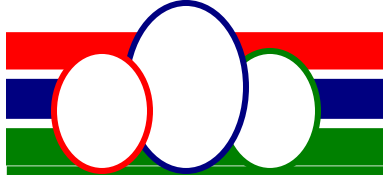


THE REPUBLIC OF THE

GAMBIA



OFFICE OF THE OMBUDSMAN

REF: BC109/147/01(20)

31st December 2018

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

Honourable Speaker,

SUBMISSION OF 2018 ANNUAL REPORT

I have the esteemed honour and privilege to submit the 15th Annual Report of the Office of the Ombudsman covering the period 1st January to 31st December 2018.

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,

.....
Hon. Bakary K. Sanyang
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 establishment 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 statement 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 and team continue to visit the main prisons at Mile two and the prisons 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. An area of great concern is the state of the remand prisons in terms of the number of years that some of them have remain in custody without being judged and

sentenced or acquitted. 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 IV 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

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. 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 your directives.

Permanent Secretaries, Deputy Permanent Secretaries, Managing Directors, Deputy Managing Directors, Executive Directors, Deputy Executive Directors and Directors, from both government institutions and parastatals have declared 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, the Ombudsman 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 15th annual report of the Ombudsman and it covers the period 1st January to 31st December 2018. During the year under review, the Office registered cases from all regions of the country and continued to successfully settle cases registered.

1.2.1 DATA ANALYSIS

At headquarters 326 complaints were registered, out of these 106 were from the private sector 55 complaints were satisfactorily resolved in favour of the complainants, 37 dismissed after full

investigation due to lack of merit, 18 discontinued due to the fact that they were frivolous and not made in good faith, 2 withdrawn and 105 still pending.

At the Kerewan Regional Office 13 complaints were registered and investigations conducted on all the complaints. Out of these 5 were settled in favour of the complainants 2, discontinued, 1 dismissed, 1 withdrawn and 1 pending.

At the Mansakonko Regional Office 21 complaints were registered Office. Out of these 19 complaints were from the public sector and 2 complaints were registered from the private sector. 7 complaints were settled in favour of the complainants, 5 discontinued due to the fact that they were frivolous and not made in good faith, 3 dismissed after full investigation for lack of merit, 4 pending.

At the Basse Regional Office 26 complaints were registered out of these 18 cases were settled in favour of the complainants, 6 discontinued, 1 dismissed and 1 still pending.

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

- | | |
|---|----|
| • Department of Labour | 22 |
| • Ministry of Basic and Secondary Education | 11 |
| • National Water and Electricity Company | 11 |

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 offices work plan and strategic plan.

1.3.1 SENSITIZATION

Awareness creation plays a critical role in the dispensation of administrative justice. This is because, except for proactive investigations, victims of administrative injustice can only get redress if they come forward to complain to the ombudsman.

For the Ombudsman to receive complaints from members of the public, it presupposes that complainants are aware of the existence of the Ombudsman and the function of the Office, and have also sufficient trust and confidence in the process. The many acts of administrative injustice that remain unreported are as a result of low levels of awareness.

It is evident from the nature of complaints that when people are not adequately sensitized, they become easy prey of those who are inclined to commit acts of administrative injustice against them. Also, in many instances, acts of maladministration in terms of applying wrong procedures or overstepping the bounds are as a result of lack of knowledge of correct procedures and processes.

The Office of the Ombudsman sees awareness creation as not just a means of helping victims of administrative injustice, but also as a means of improving the quality of public administration. Sensitization therefore remains a central strategy for the Office in its drive to attaining its objectives in relation to the foregoing.

During the period under review, the Office embarked on a series of sensitisation programmes in various forms; such as, workshops, radio programmes, TV adverts, institutional and community clinics at both head office and regional offices.

At head office, a workshop was organised for public officers, including representatives from ministries, security institutions, parastatals and local government authorities.

Advertisements were also done on GRTS (Television) in the English language and in four local languages. We also advertised on Paradise FM in English, Mandinka, Wolof and Fula for a period of one month.

The Office also conducted phone-in panel discussions on GRTS (Radio). The phone-in programmes, five slots in total, were conducted on alternate days and were highly interactive as it afforded listeners the opportunity to call and ask questions or make comments.

In the Lower River Region, two workshops were held: one for public officers and the other for community representatives. Following the workshops, the Office conducted community clinics in places like Kiaf, Japineh, Wellingarabah and institutional clinics with the paramilitary, Fire and Rescue Services and Pakalinding Upper Basic School. We also conducted two days of phone-in radio programmes on Soma Community Radio.

In the Upper River region a workshop was organised for public officers and a separate workshop for community representatives. Community clinics were held in Mansajang, Kaabakama, Kanyubeh, Nafugan Fulbeh, and Alunhari. Institutional clinics were held with the police, immigration as well as with the Fire and Rescue Services. We also had two phone-in radio programmes in Basse on GRTS (FM)

In the North Bank Region, similar programmes were conducted in the form of workshops for public officers and community representatives. Clinics were also conducted after the workshops which were held in Mbamorikunda, chamen, Bali Mandinka, Kerewan, Kisima Jaw, Chillah and Sika. We have also conducted clinics at Njaba Kunda Health Centre and Kerewan Health Centre. We also conducted community radio sensitisation programmes on North Bank Community Radio.

1.3.2 INVESTIGATIONS

On investigation and complaints handling, the office continued to receive increase number of cases. The highest number of complaints received were wrongful dismissal or termination followed by unfair treatment and injustice.

1.3.3 CONSTRAINTS

The regional offices Mansakonko and the Kerewan Regional Offices are operating from the Governor's Office. The Basse Office was operating within one of the Ministry of Agriculture's complex. The Ministry of Agriculture has taken their office and currently the Basse Office is renting. 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.

1.3.4 WAYFORWARD

- Visiting prisons and police cells and all detention centres 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, Farafenni and Janjangbureh
- 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.
- 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 cognizance of the importance of training and capacity building in the effective implementation of an institutional mandate. During the year under review, one staff completed master's program on sponsorship from the office. One of the staff is currently pursuing an LLM on Human Rights and

Humanitarian Law through distance education at Aberystwyth University in UK. Another staff is currently pursuing an MSC program at the University of The Gambia on International Relations and Diplomacy. One of the principal investigators completed his master's program on Public Sector Management from Ghana Institute of Management and Public Administration (GIMPA).

On local short term training, one of the principal investigators attended training on Strengthening Public Financial Management and Public Accountability organized by USAID in partnership with government of The Gambia. One of the investigators attended a civil military training organised by The Gambia Armed Forces. The aim of the training was to share knowledge with the participants on the need for coordination among civilians, military and police officers working in a post-conflict environment while at the same time recognising the different role, priorities and perspective of different actors in such operation.

The Ombudsman participated in the biennial African Ombudsman and Mediators Association (AOMA) General Assembly held in Kigali, Rwanda which brings together Ombudsman, their staff and expert for high level deliberation on topical legal and policy issues in the Ombudsman Practice. The Principal Investigator/ Legal Officer also attended the Commonwealth Africa High-Level Regional dialogue on strengthening Equality and Equal Protection of the Law – Reforming Laws that discriminate held in Johannesburg, South Africa.

OVERSEAS TRAINING 2018

<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>
Landing Bondi	Director of Human Rights	LLM Human Rights and Humanitarian Law(online)	Aberystwyth (UK)	3yrs commencing 1 st October 2015	With salary	Ombudsman
Lamin Sadykhan	Principal Investigator	Master's program on Public Sector Management	Ghana Institute of Management and Public Administration (GIMPA)	1 year commencing January 2018	With salary	Ombudsman

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>
Baboucar I. Touray	Investigator	Masters in International	University of The Gambia	Two years 2017-2019	With salary	Ombudsman

		I Relations & Diplomacy				
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CHAPTER 3

3.1: FINANCIAL ALLOCATIONS

During the year ended 2018, 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 2018 is; D16, 661,631

The breakdowns of the allocations from January-December 2019 are as follows:

- | | |
|--------------------------|---------------------|
| a. Salaries etc. | D 9,590,000 |
| b. Other charges | D 6,741,631 |
| c. Total budget for 2018 | D 16,331,631 |

Table showing the trend of allocations from 2016 to 2018

YEAR	ALLOCATIONS	DISBURSEMENT	SHORTFALL	INCREMENT	VARIANCE
2018	D16,331,631	14,473,693	1,857,938	(774,708)	11.38%

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%

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 2018

NUMBER OF STAFF	PARTICULARS OF POSITION	GRADE	ANNUAL SALARY
1	OMBUDSMAN	FIXED	170,556
2	DEPUTY OMBUDSMAN	FIXED	274,872
1	DIRECTOR OF INVESTIGATION	12.8	86,645
1	DIRECTOR OF HUMAN RIGHTS	12.3	78,005
1	DIRECTOR OF COMMUNICATION	12.4	79,733
1	FINANCIAL CONTROLLER	12	74,549
1	PRINCIPAL INVESTIGATOR	11.8	73,901
1	PRINCIPAL INVESTIGATOR/LEGAL ADVISER	11.4	69,466
1	PRINCIPAL INVESTIGATOR - HUMAN RIGHTS	11	66,139

1	SENIOR INVESTIGATOR - HUMAN RIGHTS	10.8	64,195
1	SENIOR INVESTIGATOR - ANTI CORRUPTION	10.4	59,760
1	COMPLAINT OFFICER	10.4	59,760
1	INVESTIGATOR	8.6	45,936
14	-		1,203,517
1	ADMIN MANAGER	11.6	71,683
1	PRINCIPAL ACCOUNTANT	10.2	57,542
1	PRINCIPAL PRIVATE SECRETARY	9.8+L	55,384
1	ACCOUNTANT	8.2	43,128
1	PROCUREMENT OFFICER	8.5	45,000
1	SECRETARY	7.5	37,814
1	RECORDS CLERK	6.7	33,005
1	RECORDS SUPERVISOR	5.5	24,840
4	DRIVER	3.2,3.7,3.7.3.8	65,088
1	GARDENER/CARE TAKER	3.8	16,992
1	MESSENGER	3.8+L	16,992

3	CLEANER	3.2,3.3,3.6	46,296
2	WATCHMEN	3.6,3.2,	31,104
1	IT SUPPORT TECHNICIAN	5.2	22,464
20			567,332
	KEREWAN		
1	SENIOR INVESTIGATOR	10.8	64,195
1	INVESTIGATOR	8.3	43,128
1	SENIOR TYPIST	5.8	27,216
1	DRIVER	3.3	15,192
1	NIGHT WATCHMAN	3.3	15,192
<u>1</u>	CLEANER / MESSENGER	3.8	<u>16,992</u>
6			181,915
	MANSAKONKO		
1	SENIOR INVESTIGATOR	10.5	60,869
1	INVESTIGATOR	8.3	43,128
1	SENIOR TYPIST	5.8	27,216

1	DRIVER	3.8	16,992
<u>1</u>	CLEANER / MESSENGER	3.8	<u>16,992</u>
5			165,197
	BASSE		
1	SENIOR INVESTIGATOR	10.5	60,869
1	INVESTIGATOR	8.3	43,128
1	SENIOR TYPIST	5.7	26,424
1	DRIVER	3.7	16,632
<u>1</u>	CLEANER / MESSENGER	3.7	<u>16,632</u>
5			163,685
-			-
<u>50</u>	OVERALL TOTAL BASIC SALARY		<u>2,281,646</u>

CHAPTER 4

4.1 MONITORING VISITS TO PLACES OF DETENTION

In pursuance of Section 11(2) of the Ombudsman Act 1997 and following the granting of unrestricted access to the Ombudsman to prisons and other places of detention by the former Minister of the Interior Mai Ahmad Fatty, the Office of the Ombudsman visited prisons, police cells and immigration detention facilities in 2018.

The visits were unannounced. The objective of the visits was to assess the treatment and conditions of prisoners and other persons deprived of their liberty and make recommendations for improvement and compliance with national, regional and international standards.

The cooperation of the authorities at the places of detention was very good. The members of the visiting team were granted access to all the facilities.

Areas that were looked into during the visits include accommodation, overcrowding, food, health care, sanitation, treatment, activities, registers, contact with the outside world, safety and security and staff matters.

4.1.2 VISITS TO PRISONS

All the three prisons in the country were visited in 2018. Mile II Prison was visited on 13, 14 and 22 February 2018, Jeshwang Prison on 28 March, 8 May and 6 and 8 August 2018 and Janjanbureh Prison on 16 July 2018.

4.1.3 ACCOMMODATION

Mile II and Jeshwang prisons were built many years ago. The dormitories and cells were very old and needed renovation.

All the cells in the three prisons had big windows and there was adequate fresh air and natural light. There was sufficient artificial lighting and ventilation in the cells except for Jeshwang Prison cells and blocks 5 and 7 of the security wing at Mile II where there were no fans. Cell no. 6 of block 5 at the security wing at Mile II had no artificial light.

Mile II remand wing was overcrowded and there were not enough mattresses in the cells. The inmates in the adult wing at Jeshwang Prison complained that their mattresses had bedbugs.

