from his position as food inspector with immediate effect on the grounds that he had been engaged in numerous fraudulent activities.

He further alleged that he was unfairly dismissed since he was not given the opportunity to be heard at a disciplinary hearing that was held on 30 December 2016.

FINDINGS

He was appointed as food inspector category I by the said institution with effect from 3 February 2014. As food inspector, he was expected to work in accordance with the schedule prepared weekly by the officer in charge of the Food Control Department

On 6 May 2014, he was queried for unauthorized issuing of food handler certificates. On 7 October 2014, he was again queried for allowing the entry of Buffalo liver through the sea port despite an executive directive suspending its entry until further notice. On 29 September 2016, he was also queried for discrepancies between his inspection schedule and fuel supply.

Following a notification from the European Commission through a Rapid Alert System that 1,248 cartons of eggs contaminated with salmonella were delivered to The Gambia, the officer in charge of the Food Control Department and two food inspectors undertook an investigation to trace the said eggs. It was revealed that he had disposed of 800 cartons of the 1,248 cartons of eggs from a shop in Banjul.

It was established that he had also disposed of the said eggs at Brikama Tambana dump without informing or involving his institution. He had also issued a destruction certificate that contained the institution's letterhead and a wrong stamp that belonged to a defunct institution.

He undertook the disposal without the authorization of National Environment Agency, which is mandated to advise his institution and other relevant authorities on the most appropriate method and location of disposal which is environmentally friendly.

It was further confirmed that on 15 December 2016, he was suspended for two weeks without pay and urged to attend a disciplinary hearing on 30 December 2016. On 23 December 2016, an emergency board meeting was convened where a conclusive decision was reached to terminate his service considering the series of query letters issued to him and the gravity of his last offence.

On 4 January 2017, he was issued with a letter dated 30 December 2016 that he was dismissed from his position as food inspector with immediate effect as recommended by the institution's board.

CONCLUSION

Considering the above findings, the Ombudsman therefore dismissed the complaint in accordance with Section 9(3)(a) of the Ombudsman Act as frivolous and not made in good faith.

COMPLAINT NO:

4/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant worked for a security institution from 1 June 1991 to 31 May 2003. On 6 September 2003, he got enlisted into another security institution, which he served for eight years. He alleged that in August 2012 while on posting, his son had a car accident and was admitted to Edward Francis Small Teaching Hospital.

He applied for a gate pass through his station officer who granted him seven days permission. During this period, personnel from the headquarters visited the station while he was away and marked him absent without leave (AWOL) and recommended for the stoppage of his salary with immediate effect. On 9 September 2012, he was ordered to report to the headquarters. He was informed that he absented himself from duty for almost two years and continued to receive salary which he denied.

He further alleged that on 10 September 2012, he reported for further interrogations and was subsequently detained until the following morning. He was escorted to IBC Bank for verification and his case file was forwarded to Operations through deputy head of institution and finally to head of institution who discharged him from the service. He went to collect his discharge certificate but was informed that he could not be issued with a discharge certificate because the officer responsible for that had gone on peace keeping. He was frustrated because he could not access his benefits without a discharge certificate.

FINDINGS

The complainant failed to report to his duty post for almost two years without permission.

He was receiving salary for almost two years without going to work and as a result he was discharged from the service.

He never applied for a discharge certificate and therefore his allegation of non-issuance of discharge certificate could not be established.

RECOMMENDATION

It was recommended that the complainant should follow due procedures and apply for a discharge certificate.

COMPLAINT NO:

6/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was employed on 1 January 1993 by a public institution. He alleged that in May 2014 he was issued with a letter titled "Termination of Service" dated 29 April 2014. The content of the letter indicated that he was dismissed on the grounds of incessant poor attitude towards work. He further alleged that three days later he complained to the administrative head of the institution about the contradiction in the letter, but he warned him not to lodge any complaint to him and threatened that he would make sure that he loses his benefits.

A week later the complainant received another letter with the same date of the first letter titled "RE: DISMISSAL" on the grounds that the decision has been taken after series of warning letters issued to him on account of his incessant poor attitude to work. Since then the complainant had been to different people to resolve the matter but to no avail.

FINDINGS

The complainant had series of issues with different market managers regarding unprofessional handling of duties.

Subsequently, he received a suspension letter dated 25 July 2001 for assigning a volunteer to sell tickets and collect revenue, which contravened the institution's rules. As a result he was suspended for one month without salary.

On 10 February 2006, he was issued with a final warning letter and two weeks' salary deduction for his deliberate refusal to report to work on public holidays and Operation Clean the Nation days contrary to the terms and conditions of service stipulated in his letter of appointment.

A memo dated 31 January 2006 indicated that he and five market collectors deliberately absented from work without permission and recommended disciplinary measures to the effect.

He received another warning letter dated 15 May 2009 for recruitment of voluntary collectors, which was an unacceptable act and dereliction of duty. He failed to desist from his poor incessant attitude towards work that prompted various market managers to recommend for his redeployment on letters dated 16 April 2014 and 21 April 2014.

CONCLUSION

Based on the evidence gathered, his dismissal from the service of the institution was appropriate. The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

COMPLAINT NO:

9/2017

NATURE OF COMPLAINT:

Claiming Retirement Benefits

COMPLAINT

The complainant was appointed by a private security company, on 1 September 2006 as security guard. He alleged that on 10 June 2016, he went to an institution to process his retirement benefits but was informed that his employer had not paid his contributions. He followed up with his employer but they confirmed that his contributions were paid up to the end of his contract. He was in a dilemma and sought proper review of his contributions. He claimed that since his salaries had been deducted and paid into the provident fund, he deserved to be paid his benefits.

FINDINGS

The complainant was partially paid D6894.67 through Standard Chartered Bank cheque No:009205 dated 27 December 2016 being contributions made by his employer under the National Provident Fund covering January 2011 to November 2015 plus interest from his savings.

The complainant's employer failed to contribute for him from September 2006 to December 2010 and as a result Social Security summoned the institution to court to recover the arrears of pending contributions.

CONCLUSION

Since the matter was in court, the complainant was advised to exercise patience until the court decides on the case.

COMPLAINT NO:
NATURE OF COMPLAINT:

12/2017
Wrongful Dismissal

COMPLAINT

The complainant was appointed by a public institution on 1 June 2010. On 3 October 2013, he was on duty at the Banjul International Airport. In the evening around 8:40 pm, he screened a passenger holder of dual citizenship, British and New Zealand who disembarked from a Senegalese airline. He suspected the passenger to be under the influence of drugs. He took him to their office and conducted a physical search on him. He gave him a disposable cup and took his urine sample which he tested and found that the results were negative. The passenger was not happy with him and threatened to report him to his superiors and ensure that he would be fired. He alleged that on 13 October 2011, he was asked to report to office and upon arrival he was issued with a letter of indefinite suspension. He was accused of taking a bribe of 400 US dollars from the passenger which he denied. His statement was obtained and on 19 October 2011, he was dismissed from the service.

FINDINGS

The complainant was appointed on 1 June 2010, in line with the provision contained in Part II section 18 of the Drug Control Act 2003.

On 3 October 2011, the complainant was on duty at the airport. He introduced himself to the said passenger and screened him by conducting a physical search on his person and administering a urine test without following the due procedure. The norm is that officers are supposed to work in pairs or more but the complainant failed to consult his colleagues or seniors on the ground which contravenes the regimental standards and best practice.

The result of the urine test administered on the passenger was negative and the complainant asked him to confirm his belongings. He checked the contents of his wallet in his presence and claimed that US \$400 and New Zealand \$5 was missing from his wallet. The complainant denied taking the money but he insisted that while he was urinating, he turned his back on the complainant and he accused him of stealing his money. He reported the incident to the complainant's employer.

Through a letter Ref: ZQH119/167/01(4) dated 13 October 2011, he was suspended indefinitely from the services with immediate effect for breach of the institution's code of conduct. He was asked to surrender all official materials to the commissioner of operations pending the outcome of the investigation.

He was dismissed through a letter ZQH119/167/01(07) dated 19 October 2011, from the service forthwith. The ground for his dismissal was that on 3 October 2011, while on duty at the Banjul International Airport, he took US \$400 from the passenger and that his behaviour was disappointing and amounted to staining and blemishing the good image and integrity of the institution.

It was observed that the passenger accused him of taking US \$400 from him but the three witnesses from his own institution in their witness statements stated that the man accused him of taking US \$250, which he confirmed in his statement.

CONCLUSION

Since he had flouted the rules and procedures by failing to inform his seniors or involve his colleagues at the airport before conducting the urine test, which is the due process, his action raised some element of doubts. The Ombudsman concurred with the institution's decision that by acting alone in isolation constitute professional malpractice and an affront to standards and best practices. Therefore, his dismissal was done in good faith and in accordance with the institution's code of conduct.

COMPLAINT NO:

15/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was enlisted into a security institution on 6 September 2009. She said that she served for almost two years and was posted to the disciplinary unit where she served for one month and was redeployed to the Operation Bulldozer. She alleged that during this period, her commander demanded to sleep with her but she refused. He became angry with her and redeployed her to another unit.

A week later, the then officer-in-charge marched her to his office and read out a charge sheet prepared by the man whose sexual demand she had earlier rejected. She was charged with two counts of refusing to take command and having a problem with one female officer of a sister institution. She alleged that she attempted to make a plea but the officer-in-charge told her that a senior man is always right and as a result she was sent home.

FINDINGS

The complainant had an issue with a female officer of a sister institution, who was also in Operation Bulldozer (a multi-security task force) regarding her lack of respect for seniority. She was marched before the officer alleged to have demanded sex. Her shift was changed to address the situation.

Three days later she disobeyed orders from her senior in rank by refusing to hand over fish money meant for the feeding of detainees.

Subject to persistent refusal to orders and insubordination towards seniors in rank, the complainant was redeployed but she still failed to comply which resulted in her dismissal.

CONCLUSION

She was found wanting in her comportment and attitude in terms of respect for seniority. In the light of the above, the decision to dismiss her was upheld. The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as vexatious and not made in good faith.

COMPLAINT NO:

28/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was enlisted into a security institution on 1 December 1986. On 29 November 1989, while escorting prisoners from the Edward Francis Small Teaching Hospital to Poly Clinic for medical treatment, a prisoner pickpocketed a man.

He only came to know of it when a vendor brought it to his notice. After checking with the man whose money was taken, it was confirmed. The complainant took the prisoner in question to the toilet and searched him. The money was found and returned.

Upon arriving with the prisoners at the institution, he reported the incident to his boss and was immediately given a verbal dismissal.

In 1999, he wrote a letter to his ministry for reinstatement. In a letter dated 27 October 1999 addressed to him, he was informed that there was no vacancy. He later requested for his dismissal letter and it was given to him on 25 February 2004 even though the event occurred in 1989.

FINDINGS

The complaint was reviewed and it was observed that his dismissal took effect on 29 November 1989 prior to the establishment of the Office of the Ombudsman. The Ombudsman does not investigate complaints retrospective but rather investigate cases commencing from the date of its establishment.

CONCLUSION

In light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:
NATURE OF COMPLAINT:

32/2017
Wrongful Dismissal

COMPLAINT

The complainant was appointed in November 2000 by a public institution. In 2001 he was deployed to the institution's security unit as a guard. He alleged that he was accused of misbehaviour and lack of respect for authority which he could not comprehend. He was issued with a dismissal letter dated 4 February 2002. He complained that he was not accorded the opportunity to be heard before the disciplinary committee prior to his dismissal. He assumed that the decision to dismiss him was very harsh.

FINDINGS

Evidence gathered revealed that the complainant's dismissal was as a result of continuous misbehaviour at work and lack of respect for authority.

Even though he wrote a letter of apology to management and promised to desist from all forms of unprofessional and unethical acts, he failed to honour his promise. For that reason, the decision to dismiss him was upheld.

CONCLUSION

The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

COMPLAINT NO:
NATURE OF COMPLAINT:

41/2017
Unlawful Dismissal

COMPLAINT

The complainant was enlisted into a security institution effective 7 August 2008. In 2014, he was posted to Tanka-Tanka Psychiatric Hospital. He alleged that an inmate escaped from Tanka-Tanka in December 2015 while he was on duty. He was charged and detained for ten months. He further alleged that he was released and handed over to National Intelligence Agency for further interrogation and later marched before the head of their institution who dismissed him instantly.

FINDINGS

A prisoner escaped from lawful custody at Tanka-Tanka Psychiatric Hospital while the complainant was on duty as shift commander.

He was charged with the offence "allowing to escape any prisoner who is committed to his charge or whom it is his duty to keep or guard"; under Section 23 (13) of the Prisons Act Cap 20:01 Vol. III Laws of The Gambia 1990. The complainant pleaded guilty and he was dismissed from the service.

CONCLUSION

The decision to dismiss the complainant was upheld. The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

COMPLAINT NO:

46 /2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was enlisted into a security institution effective 31 June 2005. In 2008, he was enrolled into Management Development Institute (MDI) for two years course in ICM. During this period, he was granted study leave and made to sign a bond with his employer. He alleged that despite signing a bond, he had been paying his tuition fees for himself. He further alleged that in the second year of his studies, he was arrested and detained for six months and later dismissed on the ground of executive directive.

FINDINGS

On 26 December 2009, he fought with a police officer at a concert, a conduct unbecoming of a professional security officer.

Between March and April 2011, he used the name of the head of their institution on a number of occasions without authority to interfere with matters before the courts to further his personal interest, an offence to which he pleaded guilty.

His dismissal on 10 June 2011, was in compliance with Section 78(1) of the Act governing his institution.

CONCLUSION

In the light of the above, the case was dismissed as trivial, frivolous, vexatious or not made in good faith.

COMPLAINT NO:

48/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was enlisted into a security institution effective 2007 as mechanic. He alleged that in June 2012 one of the institution's vehicles was reported to have had a mechanical breakdown at Kittie Village. He received a phone call from a senior officer who instructed him to tie the vehicle and take it to their place of work. His commander

asked him about the progress of work on the vehicle but he told him that the engine block was broken and should be replaced.

He suggested to him that there was a scrap jeep in the garage, which had a good engine block that could be fixed in the said vehicle and he agreed with the idea. The following day an officer brought an engine block and ordered the complainant to fix it in the said vehicle but he informed him that the block was not fit for the vehicle. The officer then took the engine block to the store. During his tour of duties, the same officer took the engine block from the store and ordered the complainant to take it to his private garage at Tabokoto, which he later sold for D500 and gave him D200.

He further alleged that a week later their chief mechanic requested for the engine block and the officer who had sold it told the chief mechanic that the complainant sold it. He was marched before a senior officer, who directed him to purchase the engine block for D800 from his private garage at Fajikunda. The following morning, he was on master parade and suddenly he was marched before another senior officer and then to an intelligence officer. His statement was obtained and he was put in cell for 21 days with hard labour. He was marched before their commander who dismissed him verbally from the service.

FINDINGS

The complainant was charged with stealing under section 69 of the Act governing his institution and he pleaded guilty to the charge.

CONCLUSION

Stealing is intolerable and as a security officer he is expected to protect property and law abiding. Consequently, the decision to his dismissal was upheld. The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

COMPLAINT NO:

53/2017

NATURE OF COMPLAINT:

Unlawful Termination

COMPLAINT

The complainant was appointed by a public institution as cleaner effective 1 July 1997 and was paid on a daily basis. She worked for three months at one office after which she was re-deployed to another office. She was assigned to the residence of a government officer, where she worked until January 2017. On 3 April 2017 her services were terminated. According to her termination letter, the reason for her termination was because her services were no longer required effective 18 January 2017. She urged the Ombudsman to intervene for redress.

FINDINGS

The complainant was appointed as cleaner with effect from 1 July 1997 as a cleaner on daily paid. Through letter ref: CF16/61/01(14) dated 3 April 2017 her service was non-

functional since January 2017 and as a result her service was no longer required. Her service was terminated with effect from 18 January 2017.

The institution followed the required legal procedure in terminating complainant's service.

CONCLUSION

In light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

54/2017

NATURE OF COMPLAINT:

Unlawful Termination

COMPLAINT

The complainant was appointed as cleaner in the public service and posted to the residence of a senior government officer effective 1 August 2012. She served there until 18 January 2017, when she was asked to go home and wait until called. On 3 April 2017, her services were terminated. According to her termination letter, she was dismissed because her services were no longer needed with effect on 18 January 2017. She urged the Ombudsman to intervene for redress.

FINDINGS

The complainant was appointed as cleaner with effect from 1 August 2012 as a cleaner at the vice president residence. Through letter ref: CF16/61/01(14) dated 3 April 2017 her service was non-functional since January 2017 and as a result her service was no longer required. Her service was terminated with effect from 18 January 2017.

The institution followed the required legal procedure in terminating complainant's service.

CONCLUSION

In the light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

57/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was appointed as driver in 1992. He was redesignated as a pipe fitter in 2004. He alleged that in 2006 he was arrested and detained at the then National

Intelligence Agency (NIA) on allegation of illegal connection. He was tortured and demanded to pay D22, 000 as a fine.

He alleged that the day he settled the payment he was called to the managing director's office and issued with a dismissal letter dated 27 February 2006. He complained that he was not arraigned before any court to prove his innocence rather he was taken to the NIA and forced to pay that amount. He said the decision taken against him was very harsh. He sought a review of the decision to a lighter punishment so that he could be paid his benefits.

FINDINGS

The complainant was involved in illegal reconnection of water and electricity. He received a warning letter dated 26 August 2002 in connection with the issue. Following his confession on a voluntary statement he wrote dated 3 January 2006, it was evident that he accepted committing the crime.

Knowing the gravity of his action, he wrote a letter of apology to management. The disciplinary committee accepted the apology and waived the punishment meted out to him based on the provisions of section 83 of the Labour Act 2007.

The complainant was accorded adequate chances to reform but he failed to cooperate and continued to engage in illegal activities that resulted to his dismissal.

CONCLUSION

The decision to dismiss the complainant was genuine. The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

COMPLAINT NO:

58/2017

NATURE OF COMPLAINT:

Unlawful Termination

COMPLAINT

The complainant was appointed as meter reader by a public institution on 14 October 1999. He was promoted senior meter reader in 2010. He alleged that on 11 May 2012. He took permission from his supervisor to attend his brother's naming ceremony. He continued to work until 6 June 2012 when he was issued with a dismissal letter. He urged the Ombudsman to intervene for redress.

FINDINGS

The complainant's service was terminated through a letter dated 6 June 2012 due to professional misconduct, unprofessional attitude towards his work and failure to perform his work as expected.

The complainant sued the institution claiming an order that the termination of his appointment was ultra vires, null and void, an order to reinstate him and any further or other orders.

The tribunal dismissed the complainant's case. He appealed to the High Court but the judge did not find any merit in his appeal and he dismissed the case accordingly.

CONCLUSION

When the Ombudsman commenced investigations, the complainant's case had already been decided in a court of law. The Ombudsman refrained from reviewing the decision of the court in accordance with the provisions of section 9 (2)(b) of the Ombudsman Act 1997, which makes the decisions of any tribunal established by law to be outside the jurisdiction of the Ombudsman.

The case was discontinued in line with section 9 (3)(b) of the Ombudsman Act.