Inmates in Mile II remand and security wings and Jeshwang juvenile wing used buckets in the cells to urinate and defecate at night.

All the cells had mosquito nets. There were TV sets in all the cells in Mile Prison except for blocks 5 and 7 in the security wing and the same thing for Janjangbureh Prison except for the cell for female inmates. However, there were no TV sets in any of the cells at Jeshwang Prison. None of the cells in the three prisons had a radio and inmates were not supplied with newspapers. There were no wardrobes, chairs and tables in any of cells in the three prisons.

4.1.4 ACCESS TO JUSTICE

Many remand prisoners had spent many years in prison at the time of the visit. For example, at Mile II Prison one prisoner had spent 9 years in prison and another one 14 years. There were also a lot of delays in taking remand prisoners to court and many inmates complained that they had not been informed about the status of their appeals against court judgments.

4.1.5 FOOD

The inmates at all the three prisons were given three meals a day. There were also special diets for people with diabetics and other health problems. Some inmates at Mile II and Jeshwang Prisons complained about the quantity and quality of the food. Many also complained that most of the time only 'chereh' was given to them for dinner.

4.1.6 HEALTH CARE

Mile II has a clinic whilst Jeshwang and Janjanbureh prisons do not have any. Prisoners at Janjanbureh and Jeshwang were taken to nearby health facilities. A medical doctor visited only Mile II and not the other prisons. Only one nurse at Mile II was qualified. Although some equipment and medicines were found at the clinic, the authorities said the equipment was inadequate and sometimes only paracetamol was available.

4.1.7 SANITATION AND HYGIENE

Many toilets in the three prisons were not in good condition and needed renovation. There were not enough toilets in Mile II remand wing. At Janjanbureh Prison the visiting team was informed that no Dettol or vim was provided for cleaning the toilets. The sewerage in the prison was old and full and it flowed whenever there was rain. Female inmates in all the three prisons were not provided with sanitary towels (pads).

4.1.8 CLOTHING

Some inmates at Mile II main yard complained that they were given only one uniform when admitted and they remained like that up to one year. They also said that they were not given sweaters to protect them from cold during harmattan. They added that the discharged prisoners' jumpers were given to new convicts without being disinfected.

4.1.9 ILL-TREATMENT

Inmates in the three prisons said they were no longer tortured or maltreated. However, several inmates at Mile II complained that they had been maltreated by some prison officers and a child at Jeshwang juvenile wing complained that he was hit by an officer.

4.1.10 EDUCATION AND VOCATIONAL TRAINING

No basic education classes were provided in the prisons except for the juveniles at Jeshwang Prison. There was a shortage of textbooks for the juveniles and their classroom furniture was in a state of disrepair. The juveniles could not take exams like GABECE and WASSCE. Only Mile II Prison had vocational training and a library.

4.1.11 WORK

Most of the prisoners were not provided with any work. Only a few of them were involved in cooking, baking and gardening.

4.1.12 RELIGION

The visiting team was informed at Mile II that one of the prison officers was assigned to teach prisoners the Qur'an. The Qur'an was also provided at Janjanbureh Prison. Mile II and Janjanbureh prisons have a mosque. The team was further informed that pastors were allowed to offer voluntary services on Sundays and Wednesdays.

4.1.13 CONTACT WITH THE OUTSIDE WORLD

Prisoners were allowed to be out of their cells from 8 am to 5 pm, which is nine hours, except for some inmates in Mile II security wing, who were allowed to be out of their cells for seven hours. Prisoners at Jeshwang were not permitted to go beyond the verandahs. Remand prisoners were allowed to have visitors every day whilst convicts were visited only once a month. There were no communication facilities for prisoners.

4.1.14 EXERCISE AND RECREATION

Apart from the lawn in Jeshwang juvenile wing, which is used for playing basketball and football, there were no other sporting facilities in any of the three prisons. Inmates in the three prisons were also not given the opportunity to do daily exercise for one hour.

4.1.15 SECURITY AND SAFETY

The fence of Mile II Prison was high and there were towers for monitoring the activities in the prison. On the contrary, the fences of Jeshwang and Janjanbureh prisons were low and there were no towers. None of the three prisons had CCTV cameras, alarm bells, metal detectors and razor wire. There were also no extinguishers in the cells.

4.1.16 COMPLAINT SYSTEM

The inmates at Mile II said that they complained to the officer in charge of their wing only about problems between prisoners and were not given the opportunity to complain to the Director General about general issues and problems between prisoners and the staff. In response to the visit report, the prison authorities stated that there is a complaint book available and open for every prisoner who wants to see the Director General of Prisons.

4.1.17 REGISTERS

The visiting team could not find any register for each prisoner. In response to the visit report, the prison authorities said that there is a warrant jacket for each prisoner that contains information about the prisoner.

4.1.18 STAFF MATTER

The structures in the staff quarters were dilapidated and in poor condition, especially the toilets and bathrooms. The staff quarters at Janjanbureh Prison had old asbestos that could cause health hazards. There were no telephones, computers, printers and photocopiers in most sections of the prisons and no special van for court escorts. The other problems include getting uniforms regularly, lack of transport for the staff, shortage of staff, limited office space, most staff not having offices, inadequate furniture and lack of risk allowance.

4.1.19 RECOMMENDATIONS

The following are some of the recommendations made.

- As a matter of urgency, government should make efforts to complete the construction of the structure in Jeshwang that is meant for remand prisoners.
- Prisoners who have spent 14 years and 9 years on remand at Mile II should be given conditional release, as required by Section 19(5) of the 1997 Constitution.
- Measures should be taken to address the issue of delay in taking prisoners to court and the issue of prisoners not knowing what has happened to their appeals.
- Government should introduce or make more use of alternatives to pretrial detention, such as regular reporting to police.
- Government should ensure that prisoners have access to legal aid services. Rule 61(3) of the Mandela Rules states that there should be access to effective legal.
- The Judiciary should consider having visiting judges and magistrates who go to prisons to check the legality and length of pretrial detention in prisons.
- The prison authorities should create an effective complaints procedure so that prisoners can easily lodge a complaint on all issues without fear of punishment.
- Prison authorities should ensure that there is no solitary confinement and ill-treatment.
- The quantity and quality of food provided to inmates should be looked into. A machine for grinding millet should be provided to the cooks at Janjangbureh Prison to facilitate their work, as done at Mile II. Government should provide electric cookers to address the problem of getting trucks to fetch firewood.
- The toilet facilities in general needed renovation. The authorities should ensure that prisoners at Mile II remand wing do not wait too long in the morning before they can use the toilets. Cleaning products should be provided.

- The prison authorities should put an end to Mile II remand wing and Jeshwang juvenile wing prisoners' use of buckets in cells to urinate and defecate at night. All prisoners should have access to toilets at any time, including at night.
- The clinic at Mile II should be provided with the necessary drugs, equipment and qualified health personnel. There should be an ambulance at Jeshwang and Janjanbureh prisons.
- Sanitary towels (pads) should be provided to the female inmates when needed.
- Government should provide fans and TV sets in the cells that do not have any.
- The cells should be renovated as they are old. Old mattresses should be replaced with new ones in the cells of all the prisons.
- All prisoners should attend basic education and vocational training.
- Each prisoner should have at least two uniforms upon admission and also a sweater during harmattan. Enough soap should be regularly provided to inmates not only for washing their clothes but also for bath.
- Convicts should be allowed to have visitors at least once a week, to be in line with international standards, rather than once a month. Writing materials should be provided in prisons to enable inmates to write letters to families and friends.
- Each prisoner should be allowed to have at least one hour of exercise in the open air each day, weather permitting, as required by rule 23(1) of the Mandela Rules. Measures should be put in place to ensure that prisoners in the adult wing at Jeshwang are not kept only under the verandah of the building.
- Convicted prisoners who are fit to work should be allowed to work and get paid.
- Chairs and tables should be provided in all the cells so that inmates can eat their food and also write their letters comfortably. There should also be wardrobes or cupboards for inmates to keep in their clothes.
- The staff quarters should be renovated. The asbestos at the staff quarters at Janjanbureh should be removed as a matter of urgency. Adequate office space, furniture and staff should also be provided.
- All the prisons should have CCTV cameras, security alarm and other facilities. Jeshwang and Janjanbureh prisons should have towers and high fences.

- Cells and dormitories should be measured to determine their sizes and the capacity of each prison should also be established.
- The issue of risk allowance should be looked into.
- Government should increase the amount allocated to the prison department so that the recommendations made can be implemented.
- Government should expedite implementing its plan of building new prisons. It should ensure that the new prisons are in line with the international standards.
- The Prison Act should also be amended as soon as possible so that it can be in line with the international standards.

4.2 VISITS TO POLICE CELLS

The Office of the Ombudsman visited police cells in Banjul, Kanifing Municipality, West Coast Region and Central River Region (CRR) in November and December 2017 and January and July 2018.

A total of 36 police stations and 5 police posts were visited. Sixty-five police cells were inspected during the period.

The police stations and posts that were visited in Banjul are: Banjul Police Station, Banjul Ferry Terminal Police Post and Crab Island Police Station.

The police stations and posts that were visited in Kanifing Municipality are: Kairaba Police Station, Old Jeshwang Police Station, Bakau Police Station, Kanifing Police Station, Serrekunda Police Station, Bundung Police Station, Tallinding Police Station, Abuko Police Station, Kotu Police Station, Manjai Police Station, Bakoteh Police Station and Anti-Crime Unit.

The police stations and posts that were visited in West Coast Region are: Wellingara Police Station, Brusubi Police Station, Old Yundum Police Station, Yundum Police Station, Airport Police Post, Gunjur Police Station, Brikama Police Station, Sanyang Police Station, Tujereng Police Station, Kalagi Police Station, Bwiam Police Station, Sibanor Police Station, Somita Police Post, Giboro Police Post, Mandinaba Police Station and Brikama Madina Police Station.

The police stations and posts that were visited in CRR are: Kaur Police Station, Njau Police Station, Firdawsey Police Station, Kuntaur Police Station, Dankunku Police Post, Jareng Police Station, Brikama Ba Police Station, Karantaba Police Post, Janjanbureh Police Station and Bansang Police Station.

4.2.1 CONDITION OF CELLS AND DETENTION ROOMS

All the police stations visited had cells except Bwiam Police Station, which had neither a cell nor a detention room. Most of the detainees in police stations were kept in the detention rooms at the time of the visits.

Bundung and Serrekunda police stations were found overcrowded. There were 23 people detained at the detention rooms of Bundung Police Station and 14 were detained at the detention room of Serrekunda Police Station.

Although detainees were not in cells at most police stations at the time of the visits, the visiting team was informed in some police stations, such as Brusubi Police Station and Bakoteh Police Station, that detainees always spent the night in cells.

In almost all the police stations and police posts visited, there were no separate cells or detention rooms for female detainees and juveniles. Many police stations, including Crab Island, Yundum, Gunjur, Brikama Ba and Sibanor police stations, told the visiting team that female detainees and juveniles were always kept at the counter whilst male detainees were kept in the detention rooms or cells.

The international standard is that female detainees should not be kept in the same cell or detention room as male detainees and juveniles should be separated from adults. Section 29(3) of the 1997 Constitution states that ‘a juvenile offender who is kept in lawful custody shall be kept separated from adult offenders’.

The authorities at the police stations and posts visited were unable to tell the visiting team the exact capacity of their cells. The visiting team made rough estimation of the cells in many police stations and posts. There was a wide disparity between the sizes of the cells, ranging from 1.5 square meters to 53.3 square meters. Whilst the sizes of the cells at some police stations were up to international standards when used to keep one person, many police stations and posts had cells that were too small for even one person.

The cells at all the police stations and posts visited had no artificial light. The reason given by the authorities at Bundung Police Station was that if they put any electric light in the cell a detainee could commit suicide. The other police stations gave different reasons, such as the likelihood that a detainee would cause fire if an electric bulb was put in a cell.

The windows of the cells at most police stations and posts were very small and there was hardly any natural light and fresh air. Many cells had only small openings on the walls. The cell at Brikamaba Police Station, which measured approximately 5 square meters, had no window and was dark.

In many police stations the detention rooms were better than the cells. The window of the detention rooms at Kaur Police Station were big and allowed adequate fresh air and natural light, compared to the ones in their cells, which were small and did not allow sufficient fresh air and natural light to enter. The detention room at Kanifing Police Station had artificial light.

Although places were hot during summer, no police station or post had a ceiling fan in the cell or detention room for artificial ventilation.

There was no police station at which detainees were provided with mattresses to sleep on. In almost all the police stations visited the team was informed that detainees slept on mats provided

by the officers at the stations. The visiting team was informed by the authorities at Bundung Police Station that sometimes detainees slept on mats and at other times on bare floors.

4.2.2 SANITATION AND HYGIENE

Cells in many police stations were found unhygienic. The authorities at different police stations and posts said that they found it difficult to get adequate supplies of cleaning products such as omo, Dettol and vim. The officers at Kaur Police Station said they used their own money to buy cleaning products from shops.

For example, the cells at Bundung Police Station were filthy, stinking and dark. Maggots, bedbugs, cockroaches and other insects could be seen on the walls of the cells. This condition exposed the detainees, the staff and even visitors to the risk of contracting communicable diseases like tuberculosis. This can be considered degrading treatment, which is contrary to Section 21 of the 1997 Constitution. In a similar vein, the cell at Banjul Ferry Terminal Police Post was stinking excessively.

All the police stations visited had toilets but they were not in the cells. Some toilets were in the area of the detention room whilst many were in different buildings at the stations or outside the stations. Some police stations had one toilet whilst others had two. Serrekunda and Bundung police stations had only one toilet and this may be inadequate, taking into account the number of detainees held there at the time of the visit.

Many police stations and posts had no toilets provided specifically for detainees. It was the officers' toilets that detainees also used. All the police stations and posts visited had no separate toilets for male and female detainees, except Brikama Madina Police Station, which was said to be sponsored by a philanthropist.

Many police stations, such as Gunjur and Tujereng police stations, had pit latrines. Many of the toilets were in unhygienic conditions with unpleasant smell. At Bundung Police Station the detainees complained that the toilet was full and infested with insects and that at night the insects were seen everywhere in the cells and the detention room, making living in the place unbearable.

Most police stations and posts had no bathroom for detainees. The visiting team was informed that detainees used toilets to take a bath.

4.2.3 FOOD AND DRINKING WATER

In many police stations and posts visited the government did not provide any food for the detainees. It was the police officers who prepared food and gave some to the detainees. Sometimes the detainees were given food by their relatives.

Other police stations had cooks who prepared food for detainees and at the end of every month the authorities at the stations forwarded the amount to the police headquarters for payment to be effected. However, government allocated only D5 for each detainee per day for feeding. Taking the current cost of living into account, this is highly inadequate. In many police stations and posts only breakfast and lunch were provided to the detainees whilst in others only lunch was given to them.

Access to drinking water was not a problem for detainees. Many stations had taps from which they got drinking water for the detainees. However, there were also many police stations and posts that did not have any tap. For example, officers at Dankunku Police Post fetched water from public taps.

4.2.4 HEALTH CARE

At many police stations and posts the visiting team was informed that the detainees were always taken to nearby hospitals or health centers when they fell sick. For example, the officers at Bansang Police Station took sick detainees to Bansang Hospital, and the ones at Firdawsey Police Station took them to the dispenser in the village.

The officers at many police stations and posts stated that treatment of detainees at public health facilities was free. However, they also said that they paid D25 for the ticket and when the officers did not have the money it was the detainees themselves or their relatives who paid it. The officers at some police stations and posts, such as Janjanbureh Police Station and Karantaba Police Post, said that they were not asked to pay for the ticket. The officers at Kuntaur Police Station said that they did not pay for the ticket because Personnel Management Office (PMO) wrote a circular stating that detainees and police officers should not pay anything for treatment at public health facilities.

The officers at most police stations and posts informed the visiting team that when the medicines were not available at the health facilities it was they the officers who bought them for the detainees. Some said when the officers did not have the money; they asked the relatives of the detainees to buy the drugs for them.

4.2.5 CONTACT WITH THE OUTSIDE WORLD

In most police stations and posts visited, the visiting team was informed that detainees' right to communicate with their families, friends and other persons were respected. The team was told in most police stations and posts that officers gave their own phones to detainees to speak to their families. Others said that they allowed detainees who had mobile phones to use them to call their relatives or any other persons. However, at Farafenni Police Station two of the detainees, who were Senegalese, said that they were not allowed to call their families in Senegal when they requested it. The authorities at the station said they did not have the money to facilitate the call.

4.2.6 TREATMENT

In all the places visited the visiting team asked the detainees whether they had been subjected to torture or ill-treatment. There was no complaint of torture or ill treatment in any of the police stations and posts visited except at Basse Police Station where one of the detainees said he had been insulted by one of the officers called Mendy and that he had seen him hit a child with his head. The officer was not on duty but the visiting team told the station officer to investigate the matter and take an appropriate disciplinary action if the allegation turns out to be true. However, the other three detainees who were in the same detention room as the one who made the complaint said that the officers never beat or insulted them.

4.2.7 LAWFULNESS OF DETENTION

The visiting team asked about the reasons for detaining the people found in cells or detention rooms and whether police stations and posts complied with section 19(3)(b) of the 1997 Constitution concerning the taking of the arrested or detained person to court within 72 hours.

Many police stations and posts complied with section 19(3) (b) of the 1997 Constitution, as indicated in the registers and confirmed by the detainees. However, there were also several places where detainees were kept well beyond the stipulated 72 hours.

At Brikama Police Station the visiting team was told that 72 hours' detention was a problem for the officers whenever they had capital offence cases or a huge amount was involved. At the station the team found that 5 of the 13 detainees were kept beyond 72 hours. One of them was detained for 11 days and another one for 9 days.

The visiting team also found one detainee held for 8 days at Bansang Police Station. The reason given by the authorities at the station for going beyond 72 hours stipulated in the constitution was that the magistrate had travelled to Kombo.

4.2.8 INFORMATION ABOUT THE RIGHTS OF DETAINEES

Most police stations and posts visited did not inform detainees of their basic rights, such as the right not to be subjected to torture, inhuman or degrading treatment or punishment, the right to have access to a lawyer and the right to health.

4.2.9 REGISTERS

The visiting team found the following registers at many police stations: Station Diary, Crime Complaint Register (CCR), Detention and Release of Prisoner's Register Book, Prisoner's Property Register Book, Lost Property Register Book, Found Property Register Book, Exhibits Register Book, Medical Book and Sudden, Unnatural and Accidental Deaths Register.

The team did not find the same number of registers at the police stations and posts. Some had a few registers whilst others had many. Detention and Release of Prisoner's Register Book could not be found in many police stations. The reason given was that the book was not available at police headquarters. Some of the stations that had the book did not fill in the section concerning the date and time of release.

4.2.10 STAFF MATTERS

The visiting team found that a shortage of vehicles (cars) was a major problem at police stations and posts. Some police stations had only one vehicle whilst many did not have any vehicle despite the fact that their operations covered many towns and villages. For example, Bundung Police Station had only one car which was used by all the nine police stations under Bundung Division.

The team also found that the toilet soakaways at several police stations were full and in unpleasant condition. For example, officers at Bundung Police Station said that the soakaway at the station had been full for two years. The officers at several police stations used pit latrines. Somita Police Post had no toilet.

There were no landlines, computers, printers, photocopiers, scanners and internet access at most police stations and posts. The other problems include dilapidated police stations and posts, dilapidated staff quarters, officers not getting uniforms regularly, shortage of staff, limited office space, most staff not having offices, lack of electricity and toilets at some staff quarters not functioning.

4.2.11 RECOMMENDATIONS

The following are some of the recommendations made.

- As a matter of urgency, Ministry of the Interior should draw up and implement a plan to renovate and modernize police cells in line with international standards.
- Ministry of Finance should allocate funds for the renovation and modernization of police cells.
- Ministry of the Interior should ensure that all the cells have adequate natural and artificial (electric) light and sufficient ventilation. Windows should be large enough to let fresh air and natural light into the cells. Fans should also be provided as places get hot during summer.
- Ministry of the Interior should develop and implement a plan for each place of detention to have at least a separate cell for juveniles, a separate cell for female detainees and a separate cell for male detainees.
- Ministry of the Interior should ensure that there is no overcrowding in the police cells.
- Ministry of the Interior should ensure that all police detention facilities have flush toilets for detainees. Big police stations, such as Bundung, Serrekunda, Brikama and Brusubi police stations should have at least three toilets instead of only one.
- Ministry of the Interior should ensure that detainees always have access to toilets when requested, including at night.
- Ministry of the Interior should ensure that all police stations and posts with detention facilities have a bathroom for detainees.
- Ministry of the Interior should ensure that all police stations and posts are provided with adequate supply of cleaning products such as omo and Dettol.
- The Ministry should ensure that all the police cells and toilets are kept clean all the time, to avoid unpleasant smell and infectious diseases such as tuberculosis.
- The Ministry should also ensure that all the police cells have mattresses and bed sheets for detainees to sleep on.
- Ministry of Finance should allocate adequate funds for the feeding of detainees at police stations and posts.
- Ministry of the Interior should ensure that police stations and posts that do not have taps or have difficulties in having access to water are provided with taps.

- Ministry of Finance should provide funds for purchase of drugs for sick detainees when they are not available at hospitals and other health facilities.
- Ministries of the Interior and Health should ensure that health professionals regularly visit places of detention to assess the health condition of detainees.
- Ministry of the Interior should ensure that landlines or other communication facilities are provided at police stations and other places of detention for detainees to communicate with their families and others.
- Ministry of the Interior should ensure that no police station or post detain any person beyond 72 hours without the permission of a magistrate.
- Judiciary should appoint sitting magistrates in all the five regions in the country to avoid detainees being kept beyond 72 hours and delay in justice.
- Ministry of the Interior should ensure that station officers always inform detainees of their basic human rights, such as the right not to be tortured or ill-treated.
- Ministry of the Interior should draw up and implement a plan to ensure that each police station is provided with a car within a specified period of time for effective service delivery and security for all.
- Ministry of the Interior should also draw up and implement a programme to renovate all the police stations and posts and staff quarters that are in a state of disrepair as well as build new stations and posts on the plots of land allocated to police in places where they are renting.
- Ministry of the Interior should ensure that all police stations and posts have computers, printers, photocopiers, scanners and internet access.
- Ministry of the Interior should ensure that all police officers receive regular training or continuous refresher courses in human rights and other areas.

4.3 VISITS TO IMMIGRATION DETENTION FACILITIES

The Office of the Ombudsman visited three immigration detention facilities in Kanifing Municipality in January and February 2018. The immigration detention facilities that were visited are Jeshwang (Babung Fatty) Immigration Post, Brikama Regional Immigration Office and Tanji Immigration post.

4.3.1 CONDITION OF DETENTION ROOMS

All the immigration stations and posts visited had no cells. They had only temporary detention facilities. All the places visited had only one detention room. There was no detainee in any of the detention facilities at the time of the visits.

There were no separate detention facilities for female detainees and juveniles. The officers at Brikama Regional Immigration Office stated that they did not detain women except prostitutes and lunatics. They added that they did not also detain juveniles. The officers at Jeshwang Immigration Post said that they kept female detainees outside the detention room or near the counter for a few hours and released them. They also said that they did not detain people below 18 years.

The three immigration detention facilities were big and had sufficient natural and artificial lights and ventilation. They also had a fan except for Tanji Immigration Post.

The officers at Jeshwang Immigration Post stated that the room could take up to 20 detainees but normally not up to that. They added that sometimes five or six detainees were kept there. The detention hall at Brikama Regional Immigration Office measured roughly 3 x 4 meters (12 square meters). The authorities at the place said normally five to six detainees were kept at the detention hall.

The visiting team was informed at Tanji Immigration Post that detainees slept on mattresses. At both Jeshwang Immigration Post and Brikama Regional Immigration Office, the team was told that mattresses were not provided for detainees to sleep on. The officers at Jeshwang Immigration Post stated that detainees slept on mats or on chairs.

4.3.2 SANITATION AND HYGIENE

The detention rooms at the three places were found clean. Each of the three places had one toilet for detainees. The visiting team was informed by the authorities at Brikama Regional Immigration Office that the toilet and the detention hall were cleaned by their officers using omo and madar. They added that they used their own money to buy omo as they did not get any supply of detergents.

Jeshwang Immigration Post had a bathroom for detainees. Both the toilet and the bathroom at the post were found clean. The toilet at Tanji Immigration Post was in the detention room.

4.3.3 FOOD AND DRINKING WATER

The authorities at the immigration stations and posts informed the visiting team that government did not provide any food for detainees. Those at Jeshwang Immigration Post said they always made contributions and gave the money to the cook to prepare food them and detainees.

As for drinking water, the authorities at Tanji Immigration Post said they fetched water from the tap at the place and gave it to detainees. The ones at Brikama Regional Immigration Office stated that they had bought a bucket which was filled with water by one of their officers and placed in the detention room with a cup for detainees to drink.

4.3.4 HEALTH CARE

The visiting team was informed by the authorities at Tanji Immigration Post that sick detainees were usually taken to hospitals for treatment but at times detainees went to hospitals on their own.

4.3.5 LAWFULNESS OF DETENTION

The visiting team was informed by the immigration officers that foreigners who failed to regularize their stay were the ones that they always detained. The authorities at Jeshwang Immigration Post told the team that they detained for 24 hours only.

The authorities at Brikama Regional Immigration Office said that it was only when they started raiding that they detained people and that the detention did not go beyond 72 hours. Those at Tanji Immigration post said that when it was 72 hours and the detainee could not pay they released the person and asked him or her to pay later.