COMPLAINT NO:

59/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant alleged that he was verbally appointed as security officer by a public institution in January 2008. While on duty, a break-in occurred at one of the institution's branches. It was alleged that some cash was missing and he was the suspect. He was arrested and taken to Old Yundum police station where he was detained for two weeks.

He further alleged that upon release on bail, he went to collect his salary for January 2009, and found that it was stopped. He made an enquiry at the accounts unit and a security officer informed him that he was dismissed. He complained that since he was not found guilty of the alleged break-in or arraigned before any court the decision to dismiss him was unfair.

FINDINGS

The complainant's allegation of being an employee of the said institution could not be established. He could not provide this office with any authentic document to prove his employment status.

CONCLUSION

The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as vexatious and not made in good faith.

COMPLAINT NO:

60/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was appointed in September 1992. She alleged that sometime in November 2001 the head of the institution informed her that he had received a directive from a former National Assembly member to terminate her services. She was surprised because she did not do anything wrong that should warrant the termination of her services. The only thing she could recall was that the said honourable member wanted to have an affair with her but she refused. A colleague later informed her that there was a circular which stated that she was dismissed. She was of the view that an injustice was meted out to her since she had done nothing whatsoever to deserve dismissal. She urged the Ombudsman to intervene and recommend for her reinstatement or award her compensation.

FINDINGS

The complainant was appointed as junior library clerk by the said institution with effect from September 1992.

She was suspended without salary for a month together with two other colleagues for abusing the Telefax machine and the repeated abuse of the machine by her that led to her ultimate dismissal.

The complainant waited for sixteen years before lodging her complaint to the Ombudsman. According to the limitation Act Cap 8:01 Laws of the Gambia, “an action shall not be brought after an expiration of six years from the date on which the cause of action accrued.”

CONCLUSION

In the light of the above, the case was discontinued as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

62/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was enlisted into a security institution effective 1 April 2003 and transferred in 2005. He alleged that in 2007 he was on duty and one of the inmates assigned to kitchen duties escaped from lawful custody. A thorough search was conducted but he was nowhere to be found. The complainant and some officers continued the search for two months but to no avail. He further alleged that four months later he was ordered to report to headquarters. Upon arrival he was marched before deputy head of institution, who charged him with neglect of duty and detained him for two months and four days. He was released and informed that an internal investigation was conducted on the matter and found him liable and as a result the said deputy recommended for his dismissal and the head of institution dismissed him verbally.

FINDINGS

On 25 September 2007, the complainant was on duty at the main gate when a convicted prisoner escaped from lawful custody.

Based on four witnesses' statements, he was charged with escape contrary to section 23(13) of the Act governing the institution, wherein the punishment for his act of negligence to duty was set out.

The head of the institution had the discretion to discharge or dismiss him at the rank of Corporal. Therefore, the decision to dismiss him was upheld.

CONCLUSION

The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act as vexatious and not made in good faith.

COMPLAINT NO:

64/2017

NATURE OF COMPLAINT:

Unlawful Termination

COMPLAINT

The complainant stated that he was an engineer at a public institution and transferred in 1982 to another public institution, where he headed the switching section. He alleged that he had played a key role in the telecommunication development in the Gambia from feasibility studies to realization of all the development phases.

In 1994 he went to the University of San Francisco, USA, to pursue a masters' degree in telecommunication, economics and policy. He stated that a saga involving his institution in 1995/96 did not find him in the Gambia; hence he was unable to defend himself against the incorrect accusations made by some disgruntled people against him and a head of institution at a commission of inquiry looking into the affairs of the institution. As a result of their fallacious testimonies, his service was terminated. His family was evicted from his house. He was never served with any formal termination letter or verbal notice. He lost his compound, his wife's car, his prior services with the Gambia government from 1969 to 1981 and social security benefits.

FINDINGS

The complaint was reviewed and it was found that the complainant's dismissal took effect prior to the establishment of the Office of the Ombudsman.

Secondly, section 2 of the Indemnity Act states: "Government or its agents shall not be held liable for any acts or omissions done or purported to have been done during the transition period."

Thirdly, the complainant's case was handled by the Commission of Inquiry into the affairs of the institution he worked for and as a result his services were terminated and his compound forfeited to the state.

CONCLUSION

Since the matter was before the Commission of Inquiry the case was sub judice.

CASE NO:

65 /2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was appointed by a public institution as training technician in 1976. He got promoted to engineer in 1982. In 1984 he was promoted to senior engineer heading the satellite station. He had another promotion as chief technical officer on 7 November 2008.

The complainant alleged that he was dismissed with immediate effect conveyed to him in a letter dated 26 January 2009 on grounds of executive directive. He complained that the cause of his dismissal was not mentioned in his dismissal letter. He has the conviction that he was unfairly treated and his dismissal was unlawful.

FINDINGS

The complainant was offered appointment in the services of an institution as 5-Unit operator on 20 October 1976 until in June 1982, when he was appointed as day maintenance technician.

In April 1984, his services were transferred to another institution where he steadily rose through the ranks to the position of director of operations and maintenance.

The institution received a letter dated 4 December 2006, from the line institution giving directives for the termination of the complainant's services with immediate effect without stating any reason.

Nearly two years from the termination of his services, the institution received another letter dated 7 November 2008, from the same institution stating that the complainant was appointed to a post in acting capacity with effect from 7 November 2008.

Three months later the institution received another letter dated 26 January 2009, from the same institution again giving directives for his dismissal with immediate effect without stating any reason.

He made an appeal to the secretary general on 31 January 2009 for a reconsideration of his dismissal. Through letter Ref: OP277/141/01/PART: VI (47) dated 17 March 2009, the decision to dismiss him was changed to termination.

Through letter Ref: GTC/1/14/3/PART 4(118) dated April 2009, his terminal benefits were computed as follows:

- 2 months' salary in lieu of notice D25,650
- 25 days' leave entitlement D33,570

However, his liability with the institution was D66, 400 being car loan. An arrangement was made to indicate in writing how he intended to settle the loan balance of D66, 400. Social Security and Housing Finance Corporation was advised to pay his benefit accordingly.

CONCLUSION

The decision to terminate his services was as a result of an executive directive and the Ombudsman does not have the mandate to interfere. The case was therefore discontinued in line with section 9 (2)(e) of the Ombudsman Act 1997.

COMPLAINT NO:

66/2017

NATURE OF COMPLAINT:

Wrongful Termination

COMPLAINT

The complainant was appointed as Messenger on 1 July 1981 at a public institution. His service was transferred to another institution in November 1984 effective 1 July 1984. He was promoted to chief messenger on 15 July 1991, to take effect on 1 April 1991. He alleged that five years after his promotion without query about his performance at work, he was issued with a termination letter dated 29 August 1996. The termination letter indicated that he had a liability of D76, 381.20 with the institution and a personal loan balance to be confirmed which must be settled latest end of September 1996. He also had annual leave arrears of 45 days which is equivalent to D2, 723.76 plus one month salary in lieu of notice amounting to D1, 261. Both amounts shall be deducted from the loans. On 19 May 1997, he received a letter from the institution's demanding him to pay the outstanding balance of D67, 103.88. This amount was to be paid within 14 working days of receipt of the letter or legal action would be taken against him.

The complainant further alleged that he went to Social Security to process his retirement benefits, but he was questioned about the grounds for the termination of his services. He complained that his institution wrote a letter to social security dated 21 October 1996 requesting his grounds of exit to enable them act on his claim. The reply from his institution dated 20 May 1997, stated that the complainant was retrenched. To his surprise he was the only one affected by the retrenchment. He was 45 years at the time of the termination of his service and did not commit any crime that should warrant the termination of his service. He was doubtful of the retrenchment. His bone of contention was whether he should pay the loan when he was suddenly retrenched or does his termination hold on the grounds that his services were no longer required by the institution. He alleged that the liabilities were long term loans and he was servicing them based on his salary. Since the termination of his service, he could not access his entitlements.

FINDINGS

The complainant was employed by an institution and later engaged as messenger on 1 July 1981. His services were transferred to another institution after incorporation of the institutions in August 1984.

During his tenure he was warned on several occasions for poor output and productivity in the exercise of his functions and persistent defiance of instructions from his superiors and as a result he was indefinitely suspended with effect from 1 June 1983 on a letter dated 31 May 1983.

He was again suspended for two weeks without pay conveyed in a letter dated 30 December 1986 for persistent insubordination towards the then deputy general manager.

He was issued with another warning and suspension letter dated 6 August 1993 for misconduct towards the then managing director and director of finance and administration which prompted the Disciplinary Committee to recommend for his immediate transfer to the technical department and he was re-designated as technical cleaner.

He wrote an apology letter on 7 February 1994 and appealed for clemency. His apology and appeal was accepted and he was reinstated as chief messenger and posted to the managing director's office effective 17 February 1994.

Due to his persistent misbehaviour and poor performance records, his services were terminated on 29 August 1996 and all his entitlements processed and paid by Social Security.

CONCLUSION

The evidence gathered indicated that the complainant's demeanour was persistent impulse of erratic behaviour and insubordination towards his superiors at work. After several warnings and punishments, he apologized but failed to change. The decision to terminate his services was upheld.

The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as vexatious and not made in good faith.

COMPLAINT NO:

67 /2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was appointed as security officer effective 1 December 1986. He was promoted to acting senior security manager on 1 July 2007. He alleged that he served

diligently until 12 October 2007, when he was issued with a dismissal letter dated 12 October 2007 in connection with 10,000 litres of diesel that was said to be missing from a generator tank at their office in Banjul.

He further alleged that since he was not arraigned before any court to prove his innocence, the decision of the disciplinary committee was harsh. He was seeking a review of the dismissal to be translated to termination.

FINDINGS

The complainant was appointed as security officer by an institution conveyed to him in a letter Ref: GTC/1/1/vol.7/(14) dated 23 October 1986. Again through letter Ref: GTC/P/348/(16) dated 12 June 1989, he was appointed as chief security officer. Through Memorandum no. PSO/11/9006 dated 29 November 1990; he was redesignated as senior security officer.

Through letter Ref: GTC/1/6/0/(156) dated 18 December 1991, he was promoted to the post of chief security officer category II Grade FI. He was again promoted to the post of manager security on category II Grade D through letter Ref: GTC/16/ PART 8(50) dated 28 December 2005. Through letter Ref: GTC/1/14/PART 9 (385) dated 10 July 2007; he acted as senior manager security.

He was suspended through letter ref: GTC/SUSP/1/(165) dated 7 February 2007, without salary for two weeks for the removal of scrap metal cases to which he confessed. He also tampered with the daily diary of the institution at one of the branches by removing pages from 14 – 18 December 2006, without authority. He was also given a final warning that any recurrence of such malpractice would result in his instant termination.

On 10 September 2007, 14,600 litres of diesel fuel equivalent to D403, 181 was missing at the office generator. An investigation was conducted and it was found that he unilaterally changed and overrode a long standing control mechanism that was put in place with a view to secure and control the generator room and fuel tanks. He took possession of both padlocks by keeping the keys without authority. Over 14,000 litres of fuel was removed from the premises when the set of keys were all in his possession at the material time.

The investigation further proved that he was in breach of the terms of his employment and the breach amounted to gross misconduct due to the fact that he failed to perform his duties with reasonable competence, care and skill and render honest and faithful services making it unreasonable for him to continue in the employment of the institution.

A disciplinary hearing was held in accordance with section 89 of the Labour Act and he was given the right to be heard and to defend the allegations made against him. The disciplinary committee was not satisfied with his defence and as a result section 85 of the Labour Act was invoked. He was dismissed from the service conveyed in a letter

Ref: GTC/1/14/1/ (71) dated 12 October 2007, on the ground of unsatisfactory job performance.

Following his dismissal, he filed a case suit no. HC17308/CO/041/C1 against his employer for unlawful dismissal. The court ruled that the matter was time barred and therefore could not proceed. The case was struck out.

He had violated the long-standing control mechanism that was put in place with a view to secure and controlling the generator room and fuel tanks. His action resulted to betrayal of trust and has eroded the confidence bestowed on him as the head of security responsible for protecting institutions properties.

CONCLUSION

The Ombudsman upheld the decision of the institution to dismiss the complainant. The case was dismissed as trivial, frivolous, vexatious or not made in good faith.

COMPLAINT NO:

68/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was appointed as sailor on 3 May 1999. He was later re-designated to crane driver at Samo. On 16 May 2012, there was no electricity supply in Banjul as a result he went to the ports to watch the UEFA cup final in M-V Samo.

Upon his arrival, there was nobody on sight but after a while, the sailor on duty came in as the engineer on duty was sleeping in his cabin. Unknowingly, there were intelligence officers hanging around. After a short while, the officers appeared and questioned the complainant and sailor on duty about 120 litres of gas oil that was on the ship.

The complainant told the officers that he was only there to watch a football match. He was taken to the seaport police, together with the sailor. They were referred to Banjul Police Station the following day and later taken to mile II where they were detained for almost three weeks. They were granted bail and arraigned before the court. Following a court ruling, the complainant was dismissed while the sailor, who is a relative to the former managing director, was asked to resume work.

FINDINGS

The complaint was reviewed and it was found that the complainant was charged with stealing from a vessel contrary to section 256(c) of the Criminal Code Cap10: 01 Vol. III Laws of The Gambia. He was arraigned before the Banjul Magistrates' Court, found guilty and sentenced to a fine of D3000 in default to serve three months' imprisonment.

CONCLUSION

Since the matter was already decided in a court of law, the Ombudsman refrained from proceeding with the matter due to lack of jurisdiction. In light of the above, section 9

(3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

75/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was appointed as store clerk on Category III FA 1 on 18 November 1994. On 5 May 1999, he was transferred to a public institution and later re-designated as assistant marketing officer at another public institution effective 19 September 2000 on the same grade.

He alleged that on 5 January 2001, he was issued with a dismissal letter requiring him to settle all outstanding loans owed to the institution before 4 February 2001 failing which legal action would be taken against him. He explained that his dismissal was a shock to him because he did not do anything that should warrant such a harsh decision against him.

FINDINGS

The complainant was appointed as store clerk I with effect from 21 November 1994, and confirmed in appointment after serving eighteen months' probation. In a letter conveyed to him dated 19 September 2000, he was re-designated as marketing officer.

On 4 December 1998, he was suspended without salary for a period of one week as a result of insubordination towards his manager and head of section. Again, on 8 April 1999, he was given a final warning that his insubordination would no longer be entertained and any recurrence of such behaviour would lead to instant termination.

Through letter ref: PR/C/687/Vol. I (88) dated 2 January 2001; he was dismissed through an executive order. He filed a law suit against the institution and judgment was entered in his favour that his dismissal was unlawful and he was awarded the following:

- Damages in the sum of D184, 000 made as follows: - D32,000x5=D160,000 being his salary for 5 years, D24,000 for transport allowance at D4,800x5.
- 19% Social Security contributions of D20,052 from November 1994 to August 2000 at D3809.88x5=D19, 049.40.
- September to December 2000 at D23, 400 per annum, D1482.00.
- Contribution from 2001 to 2006 of what would have been contributed on his behalf i.e. D32, 000x19%, D30, 400.
- Interest on the above sum at the rate of 15% per annum from 5 January 2001 until date of judgment, in addition to cost assessed at D5000.

CONCLUSION

Since the matter was taken to court and judgment was delivered, the Ombudsman refrained from proceeding with this matter under section 9 (2)(a) of the Ombudsman Act which states “the Ombudsman does not have power to question or review the decision of any court of law or any judicial officer in the exercise of his or her judicial functions.”

COMPLAINT NO:

82/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was appointed as plumber in 2002. He alleged that on 15 November 2005, he was issued with a dismissal letter. The cause of his dismissal was said to be a management directive. He complained that the decision of his dismissal was deemed as very unfair. He sought a review of the dismissal to termination so that he could be paid his entitlements.

FINDINGS

The complainant was dismissed on 15 November 2005 following a directive from the Personnel management office

The complainant filed a claim against Nawec for unlawful dismissal at the Kanifing Industrial Tribunal on 15 May 2006 and judgment was delivered and damages were awarded in favour of the complainant. The complainant was paid D59,167 on a Trust Bank Cheque No.928687 being the judgment sum awarded by Kanifing Industrial Tribunal

CONCLUSION

When the Ombudsman commenced investigations, the complainant's case had already been decided in a court of law. The Ombudsman refrained from reviewing the decision of the court in accordance with the provisions of section 9 (2)(b) of the Ombudsman Act 1997, which makes the decisions of any tribunal established by law to be outside the jurisdiction of the Ombudsman.

The case was discontinued in line with section 9 (3)(b) of the Ombudsman Act.

COMPLAINT No:

96/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was appointed as intelligence officer in 1985 at a public institution. In March 1995, he was appointed as assistant chief security officer at another institution on secondment.

According to his appointment letter, his appointment was terminable by either party upon giving three months' notice or payment of three months' salary in lieu of notice. The institution failed to honour his appointment agreement on the grounds that they were acting on a directive. He fled the country for fear of being arrested and detained because of the political environment then.

FINDINGS

The complaint was reviewed and it was observed that the complainant's dismissal took effect in August 1995 prior to the establishment of the Office of the Ombudsman.

Secondly section 2 of the Indemnity Act states "Government or its agents shall not be held liable for any acts or omissions done or purported to have been done during the transition period".

CONCLUSION

The Ombudsman does not investigate complaints retrospectively but rather investigate cases commencing from the date of its establishment. In light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

98 /2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant alleged that he was the officer commanding a security division during the political clash between APRC and UDP at Chamoi Bridge and as a result of his intervention he was dismissed. He alleged that following his dismissal from the security on 29 June 2000, he wrote to the former president seeking reinstatement. His appeal was approved through a letter ref: OP 227/141/01/Temp II (44) dated 13 October 2006. The complainant was claiming the payment of his salary arrears from July 2002 to October 2006.

FINDINGS

The complainant was the officer commanding a security division during the political clash between the supporters of the APRC and UDP at Chamoi Bridge Upper River Region.

Following the said incident, he was dismissed on 29 June 2000. He wrote to the former president seeking clemency and to be reinstated. In a letter conveyed to him ref: OP227/141/01/Temp II (44) dated 13 October 2006 approval was granted to his request.

It was observed that letter ref: OP227/141/01/Temp II (44) dated 13 October 2006 did not indicate any payment of salary arrears for the period he was dismissed.

CONCLUSION

Referring to the claim for salary arrears for the period he was dismissed, the panel set for reviewing executive dismissals had approved the period constituting dismissal as a result of executive directive would not attract any financial remuneration.

In light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:	119/2017
NATURE OF COMPLAINT:	Wrongful Dismissal

COMPLAINT

The complainant stated that he was appointed on 4 May 2015. On 26 May 2017 after closing hours, he handed over the car keys to the director general, who told him to inform his family that he was going to close late because he wanted him to take his wife to her aunt's funeral at Kartong. He told him that he was going to the bank for an urgent transaction because he needed to send money to his sick brother in Dakar, Senegal. After he returned from the bank, he went to the office and phoned the director general but he never picked the call.

The complainant alleged that on 30 May 2017, he received a call from the secretary to the human resource officer that he had a warning letter to pick from her office, which he refused to receive on the grounds that he did not do anything wrong.

The complainant further alleged that on 5 June 2017, he was served with a dismissal letter dated 1 June 2017, on the basis that he refused to receive his final warning letter from the human resource office and it was also mentioned that he failed to pick the director general's calls on time.