4.3.6 REGISTERS

The visiting team found Aliens Register, Residential Permit Book for ECOWAS and Residential Permit B (RIP) ECOWAS Register at Jeshwang Immigration Post. Immigration Station Diary Register and List of Raided Form were found at Brikama Regional Immigration Office.

4.3.7 STAFF MATTERS

The visiting team was informed by the authorities at different immigration stations and posts that they did not have enough vehicles (cars). Those at Brikama Regional Immigration Office said that the whole of West Coast Region had only three cars. The ones at Jeshwang Immigration Post stated that they had not been given any vehicle.

The visiting team was informed by the authorities at Jeshwang Immigration Post that they did not have enough staff. They also said that they did not have adequate office space.

The authorities at Brikama station said that risk allowance should be given to the immigration officers as they encountered risk when patrolling.

The issue of toilets was also raised. The authorities at Brikama station said they needed a flush toilet. They added that they would like it to be separated from detainees' toilet.

4.3.8 RECOMMENDATIONS

- Ministry of the Interior should ensure that other immigration detention facilities have fans and artificial lights, as was the case with Jeshwang Immigration Post and Brikama Regional Immigration Office.
- Detaining 20 people in Jeshwang Immigration Post, as estimated by the authorities in the place, will lead to overcrowding. Ministry of the Interior should ensure that there is no overcrowding in any immigration detention facility.
- Ministry of the Interior should ensure that mattresses and bed sheets are provided to the relevant immigration detention facilities for detainees to sleep on, as was the case at Tanji Immigration Post.
- Ministry of the Interior should ensure that all immigration places of detention have flush toilets, as requested by Brikama Regional Immigration Office.

- Ministry of the Interior should ensure that immigration detention facilities that keep detainees for more than a day have a bathroom for detainees.
- Ministry of the Interior should ensure that all immigration detention facilities are provided with adequate supply of cleaning products such as omo and Dettol.
- Ministry of Finance should allocate funds for the feeding of detainees at immigration detention facilities. The funds should be adequate for breakfast, lunch and dinner to be provided to detainees.
- Ministry of the Interior should ensure that communication facilities are provided at immigration detention facilities for detainees to communicate with their families and others.
- Ministry of the Interior should ensure that immigration officers always inform detainees of their basic human rights, such as the right not to be tortured or ill-treated and the right to contact with families and others.
- Ministry of the Interior should ensure that immigration stations and posts are provided with enough vehicles for effective service delivery.
- The Ministry should also ensure that adequate fuel is allocated to immigration stations and posts.
- Ministry of the Interior should ensure that immigration stations and posts have landlines to enable officers to communicate with members of the community.
- As we are in the age of technology, Ministry of the Interior should ensure that all immigration stations and posts are provided with computers, printers, photocopiers, scanners and internet access.
- Ministry of the Interior should ensure that immigration stations and posts have adequate number of staff for effective service delivery, as highlighted by Jeshwang Immigration Post.
- The ministry should ensure that all immigration stations and posts have adequate office space for the staff to work effectively.

CHAPTER 5

5.1 CASES BROUGHT FORWARD

COMPLAINT No: 5/2016
NATURE OF COMPLAINT: Claiming Death Gratuity

COMPLAINT

The complainant said that his late grandfather was employed by a ministry as caretaker and served in that capacity until his death on 26 July 2006. He alleged that the family made several follow-ups for his death gratuity but to no avail. The complainant urged the Ombudsman to intervene for redress.

FINDINGS

Investigations revealed that the complainant's late grandfather's employment record could not be traced. The complainant was however able to produce his grandfather's pay slip and his uncle also swore to an affidavit in support of his late grandfather's employment. Upon swearing to an affidavit, a file was opened and the death gratuity was computed.

CONCLUSION

Complainant's late grandfather's death gratuity was paid amounting to D8, 875.03 through the Curator of Intestate Estate.

COMPLAIN NO: 1/2017
NATURE OF COMPLAINT: Unlawful Termination of Service

COMPLAINT

The complainant said that he was employed in June 2014 by a public institution. In 2015, he had a problem with a senior officer under whom he was posted in the provinces. He said he reported the problem to the authorities at the head office. He was asked to report to Banjul. He alleged that he spent one month in Banjul after which he was asked to stay at home until further notice. In September 2015, he went to receive 1 X 6 loan but was advised by his superior not to take it otherwise disciplinary measures would be taken against him. He also alleged that the institution continued to pay his salary from September 2015 to November 2016 but he did not withdraw the money from his account where the money was being paid.

He further alleged that in November 2016 his superior called him to report to the office. When he arrived he was told that an audit exercise had been conducted and it was revealed that his salary was flowing while he was not going to work. He confirmed the statement.

On 18 November 2016, he withdrew the money that was paid into his account and paid it back to the accounts of the institution. He was asked to write requesting reinstatement but his request was not considered.

FINDINGS

The complainant was employed by a public institution and posted to the provinces with effect from 17 June 2014. On 12 August 2014, the senior officer under whom he was working reported that he had not been reporting to work. On 16 September 2014, his head of institution was informed of his absenteeism without permission and requested the stoppage of his salary and dismissal.

On 20 October 2014, the complainant was queried and was requested to urgently justify his absenteeism since July 2014, failure of which would result to his dismissal. On 16 December 2014, he replied to the query claiming that he was sick for the past 5 months and underwent both medical and local treatment without notifying the authorities.

After officials had deliberated on the complainant's issue, he was instructed in 2016 to return the salary that was paid into his account. He complied and returned all the salaries from October 2015 to October 2016 which amounted to D34, 095(thirty four thousand and ninety five dalasi).

On 19 September 2017 it was decided that the complainant's services be formally terminated with effect from 16 September 2014. Through letter dated 21 September 2017, the complainant was informed of the termination of his services.

The Ombudsman challenged the relevant authority as to the legality of their action because the complainant's service was terminated on 16 September 2014 but he was not informed until 21 September 2017. They said that the termination of the complainant's service was legal that was why the term "retrospective" was used. He admitted that the complainant should have been informed of the situation and advised the complainant to write if he believed that he was eligible for compensation.

CONCLUSION

The complainant behaviour infringed clause 4.4.3 of the Code of Conduct which states "a civil servant shall be punctual in the execution of his duties." The Ombudsman upheld the decision to terminate the complainant's service since he had absented himself from work without approval. The complainant had spent less than ten years in the civil service therefore he is not eligible to be paid terminal benefits.

The Ombudsman upheld the decision to terminate the complainant's service since he absented himself from work without approval. Since the complainant had spent less than ten years in the civil service, he is not eligible to be paid terminal benefits.

CASE NO: 7/2017
NATURE OF COMPLAINT: Unlawful Dismissal

COMPLAINT

The complainant was appointed as assistant commissioner in 1979 and posted to one of the regions where he served until 1983 when he was transferred to another region. In 1989, he requested departmental transfer to one of the area councils. His request was granted and he served the council as development officer for one year after which he was transferred to another council in 1990.

He alleged that in June 2000, he was issued with a dismissal letter. No reason was given as to why he was dismissed. He further alleged that it was as a result of his failure to fuel some APRC vehicles which were supposed to go to a meeting.

FINDINGS

The institution informed the Ombudsman that according to their records complainant was, together with other staff members, retired on 23 November 2000. His gratuity documents with eight other members of staff were forwarded to the auditor general for verification.

Thereafter, the complainant was entitled to be paid a monthly pension of D520. Records showed that the complainant is being paid a monthly pension of D520 to his account with the Trust Bank Limited.

CONCLUSION

Since the complainant was being paid his monthly pension, the case was closed accordingly.

CASE NO: 28/2017
NATURE OF COMPLAINT: Claiming payment arrears

COMPLAINT

The complainant was a member of the National Provident Fund. Initially he was issued with a membership number B1814 which was later replaced with number 2021814. In 2003, he applied for payment of his pension and was paid D 34,692.99. He alleged that his 2006 and 2015 statement of account showed he had a balance of D20, 108.69 and D31, 661.12 respectively. He made another request in December 2017, to collect the remaining balance of his provident fund account but to his surprise, he was informed that all his benefits were paid in 2003. It was explained to him that the balance reflecting in his statement of account was an error resulting from the failure to close his account.

FINDINGS

The complainant was paid his full benefits amounting to D34, 692.99 on 4 April 2003 and a receipt was issued to that effect. The balance which continued to reflect on the complainant's statement of account was a mistake due to oversight and the anomaly has been rectified accordingly.

The complainant admitted that he had not been working since then, which confirmed the institution's claim of error in their system.

CONCLUSION

Since the complainant had not been working, therefore he was not entitled to any additional contribution. However, the Ombudsman advised the institution to regulate its system and desist from issuing statements to members whose accounts had already been closed to avoid misunderstanding.

COMPLAINT NO:

50/2017

NATURE OF COMPLAINT:

Unlawful Termination

COMPLAINT

The complainant explained that in July 2014, he was asked to go and work as fire officer at a public institution. He alleged that he worked for six months unpaid but was later given a drawback of six months 'salary arrears on the seventh month. In March 2015, the institution appointed him as plumber and started paying him salaries attached to that post despite being a fire officer.

On 1 July 2015, he was reappointed on promotion as fire officer on grade 7 even though it was agreed at a meeting that he should be paid salary on grade 9. In April 2015, he had an injury on his way home from work and as a result he was diagnosed with diabetes. He had managed with this condition while effectively working until 21 May 2015 when he got admitted to the Serrekunda Hospital and discharged on 15 June 2015.

During admission, his right leg was amputated below knee which had delayed his resumption to duty since he had been regularly visiting the hospital for daily dressing. Knowing that he could not resume immediately, he wrote to the institution explaining his condition. Besides, he was given 6 months' excused duty which was indicated in his medical report. To his dismay, he was written a letter dated 30 December 2015 that his appointment as fire officer was revoked effective 31 December 2015.

FINDINGS

The complainant was appointed as assistant plumber at the said institution with effect from 1 March 2015 on a month to month basis. Three months later, he was appointed as fire officer grade 7 with effect from 1 July 2015.

He was on probation when he was informed that his appointment as fire officer was revoked with effect from 31 December 2015. No reason was given for such decision and he was paid one month salary in lieu of notice.

On 9 November 2015, he wrote to inform them that he had been suffering from diabetes and had been experiencing high sugar level since July 2015. As a result he was admitted for almost one month at the Serrekunda Hospital. His condition was gradually improving but the wound he sustained on the leg was yet to heal. This was the reason for his long absence from work but they failed to pay heed to his letter.

Medical report from the Serrekunda Hospital revealed that he was admitted on 21 March 2015 and discharged on 15 June 2016. The medical report shows that he was suffering from a septic gangrenous diabetic foot which was associated with severe pain and high grade fever. After a week without much improvement, he was amputated below knee on the right leg. He was placed on antibiotic and insulin and discharged a week later.

He was not confirmed in his appointment and he had failed to produce a certificate of medical fitness or certificate of character as required by General Orders 02107 before being offered an appointment.

Following the amputation of his right leg, his employers did not refer him to a medical board to determine whether he was fit to continue duty or be retired on medical grounds before rescinding his appointment.

He failed to adhere to the provisions of Section 02114 (h) of the General Orders which states that a permanent appointment will not be effective until after the appointee has passed a medical examination and provide a certificate of character from the police.

CONCLUSION

Since the complainant's health condition to perform his duty was an issue and the fact that he had failed to comply with Section 02114 (h) of the General Orders to provide a medical certificate to show that he has passed a medical examination, his appointment was not effective. The case was dismissed under section 9(3) (a) of the Ombudsman Act as frivolous and not made in good faith.

COMPLAINT NO:

82/2017

NATURE OF COMPLAINT:

Indefinite Suspension

COMPLAINT

The complainant stated that he first worked as generator operator on daily wages for council before he was later employed on permanent basis as engine operator on 15 July 1999. He stated that buying cash power for the council meters was later added to his responsibility.

In October 2016, the management of the council discovered variations in the total expenditure of cash power and the actual purchases. The records indicated that a total of D340, 000 was paid in his name for the month of October 2016 for the purchase of cash power. The purchase was for the two meters at the head office and the annex. Notwithstanding, the actual purchase of cash power for October 2016 was D180, 500 according to a print out from Nawec.

He further alleged that he was called and queried. He added that he produced receipts in his possession and also informed management that cheques issued in his name were sometimes rejected by the bank but he would borrow from accounts to be refunded later.

He stated that following the above mentioned query, he was suspended indefinitely effective 2 November 2016. He concluded that sometime in January 2017, he wrote to the council for consideration of his plight as a suspended member of staff but to no avail. He urged the Ombudsman to intervene for redress.

FINDINGS

The complainant was appointed as engine operator with effect from 1 July 1999. He was suspended indefinitely on 2 November 2016. The suspension was based on the discovery of a negative variance between the total expenditure on cash power and the actual purchases for the month of October 2016.

It was stated in the suspension letter that a total amount of D340, 000 was paid in the complainant's name in the month of October 2016 to purchase cash power for the two meters in the main office

and the annex. It was further stated that the total purchase of cash power for the period according to records provided by Nawec stands at D180, 500 leaving an outstanding amount of D115, 500 unaccounted for.