FINDINGS

In a letter dated 4 July 2017, the complainant was informed that he had been verbally warned on several occasions by management and the managing director. It was proven by the managing director that the complainant's conduct was unacceptable. The complainant was in the habit of ignoring and refusing to receive telephone calls from the managing director and always reporting to work late.

On 20 May 2017, the complainant failed to pick the managing director on time during the corporation's annual official retreat and he did not attend when all the staff were expected to be present.

On 19 May 2017, the complainant responded rudely and inappropriately to the managing director in the presence of senior officials when he was returning the car keys. The complainant was invited to the managing director's office for him to receive a warning letter and he deliberately refused to take it. This attitude demonstrated disrespect and arrogance he had for authorities.

It was observed that accepting this level of misconduct and gross insubordination from a member of staff, who was employed just for two years, could not only set a bad precedence at work but also trigger inefficiency and ineffectiveness in both decision making and performance.

CONCLUSION

Considering the facts above, the complaint was dismissed under section 9(3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

COMPLAINT NO:

126/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was appointed as steward in 2001 and his appointment was confirmed with effect from 27 September 2005. On 19 March 2008, he was accused of trying to poison the former president and was dismissed.

Following his dismissal, he was arrested and detained for 11 months and three weeks. He was then released for a week and rearrested on 26 January 2009 and was again detained at the Serious Crime Unit for a week. He was then transferred to Mile II Central Prison where he was under custody for four years and five months. He was finally released on 26 June 2012 but was never charged or taken to court. He was also not issued with a dismissal letter.

FINDINGS

The complaint was reviewed and it was observed that the complainant's dismissal took effect on 19 March 2008 through an executive directive. According to section 9 (3)(e) of the Ombudsman Act, the Ombudsman does not have jurisdiction to inquire into any matter relating to the affairs of the President.

CONCLUSION

In light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

133/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was enlisted as security officer in 2006. Since his appointment, he was never given a warning letter. On 11 November 2011, while on duty at the Denton Bridge, an European was passing by and upon screening, it was discovered that his passport had an expired entry stamp. The complainant advised him to re-stamp it in order to regularize his stay in the Gambia which he understood. Afterwards, the white

man pulled out 20-pound sterling and gave it to him without him asking for it. When he moved, the complainant called his attention and asked why he was giving him such money? The European said that it was just a gift but the complainant returned the money.

The complainant further alleged that when the white man left, he explained all that transpired between them to a friend of his who was also a brother to a minister. When the minister heard of the incident, she sent for him but he could not meet her on that day. She drove to his office to inquire but he made it categorically clear to her that he returned the money but the minister was not convinced enough that she raised the issue in a security council's meeting. After the meeting, the complainant was arrested, detained for 15 days and later asked to go without a dismissal/termination letter by the head of institution who said it was an order from the former president.

FINDINGS

The Ombudsman wrote a letter to his employer, reference BCG 40/234/03 (140) dated 26 July 2017 for reaction. The director general replied through a letter referenced ID: TC/047/08/2017 dated 22 August 2017 informing the Ombudsman that the complainant was dismissed through an executive directive.

He further informed the Ombudsman that the complainant's case was reviewed and he was reinstated and posted to the intelligence unit in Banjul.

CONCLUSION

The Ombudsman upheld the decision of the institution to reinstate the complainant.

COMPLAINT NO:

134-138/2017

NATURE OF COMPLAINT:

Wrongful termination

COMPLAINT

The complainants alleged that they were appointed as security guards by a public Institution with effect from 1 September 2013. They have been working with the said institution for four years without any formal query or warning letter. They alleged that the Director General of the Institution had decided to restructure the whole institution but for reasons best known to him. He finally resorted to terminating the services of all the security guards on the ground of unsatisfactory performance.

The complainants further alleged that they were issued with letters dated 7 June 2017 informing them that their contracts with the institute would be terminated with effect from 31 July 2017. They had applied for their annual leave in 2014 but they were denied without any explanation.

FINDINGS

The complainants were appointed as security guards by an institution with effect from 1 September 2013. Following the appointment of a new director general in 2017, the

director general in restructuring the institution, he decided to terminate the services of the complainants on 7 June 2017 on the ground of unsatisfactory performance.

The complainants had also applied annual leave but the Institute's management denied their application without giving any explanation.

CONCLUSION

The complainants were paid accordingly.

COMPLAINT NO:

152 /2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was appointed as security guard with effect from 1 July 2002. He was promoted to the rank of assistant detective inspector with effect from 1 January 2010. He stated that on 1 February 2013, he was found in possession of ammunition of war without authority at Sinchu Alagie village. He was charged and arraigned before the Brikama Magistrates' Court. He pleaded guilty to the charge, He was sentenced to three months imprisonment and also fined D125,000 in default to serve nine months imprisonment. He served the sentence and upon his release from prison, he was issued with a dismissal letter. He wrote a letter to the president congratulating him for pardoning prisoners of all categories on 22 July 2015 and he also seized the opportunity to apologise for the actions leading to his conviction which was accepted by the president. He appealed for reinstatement into the security service but his institution did not support his request. He urged the Ombudsman to intervene so that he could be reinstated.

FINDINGS

The complaint was reviewed and it was observed that the complainant was in possession of arms and ammunition without authority. He was arraigned before the Brikama Magistrate Court. He pleaded guilty to the charges preferred against him. He was convicted and sentenced to three months' imprisonment and fined D125, 000 in default to serve nine months.

Subsequent to his release from prison, he was issued with a letter reference PR/C/D/0600739(57) dated 27 February 2013 informing him that following his conviction to serve a jail term, he was dismissed from the service with immediate effect.

CONCLUSION

Since the complainant was tried before the Brikama Magistrate Court, found guilty, fined and sentenced to jail term, the case was dismissed.

COMPLAINT NO:
NATURE OF COMPLAINT:

153/2017
Wrongful Dismissal

COMPLAINT

The complainant was appointed in 1970 as plumber by a defunct institution. He got promoted to various positions until 1997 when he was appointed as an officer in another institution and confirmed in appointment as superintendent In December 1997.

He alleged that on 31 December 2003, he was issued with a dismissal letter without indicating the reason for his dismissal. He disclosed that he had never been found wanting in his job or had any problem or query in the exercise of his functions. He sought review of the harsh decision meted out to him and allowed him to accomplish his wish and served the company up to retirement age.

FINDINGS

The complainant was issued with three warning letters prior to his dismissal. He received a warning letter on a memo dated 17 November 1998, for his participation in a theft case.

On 20 October 2003, he received another warning letter that served as a final warning for illegal water supply to a resident of Sukuta which contravenes the institutions service rule 0603.

He received his final warning letter dated 17 November 2003 for serious neglect of duty and as a result he was deducted one week wage from his salary.

The complainant's dismissal became evident that he continued committing other malpractices that prompted management to review his file and established his dismissal with effect from 4 January 2004.

CONCLUSION

Based on the evidence gathered the termination was genuine. The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

COMPLAINT NO:
NATURE OF COMPLAINT:

155/2017
Wrongful Termination of Contract.

COMPLAINT

The complainant was appointed on 1 October 2013 on a one-year renewable contract as maintenance supervisor. He was offered a provisional appointment pending the approval of the institute's service rules as indicated in his appointment letter. His contract was renewed in October 2015. The complainant alleged that the institute had a

new director general who engaged in restructuring the institution and as a result his contract was terminated effective 31 July 2017.

FINDINGS

The complainant was appointed as a maintenance supervisor on contract. The institute's administration stated that the institution needed qualified staff with the capacity to do the entire maintenance work in the areas of building and equipment.

The responsibility requires a higher qualification and work experience for the position of general maintenance technician.

The complainant was interviewed for the new position and was not successful but was offered another position, which he declined.

CONCLUSION

On 23 September 2017, the Institute paid the complainant his terminal benefit amounting to D18, 616.67 on a GTB cheque number 00002118.

COMPLAINT NO:

172/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was enlisted into a security institution in 1993. In 2009, he was promoted to the rank of sergeant. A friend of his in a different institution asked him to assist in arresting a man he suspected of being in possession of prohibited drugs. He helped him apprehend the suspect and then went home.

His friend later visited him and gave him D100. The following day, personnel of his institution called him and told him that orders were given for him to be detained. He was detained for six months without charges. He was later charged with receipt of gift and attempted extortion contrary to section 82 (f) and 77 of the Act governing his institution.

He was tried in a security court. He was exonerated on the civil matter but found guilty on the security matter. He was convicted to two years imprisonment but was released after serving one year six months. After his release, he alleged that a senior officer told him that he testified against him in court to please the president.

FINDINGS

The complaint was reviewed and it was found that the complainant was charged with receipts of gift and attempt extortion contrary to section 82(f) and 77 of his institution's Act. He was tried in a security court, found guilty and sentenced to two years imprisonment.

CONCLUSION

Since the matter was presided over by a court, the Ombudsman refrained from proceeding with the matter for lack of jurisdiction. In light of the above, section 9 (3) (b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

178/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant said that she was enlisted into a security institution effective 26 May 2014. She added that on 14 May 2015, she got married to a colleague and was dismissed on 26 October 2016. She stated that the reason for her dismissal was, she got married to a co-worker and according to their head of institution, that was prohibited.

FINDINGS

The complainant's dismissal was not supported by any law. Section 169(b) of the Constitution provides that "No public servant shall be removed from office or reduced in rank or otherwise without just cause."

CONCLUSION

With the intervention of the Ombudsman, the complainant was reinstated.

COMPLAINT NO:

181-186/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainants stated that they were enlisted into a security institution as security Officers. They were posted to different duty posts. On 1 October 2016, they were verbally dismissed by the head of their institution without giving any reason.

FINDINGS

The complainants were enlisted on 26 May 2014 and completed their recruitment training on 26 February 2015. They were dismissed in October 2016. Their dismissal was not supported by any valid reason. The head of institution abused his powers in dismissing the complainants without any just cause.

Section 169(b) of the 1997 Constitution provides that "No public servant shall be removed from office or reduced in rank or otherwise without just cause".

CONCLUSION

With the intervention of the Ombudsman, the complainants were reinstated.

COMPLAINT NO:
NATURE OF COMPLAINT:

187/2017
Unlawful Dismissal

COMPLAINT

The complainant was enlisted as security officer effective 12 May 1996. He was promoted to corporal in 2011. In 2014, while on posting at Kanilai as guard commander, a taxi driver who was related to the former president stationed his vehicle in a compound. When the former president returned from his treatment programme, he saw the taxi packed inside the compound and got angry. The guard commander on duty was summoned to a meeting and asked to write a list of all the guards on duty at the main entrance. The following day, they were ordered to report to State House. They were paraded before the former State Guard Commander who informed them that they had been dismissed.

FINDINGS

The complainant was enlisted on 12 May 1996 and promoted to corporal in 2011. He was verbally dismissed in 2014. No reason was stated for his dismissal and there was nothing on record that could provide material information to substantiate his dismissal.

Section 169(b) of the 1997 Constitution provides that “No public servant shall be removed from office or reduced in rank or otherwise without just cause”.

CONCLUSION

The complainant was reinstated effective 21 August, 2017.

COMPLAINT NO:
NATURE OF COMPLAINT:

189/2017
Unlawful Dismissal

COMPLAINT

The complainant was enlisted in 2014. She alleged that in 2016, she got pregnant and her health condition became unstable. She was excused from duty to seek medical treatment. She stated that a senior officer informed her that she was dismissed from the service of the institution. She alleged that the official items under her custody were all taken away from her. She stated that her dismissal did not conform to due process. She was never charged or marched before the head of the institution for disciplinary action.

FINDINGS

The complainant absented herself from work for a period of 21 days without any permission from her superior. She was dismissed by head of institution.

The decision is supported by Section 11(b)(i) of the Act governing the institution. Which states “A prison officer may at any time be dismissed, when the prison officer is sentenced to be dismissed from the service”

Section 23 (1) (ix) further provides that “A junior officer who absents himself or herself without leave or wilfully overstays his or her leave commits an offence against discipline, and subject to the provisions of the constitution the offence may be inquired into tried and determined, and the offender is liable to suffer punishment according to the degree and nature of the offence in accordance with the provisions of this Act”.

CONCLUSION

Since the complainant failed to report to work for 21 working days without obtaining permission from her superior or presenting an excused-from-duty document from a medical doctor to justify her absence, she has failed in her responsibility as an officer. She should have followed the right procedure to obtain an excuse from duty.

Section 9 (3)(a) of the Ombudsman Act provides that “the Ombudsman may decide to discontinue an investigation where he or she was satisfied that the complaint is trivial, frivolous, vexatious or not made in good faith”. The complaint was dismissed.

COMPLAINT NO:

190/2017

NATURE OF COMPLAINT:

Wrongful Termination

COMPLAINT

The complainant was employed at a public institution under the Traffic Department of Equipment Management Unit with effect from 1 October 1997. His terms of reference included supplying fuel and lubricants to the machines for operation. He stated that he was involved in a hydraulic oil saga of 120 litres. A task force was constituted to investigate the matter. Upon completion of their investigation the task force recommended that he should be warned and punished. Instead, his services were terminated. He opined that the decision of the former managing director, to terminate his service was drastic and not made in line with the recommendation of the task force. He urged the Ombudsman to intervene for redress.

FINDINGS

The complainant was employed at the said institution under the Traffic Department of Equipment Management Unit on 1 October 1997.

On 16 October 2016, the complainant was involved in a theft of 120 Litres of hydraulic engine oil. A task force was constituted to investigate the allegation and submit their report to the management. In their report, the task force concluded that the complainant confessed that he and his colleague were the only persons involved in the alleged stealing of 120 litres of hydraulic oil.

The task force recommended a disciplinary measure of suspension and immediate redeployment. Notwithstanding the said recommendation, the managing director resolved to terminate the service of the complainant acting on the provisions of rule

0305 sub 2(b) of their service rules, which states “The Authority reserves the right to dismiss any employee for misconduct or negligence of duty without notice or salary in lieu of notice. An employee may be dismissed for grounds laid down as follows: 2(b) Fraud or other serious dishonesty causing substantial loss to the Authority.”

CONCLUSION

Since the complainant was guilty of fraud and dishonesty, the termination of his service was not unlawful in the circumstances. However, the complainant was entitled to be paid his terminal benefits.

COMPLAINT NO:

194 /2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was appointed as trainee assistant surveyor by the institution on 1 April 1987. In 2008 he was promoted to the position of principal lands and valuation officer. In October 2010, he acted as director for 16 months without any benefits attached to the position. While acting in the latter position, he was also assigned to relieve the deputy permanent secretary technical while he was on leave for three months.

In October 2012, he was arrested and detained by the then National Intelligence Agency (NIA) for one week. While he was under detention, he was issued with a dismissal letter. After several arrests and detentions, he was arraigned before the Banjul Magistrates’ Court. Judgment was delivered in April 2016 and was found guilty. He was fined D175, 000 in default to serve 15 years’ imprisonment with hard labour.

FINDINGS

The complainant was charged with conspiracy to commit felony contrary to section 368 of the Criminal Code, making false documents contrary to section 320 of the Criminal Code, disobedience of lawful orders contrary to section 115 of the Criminal Code, neglect of official duty contrary to section 113 of the Criminal Code Cap10: 01 Vol. III Laws of The Gambia.

He was arraigned before the Banjul Magistrates’ Court, found guilty and sentenced as follows:

- Count one - to a fine of D50,000 in default to serve seven years imprisonment with hard labour
- Count five - to a fine of D50,000 in default to serve three years imprisonment with hard labour
- Count six - to a fine of D20,000 in default to serve two years imprisonment with hard labour

- Count seven - to a fine of D50,000 in default to serve two years imprisonment with hard labour

The sentences were to run consecutively. The complainant was sentenced to 14 years imprisonment instead of the 15 years imprisonment he claimed.

CONCLUSION

Since the matter was presided over in a court. The Ombudsman refrained from proceeding with this matter for lack of jurisdiction.

In light of the above, section 9 (3) (b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

195/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was enlisted into a security institution in 1982. He was discharged in 1998 and later reinstated in November 2016. He said that sometime in July 2017 while closing from work, he suspected some boys to be in possession of cannabis. He approached them with the intention of interrogating them but they refused to co-operate with him. He added that while trying to get the suspects to co-operate, an altercation ensued and in the heat of the moment, a senior officer intervened to maintain order. He alleged that he was then taken to their headquarters in Banjul where he was detained for two days without charge. He also alleged that he was later released and allowed to resume duties at his post.

Two days later, he was called upon to report to the deputy head of institution. On his way, he was informed by a senior officer that he had discussed the matter with the deputy and the arrangement made was that he should plead guilty; that he would be stripped off his rank and after six months, his rank would be restored. He alleged that he did not agree with the proposal but was later convinced by the officer that this was the best arrangement he could make. He further alleged that at the deputy's office, the charges were read over to him and he pleaded guilty. He was dismissed and asked to surrender all items belonging to the institution.

FINDINGS

The complainant was enlisted into the institution in 1982. He was discharged in 1998 and later reinstated in November 2016.

The complainant was charged with two counts: disobedience to order and discreditable conduct contrary to rule 13(1) of the disciplinary code of the institution's Act. Count 1: the particulars of offence states on Sunday 16 July, 2017 between the hours of 16:00hrs

and 00:00hrs in Banjul, he disobeyed orders that he should not be drunk while in security uniform.

Count 2: the particulars of offence stated on Sunday 16 July 2017 between the hours of 16:00hrs and 00:00hrs in Banjul, he was found drunk and displaying which discredit the reputation of the institution.

The complainant pleaded guilty to both counts and was discharged on 26 July 2017 in accordance with section 13 of the institution's Act.

CONCLUSION

The complainant's conduct and behaviour did not portray the good image of his institution and if such attitude is allowed, it would tarnish its good image. The institution's decision to discharge complainant is in line with Section 13 of the institution's Act. In this regard, the complaint was discontinued in accordance with section 9 (3)(a) of the Ombudsman Act.

COMPLAINT NO:

196/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant stated that he was enlisted into a security institution in July 1999. He was promoted to the rank of an officer commanding special operation. On 8 February 2016, he was dismissed from the service. He alleged that no reason was given for his dismissal. He urged the Ombudsman to intervene for him to be reinstated and paid all his benefits.

FINDINGS

The complainant was enlisted as security guard effective 1 July 1999. He was promoted to the rank of an officer commanding special operation.

He was dismissed on 8 February 2016. The complainant's dismissal could not be substantiated by any valid reason. He was dismissed without any just cause.

Section 169(b) of the Constitution provides that "No public servant shall be removed from office or reduced in rank or otherwise without just cause.

CONCLUSION

Since the complainant was removed from office without any just cause, the Ombudsman recommended for his reinstatement and compensation for the wrongful dismissal.

The Ombudsman's recommendation was adhered to and the complainant was reinstated effective 1 February 2018.

COMPLAINT NO:
NATURE OF COMPLAINT:

206/2017
Wrongful Dismissal

COMPLAINT

The complainant stated that she was enlisted into an institution effective 26 May 2014. She alleged that in June 2015, she fell ill and sought permission to undergo medical treatment which was granted for a period of one week. She stated that because her health could not subside at the end of the week, she requested an extra week to regain her health which was denied. She maintained that owing to her health condition, she stayed for an extra two weeks. The complainant further alleged that in July 2015, she reported to work and was informed that her name was no longer in the system; her salary was stopped and she was also informed not to report to work.