Our investigation revealed that the following amounts were paid in the complainant's name: D50, 000 on 3 March 2016, D50, 000 on 24 October 2016, D120, 000 on 5 October 2016 and D120, 000 on 17 October 2016.

The complainant denied signing one of the vouchers No: 6079 thus denying receiving the money. As a result we requested the statement of account from the bank to verify who actually debited the amount. The statement of account disclosed the complainant as the receiver of D120, 000 dated 20/10/2016 on Cheque No. 6079. Therefore, the actual amount paid to him for the reload of cash power for the three meters was D340, 000.

Our investigation on the cash power printout from Nawec revealed that no cash power purchase was made for the meter No: 07049361780 which was identified as the meter No. for the Annex. The cash power printout we received from Nawec only indicated cash power purchased for the two meters at the main office which is Meter No: 01321337253, and Meter No. 07072277499. The actual purchase of cash power for the two meters was D165, 500. A subtraction of the total amount paid in the complainant's name for the purchase of cash power amounting to D340, 000, from the actual purchase of cash power amounting to D165, 500, leaves an outstanding balance of D174, 500 unaccounted.

Going through the evidence above, we have noted that the complainant had suppressed D174, 500 from the D340, 000 paid in his name for the purchase of cash power on the three meters.

CONCLUSION

The Ombudsman recommended that the institution should take the right disciplinary measures in addressing this issue and the complainant should be surcharged to pay the amount he had suppressed from the council's fund. The Ombudsman dismissed the complaint in line with section 9 (3) (a) of the Ombudsman Act.

COMPLAINT NO:

95/2017

NATURE OF COMPLAINT:

Wrongful Termination

COMPLAINT

The complainant was employed as state enrolled nurse midwife in 1994. He was once on duty when a prison officer came with his sick father and wanted immediate treatment. He told him that he was attending to a private delivery at the labour ward and asked him to go to the outpatient but that did not go well with the officer. The following day, the prison officer reported him to his superiors that he refused to attend to his father and further alleged that he suspected him to be under the influence of substance because of his aggressive attitude. Few days later, his institution wrote to the Public Service Commission recommending that his service be terminated. The accountant general was also directed to stop his salary. After three months of work without pay, he had no choice but to stop working. He urged the Ombudsman to intervene for redress.

FINDINGS

The complainant was appointed as state enrolled nurse and midwife in 1994. On 3 January 2008 his permanent secretary informed the Personnel Management Office that he had received a report of complainant's poor attitude to work from the officer in-charge of the health centre where complainant was posted. He frequently report to work in very bad state of drunkenness and at the same time very aggressive and as a result he nearly fought with a deputy head of a public institution.

The complainant was also accused of charging for STI treatment and would also ask patients to pay for antenatal cards when they are supposed to be issued free of charge which became a concern for both the staff of his health centre and the community.

It was revealed that the complainant acted in a similar manner in his previous posting at a different health centre and as a result he was transferred and strongly admonished to desist from such unprofessional attitude.

The complainant refused to change his attitude and continued to act in an unprofessional manner. As a result, the permanent secretary recommended for his dismissal from the service. Evidence from his personal file revealed that he left the civil service unceremoniously but was later reinstated and warned seriously to desist from such behaviour.

Despite the warnings, there was no improvement in his unethical behaviour of persistent drunkenness during working hours. His supervisors at the various health facilities he worked with felt very uncomfortable to work with him bearing in mind the safety of patients and the community at large.

On 21 August 2008 the Public Service Commission approved the termination of his service from the civil service.

CONCLUSION

In view of the above findings, the Ombudsman upheld the decision of the Public Service Commission to terminate the complainant's service.

COMPLAINT NO:

110/2017

NATURE OF COMPLAINT:

Wrongful Termination of Service

COMPLAINT

The complainant stated that he was appointed as development officer effective July 2017. In November 2010, he was promoted to the position of acting executive secretary.

He alleged that he was issued with a termination letter dated 1 July 2014. It was indicated in the said letter that he was re-designated as development officer. On 11 August 2014, he was again issued with another termination letter dated 7 August 2014 stating that "further to his termination he would be paid a month's salary in lieu of notice plus 6 months' salary in accordance with the Labour Act which would be paid in instalments.

He complained that at the time of terminating his services as executive director, the position of development officer to which he was re-designated had not existed. He claimed the payment of his terminal benefits.

FINDINGS

The complainant was appointed as development officer effective July 2007. He rose through the ranks to the position of executive director effective 1 February 2014.

On 1 July 2014, his appointment as executive director was terminated and he was re-designated to the position of development officer with immediate effect on 1 July 2014.

On 7 August 2014, his appointment as development officer was also terminated but with a promise that he would be paid his salary and a month's salary in lieu of notice plus six months' salary in accordance with the Labour Act and such payment was to be effected in instalments.

The ministry acknowledged that the issues raised by the Ombudsman were undisputable. In other words, the facts as stated therein were incontrovertible. They added that the institution has been instructed to pay the complainant's salary and one month's notice, and in addition six months' salary in accordance with the Labour Act.

Our investigation did not reveal any valid reason for which the ministry could summarily dismiss the complainant since none was provided in his termination letter. In such circumstances, a conclusive presumption is raised that the termination of his contract after five months was unlawful. Thus, the remaining of his 2 year contract was 1 year 8 months.

Furthermore, the Act of the institution provides for it to appoint its staff. In addition, section 231(5) of the 1997 Constitution of the Gambia provides inter-alia that "the power to make appointment to a public office includes the power to dismiss any person so appointed". If the institution is the body empowered by the Act to appoint its staff, then it is also vested with the powers to dismiss or terminate the appointment of its staff and not the ministry.

It follows that the ministry had no power to terminate his appointment as development officer since it was not the appointing authority. In addition, the payment of six months' salary in lieu of notice presumed that the complainant was made redundant. Section 57 of the Labour Act stipulated six months' notice period in the case of redundancy or payment in lieu of notice. Like any other termination of appointment, the employee is entitled to know the reason for his termination which must be spelt out in the termination letter. In the absence of a valid reason, the law presumed an unlawful termination. As a general rule, no public servant shall be removed or reduced in rank or other punishment without just cause as stipulated under section 169 of the 1997 Constitution.

Finally, a contract of employment for a specified period, as in the instant case, terminates automatically on the date specified for its termination unless it is renewed or prolonged. In addition, at the time of the termination or end of the contract, the employee is entitled to be paid all remuneration and accrued benefits due. This is tenable in the case of an unlawful termination. Furthermore, the termination of his employment as a development officer by way of redundancy did not follow the right procedure and has no legal basis since it was made by the ministry without the requisite power to terminate his service.

RECOMMENDATION

In light of the above, the Ombudsman recommended for the payment of all remuneration and accrued benefits due in his 2-year contract of employment as executive director.

The Ombudsman further recommended that the ministry adheres to the provisions of the said Act and desist from encroaching into powers vested in other bodies in terms of appointment and dismissal/termination of employees' services.

CONCLUSION

On 3 July 2019, the ministry informed the Ombudsman that it had asked the complainant's institution to take the necessary actions to ensure that the complainant's entitlement as former executive director is paid. The ministry further informed the Ombudsman that another institution under the ministry had been contacted to engage the complainant.

The complainant confirmed to the Ombudsman that he had been redeployed and his services transferred including all his benefits to this institution as principal personnel officer. He complained to the minister and he promised to regularize his appointment.

COMPLAINT NO: 120/2017
NATURE OF COMPLAINT: Claiming Salary Arrears

COMPLAINT

The complainant stated that he was enlisted into a security institution in 1989. In 2011, he was sent on peace keeping mission to Darfur, Sudan, for a period of one year. Upon his return from Darfur on 6 December 2012, he was arrested and imprisoned together with five colleagues until 26 May 2013, when he was allowed to have access to his family. He was charged with visiting guard post daily and engaging in sexual relationship with a female officer while in Darfur. He alleged that while he was on detention for fourteen (14) months his salary was not paid. He further alleged that he was tried before a court martial, found guilty and sentenced to 22 months imprisonment. He claimed his unpaid salaries for the period he was under detention prior to his conviction and sentencing by the court martial.

FINDINGS

On 7 May 2013, the complainant, together with five (5) other accused officers, was arraigned before a disciplinary court martial. The complainant was charged with scandalous conduct of officers contrary to section 60(2) of the institution's Act and disobedient to lawful command contrary to section 48 of the same Act.

The complainant was found guilty and sentenced to a jail term of 22 months which expired on 23 April 2015 as stated in the certificate of expiration of his term of imprisonment.

CONCLUSION

On 22 June 2017 the Ombudsman requested for clarification on the complainants claim of fourteen (14) months unpaid salary during detention. Consequently, on 5 February 2018, the complainant was paid D23, 293 being salary arrears for the period March 2013 to February 2014.

COMPLAINT NO: 139/2017
NATURE OF COMPLAINT: Claiming IFMIS Allowance

COMPLAINT

The complainant was appointed as assistant records clerk on 13 May 2008. He was later promoted as records clerk on grade 3. On 21 January 2015, he was again promoted to records supervisor II on grade 4, effective 1 January 2015. He alleged that on 13 June 2017, he reported to work after 9am and when he was signing the attendance register the head of the institution saw him and confronted him on his reporting time to work.

He stated that he explained to him that he was late because he went to collect money for his mother and he had informed his supervisor but the head of institution said he should have been informed which the complainant admitted and apologized.

The complainant further alleged that when he went to collect his June salary and realized that his Integrated Financial Management Information System (IFMIS) allowance was not paid. He enquired from the accountant but was informed that it was a directive from the head of institution.

FINDINGS

The complainant was appointed as assistant records clerk with effect from 13 May 2008 and posted to a department. On 30 December 2009, he was promoted to the position of records clerk and posted to another department.

The complainant was confirmed in the permanent and pensionable establishment with effect from 26 June 2013. He was promoted to records supervisor II with effect from 1 January 2015.

On 13 June 2017 the complainant reported to work at around 10:00am in short trousers with very rough appearance. This contravened clause 4.4.3 of the Code of Conduct which states “civil servant shall be punctual in the execution of his or her duties.”

He signed the wrong time of arrival on the attendance register. He was asked to sign the exact time he reported to work. He was questioned as to the reason of his lateness, he stated that he was sick and passed through the hospital. He was asked to produce his hospital papers for verification, but he changed his story stating that he passed through somewhere to collect his money. He insisted that the head of the institution should not ask him but his supervisor from whom he obtained permission.

The complainant’s demeanour was very disrespectful to the head of institution and this triggered the head of institution to inform the complainant’s employers about the incident and requested that he be transferred and his IFMIS allowance be stopped with immediate effect

It was found that the IFMIS allowance was not part of the complainant’s pay roll entitlement and it is not paid as of the government payroll.

CONCLUSION

The complainant’s demeanour toward the head of institution contravenes clause 6.1.1 and clause 6.1.2 (3) of the Code of Conduct. The Ombudsman upheld the decision to stop his IFMIS allowance and the complainant’s subsequent transfer to another department.

The Ombudsman further recommended that the complainant should behave in a manner that is professional and retains the confidence of all with whom he has dealings, failing which stern disciplinary measures would be taken against him by the relevant authority.

COMPLAINT NO:

149/2017

NATURE OF COMPLAINT:**Unlawful Dismissal****COMPLAINT**

The complainant was appointed as accounts clerk in 1968. He has worked in various government departments. In 1992, he was promoted to the position of principal accountant and was posted to a ministry where he worked until May 2002 when he was issued with a dismissal letter.

FINDINGS

The complainant was appointed as accounts clerk in 1968. He worked in various government departments and in 1992, he was promoted to the position of a principal accountant and posted to the said ministry where he was dismissed on 8 May 2002.

The Ombudsman wrote to the permanent Secretary of the said ministry requesting for clarification on the allegations made by the complainant. The ministry informed the Ombudsman that the complainant was not directly under the ministry and referred the office to the relevant authorities.

However, the relevant authorities informed the Ombudsman that the department could not find any records relating to the circumstances surrounding the dismissal of the complainant.

The Ombudsman wrote to the Personnel Management Office requesting them to shed more light on the circumstances that led to the complainant's dismissal. Subsequently they wrote to inform the complainant that the PSC has concurred with the executive decision to rescind his dismissal.

The complainant was reinstated from the date he was dismissed and retired from the service of the Gambia government with effect from 30 December 2008. He was informed that the period from the date of his dismissal to retirement date will not attract any payment of salary. However, his service would be connected for the computation of his retirement benefits.

CONCLUSION

The complainant informed the Ombudsman that he was paid his retirement benefits and the case was closed accordingly.

COMPLAINT NO:**167/2017****NATURE OF COMPLAINT:****Injury Compensation****COMPLAINT**

The complainants alleged that they were appointed by a public institution to various positions. They alleged that on 7 August 2016 while driving towards CRR north, they had an accident at Panchang village, CRR and were rushed to Kuntaur Health Centre for medical treatment.