FINDINGS

The complainant was enlisted into an institution on 26 May 2014. The complainant stayed away from duties for three weeks without an excuse from duty from a medical doctor or permission from a superior in rank.

She was charged with absenting herself from duties without leave or wilfully overstaying her leave contrary to Section 23 (1)(ix) of the institution's Act. As a result, a charge was preferred against her; she was dismissed effective 25 February 2016.

Sections 11(b) also support the institution's decision.

CONCLUSION

Since the complainant stayed at home without permission from her superior or an excuse duty from a medical doctor, she had failed in her responsibility. She should have followed the right procedure to obtain an excuse from duty.

Section 9 (3)(a) of the Ombudsman Act provides that "the Ombudsman may decide to discontinue an investigation where he or she was satisfied that the complaint was trivial, frivolous, vexatious or not made in good faith". The investigation was discontinued.

COMPLAINT NO:
NATURE OF COMPLAINT:

224/2017
Wrongful Dismissal

COMPLAINT

The complainant stated that he served in the security institution from 1988 to 1994 when the Jawara administration was toppled. He travelled with him to Senegal and then proceeded to the United Kingdom. He wanted to return to the Gambia to serve his country but he learnt that he was dismissed from the service. He maintained that he was doing his duty to protect the former president and that his dismissal was unlawful because he swore to an oath to protect the president. He urged the Ombudsman to intervene so that he would be paid his services and compensated for loss of earnings.

FINDINGS

The complaint was reviewed and it was observed that the complainant's case took effect prior to the establishment of the Office of the Ombudsman.

Secondly, section 2 of the Indemnity Act states, "Government or its agents shall not be held liable for any acts or omissions done or purported to have been done during the transition period".

CONCLUSION

In light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

225 /2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant alleged that his late father worked for a public institution and was posted to North Bank Region as the commanding officer. In 1996 his father was accused of stealing a derelict and mechanically broken-down vehicle seized from a Senegalese businessman who was convicted by the travelling magistrate and had to pay money.

Two vehicles belonging to the Senegalese were seized. One of the vehicles was given to the travelling magistrate for his official use and the other to his late father. The vehicle given to his late father was stolen at the premises of the police station. The police officers made a thorough search but the vehicle could not be traced.

His late father was recalled to the institution's headquarters. He was incarcerated for months without trial. He fell ill and was admitted at the Bansang Hospital. Following his release, his late father never regained his health. After a long battle with high blood pressure and diabetes, he met his untimely death in 2005. The police cleared his father of any criminal act prior to his death. He urged the Ombudsman to intervene to administer justice and bring the perpetrators before the law.

FINDINGS

The complaint was reviewed and it was observed that his late father's case took effect prior to the establishment of the Office of the Ombudsman.

Secondly, section 2 of the Indemnity Act states, "Government or its agents shall not be held liable for any acts or omissions done or purported to have been done during the transition period."

CONCLUSION

In light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

COMPLAINT NO:

233/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was enlisted into a security institution 1985. In 1994, he left the country with former President Sir Dawda Kairaba Jawara. He had been serving the former president up to 2004 when a presidential decree was issued allowing the former president to return home. He alleged that he and his colleagues were excluded from the presidential decree. He said that he had made arrangement to return but when he learnt that two senior officers of his institution wrote to the president labelling him as a traitor who sabotaged their revolution, he cancelled his trip because it was not safe for him to return home. He stated that the termination of his services was unlawful. He urged the Ombudsman to intervene so that he could be paid arrears of salaries and any other benefits due to him.

FINDINGS

The complaint was reviewed and it was observed that the complainant's case took effect prior to the establishment of the Office of the Ombudsman.

Secondly, section 2 of the Indemnity Act states, "Government or its agents shall not be held liable for any acts or omissions done or purported to have been done during the transition period".

CONCLUSION

In light of the above, section 9 (3)(b) of the Ombudsman Act was invoked as the inquiry would be unnecessary, improper or fruitless.

4.3: UNFAIR TREATMENT

COMPLAINT NO:

3/2017

NATURE OF COMPLAINT:

Claiming Compensation

COMPLAINT

The complainant stated that he started work as seasonal worker on 20 May 2008. On 2 December 2015, between 10 am to 11 am while at work, he got involved in a fire accident which led to severe burns on certain parts of his body. He was immediately rushed to the hospital where he received medical attention. He asked his employer not to inform his mother about his situation because she was suffering from heart disease. They went against his will and informed her, which resulted in her untimely death.

He alleged that he spent almost one month at the hospital and spent D5, 000 on medical bills. When the manager came to visit him, he asked him whether he was given any money from the institution to which he replied in the negative. When the manager returned to the office, he sent him D10, 000 in two instalments. He submitted the receipt of his medical bills to his manager.

On 8 September 2016, he was issued with a termination letter. He went to a public institution to claim injury compensation and was paid D10, 000.

FINDINGS

The complainant started work as seasonal worker on 20 May 2008 at a public institution. His work was based on contracts which were not supposed to exceed six months. At the end of each contract, they were called to renew the contract if their services are needed.

On 2 December 2015, he got burnt at the boiler of the oil mill of the institution. He was rushed to the hospital where he received medical attention. He was later discharged on 28 December 2015.

The institution gave him D10, 000 in two instalments to use for treatment. In a letter dated 17 May 2016 the institution wrote to the hospital for a Medical Board Report on behalf of the complainant. The report stated that he sustained a circumferential burn on his legs, his scalp and forearms and recommended that he should be given disability percentage of 20%.

In a letter conveyed dated 4 October 2016, the institution wrote to a head of department requesting the compensation claim for the complainant. On 18 October 2016, a department wrote to the managing director of a corporation informing them that the compensation due and payable to the complainant was D900 per month until his death.

The corporation, in reaction to the Medical Board Report and the letter from the department, paid the complainant an injury compensation fee of D10, 758 on 21

November 2016 on a Guarantee Trust Bank cheque numbered 0000053 and D900.00 per month.

CONCLUSION

Since the complainant was given D10, 000 by his institution for treatment, D10, 758 as injury compensation from the corporation and a monthly injury compensation of D900 until his death, the Ombudsman therefore dismissed the case as the complainant has been compensated in accordance with the law.

COMPLAINT NO:

5/2017

NATURE OF COMPLAINT:

Claiming Monthly Pensions

COMPLAINT

The complainant stated that he served a defunct public institution as driver from 1 February 1985 to 1 January 1992. He later got employment at another institution and served from 1 July 1992 to 31 December 2000.

He alleged that he served for nine years in the former job and eight years and six months in the latter job. After his retirement he was paid lump sum as his gratuity. He further alleged that he was never paid monthly pension and has the conviction that since his service was within the intra-scheme transfer, he was entitled to monthly pension.

FINDING

The complainant's appointment with the institution he first worked for, was from 1 February 1985 to 1 January 1992 and the latter, from 1 July 1992 to 1 January 2001 which was less than ten years in each institution.

He had a break in service, which does not qualify him for the intra -scheme service transfer and connection of his services.

He was paid lump sum covering all his benefits based on his length of service. Therefore, he was not eligible to be paid monthly pension.

CONCLUSION

The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as vexatious and not made in good faith.

COMPLAINT NO:

9/2017

NATURE OF COMPLAINT:

Claiming social security benefits

COMPLAINT

The complainant was appointed by a private security institution on 1 September 2006 as security guard. He alleged that on 10 June 2016 he went to process his retirement benefits. He was informed that his employer had not paid his contributions. He made follow-up with his employer but they confirmed to him that his contributions were paid up to end of his contract. He was in a dilemma and sought proper review of his contributions. He claimed that since his salaries had been deducted and contributed to the provident fund, he deserved to be paid his benefit.

FINDINGS

The complainant was paid D6,894.67 through Standard Chartered Bank cheque No:009205 dated 27 December 2016 being contributions made by his employer under the National Provident Fund covering January 2011 to November 2015 plus interest from his savings.

The complainant's employer failed to contribute for him from September 2006 to December 2010 as a result they were taken to court to recover the arrears of pending contributions.

CONCLUSION

Since the matter was in court the complainant was advised to exercise patience until the outcome of the case.

COMPLAINT NO:

10 /2017

NATURE OF COMPLAINT:

Claiming Acting Allowance

COMPLAINT

The complainant was appointed as assistant auditor by a public institution with effect from 1 June 2016. She alleged that she had acted in the position of head of auditor from 29 December 2016 to 2 February 2017, when the head of auditor went on annual leave. She requested to be paid acting allowance since the ending of January 2017 but to no avail. She urged the Ombudsman to intervene so that she could be paid one month acting allowance.

FINDINGS

The complainant was appointed as assistant auditor by the institution with effect from 1 June 2016. When the head of audit went on annual leave from 29 December to 2 February 2017, she was assigned to act in the position of acting head of audit from 29 December 2016 to 2 February 2017 which she executed effectively. She claimed her acting allowance at the end of January 2017 but it fell on deaf ears.

CONCLUSION

The complainant was paid D36,640 on voucher No. 029 dated 27 February 2017.

COMPLAINT NO:

18/2017

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

The complainant stated that on 21 February 2016 while riding his bicycle on his way to work, he was knocked down by a driver of one of the embassies. The said vehicle driver first apologized to him and said that he was sick and was not seeing properly. The police traffic unit came to the scene of accident and took the sketch plan and all the necessary details. One police officer escorted him to Sukuta Health Center where he received medical treatment.

The police took his statement and the embassy promised to solve the matter soonest but they failed to honour to their promise. He took it upon himself to pay all the medical bills without any help from the embassy. He was of the view that the police neglected his case and denied him justice.

FINDINGS

The accident occurred and the embassy driver accepted to take responsibility and promised to refund the complainant's medical bill.

CONCLUSION

The complainant was compensated on 19 June 2017, an amount of D400 at the Office of the Ombudsman, being the medical cost, he incurred.

COMPLAINT NO:

23/2017

NATURE OF COMPLAINT:

Claiming benefits

COMPLAINT

The complainant was employed as security officer at a private security company in September 2007. He said that he resigned on 10 April 2014 at the age of 45. He alleged that he requested part payment of his benefits from an institution but to no avail. He explained that the institution wrote a letter to his employer dated 20 June 2016 informing them that no contribution was made to his account (2184469) from September 2007 to December 2010. His employer informed him that according to their records they had contributed from 2007 to 2009. He alleged that 2008 to 2010 were also paid and even mentioned the name of the officer under whose custody the documents were. He was of the view that there was misunderstanding in the processing of his contribution. As a result, he sought review of his statement to enable him to access his benefits.

FINDINGS

The public institution responsible for such matters has referred the issue of the complainant's claim to court. The said security institution failed to contribute for its employees from September 2007 to December 2010, February 2014, May 2014, and July 2014 to August 2014 respectively.

CONCLUSION

The matter was before the court and the complainant was advised to exercise patience and follow up with the institution until the determination of the case. The case was sub-judice.

COMPLAINT NO:

25/2017

NATURE OF COMPLAINT:

**Claiming Outstanding Salaries and
Gratuities**

COMPLAINT

The complainant stated that he won the 2012 National Assembly Election as an independent candidate. On 4 August 2016, he travelled to USA when parliament was in recess. On 29 August 2016, he was written to. The letter stated that he had failed to return home after attending a conference in the USA.

A senior official of his institution instructed the senior accountant to stop his salary until further notice and informed the accountant general to intimate his office on his liabilities and gratuities.

On 26 September 2016, the institution moved a motion to expel him, citing a wrong section i.e. 112(a) and (b) of the 1997 Constitution. The complainant alleged that the section was irrelevant on his case as he could only be dismissed by his electorates not the institution.

FINDINGS

Chapter XI section 166(4) (a) of the 1997 Constitution of the Gambia states "an office of the public service does not include the Office of the President, Vice President, Speaker of the National Assembly, Secretary of State or a Member of the National Assembly."

A motion was moved on 26 September 2016 at the National Assembly by an honourable member to expel him from parliament and it was approved. According to section 3(a) of the Ombudsman Act 1997, the Ombudsman is mandated "to investigate complaints of corruption, injustice, maladministration, abuse of power and unfair treatment of any person by a public officer in the exercise of official duties".

CONCLUSION

The Speaker and National Assembly members are not public officers as stipulated under section 166(4) (a) of the 1997 Constitution of the Gambia. The Ombudsman refrained from proceeding with this matter for lack of jurisdiction.

COMPLAINT NO:
NATURE OF COMPLAINT:

26/2017
Claiming ownership of land

COMPLAINT

The complainant stated that she bought a plot of land in Bafuloto village, from a man on 22 May 2013 and 2015. She added that she fenced the land. Later a man emerged claiming to be the owner of the land. He claimed to have bought the land in 2012 from the Alkalo of Farato Bojang Kunda.

The complainant further alleged that in October 2016, she visited the said land but to her dismay she found that a house was erected on the land by Lamin Camara, who later settled on the said land with his family in February 2017.

FINDINGS

The complainant bought a piece of land measured 30x30m from Alasana Saidy the former Alkalo of Bafuloto village on 22 May 2013. The same land was also sold to Lamin Camara by the Alkalo of Farato Bojang Kunda Modou Bojang on 6 June 2012. Both the two Alkalos claimed that the said land is located in their villages, Bafuloto and Farato Bojang Kunda.

Lamin Camara the one settling on the land is the first to buy the land before the complainant. He bought the land on 6 June 2012 while the complainant bought it on 22 May 2013. The matter was taken to both the police at Brikama and the Commissioner for resolution but both could not do much because the real ownership of the land is still unclear.

CONCLUSION

The Office of the Ombudsman does not have the power to determine the ownership of land. The complainant was therefore advised to take the matter to the District Tribunal or the High Court to determine ownership.

COMPLAINT NO:
NATURE OF COMPLAINT:

35 /2017
Unfair Treatment

COMPLAINT

The complainant stated that he was appointed as teacher at a senior secondary school by the proprietor of the school. In April 2004, he was appointed acting principal of the school. In July 2004, due to the level of indebtedness, the proprietor gave orders to close the school and to ask the students to transfer to other schools because the school

arrears. They owed their host; that is, the proprietor of the school within whose premises they were operating.

The complainant stated that he borrowed money and paid the arrears and continued running the school. He explained that in 2005, with the help of the village Development Committee of Busumbala, he conditionally secured a land in that settlement where he built classrooms and relocated the school in 2007.

He alleged that in 2011, the proprietor's wife claimed ownership of the school under the pretext that it was her husband's property. The matter was taken to Brikama Magistrate Court where it was decided that the school be handed over to the ministry until issues regarding its ownership were determined. On 10 December 2014, the school was handed over to the ministry. He also alleged that the ministry had also promised that they would be paying his salary but he had not been receiving anything from them.

FINDINGS

The complainant was appointed as teacher, and later appointed as acting principal of a senior secondary school by the proprietor/principal through letter dated 1 April 2004. His term of reference was to supervise the collection of school fees and other administrative matters.

It was then a junior secondary school, which was officially registered by the proprietor as the sole proprietor in 1997. During the 1997/98 Academic year, the proprietor had an agreement with a proprietor of an institute to allow the school to operate afternoon classes at the institute. The said school had no premises of its own then.

The junior secondary school was upgraded to a senior secondary school in 2002. The school commenced the 2002/2003 academic year as a senior secondary school. The school was still using the premises of the institute and operating afternoon classes.

The proprietor in 2000 was allocated a plot of land by the Busumbala Village Development Committee (VDC) for the purpose of relocating the school from Brikama to Busumbala. A Memorandum of Understanding (MOU) was signed between the proprietor and the Busumbala VDC.

Following the allocation of the land in Busumbala to the proprietor in 2000, he never returned to the villagers of Busumbala to give feedback on the building of the school on the land allocated to him. In 2007, the school relocated to the new site in Busumbala.

In September 2004, when the proprietor failed to pay the rent arrears with the intention of abandoning the school, the complainant raised money and paid D35, 000 being rent arrears of the school. The complainant also paid salary arrears that the proprietor owed to his teachers.

A transfer of ownership of the land situated in Busumbala village was issued to the complainant by the Alkalo measuring 100mx30mx97mx20m. The cost of the land was D500, 000. He effected payments by instalments. The first payment was D200, 000 on receipt no. 053 dated 16 February 2009, the second payment was D100.000 on receipt no. 057 dated 16/10/2009, the third payment was D20, 000 on receipt no. 065 dated 16/10/2009 and the final payment was D180, 000 on receipt no. 074 dated 16/10/2009. In February 2011, an official transfer of the land was made by the Brikama Area Council to him.

On 23 September 2011, a Power of Attorney purported to be executed by the then proprietor (deceased) appointing his wife as the new proprietress of the school. The new proprietress created a new account for the senior secondary school at the Gambia Teachers Cooperative Union (GTUCCU) where all the monies due to the school were paid by the President Empowerment for Girls Education Project (PEGEP).

PEGEP made a payment of D302, 000 on 7 May 2014 and D152,200 in June 2014 to a GTUCC account Number 00150130263600 at the Standard Chartered Bank for the payment of 1, 2 and 3 term fees for the girls attending the school i.e. a total of D454, 200.

The school was among the list of schools to be closed in Region II due to the land dispute between the complainant and the new proprietress of the school. Considering the negative impact, the closure of the school will have on the enrolled students, a meeting was held at the Office of the Regional Director in Region II on 15 September 2012 on the issue of the school.

At the said meeting an agreement was signed between the complainant and the new proprietress that they will work as partners and the school will be managed by a board of governors with the proprietress and he would continue to be the principal of the school and secretary to the board. That at the end of each year, proceeds acquired would be shared among themselves after the school development has been taken care of.

An agreement was made between the complainant and the new proprietress on 1 February 2013, to sell the land on which the school is situated to the new proprietress for D3,000,000 to be paid by three monthly instalments.

The complainant filed a civil suit case no. BRK/CS/236/14 against the new proprietress & others seeking the following orders: An interim injunction restraining the defendants from interfering in his administration pending the hearing and determination of the main suite filed herein. Any further orders the court may deem to make under the circumstances.

The magistrate in her ruling dated 24 November 2014, refused the complainant's application for an interim injunction restraining the defendants from interfering in his administration pending the hearing and determination of the main suite.

She ordered the ministry to take over the administration of the school until the issue of the ownership is settled between the complainant and the proprietress. After the issue of ownership is finally determined, the ministry shall hand over the administration of the school to the rightful owner.

The complainant filed a civil suit No. HC/011/15/oh/002/HD dated 13 January 2015 against the proprietress requesting a declaration that the plaintiffs are the rightful owners of all that piece and parcel of land situated at Busumbala West Coast Region measuring 100mx30mx97mx20m more particularly delineated in the sketch plan attached hereto.

An injunction restraining the defendant whether by herself, her agents or servants or otherwise whosoever from entering, tampering, alienating or otherwise interfering with the plaintiffs' land situated at Busumbala, Kombo North District West Coast Region.

An order compelling the defendant to return the plaintiff the sum of D880,000 thereabout or any other fund diverted into the defendant's accounts by her from President Empowerment of Girls Education Project which was meant for the payment of teachers' salary. The plaintiff claimed damages, trespass, or any further or other order.

In the complainant's statement of claim before the High Court he had never claimed payment of salary and there was no documentary evidence to prove that the ministry promised to pay him salary as suggested by the complainant.

CONCLUSION

The Ombudsman upheld the decision that the ministry which is the body responsible for education in this country to take over the administration of the school until the issue of ownership is determined by the court. Since the matter is still pending before the High Court, the Ombudsman does not have the power to review the case. The case was sub-judice.

COMPLAINT NO:

36/2017

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

The complainant was employed as security guard at a private security company on 1 April 2016. On 15 February 2017 he was diagnosed with tuberculosis. He was granted two months excuse duty and was paid 16 days for February 2017. He alleged that his health condition did not improve during the period and as a result he was granted another six months' sick leave without salary from 9 March to 11 September 2017. He pleaded to be paid at least two months' salary but was denied.

He complained to the government department responsible for such matters on 28 March 2017. An official who was handling his case informed him on 31 March 2017 that

he had tried to reach the security company on phone on several occasions but to no avail.

FINDINGS

The head of the institution advised the management of the complainant's employer to be flexible and allow the complainant to go for further treatment with full pay as recommended by the doctor. However, the complainant's management argued that they can only give 14 days' leave with salary. The human resource manager of the institution promised to give feedback to labour which he never did.

The department of labour invokes section 81 of the Labour Act 2007 and referred the complaint to summons his employer before the Industrial Tribunal for redress.

CONCLUSION

The matter was referred to the Industrial Tribunal and the case was closed.

COMPLAINT No:

37/2017

NATURE OF COMPLAINT:

Claiming Retirement Benefits

COMPLAINT

The complainant was appointed as caretaker by a public institution on 30 October 2002. He alleged that on 9 February 2017, he was issued with a letter terminating his services with effect from 31 March 2017. He reported to work on 31 March 2017 and was informed to collect his benefits. He was paid D2, 500 after deducting the 1 x 6 loan. He further alleged that his employer stopped paying his contributions and as a result payment of his benefits was delayed. He alleged that since his contributions were deducted, he was entitled to receive his benefits accordingly.

FINDINGS

The complainant was appointed by the institution as caretaker on 1 July 2002.

His appointment letter dated 30 October 2002 did not indicate any retirement benefit or subscription to any of the schemes. His salary was never deducted for any contribution.

Subsequently, a new management took over the institution and terminated the services of all the staff including the complainant. The new management accorded opportunities to those who were interested to continue with the new establishment. He reapplied and got appointed on contract on 1 May 2012. During this period, he was refunded his staff welfare contribution amounting to D700, as indicated in his pay slip of October 2014.

CONCLUSION

The complainant's claim for retirement benefit was found to be inappropriate. He was paid terminal benefits in accordance with the provisions of his contract. The deduction of 1 x 6 from his entitlement was appropriate. The complaint was dismissed under 9 (3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

COMPLAINT NO:

42/2017

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

The complainant was appointed as education and professional studies lecturer on 1 September 2012. She alleged that she had been unfairly treated in the performance of her duty as prescribed in her terms of reference. She accused a senior officer of preventing her from performing her duties especially where she could benefit financially like her colleagues. She further alleged that the senior officer exempted her from module marking, primary school teaching planning, face-to-face and assigned these responsibilities to outsiders. She alleged that she was excluded from the recent Easter program in which she was supposed to take part. As a senior lecturer, she felt unfairly treated and frustrated because the senior officer had been interfering in the execution of her duties.

FINDINGS

The complainant was appointed as lecturer on contract on 1 September 2012 for a period of one year, renewable upon satisfactory performance.

Following the expiry of her contract appointment on 1 September 2013, she was allowed to continue working on the same terms and condition in her contract letter dated 5 September 2012. She was not paid contract gratuity as required by the GO 02123 section (c) which states “upon the satisfactory completion of fixed contract appointment, an officer will be entitled to 25% contract at aggregate emoluments approved by the relevant authorities”.

Her personal file was also examined it was observed that she was never queried for poor performance and the mere fact that she was allowed to continue to work after the expiry of her contract implies that her performance was satisfactory.

She had been benefiting from planning for PTC until 2015. She also benefited from the HTC programme once. It was observed that the face-to-face programme was not automatic, or any lecturer’s right. The institution reserved the right to select which lecturers should teach on the face-to-face programme accorded to lecturers during break period.

Through a letter ref: CA/C/1/Vol.2 (2016) dated 7 April 2016, her contract was renewed as lecturer, for a period of one year with effect from 1 April 2016. Her contract expired in March 2017 but her employer failed to renew the contract and allowed her to continue to work on the terms and conditions of the old contract. The law assumes that the complainant and her employer automatically entered into another contract which was enforceable by law.

Following her complaint to the Ombudsman of unfair treatment against her employer, she was issued with a letter ref: CA/GC/Vol.8(15)2017 dated 7 July 2017 informing her

that her contract will not be renewed and by end of July her payment would cease. This means that she was victimized as a result of the complaint she lodged with the Office of the Ombudsman, which was against the Laws of the Gambia. The institution should have waited for the outcome of the investigation before terminating her service.

The fact that her contract expired in March 2017, while she was communicated to in July about the non-renewal of the contract, shows a breach of contract on the side of the institution.

CONCLUSION

The Ombudsman recommended that the complainant be paid a contract gratuity of 25% from 2012 to 2015 as required by the GO 02123 sections (c).

It was also recommended that she should be reinstated with immediate effect or where reinstatement was not feasible, be paid her eight months' salary with any accrued benefits as compensation for breach of contract.

COMPLAINT NO:

43/2017

NATURE OF COMPLAINT:

Stoppage of Injury Compensation

COMPLAINT

The complainant was appointed as plumber effective 31 December 1981. He alleged that on 3 May 2006, he accidentally fell from the last floor of their headquarters and sustained injuries. He was admitted to Edward Francis Small Teaching Hospital.

He was examined by a Medical Board and his disability was rated at 20%. He was paid lump sum of D30,000 as injury compensation. The Department of Labour wrote a letter ref: LD/IC/MF/894/(5) dated 26 May 2008 and recommended that the complainant should be paid injury compensation of D900 as required on section 7 (1) C of the Injury Compensation Act 1990. He was paid D900 until 2010 when the amount was increased to D1200 and he was paid drawback of D4000. On 31 December 2015, when he attained 60 years and retired, his monthly pension was stopped. He alleged that each time he complained he was told that the update arrears would be paid to his account.

FINDINGS

The complainant was a beneficiary of the Injuries Compensation Fund (ICF) and a member of the Federated Pension Scheme (FPS).

An anomaly occurred during the computation of the revised pensions and the complainant's name was inputted in the FPS pensioners' payroll and not Injury Compensation Fund. He was paid drawback of D4,050 as outstanding pension increment. He was also receiving D270 on top of his monthly injury compensation of D900 over a period of 15 months.

Due to this error the computer system failed to recognize his name under the Injury Compensation Fund payroll as a distinct payment from the FPS pensions payroll based on the fact that the information on both schemes conveyed same details of his personal information.

The error was detected after 27 months when the complainant complained that his monthly injury compensation had not been paid to his bank account from April 2013 to March 2016.

The institution accepted responsibility for overpayment of D10,000 into his Injury Compensation Fund thereby he had an agreement to use the amount to offset the overpayment of his pension arrears through a deduction of D270 from his monthly pensions. This was reactivated and paid to his bank account effective March to December 2017. The complainant would be receiving his monthly injury compensation pensions after recovery of the overpayment.

CONCLUSION

The complainant was advised to adhere to the recovery plan agreement to enable him continuously receive his monthly pension.

The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 for lack of merit.

COMPLAINT NO:

200/2017

NATURE OF COMPLAINT:

**Failure to Implement
Recommendation**

COMPLAINT

The complainant was appointed as teacher at an academy effective 1 January 2017. He added that on 1 August 2017, he was served with a termination letter by the academy's director of administration without the required notice period or payment in lieu of notice.

He further alleged that on 9 August 2017, he complained to a government department against the academy. He added that the department convened a meeting with the representative of the academy and it was agreed that the academy should pay a month's salary in lieu of notice. He further added that the academy's representative promised to convene a meeting with the department and the Parent-Teacher Association to reach a compromise.

He alleged that until today management failed to honour the recommendation made for his one month's salary to be paid and the department has relented in their effort to implement such recommendation.

FINDINGS

The complainant was appointed as teacher at an academy effective 1 January 2017. On 1 August, 2017, his contract was terminated without the required notice period.

He referred the matter to a government department for redress. The department convened a meeting with the parties i.e. the complainant and a representative of the academy. The department recommended for the payment of the complainant's one month's salary in lieu of notice.

The academy was given a time line within which payment should be effected but it failed to pay. Several efforts were made to get the employer to pay but they could not be reached.

Section 91(5) of the Labour Act 2007 provides that "where the commissioner fails to settle the matter within one month of receipt of a complaint made to him or her, the employee or trade union may bring a claim before the tribunal in accordance with the Rules set out in the First Schedule of this Act."

CONCLUSION

The complainant was advised to take his claim to the industrial tribunal as required by section 91(5) of the Labour Act 2007.

COMPLAINT NO:

218/2017

NATURE OF COMPLAINT:

Claiming Late Husband's Gratuity

COMPLAINT

The complainant alleged that her late husband was employed at a council effective 1 October 1993 as assistant superintendent of municipal police and rose to the rank of deputy commissioner.

She further alleged that her husband passed away on 15 May 2016 and after his demise, she obtained the necessary documents for the computation of his death gratuity. She added that despite the promise that the council would look after his family and pay his death gratuity as soon as possible, she had on several occasions made follow-ups but to no avail.

FINDINGS

The complainant's husband was employed at the said council on 1 October 1993 as assistant superintendent of municipal police and rose to the rank of deputy commissioner. On 15 May 2016, her husband passed away in Dakar, Senegal. Following her husband's demise, the council commenced the computation of her husband's gratuity and it was subsequently paid.

CONCLUSION

Her husband's death gratuity was paid on the 2 February, 2018 on voucher No: PV18-0181 amounting to D 86,961.87.

COMPLAINT NO:

246-267/2017

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

The complainants alleged that on 12 October 2017, their institution's management had a meeting with the objective of sending the vendors away from selling at the ferry terminal premises. They were informed that there was a Gambian brother who had rented the ferry thus giving him monopoly of the sales at the ferry services.

The complainants further stated that they had been the vendors at the Banjul Barra ferry services for a minimum of 7 years to a maximum of 40 years. The profits obtained from these sales are used for their family upkeep. The complainants further alleged that the managing director had been very helpful. However, their major nightmare was ferry services who had given them tough time thus impacting their daily sales.

FINDINGS

After a thorough investigation, management revealed the following:

- Management's decision to bar selling on the ferries was purely for safety reasons. The ferry terminal is a very busy area where large trucks and other vehicles come into to cross to Barra and some of those vehicles at times do not have proper brakes and accidents do happen and lives are lost.
- On the case of (the man alleged to have monopolized sales on the ferry) he does not sell in the ferry but at a kiosk away from the traffic of vehicles.
- It is management's decision to write to them to take an undertaking not to sell on board the ferry and those who adhere to that will be given identity cards to be allowed to sell at the waiting shed.

CONCLUSION

Management held a meeting with the complainants and the matter was resolved amicably.

COMPLAINT NO:

296/2017

NATURE OF COMPLAINT:

Claiming Retirement Benefits

COMPLAINT

The complainant alleged that he was employed on contract at a council for many years. He was later appointed as tractor driver and his responsibilities, amongst others, were

collecting and disposing of waste. He added that he had served the council for more than 40 years and was retired via a letter ref: KMC/ADM/055 dated 24 July 2017. After his retirement effective 31 July 2017, he made several efforts to be paid his retirement benefits but to no avail. He added that he was informed by management that his file has been sent to the line ministry. He made several follow-ups to the said ministry but to no avail.

FINDINGS

The complainant was employed on contract at the said council. He served for many years and later appointed as tractor driver. He was written to via a letter ref: KMC/ADM/055 dated 24 July 2017 informing him that he was due for statutory retirement effective 31 July 2017.

His file was sent to the ministry but it got missing at the ministry. The council opened a new file and his benefits were processed.

CONCLUSION

The complainant was paid D27, 660.12 on Bank PHB cheque no.00068776
27 February 2018.

4.4 INJUSTICE

COMPLAINT NO:

16/2017

NATURE OF COMPLAINT:

Wrongful Suspension

COMPLAINT

The complainant was appointed as security guard effective 1 April 2006. He alleged that on 6 September 2016, he received a suspension letter of three months without salary based on the assumption that he participated in the alleged release of an unauthorized and undocumented vehicle (Range Rover). He further alleged that the act was considered as a security lapse, which he said had never been the case because the vehicle had a number plate and license disk at the time it was released. He complained that the procedures used to suspend him were wrong because he was not interdicted while investigation was on progress. He is claiming for the payment of three months' salary arrears.

FINDINGS

The complainant was on duty at the institution's exit gate on Saturday 20 August 2016. It happened that a smuggled vehicle (green Range Rover sport vehicle number PONU 783460 -7) was allowed to pass through the exit gate without proper documentation.

This incident prompted the authority to setup a taskforce to conduct an investigation and recommend to management their findings on those who participated in the operation of the unauthorized release and exit of the vehicle from the port's premises.

The complainant was very much acquainted with the operating procedures for the transactions and release of vehicles from the authority's premises but he failed to follow the rules and negligently allowed the vehicle to exit the gate without scrutiny and proper documentation.

He was suspended for three months without salary based on the recommendation of the taskforce and other established evidence which indicated that he was guilty of gross dereliction of duties.

The complainant was expected to be vigilant and cautious in executing his duty as a security officer to ascertain that any vehicle or goods passing through the exit gate possessed the required documents.

CONCLUSION

The complainant has to work hard to regain the trust of the authority. The punishment meted against him was genuine and upheld. The complaint was dismissed under section 9 (3)(a) of the Ombudsman Act 1997 as frivolous and not made in good faith.

Chapter 5

5.1 KEREWAN CASES

COMPLAINT NO: 1/2017
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The Complainant alleged that he applied for a cash power meter from a public company since 8 February 2017. He further alleged that he had paid all the required charges with a receipt numbered 0030186 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 8 February 2017. He paid the charges and was issued with a receipt numbered 0030186 but there was a delay in the issuance of a meter.

CONCLUSION

A cash power meter was provided to the complainant and the case is concluded.

COMPLAINT NO: 3/2017
NATURE OF COMPLAINT Injustice

COMPLAINT

The complainant stated that he was found guilty before the Farafenni Magistrates' Court on 27 October 2016 and was fined D10,000. He alleged that he had paid the money but was not issued with an official receipt. He was issued with a receipt on an A4 Paper with D10,000 written on it.

FINDINGS

The complainant was found guilty before the Farafenni Magistrate Court on 27 October 2016 and was fined D10,000 but an official receipt to that payment was not given.

CONCLUSION

The court clerk was contacted and an official receipt was given to that effect. He was warned to desist from such act.

COMPLAINT NO: 5/2017
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The Complainant alleged that he applied for a cash power meter at a public company since December 2016. He alleged that he had paid all the required charges and was

issued with a receipt numbered 0030251 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter since 17 December 2016. He was issued with a receipt numbered 0030251 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO:

6/2017

NATURE OF COMPLAINT

Unfair Treatment

COMPLAINT

Complainant alleged that he applied for a cash power meter on 14 February 2017. He paid all the required charges and was issued with a receipt numbered 0040764 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 14 February 2017. He paid the charges and was issued with a receipt numbered 0040764 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO:

7/2017

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

The complainant alleged that he applied for a cash power meter on 17 January 2017. He paid all the required charges with a receipt numbered 0028154 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 17 January 2017. He paid the charges with a receipt numbered 0028154 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO:
NATURE OF COMPLAINT

8/2017
Unfair Treatment

COMPLAINT

The complainant alleged that he applied for a cash power meter on 7 March 2017. He paid all the required charges and was issued with a receipt numbered 0028156 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 7 March. He paid the charges and was issued with a receipt numbered 0028156 but there was a delay in the issuance of a meter.

CONCLUSION

The company's regional officer promised that a cash power meter would be provided to the complainant in the soonest possible time. He said all applications submitted in March would be processed in early March 2018. The complainant was provided with a meter.

COMPLAINT NO:
NATURE OF COMPLAINT:

9/2017

COMPLAINT

Complainant alleged that he applied for a cash power meter on December 2016. He paid all the required charges and was issued with a receipt numbered 0040565 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 21 December 2016. He paid the charges with a receipt numbered 0040565 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO:
NATURE OF COMPLAINT:

10/2017
Unfair Treatment

COMPLAINT

The complainant alleged that he applied for a cash power meter on 7 March 2017. He paid all the required charges and was issued with a receipt numbered 0028156 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 7 March 2017. He paid the charges and was issued with a receipt numbered 0028156 but there was a delay in the issuance of a meter.

CONCLUSION

The company's regional officer promised that a cash power meter would be provided to the complainant in the soonest possible time. He said all applications submitted in March would be processed in early March 2018. The complainant was provided with a meter.

COMPLAINT NO:**12/2017****NATURE OF COMPLAINT****Unfair Treatment****COMPLAINT**

The complainant alleged that he applied for a cash power meter on 9 January 2017. He further alleged that he had paid all the required charges with a receipt numbered 0040634 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 9 January 2017. He paid the charges and was issued with a receipt numbered 0040634 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO:**13/2017****NATURE OF COMPLAINT:****Unfair Treatment****COMPLAINT**

The complainant stated that he applied for a cash power on 28 November 2016. He paid all the required charges and was issued with a receipt numbered 0038521 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 28 November 2016. He paid the charges and was issued with a receipt numbered 0038521 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO: 14/2017
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The complainant alleged that he applied for a cash power meter from on 16 December 2016. He paid all the required charges and was issued with a receipt numbered 0030249 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter 16 December 2016. He paid the charges and was issued with a receipt numbered 0030249 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO: 15/2017
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The Complainant alleged that he applied for a cash power meter on 11 February 2017. He paid all the required charges and was issued with a receipt numbered 0028108 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power on 11 February 2017. He paid the charges and was issued with a receipt numbered 0028108 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO: 16/2017
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The complainant alleged that he applied for a cash power meter since 2 January 2017. He paid all the required charges and was issued with a receipt numbered 0040708 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power meter on 2 January 2017. He paid the charges and was issued with a receipt numbered 0040708 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO:**17/2017****NATURE OF COMPLAINT:****Unfair Treatment****COMPLAINT**

Complainant alleged that he applied for a cash power on 19 September 2016. He paid all the required charges and was issued with a receipt numbered 0074528 but since then he could not get his cash power meter.

FINDINGS

The complainant applied for a cash power on 19 September 2016. He paid the charges and was issued with a receipt numbered 0074528 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO:**18/2017****NATURE OF COMPLAINT:****Unfair Treatment****COMPLAINT**

Complainant alleged that he applied for a cash power meter on 5 January 2017. He paid all the required charges and was issued with a receipt numbered 0040720 but since then he could not get his cash power meter.

FINDINGS

The complainant had applied for a cash power meter on 5 January 2017. He paid the charges and was issued with a receipt numbered 0040726 but there was a delay in the issuance of a meter.

CONCLUSION

The complainant was provided with a meter. The case was closed accordingly.