They were later referred to Bansang General Hospital for further medical treatment and on 8 August, 2016, they were again referred to Edward Francis Small Teaching Hospital (EFSTH). They also alleged that some of them were compelled to seek medical treatment outside the country because of their condition.

They further alleged that in 2016, they wrote a letter to their head of institution at the time requesting injury compensation but were given only D2000 each as honorarium. The complainants then demanded adequate compensation for the pains and suffering they had undergone.

FINDINGS

When the institution was contacted for their reaction on the allegation of the complainants, they requested the Ombudsman to give them time to handle the matter and to update the Ombudsman of the outcome.

CONCLUSION

The four complainants were each paid D9563 as injury compensation.

COMPLAINT NO:

169/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant said that he was enlisted into a security institution effective 3 August 2015. He alleged that on 26 October 2016, he was dismissed from the service by his head of institution. He added that his dismissal was made verbally without any reason.

FINDINGS

The complainant was enlisted into the said institution effective 3 August 2015 and was dismissed from the service sometime in October 2016. His dismissal was on account of seven counts of offences he was alleged to have committed: wilful disobeying of lawful orders; absence from duty without leave; wilful misconduct; making a false accusation against any officer knowing that such is false; holding over any complaint or report against any officer; making or joining in making anonymous complaint to a superior officer; and making frivolous or vexatious complaint or making a complaint in an irregular manner.

The complainant was tried in absentia. The charge sheet was not dated or signed.

Investigation also reveals that the particulars of offence contradict the statement of offence expressed in the seven counts. The particulars of offence were inadequate to sufficiently clarify as to how the complainant's acts or omission resulted to each of the alleged offences. In order words the complainant was not informed how his acts or omission resulted to the above seven counts of offences which is necessary to ensure a fair hearing. The consequence of such failure to state the particulars of offence after each count (i.e. informing the complainant what wrong he had committed which had led to the pressing of such counts) is to render the charge sheet materially defective.

Furthermore, section 24(1) (a) (b) of the 1997 Constitution provides that every person charged with an offence shall be afforded a fair hearing. To protect this right, section 110 of the Criminal Procedure Code also provides that every charge sheet must contain statement of offence with which the accused person is charged together with such particulars as may be necessary for giving reasonable information as to nature of the offence charged. By this provision every statement of offence must be followed, immediate, with the particulars of offence giving sufficient explanation to the accused as to which of his or her acts or omission resulted to such alleged offences. This is to afford the accused person a fair hearing and to allow him or her prepare for his defence.

Furthermore, section 169 (1) (b) of the 1997 Constitution provides that "No public servant shall be removed from office or reduced in rank or otherwise punished without just cause".

RECOMMENDATION

Since the complainant's dismissal was triggered by the seven counts of offences he was charged upon a charge sheet which itself was materially defective, the Ombudsman acting on the provisions of section 4 of the Ombudsman Act 1997 Cap: 7:08 Vol. 2 Laws of The Gambia, recommended for reinstatement of the complainant.

CONCLUSION

The institution acted upon the recommendation of the Ombudsman and the complainant was reinstated.

COMPLAINT NO:

189/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant alleged that he was appointed as trainee detective effective 1 June 2004 and worked for two and a half years. He further alleged that on 30 November 2006, he was dismissed. He added that the reasons given for his dismissal, as alleged in his dismissal letter, were in connection with his performance in the final examination at the training school and his productivity at work. He debunked the reasons given for his dismissal as unfounded and further alleged that his performance at the final examination and his productivity at work were exceptionally good.

FINDINGS

The complainant was appointed as trainee detective effective 1 June 2004. He underwent the basic recruitment training and sat to the Personal Assessment Exams wherein he scored an average mark of 96 per cent.

On 7 December 2006, his appointment was terminated. The reasons were based on his overall productivity at work and on his performance in the last exam.

However, an investigation conducted by the institution's current administration in response to the complainant's allegation of wrongful termination revealed that his performance in the last examination was beyond average. The conclusion that could be reached is that the reasons provided by the former administration in terminating his employment were false. In addition, he was remarked by his instructor as having a very high sense of commitment.

CONCLUSION

Since there were no valid reasons for the termination of his employment, the Ombudsman recommended for his reinstatement with immediate effect. The institution complied and the complainant was reinstated on 16 January 2019.

COMPLAINT NO:

199/2017&216/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainants alleged that they were appointed as trainee detectives effective 1 June 2004. On 13 October 2009, they were dismissed without the proper notice period or the provision of a valid reason for their dismissal.

FINDINGS

The complainants were appointed as trainee detectives via letter ref: PR/C/D/4029 (3) and PR/C/D/40 31 May 2004. They were dismissed on 13 October 2009 without notice and the provision of a valid reason as required by law.

Nothing adverse or incriminating was found in record against either of the complainants. Section 169(1) (b) of the 1997 Constitution of the Gambia provides that “No public servant shall be removed from office or reduced in rank or otherwise punished without just cause”.

Since the complainants’ dismissal could not be supported with evidence, their dismissal was done without just cause.

The Ombudsman recommended that the complainants be reinstated.

CONCLUSION

The institution complied with the Ombudsman’s recommendation and the complainants were duly reinstated.

COMPLAINT NO:

204/2017

NATURE OF COMPLAINT:

Indefinite Suspension

COMPLAINT

The complainant alleged that in June 2004 the former president made a pronouncement at a political rally that a certain sand mining area be handed to his institution. An executive directive was issued to the effect followed by a general order which stated that all councils in the country must settle at least 50% of their electricity bills before end of September 2004. An account was opened for the funds generated from the mining industry for the council to meet the target.

In his capacity as director of finance, he met Nawec officials to discuss payment plans for the settlement of the debts amounting to D3.7 million. After one month collection of revenue from the mining, a memorandum of understanding arising from his meeting with Nawec indicated that his council must pay a down payment of D500,000 and the balance of D3.2 million to be serviced by instalment for a period of 8 weeks at the rate of D200,000 per week. This payment reduced the arrears to D1.6 million by the time he was removed from office.

He further alleged that a senior government official and the chairman of the council requested D100, 000 from the sand mining revenue which he did not grant. Two weeks later, the same senior government official and the chairman went to his office and requested him to produce the summary list of the sand mining collection. They expressed their dissatisfaction on the mode of payment made to Nawec. The complainant provided copies of post-dated cheques paid to Nawec but the senior government official commented that he would make sure of his removal as director of finance.

A week later the complainant and the chief executive officer were arrested and detained for 2 weeks. Investigation was conducted but they were not found wanting for any crime. After 1 year of waiting, the CEO was reinstated but the complainant was on indefinite suspension without salary.

The complainant alleged that since the investigation report and Justice Paul Commission exonerated him from any criminal activity, he believed there was no justification for his indefinite suspension without salary.

FINDINGS

The complainant was appointed as assistant treasurer number one with effect from 1 December 2000. He was appointed as acting treasurer on 28 August 2001 and later promoted as treasurer on 18 October 2002.

The complainant petitioned the Office of the President on 28 June 2017, concerning his indefinite arbitrary suspension. He was informed that his petition had been forwarded to the Office of the Ombudsman for review and he would be informed of the outcome once it was finalised.

On 10 May 2018 the council informed the Ombudsman that it did not suspend the complainant. However, he was accused by the government of embezzlement of council's revenue accrued from the sand mining and as a result he was arrested for further investigation.

The relevant ministry was contacted on the issue. They informed the Ombudsman that they could not find any correspondence relating to the complainant's case. They referred the Ombudsman to the security institution that handled the matter.

That institution was contacted and they informed the Ombudsman that the complainant was investigated by a defunct institution on the issue of revenue collected from the sand mining.

An interim report dated Monday 24 January 2005 revealed that the summary of cash received by the cashier in the month of July 2004 was D896, 970 while the actual collection in the cash books revealed D1, 004,894 in the same month.

In August 2004, the sum collected was D530, 329 while in the summary presented by the cashier stated an amount of D695, 277.

In September 2004, according to the cash book the amount collected was D373, 660 while in the summary presented an amount of D574, 144.

In October 2004, according to the records in the cash book the amount collected was D890, 299 and paid to the cashier but in his summary it was stated that the amount collected was D527,092 therefore the difference of D363,207 needed an explanation.

In November 2004, the amount collected was D321, 478 according to the cash book but in the summary it stated an amount of D493, 229. Therefore the difference in the cash books indicated a less payment of D171, 751.

In December 2004, according to the collector's petty cash book the amount collected was D1, 251,124 while the summary of the statement made by the cashier did not reflect the amount

collected for the period, therefore there was the need for both finance director and cashier to explain thoroughly in writing.

In January 2005, the collector's cash book and receipts of payment to the cashier, revealed that they jointly collected D371, 739 up to the time of their last payments to the cashier which is also not included in the summary of the cashier's statement.

The Arab Islamic Bank and Guaranty Trust Bank were requested by the investigating institution to provide printout of bank statements to facilitate the investigation process. Up to the time of writing the interim report, D4, 743,524 were collected from July 2004 to January 2005.

The statement obtained from the complainant by the investigators could not be traced. Efforts to produce the full investigation report proved futile. The conclusion of the investigators is not known and the circumstances that led to the complainant's indefinite and arbitrary suspension is also not known.

The investigators released both the complainant and the cashier without recommending any charge against them. They reported to work at the council but only the cashier was allowed to resume duties and he served the council until his retirement whilst the complainant was told that he had been replaced. He was not issued with a termination or dismissal letter. He was left in limbo.

RECOMMENDATION

Relying on the fact that the complainant wasn't charged and taken to court after the investigation, his release and subsequent reporting for duties at the council (even though his position was already filled) suggest that the complainant was not found guilty of the allegations and therefore the indefinite suspension should be lifted, his services connected and his retirement benefits paid.

The Ombudsman thus recommended that the complainant's indefinite suspension be lifted with effect from the date he was verbally suspended and as well to retire him from the service of the Gambia Government with effect from 1 January 2013; the date he was due to proceed on retirement.

The period the complainant was verbally suspended indefinitely to his retirement date would not attract any payment of salary. However, the complainant's service should be connected for the computation of his retirement benefits.

The council was ordered to initiate the computation of the complainant's retirement benefits. The complainant was paid D284, 000 as gratuity and he thanked the Ombudsman for his intervention.

COMPLAINT NO:

207/2017

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was appointed as administrative officer on 2 April 1984 at a council. He alleged that he held the position of acting deputy town clerk for 3 years and got promoted to town clerk in 2012. Two years later he applied for 2 months annual leave to be deducted from his 10 months accumulated leave arrears but approval was granted for him to proceed on 10 months annual leave. He added that he attained 45 years during the period of his leave and he was served with a

summons to the Paul Commission (a commission of enquiry into the assets of public officers) and after the interrogation he was released.

He further alleged that in March 2015, he was arrested by the then NIA and served with adverse recommendation letter from the commission ordering him to make several payments without following proper judicial procedures. He was served with a dismissal letter dated 23 March 2005.

His dismissal emerged based on a directive on the report of the presidential commission of inquiry into the assets, properties and activities of public officers from the period 22 July 1994 to 22 July 2004. The complainant was with the conviction that his dismissal should have been from the council and not the ministry.

FINDINGS

The complainant's dismissal was as a result of the report of the Presidential Commission of Enquiry into the Assets, Properties and Activities of Public Officers in the former regime of President Yahya A. J.J. Jammeh.

The provisions of section 9 (2) (b) of the Ombudsman Act 1997 states that the Ombudsman does not have the power to question or review the decision of any tribunal established by law.

CONCLUSION

Based on the above findings, any further investigation by this office will be unnecessary, improper or fruitless. The investigation was discontinued.

COMPLAINT NO:

208/2017

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant alleged that he was employed by a public institution in 2004 and served the office efficiently to the best of his ability. He further alleged that he took his annual leave from 24 April to 25 May 2009 to undergo a medical check-up in Germany. While in Germany, he was informed by a friend of his dismissal from the services. When he called the management for clarification they replied to him in the negative.

Two months after his leave and medical treatment, he returned to the Gambia and reported to work. Unfortunately, he was dismissed the same day.

FINDINGS

The complainant was appointed on grade three of the government integrated pay scale on 31 May 2004.

On 24 April 2009, approval was granted for him to proceed on a month's annual leave and was supposed to resume duty on 25 May 2009.

On 13 October 2009, the complainant was dismissed. He was asked to surrender all official materials in his possession.

A petition by the complainant was sent via the Personnel Management Office (PMO) to the Office of the Ombudsman for investigations.

The Ombudsman requested his institution to clarify the reasons for the complainant's dismissal. The institution on 4 September 2018 informed the Ombudsman that the complainant was dismissed upon returning from his annual leave and that no reason for his dismissal was stated in the letter. The report further indicated that as per his personal file, he had been found to be very disciplined and hardworking and nothing adverse had been found against him.

CONCLUSION

Since his dismissal was wrongful and the fact that the complainant was very hardworking and disciplined. The Ombudsman recommended for his reinstatement. The recommendation was adhered to.