COMPLAINT NO: 20/2017**NATURE OF COMPLAINT:****COMPLAINT**

A community in Central Badibu had a water problem since 2015. Their councillor promised that he would be able to help through a project. He demanded D10, 000 as a guarantee for securing the project for the community. Since then, neither the project

nor the money given to him was made available to the community. Several follow-ups were made and they even reported the matter to the chief but to no avail.

FINDINGS

It was discovered that the councillor promised to bring water to the community through a project even though he could not mention the project's name. He demanded D10,000 from the community in the name of the so called project.

CONCLUSION

The councillor was advised to return the money to the community with immediate effect and warned to desist from such malpractices. The community was also advised to be more careful and vigilant. The councillor refunded D10,000 to the community.

COMPLAINT NO:

21/2017

NATURE OF COMPLAINT:

Injustice

COMPLAINT

A community in Central Badibu had a water problem since 2015. Their councillor promised them that he would be able to help through a project. He demanded D10, 000 from them as a guarantee for securing the project for the community. Since then neither the project nor the money given to him was made available to the village. They made several follow-ups and even reported the matter to the chief of Central Badibou but to no avail.

FINDINGS

The councillor promised to bring water to the community through a project even though he could not mention the project's name. He also demanded D10,000 from the community.

CONCLUSION

The councillor was advised to return the community's money with immediate effect and further warned to desist from such malpractices. The community was also advised to be more careful and vigilant. The councillor refunded D10,000 to the community.

Chapter 6

6.1 MANSAKONKO CASES

COMPLAINT NO:

1/2017

NATURE OF COMPLAINT:

Claiming Gratuity

COMPLAINT

The complainant was appointed as daily paid watchman with effect from 1 October 2004. He worked in the said position until 1 November 2006 when he was issued with another appointment as a security guard on Grade 1.4 of his institution's pay structure. He stated that on 3 June 2010, he resigned from his post on health grounds. His resignation was accepted in a letter dated 9 June 2010 ref: GC/8153VOL.1 (2) AC. He alleged that since then he had not been paid any of his benefit. He urged the Ombudsman to intervene for redress.

FINDINGS

The complainant was appointed as daily paid watchman in the said institution effective 1 October, 2004. He worked for two years in that capacity. With the transformation of that institution in November 2006, he was appointed as a security guard on Grade 1.4 of the institution's pay scale effective 1 November 2006. On 3 June 2010, he resigned from his post. His resignation was accepted in a letter ref: GC/8153VOL.1 (2) AC dated 9 June 2010.

The complainant served for less than five years with the institution. Besides, he was a daily paid watchman which attracts no gratuity. He also served for less than five years as a security guard. His contribution to the Federated Pension Scheme was less than five years.

Rule 3(a) of the Federation Pensions Scheme of the Gambia states that "A member who completes not less than five years of service shall, subject to Rule 14, become entitled to retirement benefits in accordance with these rules..." It follows that the minimum number of years a person must serve in order to be entitled to his or her retirement benefit is five years.

CONCLUSION

The complainant never retired from his post but resigned. At the time of his resignation, he was less than five years in his employment as security guard. He was not entitled to the benefits he was claiming.

In light of the above, the investigation was discontinued as frivolous and not made in good faith as per section 9 (3)(a) of the Ombudsman Act.

COMPLAINT NO: 2/2017
NATURE OF COMPLAINT: Requesting Appointment

COMPLAINT

The complainant started work as night watchman at a lower basic school effective 26 January 2016. His start of work came when the school was without a night watchman. He was approached by the management committee of the school to take up the job. He was asked to apply to the ministry. The complainant then sent his application to the ministry through a regional directorate. Since then, he did not receive an appointment letter or the monthly salary. He alleged to have made several follow-ups but to no avail. He urged the Ombudsman to intervene so that he could be appointed and paid.

FINDINGS

The complainant started work at the school on 26 January 2016 as night watchman. He was neither given an appointed letter nor salary.

CONCLUSION

The matter has been concluded as complainant's salary was paid and his appointment letter was also given. His salary was backdated and the whole sum paid.

COMPLAINT NO: 3/2017
NATURE OF COMPLAINT: Claiming Days Worked in December

COMPLAINT

The complainant was appointed as night watchman at an area council effective 1 October 2016 on Grade 3.2 of Government Integrated Pay Scale. He worked in the said position without any problem until 14 December 2016 when he obtained permission to travel to Kombo. He said he was given one day to travel and should return 15 December in order to be at his duty post. He said he could not report to work on the following day and his supervisor called him on telephone to find out why he was not on duty. He then recommended the complainant's suspension and he was suspended for one month without salary from 15 December to 15 January 2017. At the end of the suspension, the complainant did not resume duties instead he sent in a letter of resignation to the council dated 22 January 2017.

FINDINGS

The complainant was appointed as security guard by a council effective 1 October 2016 and was posted on permanent night shift.

The complainant once requested for two days permission from the CEO but was instead given one week of which he overstayed.

He was said to have absented himself from duties when the council was under renovation and there were materials in the complex that could be easily stolen.

He was also said to have been caught removing firewood from the campus which does not belong to him and that warranted the one month suspension without pay.

The complainant's suspension came as a result of the recommendation by his supervisor which was honoured by the council.

The complainant was suspended effective 15 December 2017 to 15 January 2017. He was supposed to report to work at the end of the suspension on 16 January 2017.

The complainant did not report to work at the end of the suspension and instead wrote a letter of resignation dated 22 January 2017 claiming the fifteen days worked in December 2016.

CONCLUSION

Since the complainant was suspended as a result of deliberate absence from duty without permission, removing firewood which does not belong to him and not reporting to work after the suspension, the Ombudsman upheld the council's decision for not paying the fifteen days since he resigned voluntarily.

COMPLAINT NO:

4/2017

NATURE OF COMPLAINT:

Claiming Hardship Allowance

COMPLAINT

The complainant alleged that he was appointed as qualified teacher on 1 September 2015 by a public institution. He was posted to an upper and senior secondary school. Following his appointment, he has never been paid hardship allowance. Officials of the institution came to the school and took a list of names of teachers qualified for the payment of the said allowance. His name was in the list but he was never paid.

FINDINGS

The permanent secretary was written to shed light on the issue. He responded through a letter dated 28 August 2017 stating that the complainant's claim was verified and the accounts department was instructed to facilitate payment as soon as possible.

CONCLUSION

The complainant was paid D9, 950 as his hardship allowance in October 2017. The case was closed accordingly.

COMPLAINT NO: 10/2017
NATURE OF COMPLAINT: Injustice

COMPLAINT

The complainant worked as community development assistant (CDA) at a government department. After his appointment in 2009, he was posted to a community in Sanjal for about three years and was later transferred to another community in the North Bank Region. He stated that he worked in the said community until September 2016 when he was transferred to a community in Lower River Region. He said that he briefly worked in that community before he was transferred again to another community, but he decided to stay and be commuting the place because of proximity. He said that he had been conducting his activities in these communities without delay and had been submitting his activity report to the CDO.

He alleged that while on posting, the CDO never involved him in any activity with his colleagues. As a result, he wrote to him informing him of abuse of office which he responded to, through a letter dated 20 July 2017 condemning his allegation. He further alleged that while attending a security sector reform meeting at Pakalinding Youth Centre, the CDO sent a letter to him through his driver dated 21 September 2017, stating that he did not recognize him as CDA and would not engage him in any departmental activity. Despite all the negative perceptions against him, he continued to carry out his activities with due diligence and professionalism.

He submitted his field visit monitoring schedule dated 7 August 2017 to the CDO in the presence of the assistant community development Officer (ACDO) and Community Development Facilitator (CDF). He was denied fuel and allowance, which instead was given to a community development officer to carry out activities which he had already done. The complainant alleged that he had submitted his feedback report to the CDO at the end of the quarter in the presence of an officer but it was not accepted.

The complainant received a letter dated 26 September 2017 from a senior officer captioned **“refusal and reluctance of instructions of supervisor”** and further alleged him of insulting and threatening to fight his supervisor. He was further asked to reply as to why disciplinary measure should not be taken against him.

He was of the view that he was unfairly treated because staying in community has not affected his work and had always been submitting his activity report to his supervisor without delay.

FINDINGS

The complainant was appointed as community development assistant in 2009 and posted to a village in the North Bank Region. He was transferred to Lower River Region where he served seven years and later posted to certain cluster.

The complainant was later transferred to another cluster but due to proximity, he decided to stay and commute daily to work. He was asked to stay with the community in order to interact and identify the development needs of the communities but he failed to comply despite several warnings.

Through a letter dated 26 September 2017, the senior community development officer received a complaint against the complainant for using abusive language towards his senior and was asked to state why disciplinary action should not be taken against him. The senior management team also requested the complainant to report immediately to his postings but he failed to comply.

The complainant was not involved in any community development activity because he was not stationed at his post, which was against the ethics of community work, as alluded to by the community development officials.

The complainant prepared an activity report on MCNHRP but it was not accepted. Instead, another community development assistant was assigned to do it since he failed to station at his post.

The alkalolu and village development committee chairpersons of the cluster he was supposed to be often saw the complainant in their community and advised him to be stationed at his post in order to interact and know their development needs.

RECOMMENDATIONS

The Ombudsman recommended that the complainant be stationed at his post since that is the norm and the institution complied.

COMPLAINT NO:

18/2017

NATURE OF COMPLAINT:

Allocating Canteen in Unhygienic Location

COMPLAINT

The regional Ombudsman officer at Mansakonko observed that the water drainage system running from Banjul-Soma highway to Manneh Kunda was allocated to a trader to construct a canteen on the drainage which was unhygienic. An inquiry was made from the council and they confirmed that they allocated the space based on the recommendation of the Physical Planning Office and the National Road Authority (NRA). As concerned authority, he requested the council to provide the office with an explanation for the logic behind allocating the construction of a canteen on the drainage.

FINDINGS

A letter Ref: ADM503/OMBMKK/17(05) dated 23 October 2017 was addressed to the chief executive officer Mansakonko Area Council requesting him to respond to the complaint. Through a letter dated 21 November 2017, the chief executive officer,

explained that the said site was used as a dump by the neighbourhood. As a result, the council was always collecting waste from the said site.

He further stated that the allocation was temporary and the removable canteen was fixed in such a way to avoid blockage of the drainage system. The NRA Regional Office was contacted and they said the allocation does not affect the drainage as they can always have access to the drain whenever the need arises.

CONCLUSION

The Office recommended to the council to be constantly monitoring the site to avoid blockage and further recommended that the occupant always keep the site clean.

Chapter 7

7.1 BASSE CASES

COMPLAINT NO:

1/2017

NATURE OF COMPLAINT:

Abuse of power

COMPLAINT

The complainant stated that he was riding a blue bicycle branded Sunders heading to Basse town. When he reached Manneh Kunda junction, he found three police officers on duty checking vehicles and motor bikes. He was stopped by one of them who ordered him to park the bicycle and he complied. He inspected the bicycle and observed that it had no brake, headlight, and reflector. The officer warned him that he would be summoned. The complainant reported the matter to the Ombudsman for redress.

FINDINGS

The complainant's bicycle was impounded by the police at Mannah Kunda junction because it had no break, headlight and reflector. Five other bicycles were also impounded for the same reasons.

CONCLUSION

Since the complainant was riding a bicycle during the day and not at night, the police officer was asked to release the bicycles. The bicycles were released. However, the bicycle owners were strictly warned to repair the brakes, headlights and reflectors of their bicycles failing which they would be summoned.

COMPLAINT NO:
NATURE OF COMPLAINT:

2/2017
Injustice

COMPLAINT

The complainant stated that on 20 February 2017, his younger brother was coming from Kombo driving his vehicle with registration No. BJL3020 J Mercedes Benz 200. Upon reaching Yorro Bere Kunda and Janjanbureh junction, a police officer stopped him and requested the particulars of his vehicle. He gave the documents to the officer who in turn examined the documents and found them to be valid. The officer saw four cell phones on the front seat and seized the phones on the grounds that they were either stolen or illegally obtained. The complainant reported the matter to the Ombudsman for redress.

FINDINGS

On 20 February 2017, the complainant's younger brother was driving from Kombo when he was stopped by a police officer at Yorro Bere Kunda and Janjanbureh junction.

The police officer on duty seized four cell phones from the complainant's brother: two Samsung and two Nokia phones. He was ordered by the Ombudsman to produce the cell phones and he complied.

CONCLUSION

The cell phones were returned to the complainant's brother and the case was closed accordingly.

COMPLAINT NO:
NATURE OF COMPLAINT:

3/2017
Unfair treatment

COMPLAINT

The complainant was appointed in December 2008 as a member of a district tribunal by a governor. On 10 March 2009, his service was verbally terminated by the governor without any reason. Since then, he had been attending court sittings up to 11 March 2010 but his salary was not paid. He reported the matter to the Ombudsman for redress.

FINDINGS

The complainant was appointed by the former governor as a member of a district tribunal and he was very hard-working. The complainant had been attending sittings but was not paid salary.

The governor never wrote to the complainant to officially terminate his service.

CONCLUSION

The complainant resumed work on 21 June 2017. The CEO arranged for the payment of his salary arrears which he accepted. The case was accordingly closed.

COMPLAINT NO:

4/2017

NATURE OF COMPLAINT:

Unfair treatment

COMPLAINT

The complainant, a teacher at a basic cycle school, alleged that his salaries for January and February 2017 were paid late. He alleged that his salary was usually paid five days after his colleagues had been paid. He made enquiries from the pay master to know the reason why his salary was not paid on time but the pay master did not give him any convincing answer. He reported the matter to the Ombudsman for redress.

FINDINGS

The head teacher of the school was interviewed. He said teachers were asked to resume work but the complainant absented himself from work for 26 days in January 2016.

In February 2017, the complainant again absented himself from work for 14 days. His absence from work was reported to the regional director of education. The pay master was instructed to deduct the number of days he did not work for in January and February 2017. This was the reason for the delay in the payment of his salaries. The deduction of his salary was in line with the Education Policy 2016-2030.

CONCLUSION

The Ombudsman upheld the decision of the director of education to deduct the complainant's salary for the period he was absent from work. The complainant was advised to take his work seriously otherwise stern disciplinary measures would be taken against him. The case was dismissed accordingly.

COMPLAINT NO:

5/2017

NATURE OF COMPLAINT:

Unfair treatment

COMPLAINT

The complainant stated that on 11 May 2016 he paid NAWEC for a cash power meter, but there was a delay in the issuance of the meter. He urged the Ombudsman to intervene for redress.

FINDINGS

The complainant paid D4, 500 for a cash power meter on 11 May 2016. The regional manager of the company was contacted. He confirmed that the complainant paid for a cash power meter and his application was processed for approval at the company's headquarters in Banjul.

CONCLUSION

The complainant's cash power meter NO: 01312508334 was installed on 10 March 2017.

COMPLAINT NO:

7/2017

NATURE OF COMPLAINT:

Delay in Installation of Water Meter

COMPLAINT

The complainant stated that he had paid for his water service connection fee of D6, 500. On 22 September 2016, invoice/receipt no 0020038 was issued to him, but the water meter was not installed. He reported to the Ombudsman for redress.

FINDINGS

The regional manager of the company was contacted. He stated that 48 water meters were allocated to Basse including that of the complainant. He instructed the head of the plumbing section to install the complainant's water meter.

CONCLUSION

The complainant's water meter was installed on 17 March 2017. The case was closed accordingly.

COMPLAINT NO:

8/2017

NATURE OF COMPLAINT:

Injustice

COMPLAINT

The complainant stated the he owned a piece of land situated at the Koba kunda layout since 2012. He started fencing the land and was stopped by an official of a government department because he did not pay D200 as fencing permit. The complainant stated that he had previously fenced three compounds but did not pay any fees. He urged the Ombudsman to intervene for redress.

FINDINGS

The head of the department in the region was contacted. He said he had never instructed the officer to collect D200 as fencing permit and such payment does not exist in their tariff. The officer in question was interviewed but he denied ever asking the complainant to pay fencing permit.

CONCLUSION

The officer was warned to desist from such malpractice failing which stern disciplinary will be taken against him.

COMPLAINT NO:

9/2017

NATURE OF COMPLAINT:

Unlawful detention

COMPLAINT

The complainant stated that his younger brothers were on their way to Sare Ngai village on a donkey cart, when they met a man riding a Honda motorbike registration No: MC 4143 URR. They tried to avoid him but his motorbike knocked against the wheel of their donkey cart. He fell on the ground and sustained injuries. The police visited the scene of the accident. Their statements were obtained and they were detained. The complainant urged the Ombudsman to intervene for redress.

FINDINGS

The station officer was contacted. The complainant's brothers who were both juveniles were detained.

CONCLUSION

The Ombudsman recommended for the release of the complainant's brothers. According to the traffic laws, the only circumstance when traffic offenders could be detained is when they commit rash or negligent act causing death. The complainant's brothers were released unconditionally.

COMPLAINT NO:

10/2017

NATURE OF COMPLAINT:

Injustice

COMPLAINT

The complainant bought ten plots of land situated at Koba Kunda Village in 2011 and 2012. He paid for compound rates for 2011 and 2012. He was in the process of developing the plots in 2014, but he was stopped by an officer from a government department without giving any reasons. He reported the matter to the Ombudsman for redress.

FINDINGS

The officer was interviewed on 12 April 2017. He stated that he was instructed by the governor to stop land owners at Koba Kunda layout from developing their properties. He further stated that the former governor did not give any reason for the stoppage of land development.

CONCLUSION

The Ombudsman recommended that the complainant should go ahead with the development of his lands at Koba Kunda and he complied.

COMPLAINT NO:

11/2017

NATURE OF COMPLAINT:

Unfair treatment

COMPLAINT

The complainant alleged that he was assaulted on 23 March 2017 by a man and as a result, he lost three teeth. He reported the matter to the police in Bansang and was escorted to Bansang Hospital for treatment. The accused was arrested and charged with assault causing actual bodily harm contrary to section 228 of the Criminal Code Cap 70:03 Laws of the Gambia. The accused was arraigned on 31 March 2017. The accused pleaded guilty and was sentenced to a fine of D10, 000 in default to serve three years' imprisonment with hard labour. He was also to pay a compensation of D5, 000 to the complainant in default to serve two years. The complainant did not receive the compensation despite repeated demands. He reported the matter to the Ombudsman for redress.

FINDINGS

The Ombudsman contacted the prosecutor and the court clerk on 13 April 2017 concerning the compensation awarded to the complainant by the court.

CONCLUSION

The complainant informed the Ombudsman through the phone that he had received the compensation of D5, 000 on 19 April 2017.

COMPLAINT NO:

12/2017

NATURE OF COMPLAINT:

Abuse of power

COMPLAINT

The complainant alleged that he was extending his shop when the alkalo's son saw him and informed his father about it. The alkalo ordered him to stop the construction because it was very close to the road. He reported the matter to the Ombudsman for redress.

FINDINGS

The relevant government department was contacted. An official of the institution visited the site on 15 May 2017. He confirmed that the complainant was extending his shop close to the road, but was stopped. He also observed that the extension of the shop did not obstruct the road and the complainant could continue with the extension work.

CONCLUSION

The complaint was amicably settled.

COMPLAINT NO:

13/2017

NATURE OF COMPLAINT:

Encroachment into his land

COMPLAINT

The complainant alleged that he bought a plot of land situated at Kabakama village in URR along the Fatoto highway. His plot of land measuring 75x25 meter square was included in the cattle track by the physical planning office. He argued that his land has already been demarcated and should not form part of the cattle track. He reported the matter to the Ombudsman for redress.

FINDINGS

The site was visited on 19 May 2017 and it was observed that the complainant's plot of land was not part of the cattle track as claimed. When the Senior Livestock Assistant was interviewed, he also confirmed that the cattle track did not include the complainant's plot measuring 75x25 meter square.

CONCLUSION

The complainant's plot of land measuring 75x25 meter square was not part of the cattle track and he was informed accordingly.

COMPLAINT NO:

15/2017

NATURE OF COMPLAINT:

Unfair treatment

COMPLAINT

The complainant, a fish monger, alleged that on 10 July 2017 he took some fish to Basse for sale. The Basse market master asked him to pay licence. He showed her his business registration certificate and his daily duty payment receipts but the market master was not convinced. He reported the matter to the Ombudsman for redress.

FINDINGS

The market master was interviewed on 10 July 2017 but stated that she was acting on the directives of the chief executive officer. The CEO when contacted said he was only referring to those who did not register their business with Attorney General's Chambers, and the complainant was not affected.

CONCLUSION

The complainant was exempted from paying licence. The case was settled.

COMPLAINT NO**16/2017****NATURE OF COMPLAINT:****Claiming Benefits****COMPLAINT**

The complainant was working at the X-Ray unit at a public hospital since 2007. In July 2017 the complainant left his job and took another appointment with a clinic in Basse without informing the hospital's board in writing. He urged the Ombudsman to intervene for his ten years' benefits to be paid by the hospital.

FINDINGS

The CEO of the hospital was interviewed on 18 July 2017. He said that the complainant did not notify management in writing that he was resigning his job.

CONCLUSION

The Ombudsman recommended to the complainant to pay one month salary in lieu of notice to the hospital as required by section 02301 of the General Orders.

COMPLAINT NO:**17/2017****NATURE OF COMPLAINT:****Injustice****COMPLAINT**

The complainant alleged that he applied for a cash power meter on 16 January 2016. He paid D5,000 but there was a delay in the issuance of a meter. He urged the Ombudsman to intervene so that the meter would be installed.

FINDINGS

The senior linesman was interviewed on 24 July 2017. He stated that the complainant was qualified to be issued with a cash power meter

CONCLUSION

The Ombudsman recommended that the complainant's cash power meter be installed as soon as possible. On 25 July 2017 the complainant's meter was installed.

COMPLAINT NO:**18/2017****NATURE OF COMPLAINT:****Unlawful detention****COMPLAINT**

The complainant alleged that on 20 July 2017, he had a visitor from Tamba Kunda. His visitor was taking a walk along the Basse highway. He was confronted by a police officer who suspected him of stealing from a compound. He arrested him and took him to the police station and was detained for two days without preferring any charge.

FINDINGS

The Ombudsman interviewed the purported theft victim on 25 July 2017. He stated that it was his nephew who stole from his compound and he reported the matter to the police station.

When the complainant's visitor was introduced to him, he said that he had never seen him before.

It was also found that the police officer arrested the man because the description given to him fits the suspect.

CONCLUSION

Since there was no ample evidence to show that the complainant's visitor was the actual person who stole from his compound, it was recommended that the suspect be released unconditionally. The suspect was released.

COMPLAINT NO

19/2017

NATURE OF COMPLAINT:

Unfair treatment

COMPLAINT

The complainant was a tenant in Basse Manneh Kunda. He was issued with a water bill on 14 August 2017 to be settled by 31 August 2017. He alleged that an officer from the company came to his compound on 15 August 2017 and disconnected his water meter. The officer demanded D250 as a reconnection fee, which he refused to pay. He reported the matter to the Ombudsman for redress.

FINDINGS

The regional supervisor of the company was interviewed on 15 August 2017. He stated that he was not aware of any disconnection until the end of August 2017. In the presence of the regional supervisor, the officer confirmed disconnecting the complainant's meter of his own accord.

CONCLUSION

The Ombudsman recommended that the complainant's water meter be reconnected. The recommendation was immediately complied with.

COMPLAINT NO:

20/2017

NATURE OF COMPLAINT:

Unfair treatment

COMPLAINT

The complainant worked as chief executive officer at a public institution and retired in March 2017. He stated that he had made follow-ups for the payment of his gratuity but he was only paid D140, 000 and the public institution owed him a balance of D40, 000. He reported the matter to the Ombudsman for redress.

FINDINGS

The CEO was contacted and he admitted that the institution owed the complainant a balance of D40, 000, which he promised to pay on 17 August 2017.

CONCLUSION

The complainant was paid D40, 000 vide Trust Bank cheque No 02345165 dated 17 August 2017. The case was closed accordingly.

COMPLAINT NO:

21/2017

NATURE OF COMPLAINT:

Unlawful Termination

COMPLAINT

The complainant was appointed as public officer on 26 July 2011. On 31 May 2017 his service was terminated and no reason was advanced.

FINDINGS

The complainant was appointed through letter ref: C10/122/01/ (153) dated 25 July 2011 as deputy governor Central River Region with effect 26 July 2016

The termination of his services was an executive directive through letter ref: C1012201/part1I (57) dated 31 May 2017.

CONCLUSION

The investigation was discontinued under section 9 (2)(e) of the Ombudsman Act 1997.

COMPLAINT NO:

22/2017

NATURE OF COMPLAINT:

Delay in the Investigation of Case

COMPLAINT

The complainant alleged that on 20 September 2017, he went to his workplace at Sambuya village and while returning home in the evening he detected that his black travelling bag containing over D300, 000 was missing. He reported the matter to a police station and the scene of the crime was visited by a police officer. His statement was obtained, but there was no progress in the case.

FINDINGS

The Ombudsman interviewed the police officer on 20 September 2017. He confirmed that the matter was reported to the police station and he visited the scene of the crime at Basse Santa-su. He further stated that the information gathered was that the suspect had fled to Guinea Conakry and as a result the investigation could not proceed.

CONCLUSION

Since the suspect was not within the jurisdiction of The Gambia, the police could not proceed with the case. The investigation was discontinued.

COMPLAINT NO:

23/2017

NATURE OF COMPLAINT:

Injustice

COMPLAINT

The complainant alleged that he arrived in Basse from Wellingara , Senegal, on board his private vehicle Reg no.DK 5332 Z to buy some goods. On arrival at the police check point he met a senior police officer, who requested his particulars for inspection. He noticed that his Senegalese driving licence No 83466 issued on 3 September 2012 had expired. He was fined D1000 which he paid and was issued with a receipt. He further alleged that the senior officer refused to release his vehicle. He reported the matter to the Ombudsman for redress.

FINDINGS

The said officer was contacted on 17 October 2017. He stated that he impounded the complainant's vehicle for testing.

CONCLUSION

The vehicle was released and the case was settled.

COMPLAINT NO:

24/2017

NATURE OF COMPLAINT:

Abuse of Power

COMPLAINT

The complainant was contracted to erect two buildings and a shed at Mansajang Kunda Village. He completed the two buildings and started the shed. However, an officer of a government department ordered him to stop the erection because it was not part of the plan. The complainant showed him the plans of the project, but he still insisted that he should not proceed with the work. The complainant reported the matter to the Ombudsman for redress.

FINDINGS

The head of the department in the region said he was not aware of the action taken by the officer. When the officer was asked as to why he stopped the complainant from erecting the shed when it was clearly indicated in the plan, he replied that it was a mistake and that he overlooked the shed in the plan.

CONCLUSION

The officer was warned by the regional head of the department to desist from such malpractice and in the event of any recurrence strict disciplinary measures would be applied. The complainant was asked to proceed with his work.

COMPLAINT NO
NATURE OF COMPLAINT:

25/2017
Abuse of power

COMPLAINT

The complainants, fish mongers, said that they had been selling fish for the past 20 years. They alleged that in October 2017, they were issued with demand notes by the public institution to pay D3000 as yearly licence for 2016-2017. They said that they had never done that before and therefore urged the Ombudsman to intervene for redress.

FINDINGS

The chief executive officer of the public institution was contacted and he confirmed that the demand notes were issued to the complainants to pay annual licence in line with licence Act schedule 2 of Cap. 92 Laws of The Gambia: 01, which gives powers to the public institution to collect annual licence from fish mongers at the rate of D1, 500.

CONCLUSION

The complainants were informed that the law required them to pay for a licence. It was recommended they should pay D1, 500 per year and they complied.

STATISTICAL APPENDICE A

PUBLIC AND PRIVATE SECTOR CASE SUMMARY 2017

The year 2017 marked a significant changes in the era of the number of cases registered at the Office of the the Ombudsman. This was propelled by the change of government and the radio announcement made by the Personnel Management Office (PMO) that all civil servants that were dismissed or have their services terminated by the former government tolodge their complaints at the Panel set-up at PMO.

At the beginning of the 2017, more than 100 cases were forwarded by the Panel at the Personnel Management Office (PMO) to the Ombudsman Office. All were investigated except 25 cases which were executive directives and was therefore sent back to the Panel to take appropriate action.

A total of 345 cases were registered at the head office out of which 312 were investigated and 33 were Private sector cases which were out of our jurisdiction. Basse, Mansakonko and Kerewan registered 26,17 and 21 cases respectively.

Table 1: Number of cases registered by various Institutions in 2017

NO.	INSTITUTIONS/DEPARTMENTS	ABB	NO. OF CASES	PERCENTAGE
1	Gambia Ports Authority	GPA	37	11.86
2	Gambia Armed Force	GAF	34	10.90
3	Gambia Prisons Service	GPS	31	9.94
4	State Intelligence Services	SIS	22	7.05
5	Gambia Police Force	GPF	21	6.73
6	Kanifing Municipal Council	KMC	10	3.21
7	Personnel Management Office	PMO	10	3.21
8	Gambia Telecommunication Company Ltd.	GAMTEL	9	2.88
9	National Water and Electricity Company	NAWEC	8	2.56
10	Edward Francis Small Teaching Hospital	EFSTH	9	2.88
11	Social Security and Housing Finance Corporation	SSHFC	8	2.56
12	Ministry of Basic and Secondary Education	MOBSE	8	2.56
13	Gambia Tourism and Hospitality Institute	GTHI	7	2.24
14	National Drug Law Enforcement Agency	NDLEAG	6	1.92
15	Gambia Radio and Television Service	GRTS	5	1.60
16	Office of the President	OP	5	1.60
17	Judiciary	JUD	4	1.28
18	Office of the Vice President	OVP	4	1.28

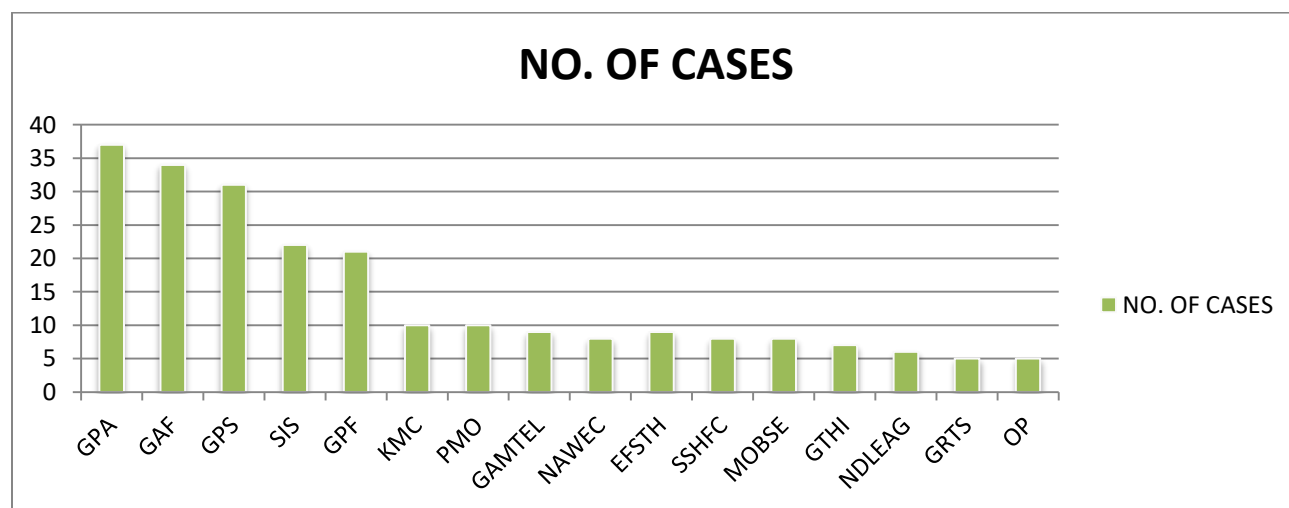
NO.	INSTITUTIONS/DEPARTMENTS	ABB	NO. OF CASES	PERCENTAGE
19	Gambia Immigration Department	GID	5	1.60
20	Ministry of Youths, Sports and Culture	MOYSC	4	1.28
21	Ministry of Health and Social Welfare	MoHSW	4	1.28
22	Ministry of Agriculture	MOA	3	0.96
23	Food Safety and Quality Authority	FSQA	3	0.96
24	National Assembly	NA	3	0.96
25	University of the Gambia	UTG	3	0.96
26	Gambia Civic Aviation Authority	GCCA	3	0.96
27	Gambia International Airline	GIA	3	0.96
28	Accountant General Department	AGD	2	0.64
29	Attorney General and Ministry of Justice	AG MOJ	2	0.64
30	Department of Labour	DOL	2	0.64
31	National Food Security Processing and Marketing	NFSPM	2	0.64
32	Gambia Fire and Rescue Service	GFRS	2	0.64
33	Central Bank of the Gambia	CBG	2	0.64
34	Gambia Printing and Publishing Corporation	GPPC	2	0.64
35	Banjul City Council	BCC	2	0.64
36	National Food Security Processing and Marketing Corporation	NFSPA	2	0.64
37	President's International Award Scheme	PIAS	1	0.32
38	Ministry of Higher Education	MoHERST	1	0.32
39	Ministry of Foreign Affairs	MOFA	1	0.32
40	Alkalo of Bafuloto	AKB	1	0.32
41	National Printing and Stationary Corporation	NPSC	1	0.32
42	Alieu Badara Memorial Sen. Sec School	ABMSSS	1	0.32
43	Gambia College	GC	1	0.32
44	Gambia Technical Training Institute	GTTI	1	0.32
45	Defunct Ministry of Economic Planning	MOEP	1	0.32
46	Ministry of Works, Construction & Infrastructure	MoWCI	1	0.32
47	Department of Social Welfare	DSW	1	0.32
48	Kairaba Senior Sec School	KSSS	1	0.32
49	National Agricultural Research Institute	NARI	1	0.32
50	National Records Service	NRS	1	0.32
51	Gam Petroleum Storage Facility	GPSF	1	0.32
52	GAMPOST	GAMPOST	1	0.32
53	Department of Lands and Surveys	DLS	1	0.32
54	Sifoe Upper and Senior Secondary School	SU&SSS	1	0.32
55	Brikama Area Council	BAC	1	0.32

56	Gambia Transport Services Company	GTSC	1	0.32
57	Gambia Milling Corporation	GMC	1	0.32
58	Jerreh Colley (High Court)	HC	1	0.32
NO.	INSTITUTIONS/DEPARTMENTS	ABB	NO. OF CASES	PERCENTAGE
59	Gambia Bureau of Statistics (GBOS)	GBOS	1	0.32
60	Ministry of Defense	MOD	1	0.32
61	Ministry of Information, Communication & Infrastructure	MOICI	1	0.32
	TOTAL NO. OF CASES AND PERCENTAGE		312	100

Source: Complaint database 2017

The Gambia Ports Authority registered the highest number of case in 2017. This number was as a result of the 20 vendors that complaint at once on the management's decision to stop them from selling at the Banjul-Barra ferry terminal. The second, third, fourth and fifth institution registering higer complaints were the security arm of the Government. Unlawful termination and dismissals were more common in the Armed Force and the State Intelligence Service (SIS) formerly NIA. The Police Force was mainly quaried for abuse of power and unfair treatment. The then Director General of the Gambia Prison Services was reported to have abuse his powers as well as acted on decisions that were beyond his mandate without consulting the Public Service Commission (PSC) as stated in the Prison Act.

Figure 1; Selected Institutions and number of cases registered in the Headquarters in 2017



Source: Complaints Unit

TABLE 2; Nature of Public Cases registered in the Head Office in 2017.

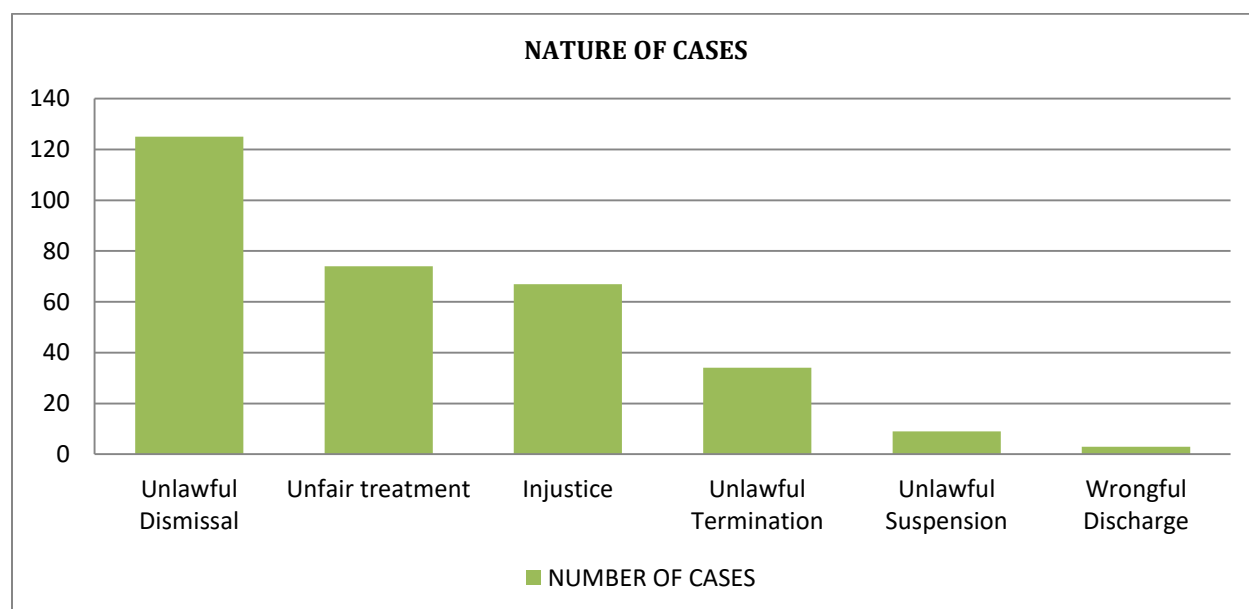
NATURE OF COMPLAINT	NUMBER OF CASES	PERCENTAGE
Unlawful Dismissal	125	40
Unfair treatment	74	24
Injustice	67	21
Unlawful Termination	34	11
Unlawful Suspension	9	3
Wrongful Discharge	3	1
TOTAL	312	100

Source: Complaints Unit

Unlawful dismissal was the most common complaint lodged in 2017. Out of 312 cases, 40 percent of the cases reported were unlawful dismissal. These dismissals were mainly related to the former government and were either as a result of executive directives, abuse of power by heads of institution or politically motivated issues.