COMPLAINT NO:

213/2017

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

The complainant alleged that he joined the civil service in 1980. He further alleged that since he attained his BSc. and MBA in 1998, he had been under constant suppression in the civil service. He added that his promotion had been targeted in annual increment from 1999 to date; that he jammed grade 8 position in 1998 while on study leave.

He added that in 1999, he applied for two vacant positions Grade 10 Grade 9 at a ministry but was not considered. He later applied for departmental transfer to fill a certain principal position but was instead given the position of human resource economist (Grade 8) which he never applied for. He also applied for the position of principal investment officer at a ministry which was vacant in 2002, 2004 and 2010 but was not considered.

In October 2010, he alleged that he was unfairly transferred to a department to fill a certain position. He contended that his transfer was designed to trigger his resignation or other punishment.

He further alleged the non-refund of his per diem which was incurred in his three weeks training course to Nigeria in 2004. He added he was promised to be paid his per diem when he returned but to no avail.

In June 2013, he participated in a study tour trip to Ghana and claimed refund of the cost of his air ticket from Dakar to Accra and concomitant expenses but was not refunded.

He finally alleged that he had also claimed two days' per diem for the two days he spent in Dakar in pursuit of a Brazilian visa to participate in a child labour meeting in Brazil but to no avail.

FINDINGS

Investigation revealed that the complainant had no official clearance from the Office of the President at the time of embarking on such trips. Being a public servant, he ought to have known that, as a public officer, clearance must be sought and obtained before one travels out of the country. Without evidence of a clearance being granted, his claim for the refund of per diem concerning the two days he spent in Dakar and the cost of his air ticket from Dakar to Ghana would have no substance. In such circumstances, the ministry would lack the basis to pay per diem.

Furthermore, investigation on the complainant's claim for per diem regarding his training course to Nigeria in 2004 revealed that the ministry had no knowledge of such training. He was requested to produce evidence of such approval from the ministry to undergo the training in Nigeria but the only evidence he produced was a copy of the certificate he alleged to have obtained from such training. This certificate cannot, by any means be substituted as the approval granted to undergo such a training course to Nigeria.

On the appointment issues, Regulation 14 of the Public Service Commission Regulations provides that "the commission shall consider and decide all matter relating to appointments, confirmation of appointments, acting appointments, promotion and transfers of Public Officers". By section 12 of the Public Service Act Cap 36:10 Vol. 6 Laws of the Gambia, an officer who is aggrieved by a decision of any appointing authority, other than the commission, in the exercise of its powers, may appeal to the commission.

Moreover, going by the complainant's letter to the Ombudsman, his complaint which started in 1999, 2002 to 2010 had been overtaken by events such that our investigation could not obtain the relevant evidence to support his allegation.

CONCLUSION

In light of the above, the case was dismissed in line with section 9 (3) (a) of the Ombudsman Act 1997.

COMPLAINT NO:	235-238/2017
NATURE OF COMPLAINT:	Unlawful Suspension

COMPLAINT

The complainants said that they were employees of a public institution under its finance department as cashiers. On 11 August 2017, they were served with indefinite suspension letters by the management on the grounds that there were discrepancies in the number of patients who received Computerized Tomography(CT) scanning and the monies collected for the period of January to July 2017.

They also alleged that on 10 August 2017, the management set up a sub-committee to investigate the alleged discrepancies. The following day, they were asked by the said committee to submit their cash books, receipts and tickets and they complied. After a thorough check, it was found that their cash books balances tallied.

The complainants further alleged that as investigation on their cases was on-going, they were supposed to be paid half salaries and also be given the chance to explain their side of the story which was never done. They also said that the only contact they have with the patients is when charging them based on the type of scanning required.

They finally alleged that their positions as cashiers at the CT scan started in May 2017 and therefore they should not be punished for discrepancies that occurred from January to April 2017. They added that as far as they are concerned, there had not been any evidence of fake receipts issued to patients during their time.

FINDINGS

The management in response stated that the complainants were involved in financial malpractices at the CT Scan Unit of the Department of Radiology and were reported to management. Later a disciplinary committee was constituted to investigate the matter and submit their findings and recommendation.

The disciplinary committee came up with the following findings:

One of the three complainants was posted at the CT Scan Unit from 2 May to 4 June 2017. She submitted D88, 000 (eighty-eight thousand dalasi) to the accounts department but according to the head of radiology department, the revenue collected for the said period amounted to D116, 000 (one hundred and sixteen thousand dalasi) leaving a difference of D28, 000 (twenty-eight thousand dalasi).

The other complainant was posted at the CT Scan Unit from 5 June-3 July 2017. He submitted D73,000 (seventy three thousand dalasi) to the accounts department while according to head of radiology department, the revenue collected with receipts attached on CT scan request forms for the said period amounts to D166, 000 (one hundred and sixty-six thousand dalasi) leaving a difference of D93, 000 (ninety-three thousand dalasi).

The third one was posted at the CT scan Unit from 3 to 31 July 2017. He submitted D58, 000 (fifty-eight thousand dalasi) to the accounts department while the head of radiology recorded D162, 000 (one hundred and sixty-two thousand dalasi) as revenue collected with receipts attached for the said period. A difference of D104, 000 (one hundred and four dalasi) was unaccounted for.

Considering the above revelations, the committee deemed it fit to invite them to shed more light on the above mentioned differences. The complainants were interviewed their cash books, tickets and receipts checked but the committee found out that their records/entries were inconsistent and could not be relied on to establish the cause of irregularities.

Management then decided to further their investigation but this time they were of the view that the complainants' presence in the department could interfere with the on-going investigations thus they decided to suspend them without salary as per section 7 (6) of the Civil Service Code of Conduct which state that "if any officer is suspected of having committed an act of grave misconduct or dishonesty, and the head of department was of the view that his/her presence in the

department could interfere with police or other investigations, or allow him/her to have access to official documents related to the investigation, he/she could be suspended from duty without salary”.

After the investigation by the said committee, they came out with the conclusion that the complainants were guilty of the allegation of financial malpractices. However, the complainants were later recalled on 2 January 2018. The reason for recalling them, according to the hospital, was based on the fact that management wanted to give them a final opportunity to prove their values to the hospital.

However, as far as Ombudsman investigations are concerned, the management did not have substantial evidence to prove that the complainants were actually guilty of the charge levied against them. According to the authorities, their investigation was mostly centred on comparing head of radiology’s collected income for the period under review versus what the complainants submitted to the accounts department. Management however forgot the fact that according to head of radiology in their preliminary report she discovered “that in fact there were many patients visiting the unit but from her observation, most of them were probably not paying to the right authority”.

This was due to the fact that there were different types of receipts attached to the request forms which did not match the hospital’s own. Further in her narrative, she revealed that whenever she asked the patients as to whom they had paid to in cases of such receipts, they often mentioned one man. At another time a patient mentioned paying D2, 000 (two thousand dalasi) to another man.

From the above findings, one can conclude that the management calculated all the monies that were accumulated from both the false receipts and the original ones and compared it to what the complainants submitted to the accounts department. This however, was unfair because the greater sum of those monies recorded in the senior officer’s book were going to the person issuing those false receipts and not in the institutions accounts.

CONCLUSION

Our investigation revealed that management was unable to prove that the complainants were guilty of the alleged malpractices. However, we acknowledged the fact that Section 7 (6) of the Code of Conduct gives the employer such right to suspend without salary whenever they feel that their presence could interfere with on-going investigations but section 88 sub section 3 of the Labour Act also stated that: “where an employee is suspended without pay under subsection (1) or(2), but is not consequently dismissed, the employer shall pay the employee the whole of the remuneration to which he or she would have been entitled had he or she not been suspended”.

RECOMMENDATION

The Ombudsman therefore recommended that the complainants be paid their salary arrears for the period under investigation in line with section 88, subsection 3 of the Labour Act.

The Ombudsman further recommended that management work with the accounts unit and put in place efficient and effective strategies to ensure that all funds collected are deposited at the accounts unit. Proper checks and balances should be put in place for effective monitoring of government funds.

COMPLAINT NO:

239-244/2017

NATURE OF COMPLAINT:**Wrongful Dismissal****COMPLAINT**

The complainants were enlisted into a security institution at different dates. The complainants were all posted at the same unit. In July 2016, they alleged that they received threats of arrest and as a result they absconded to Senegal. After the change of government, they came back to the Gambia and wanted to resume duties but were verbally dismissed.

FINDINGS

The complainants were all employees of the said institution under the same unit.

The complainants participated in a demonstration held on 16 July 2016 at the border between Farafenni and Kerr Ayyub. The reasons which triggered them to join the demonstration were due to the fact that they were fed-up with the way the system was operating. They alleged that they were forced to vote for the former President Jammeh against their will, lack of motivation, farming at the President's farm in Kanila also dispirited them. Following the demonstration, they proceeded to Senegal on 19 July 2016 for safety reasons where they were given refugee status.

On 26 July 2016 the head of their unit sent a message to all the other units informing them of the unlawful absence of the complainants and authorizing their arrest whenever they are seen for disciplinary measures to be taken against them.

All three employees were charged with absence without leave in line with the institution's Act.

CONCLUSION

The complainants' absence from duty without permission was unethical and contravened the rules and regulations governing the institution. In light of the evidence gathered, the Ombudsman upheld the decision of the institution to try them summarily in absentia and to dismiss them. The investigation was discontinued under section 9 (3) (a) of the Ombudsman Act 1997.

COMPLAINT NO:**250/2017****NATURE OF COMPLAINT:****Wrongful Dismissal****COMPLAINT:**

The complainant alleged that he was enlisted into a security institution on 4 October 1994. He was confirmed in his appointment in August 1998 and rose to the rank of chief detective on 1 August 2005.

He further alleged that sometime in 2007, he was part of a team that was tasked to investigate a stolen car owned by the former president, Yahya Jammeh. He added that after the completion of the investigation and before writing the report, he was dismissed on 28 January 2008 without

stating any reason for his dismissal. He finally alleged that he had served the institution with diligence and that his dismissal without any valid reason was wrongful.

FINDINGS

The complainant was appointed as trainee detective effective 4 October 1994. He was confirmed in his appointment on 7 September 1998 and was promoted to the rank of chief detective in 2005

On 28 January 2008, he was dismissed and no reason was given for his dismissal. In addition, investigation by his institution also revealed that nothing adverse or incriminating was found against the complainant.

Section 169(1) (b) of the 1997 Constitution of the Gambia provides that “No public servant shall be removed from office or reduced in rank or otherwise punished without just cause”. Since nothing adverse or incriminating was found against the complainant and he was dismissed without any valid reason, his dismissal was wrongful.

RECOMMENDATION

In view of the above findings, the Ombudsman, acting under the provisions of section 4 of the Ombudsman Act 1997 Cap: 7:08 Vol. 2 Laws of The Gambia, recommended for the appropriate steps to be taken by the institution to reinstate the complainant and communicate to the Ombudsman.

CONCLUSION

The complainant was reinstated on 21 May 2018.

COMPLAINT NO:

267/2017

NATURE OF COMPLAINT:

Injustice

COMPLAINT

The complainant alleged that she was enlisted into one of the security institutions in 2009. She was there until 2013, when she was asked to go home by the head of the institution. She also alleged that prior to her being sent home, her children underwent the traditional circumcision in the provinces. She then applied for her annual leave to attend the ceremony but it was rejected. When the circumcision ceremony was over, another celebration was organized. She wrote another letter asking for some days off and the head of institution granted it to her.

She further alleged that after the celebration, she resumed work but the head of institution denied ever giving her permission. When she showed him the letter, he took the letter from her and tore it. He asked her to go home without issuing her with a termination or dismissal letter.

FINDINGS

The head of administration informed the Ombudsman that the former head of institution was the umpire. He had the power to decide who to enlist, dismiss, discharge or demote in accordance with their rules and regulation.

In her charge sheet, she admitted being guilty of overstaying on leave for 22 working days which, according to the institution's Act, warrants dismissal. She explained in her statement that the reason behind her prolonged absence, was that her husband took her children for circumcision to their village. According to the husband's tradition, no mother of the circumcised children should leave the village until the circumcision ceremony was over. The complainant further explained that when she knew about the tradition, she called her office to request extension of her leave but she was asked to report to the office. She could not come because she was in Cassamance and instead sent her husband's brother to her institution and they gave him a letter indicating that her leave was extended for another 25 working days.

However, the extended leave letter was nowhere to be found.

CONCLUSION

The complainant's case was dismissed due to lack of sufficient evidence to support her claim.

COMPLAINT NO:	270/2017
NATURE OF COMPLAINT:	Unfair Treatment

COMPLAINT

The complainant said that he retired from active service on 1 August 2007. In September 2008, he was awarded a contract. The contract was supposed to end on 31 December 2016. He further alleged that prior to the date of the end of his contract; he received a letter dated 27 April 2016 informing him that his six year contract would end on 31 December 2016. He then went to the director of human resources to appeal for an extension of his contract but it was not granted

The complainant saw this as unfair because one of his colleagues was also affected but the director referred him to PMO. His colleague was given another two years contract.