Unfair Treatment and injustice centered on maladministration, stoppage of salary, pie Diem claim, abuse of power by superiors, non-payment of retirement benefits, delayed promotion, sick leave related etc. They were major problems in the Public sector and efforts should be in place to tackle them totally to encourage efficient service delivery.

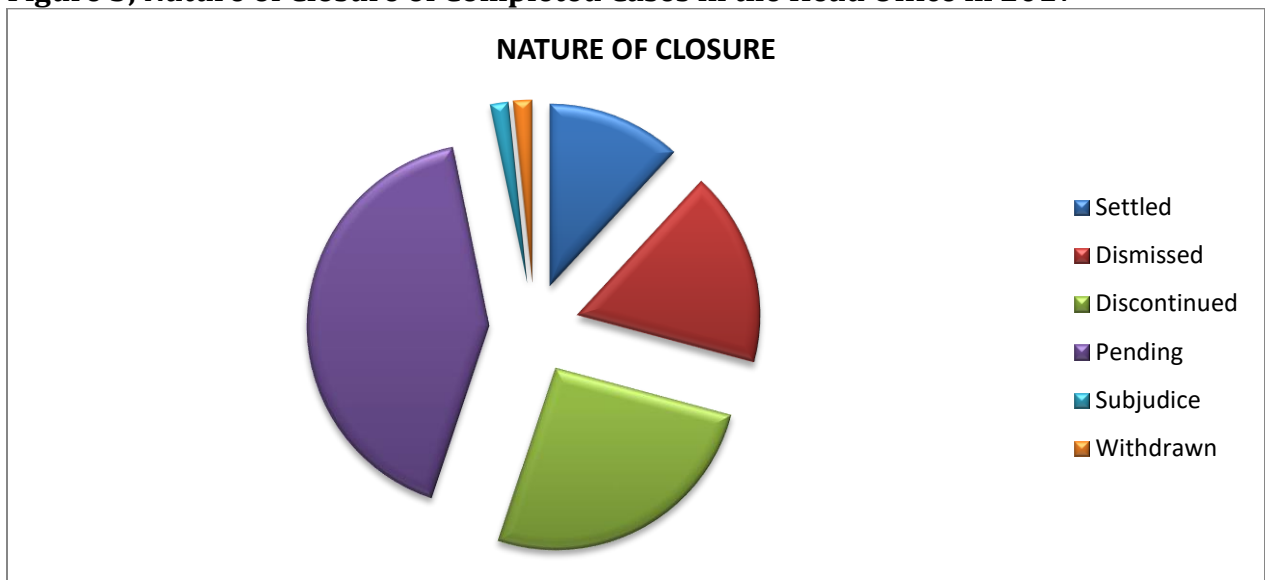
Figure 2; Nature of registered Cases in the Headquarters in 2017



Source: Complaints Unit

Table3; Nature of closure of completed cases 2017

NATURE OF CLOSE	NUMBER OF CASES	PERCENTAGE
Settled	37	12
Dismissed	54	17
Discontinued	81	26
Pending	130	42
Sub-judice	5	2
Withdrawn	5	2
Total	312	100

Figure 3; Nature of Closure of Completed Cases in the Head Office in 2017

Source: Complaints Unit

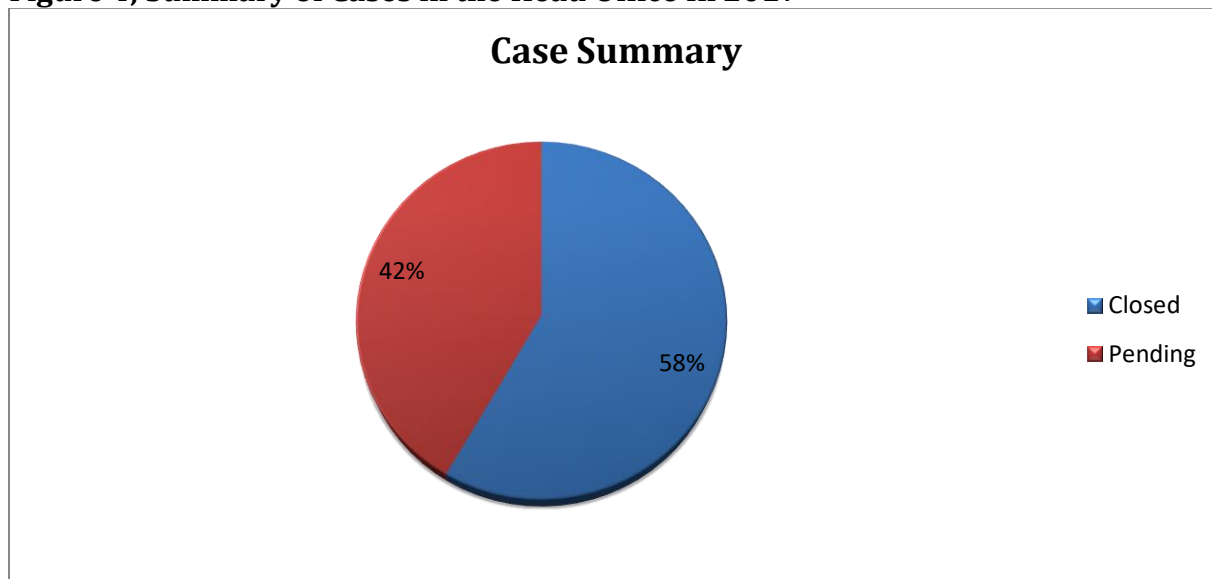
Table 4; Summary of Cases in the Headquarters in 2017

CASE SUMMARY	NUMBER OF CASES	PERCENTAGE
Closed	182	58
Pending	130	42
Total	312	100

Source: Complaints Unit

The table above summarizes the status of all the complaints received by the headquarters in 2017. Out of a total of 312 public sector cases, 182 cases were fully investigated. They were either settled, dismissed or discontinued. A total of 130 are still under investigations and we hope to conclude them as soon as possible.

Figure 4; Summary of Cases in the Head Office In 2017



Source: Complaints Unit

APPENDIX B

CHAPTER TEN OF THE CONSTITUTION OF THE REPUBLIC OF THE GAMBIA 1997

CHAPTER X THE OMBUDSMAN

- 163. National - Assembly to establish Office of Ombudsman**
- (1) Subject to the provisions of this Constitution, an Act of the National Assembly shall within six months of the coming into force of this Constitution establish the Office of the Ombudsman and provision for his or her functions and duties-
- (a) in the investigation of any action taken by a government department or other authority, or public body, to which the Act applies, being action taken in the exercise of the administrative functions of that department or authority, on a complaint by a member of the public who claims he or she has suffered injustice in consequence of maladministration or mismanagement, or discrimination on any ground set out in Chapter IV, in connection with such action;
 - (b) in the investigation, on his or her own initiative, of allegations of maladministration, mismanagement or discriminatory practices in any government department, authority, or other public body, to which the Act applies; and
 - (c) in the investigation of complaints of any failure to observe the code prescribed in Chapter (XXI) for the conduct of public officers.
- (2) Without prejudice to the generality of subsection (1), an Act of the National Assembly may;
- (a) determine the departments, authorities and other public bodies to which the Act shall apply;
 - (b) determine the actions or classes of action which may be subject to such investigations;
 - (c) determine the departments, authorities, public bodies and actions which shall be excluded from such investigations;
 - (d) determine the procedure to be adopted in any investigation and the powers which may be exercised in the course of such investigation, including the power of the Ombudsman to require persons to furnish documents and other information and to provide evidence, and provide for the

- right of any department, authority, other public body or person to be heard when its, or his or her, actions are the subject of an investigation;
- (e) provide for sanctions for the obstruction of the Ombudsman in the exercise of his or her functions or a failure to comply with his or her lawful requirements;
 - (f) provide for the making of reports by the Ombudsman, including an annual report to the National Assembly, and reports to the Inspector General of Police in the event of his or her investigations disclosing the commission of a criminal offence or to the Attorney-General in the event of their disclosing any other failure to comply with a provision of law;
 - (g) provide for the appointment of one or more Deputy Ombudsman to exercise, under the directions of the Ombudsman, the functions of that office.
 - (h) Make such administrative and financial provisions as may be necessary or desirable for the efficient functioning of the Office of Ombudsman.

**164.
Appointment and
tenure of
office of
Ombudsman**

- (1) The President shall appoint an Ombudsman and his or her Deputies in consultation with the Public Service Commission, subject to confirmation of the National assembly within seven days of the presentation of the request.
- (2) In making an appointment under this section, the President shall have regard to the need for persons exercising the functions of Ombudsman to have substantial administrative or professional experience.
- (3) The Office of the Ombudsman and Deputy Ombudsman shall be offices in the public service.
- (4) A person shall not be qualified to hold office as Ombudsman or Deputy Ombudsman if he or she is a Member of the National Assembly, a Secretary of State or State or holds any other public office.
- (5) Subject to this Constitution, an Act of the National Assembly shall prescribe the tenure and terms of service of the Ombudsman and any Deputy Ombudsman.

- (6) An Ombudsman or Deputy Ombudsman may only be removed from office by the President for inability to discharge the functions of his or her office (whether arising from infirmity of mind or body or from any other cause) or for misconduct, and shall not be removed unless the National Assembly has appointed a tribunal to investigate the case and his or her removal has been approved by resolution of the National Assembly supported by the votes of not less than two-thirds of all the members of the National Assembly. The Ombudsman or a Deputy Ombudsman shall have the right to be heard and to be legally represented before the tribunal.

165.Independence of Ombudsman

- (1) Subject to the provisions of this chapter, in the exercise of his or her functions, the Ombudsman and a Deputy Ombudsman shall not be subject to the direction or control of any person or authority but subject only to the Constitution and the law.
- (2) All departments, authorities and other public bodies which are subject to investigation by the Ombudsman shall accord such assistance as he or she may require for the protection of the independence, dignity and effectiveness of the Ombudsman in the performance of his or her functions.

APPENDIX B
THE OMBUDSMAN ACT 1997

AN ACT to establish the Office of the Ombudsman and to define and prescribe the powers, duties and functions of the Ombudsman was assented to by the President on 29th September 1997.
ENACTED by the President and the National Assembly of The Gambia.

Short Title

1. This Act may be cited as the Ombudsman Act 1997 and shall come into force on such date as the Secretary of State may by order published in the Gazette appoint.

Establishment

2. (1) There is hereby established the Office of the Ombudsman which shall consist of the Ombudsman and two Deputy Ombudsmen.

(2) The Ombudsman and Deputy Ombudsmen shall be appointed by the President in consultation with the Public Service Commission and subject to confirmation by the National Assembly.

(3) The Ombudsman and Deputy Ombudsmen shall be appointed for a period of five years and shall be eligible for re-appointment.

(4) The Ombudsman and Deputy Ombudsmen shall, before entering upon the duties of office, take an oath of office.
(5) The Ombudsman and Deputy Ombudsmen shall not hold any other public office.

(6) The Ombudsman and any Deputy Ombudsman shall constitute aquorum for the purpose of arriving at any decision.

Functions of the Ombudsman

3. (1) In addition to the functions of the Ombudsman under the Constitution, the Ombudsman shall have the following functions -
 - a. to investigate complaints of injustice, corruption, abuse of power, maladministration and unfair treatment of any person by a public officer in the exercise of official duties;
 - b. to investigate complaints concerning the functioning of the Public Service Commission, the administrative and security organs of the State, the Police Service and Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment to those services or fair administration in relation to those services.

- (2) The Ombudsman may, where it is considered desirable, investigate into any matter referred to in paragraphs (a) and (b) of subsection (1)

Action or steps to be taken in connection with outcome of inquiry or investigation

4. (1) The Ombudsman shall after holding any enquiry or investigation
- a) recommend appropriate action or steps to call for or require the remedying correction and reversal of matters or instances specified in section 3 through such means as are fair, proper and effective;
 - b) notify the person who laid the matter before the Ombudsman of the outcome of such inquiry or investigation in such manner and form as the Ombudsman may determine and to such extent as the Ombudsman may deem necessary in the public interest or that the matter shall not be further enquired into or investigated in terms of section 8.

General powers of the Ombudsman

5. (1) For the purposes of performing his or her functions, the Ombudsman shall have the following powers –
- (a) to determine the nature and extent of any inquiry or investigation referred to him or her;
 - (b) upon the issue of a warrant under the hand of the Ombudsman to enter at any time any building or premises or any part of any building or premises to make enquiries and put such questions to any person in connection with the matter in question;
 - (c) access to all books, vouchers, stamps, securities, equipment, stores and other movable goods in the possession or under the control of any person;
 - (d) to request particulars and information from any person;
 - (e) to make enquiries into, extracts from or copies of any book, voucher or other document which he or she deem necessary in connection with any inquiry or investigation;
 - (f) to seize anything which they deem necessary in connection with an inquiry or investigation.

Power to summon

6. (1) The Ombudsman shall have the power to summon witnesses and

witnesses

to examine witnesses under oath.

(2) A summons for the attendance of a witness or the production of documents shall be served in the same manner as if it were a subpoena for the attendance of a witness in court.

(3) The ombudsman may by warrant order the arrest of any person, who after being served with a summons fails to appear before it.

**Orders by
Ombudsman**

7. Orders, writs and directions issued by the Ombudsman shall have the same force as an order, writ or direction of the High Court.

**Certificate of
the President**

8. (1) Notwithstanding section 5, where the President has certified that the giving of any information, or the production of any document -

a) might prejudice the security, defence or international relations of the State or the investigation or determination of offences; or

b) might involve the disclosure of the deliberation of the Cabinet or any sub-committee of the Cabinet relating to matters of a secret or confidential nature and would be injurious to the public interest;

**Jurisdiction of
Ombudsman**

the Ombudsman shall not require the information to be given or the document to be produced.

9. (1) The Ombudsman shall have jurisdiction to inquire into the conduct of any person to whom this Act applies.

(2) Notwithstanding subsection (1), the Ombudsman shall not have power to question or review -

a) the decision of any court of law or of any judicial officer in the exercise of judicial functions;

b) decisions of any tribunal established by law;

c) any matter which is sub-judice;

d) any matter relating to the exercise of the prerogative of mercy, and

e) any matter relating to the affairs of the President.

(3) (1) The Ombudsman may decide to discontinue an investigation where he or she is satisfied that -

a) the complaint is trivial, frivolous, vexatious, or not made in

good faith; or

- b) the inquiry would be unnecessary, improper or fruitless.
- (4) The Ombudsman shall, in any case in which he or she decides to discontinue an investigation, inform the complainant in writing accordingly but shall not be bound to give any reasons.

**Investigations
to be in camera**

10.(1) Every investigation under this Act shall be in camera.

**Provisions
relating to
complaints and
allegations**

(4) Notwithstanding subsection (1), the Ombudsman may in the public interest publish his or her findings at the end of an investigation.

11.(1) A complaint under this Act can be made by anybody in any form; provided that where a complaint is made orally it shall be reduced into writing by a member of staff of the Ombudsman.

**Evidence and
procedure**

(2) Notwithstanding the provisions of any written law, where a prisoner or any other person held in any institution makes an allegation or complaint to the Ombudsman, such allegation or complaint shall not be made through, or subject to the scrutiny of any other person.

12. (1) The procedure for conducting an investigation shall be such as the Ombudsman consider appropriate in the circumstances.

(2) The Ombudsman may authorise any of his or her staff to exercise any of the powers under section 5.

(3) Where the Ombudsman proposes to conduct an investigation, it shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action complained of, an opportunity to comment on any allegation made to him or her.

Reports

13.(1) The Ombudsman shall submit to the President a report of every investigation it has conducted which shall contain -

(a) a summary of the evidence taken together with the conclusions and recommendations;

(b) a statement of any action that has been taken by any person whose conduct is under investigation or by the department or authority of which such person is a member, to correct or ameliorate any conduct, procedure, act or omission that is adversely commented upon in the report;

(c) where any person has suffered loss or injury as a result of any alleged misconduct, maladministration or abuse of office or authority by any person whose conduct is under

**Enforcement
and notification**

investigation, the Ombudsman may in his or her recommendations state that compensation should be paid to the person who has suffered such loss or injury or to any dependent of such person, and shall determine the sum which it recommends as compensation.

**Report
National
Assembly**

to

14.(1) The President may, on receipt of the report of the Ombudsman on any investigation conducted by him or her, or during the continuance of any such investigation, take such decision in respect of the matter investigated or being investigated into by the Ombudsman as the President deems fit.

(2) When the Ombudsman receives such decision he or she shall notify the complainant and the person complaint against whom the complaint or allegation was made.

15.(1) The Ombudsman shall submit to the National Assembly an annual report of his or her operations.

**Staff
Ombudsman**

of

(2) The annual report shall be submitted within six months of the following year.

(3) A report under this section shall not disclose the identity or contain any statement which may point to the identity of any person into whose conduct an investigation is made.

**Finality
Ombudsman's
acts**

of

16.The Ombudsman shall employ such staff as he or she shall determine, who shall become public officers.

**immunity
Ombudsman
and members of
staff of office of
Ombudsman**

of

17.(1) No investigation, proceedings, process or report of the Ombudsman shall be held bad for any error or irregularity of form or be challenged, reviewed, quashed or called into question in any court save on the ground of lack of jurisdiction.

(2) The High Court shall be the final court of appeal in all matters in which the Ombudsman is a party.

18.(1) No proceedings, civil or criminal, shall lie against any Ombudsman or member of staff of the Ombudsman for anything done in good faith in the course of the exercise of his or her official functions.

(2) Subject to the provisions of this Act, the Ombudsman or member of staff of the office of the Ombudsman shall not be called to give evidence before any court or tribunal in respect of

Expenditure

any information received in the exercise of official functions.

19.(1) All expenditure in connection with the office of the Ombudsman shall be charged on the Consolidated Revenue Fund and shall be paid at the beginning of each financial year.

(2) A person summoned as a witness under this Act may on the order of the Ombudsman be paid such allowance as the Ombudsman may prescribe.

Offences

20.(1) If any person who -

(a) being a witness before the Ombudsman without lawful excuse refuses to be sworn or affirmed, or having been sworn or affirmed refuses to answer fully and satisfactorily any question lawfully put;

(b) having been sworn or affirmed knowingly gives false testimony touching any matter which is material to any question under investigation;

(c) intentionally insults, interrupts or otherwise obstructs the Ombudsman or member of staff of the Ombudsman in the performance of functions under this Act;

(d) intentionally disobeys any order made under section 6; commits an offence and shall be liable to the same penalty as any person who commits a like offence in relation to a court.

Power to make rules

21.(1) The Ombudsman may make rules for the better carrying into effect of this Act and, without prejudice to the generality of the foregoing, for any of the following matters:

(a) prescribing terms in respect of proceedings before the Ombudsman;

(b) prescribing the duties of officers and other persons appointed under this Act; and

(c) prescribing the procedure for conducting investigations.

Passed in the National Assembly this Fourth day of July, in the year of our Lord one thousand Nine hundred and Ninety-Seven.

D S Njie
Clerk of the National Assembly