He finally alleged that he was also denied 25 per cent of his two years contract gratuity while other retired officers were paid.

FINDINGS

The ministry stated that PMO gave directives that all contract appointments with government that ended should not attract renewal except for continuing contracts. The complainant was part of those whose contract ended and his contract was not renewed

PMO stated that the freezing of contract appointments of retired officers in his institution and non-essential contract was a cabinet approval, based on the recommendation of the 2017 Nationwide Staff Audit Report. They further stated that appointments and renewal could not be claimed as a right nor is it granted on automatic basis but purely on need and availability of vacancy.

CONCLUSION

Since PMO confirmed that the freezing of contract appointments of his category and non-essential contracts was a cabinet approval, the investigation was discontinued.

COMPLAINT NO: 281/2017
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The complainant alleged that he was employed by a public institution on 29 September 2014. In January 2015, he got admission to the American International University on scholarship. Before the commencement of his course, he applied for study leave with salary but the institution rejected his request and redeployed him. The human resource manager, asked him to produce surety who can serve as guarantor despite not approving his study leave application.

He also alleged that from December, 2015 to March 2016 while at his place of work, his salary was flowing but in April 2016, his salary was stopped for no reason. This continued until October 2016.

Finally the complainant alleged that after the completion of his programme, a senior officer wrote to the management to pay his pending salary arrears but to no avail. He also lodged a complaint to his superiors for intervention but this too did not yield any positive result.

FINDINGS

According to the institution the complainant was redeployed on 29 September 2014.

In a letter dated 16 March 2015, the complainant applied for study leave to pursue a Bachelor's Degree in Psychiatry at the American International University of West Africa for a period of three years. Prior to management's approval of his leave, the complainant stopped reporting to work and proceeded to pursue his training programme. He was also asked to formalize his request for study leave by signing a surety bond but he failed to comply until 31 February 2016.

They also added that from 16 March 2015 to 31 March 2016, the complainant was not reporting to work while his salary was still paid. That was the reason his salary was withheld effective 1 April 2016.

In November 2016, management was informed by one of the senior officers that the complainant had been reporting to work while pursuing his study programme and requested for the payment of his withheld salaries from April to October 2016. The management in response asked the officer to provide them with evidence to prove his claim but he never did.

As a result, management said they were not supposed to pay the complainant salary arrears because he had not shown any evidence that he was reporting to work.

CONCLUSION

Since both the said senior officer and the complainant were not able to provide the hospital management with evidence that the complainant was reporting to work, the investigation was discontinued.

COMPLAINT NO: 289/ 2017

COMPLAINT

The complainant alleged that he was appointed as minister on 10 February 2012 in the government of former President Jammeh. Before his appointment as minister, he was confirmed in the civil service and rose through the ranks to the position of permanent secretary.

He also alleged that following his appointment as minister, he applied for special leave of absence from the civil service and was granted in April 2012 in a letter ref: 1006436/ (65). He added that the leave of absence was from the date of his appointment as minister until the end of his tenure. There was no specific timeline stated in the letter mentioned above. He also maintained that he was never written to during this period on matters relating to the leave of absence.

He further alleged that at the end of his tenure as minister after the declaration of the presidential election results on 2 December 2016, he notified the relevant authority on the 5 December 2016 informing them of his desire to return to the civil service as permanent secretary. He maintained that he has written two reminders dated 27 March 2017 and 17 August 2017 in respect of his previous correspondence dated 5 December 2016. On 15 November 2017, he wrote to another authority reminding him of his intention to return to the civil service. He received a reply on 6 December 2017 informing him that his request is being processed by another authority and would be notified accordingly. He alleged that no action was taken by the said authority as far as he was aware.

FINDINGS

The complainant was appointed as minister effective 10 February 2012. After his appointment, he applied for special leave of absence dated 26 March 2012. His application for special leave of absence was granted effective from 10 February 2012 for the duration of his tenure as minister of youth and sports.

On 27 December 2016, he resigned from his position as minister. Prior to his resignation, on 5 December 2016, he wrote and requested for a return to the civil service in his previous capacity as permanent secretary. His request was rejected and instead, he was voluntarily retired with effect from 10 February, 2016.

Section 72 (4) of the 1997 constitution of the Gambia provides that “the vice president and secretaries of state shall not (a) while they continue in office, hold any other office of profit or emolument whether public or private”. In other words, a secretary of state, now minister, shall not hold any other public office while continuing to serve as a cabinet minister. The effect of the above constitutional provision is that any public/civil servant who has been appointed as minister should resign from the position he or she holds in the public sector or be removed from such office.

Since the above provision of the constitution is clear and unambiguous, his assumption into political office as minister effective 10 February 2012, extinguishes his position as permanent secretary in the civil service. He was obliged by law not to hold any other office whether public or private and should have resigned from his position as permanent secretary. In this circumstance, his choice to apply for special leave of absence was improper.

CONCLUSION

The complainant's application for special leave of absence and the granting of such application for the duration of his tenure as minister was invalid. The granting of such leave of absence for the duration of his tenure contravenes the provisions of rule 04119 of the General Orders.

COMPLAINANT NO: 290/2017
NATURE OF COMPLAINT: Unlawful Dismissal

COMPLAINT

The complainant alleged that some prisoners were caught with suspected cannabis. When they were asked where they got it from, they mentioned names. This list was posted on the notice board. Two weeks later, the same prisoners gave another list of names different from the one they previously mentioned and his name was included. As a result, he was detained for 35 days. He also claimed that the institution that detained him investigated the matter and found him not guilty. However, he was dismissed effective November 2015 without trial.

FINDINGS

The head of administration at the Gambia Prisons Services informed the Ombudsman that the complainant was re-instated.

CONCLUSION

Based on the above information, the case was closed accordingly.

5.2 UNLAWFUL DISMISSAL

COMPLAINT NO: 3/2018

NATURE OF COMPLAINT:**Wrongful Dismissal****COMPLAINT**

The complainant was enlisted into a security institution in May 2009. He alleged that in April 2014, he was on duty at the gate when the head of the institution was on patrol and found him and other officers at the guard post and accused them of sleeping while on duty. He was charged and his statement was obtained. He pleaded not guilty to the charge but he was dismissed from the service while his colleagues were demoted.

The complainant had the conviction that his dismissal was unfair based on the fact that they were not sleeping on duty. He is seeking review of his dismissal because his job was his only source of earning.

FINDINGS

The complainant was enlisted into the said institution in May 2009. On 25 April 2014, he was on night duty at the gate, when the head of institution was on his usual inspection, and found him sleeping. It was one officer who was not posted at the gate who had to open the gate for the head of institution to enter.

CONCLUSION

The complainant was responsible for providing security. Therefore, he was supposed to stay awake but he slept until another officer from at a different location who saw the vehicle of the head of the institution and opened the gate for him. Based on this act of negligence of duty, the decision to dismiss him was upheld and the complaint was dismissed under section 9 (3) (a) of the Ombudsman Act 1997 for lack of merit.

COMPLAINT NO:**7/2018****NATURE OF COMPLAINT:****Appeal on Dismissal****COMPLAINT**

The complainant was appointed by a public institution as acting director of finance in May 1995 and confirmed in 1996. He worked in various capacities ranging from accounts clerk to manager internal audit.

He alleged that he was indicted by a commission of enquiry for gross negligence and breach of administrative procedures. He opted to sue his institution but he doubted the possibility of fair hearing since the enquiry was initiated by the former regime. The complainant further alleged that the commission alleged that he breached administrative procedures for not doing due diligence check on the finance. To his dismay, the commission recommended for his dismissal. The complainant appealed to the commission to reduce his dismissal to termination and consider his cumulative service from the Federated Pensions Scheme but to no avail.

FINDINGS

The complainant appeared before a commission of enquiry which held him culpable for gross negligence and breach of administrative procedures and as a result he was dismissed.

CONCLUSION

The complainant's dismissal was a directive as a result of the findings of the commission set up by the president. The Ombudsman lacks jurisdiction to investigate the complaint under section 9 (1)

(2) (1) (a) of the Ombudsman Act 1997.

COMPLAINT NO: 18/2018
NATURE OF COMPLAINT: Wrongful Dismissal

COMPLAINT

The complainant was appointed as a driver on 19 February 2014. He alleged that 11 months after his immediate boss was sentenced to prison, he was issued with a dismissal letter on the allegation that he was saddened by the decision taken against his boss.

FINDINGS

Investigations revealed that there was no reason given concerning the complainant's dismissal. No adverse or incriminating evidence was also found to warrant his dismissal.

RECOMMENDATION

Based on the evidence provided to this office, the decision to dismiss the complainant was not reasonable; hence, the Ombudsman recommended the reinstatement of the complainant with immediate effect.

CONCLUSION

The institution adhered to the Ombudsman's recommendation and reinstated the complainant on 1 August 2018.

COMPLAINT NO: 25/2018
NATURE OF COMPLAINED: Unlawful Dismissal

COMPLAINT

The complainant alleged that she was enlisted into a security institution in 2014. She added that prior to her delivery, she applied for confinement leave but it was not approved. She continued to work until her delivery. She went to Brikama District Hospital and sought for confinement leave and it was granted. She proceeded on leave effective 6 November 2017 to 7 May 2018.

She further alleged that while on leave, in December 2017, a nephew to one of her superiors sold a piece of land to her husband but the land had issues and her husband reported the nephew to the police. This did not go well with her superior. She alleged that a senior officer threatened her husband that if he was not careful, he would sack her. She finally alleged that in January 2018, when the list of dismissed officers was published, to her dismay, her name was on the list.

FINDINGS

The deputy head of admin of the institution informed the Ombudsman that the complainant was absent from duty from 2 July to 14 November 2017.

The officer in-charge of the region in which she worked sent a report to her institution the conveying information of her absence after all necessary procedures for her to return to duty proved futile. She was published absent without leave and dismissed on 8 January, 2018.

The complainant rejected the fact that she was absent from work during the period mentioned above. However, a check done on their duty roster and the diary indicated that the complainant was reporting but not regularly. From July 2017 to November 2017, the complainant only reported 8 times to work. The rest were all marked absent excluding the days she was supposed to be off.

According to the Public Service Commission Regulations, if a public officer is absent from duty without leave or reasonable cause for a period exceeding 14 days and the officer cannot be traced within a period of twenty days of commencement of such absence, or if traced, and no reply to a charge of absence without leave is received from him/her within 10 days after the despatch of the charge to him/her, the public officer upon whom disciplinary control is delegated may summarily dismiss him/her, and declare his /her post vacant.

Her institution having such powers acted upon it and dismissed her from the service after all attempts proved futile.

CONCLUSION

The Ombudsman upheld the decision to dismiss the complainant.

COMPLAINT NO:

35/2018

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant was enlisted in a security institution in 2013. She alleged that in January 2016, she was accused of dating a junior officer. She was marched before the head of the institution who in turn insulted her and called her names in the presence of officers and transferred her immediately. Her family pleaded with the head of institution to clear her name from the allegation instead he verbally dismissed her from the service.

FINDINGS

The complainant was confronted by the head of institution and she wrote a letter of resignation dated 25 January 2016. This letter manifested that she wilfully resigned from the service.

Our investigation further revealed that she was not charged with any offence as per her personal file and for that reason her complaint of unlawful dismissal could not be established.

CONCLUSION

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

COMPLAINT NO:

36/2018

NATURE OF COMPLAINT:

Unlawful Termination

COMPLAINT

The complainant said that he was appointed by a public institution in September 2004. In 2016, his head of institution was on a tour to the premises. When the managing director saw him, he accused him of being not punctual and irregular at work which was not based on any grounds. Few days later, he received a letter terminating his service.

FINDINGS

The complainant was appointed on 13 March 2004 as labourer with effect from 11 March 2004. The complainant, upon his satisfactory performance and conduct, was confirmed into the permanent and pensionable establishment of the institution.

On 13 April 2005 complainant was promoted to Grade 2 of the institution's pay scale with effect from 1 January 2005.

The complainant was requested to explain the reason for absenting himself from work for five working days without permission which is contrary to the service rules of the institution. He responded that the allegation of absenting himself from work was a misunderstanding. He stated that he has been reporting to work and the daily register could prove him right.

The complainant was written to on 18 June 2008 that his explanation was not convincing, he was suspended for one week without salary. He was also warned that recurrence of such an act might lead to dismissal.

The complainant was requested to explain in writing the reason for absenting himself from duty and why disciplinary measure should not be taken against him. The complainant responded in a letter dated 1 July 2009 that he was sick and submitted a medical paper dated 24 June 2009, indicating that he was given excused duty for 48 hours.

Despite the medical paper he tendered, he was given a final warning letter to desist from such behaviour, recurrence of which would leave management with no option but to take severe disciplinary action against him.

The complainant was requested on 26 June 2013 to explain in writing why disciplinary action should not be taken against him for failing to report for duties on Sunday 23 June 2013. His absence had resulted in unnecessary delay in the operations which contravenes the service rules of the institution. The excuse he gave was that he reported to Pakala Clinic to dress the wound he sustained. He was warned on 16 July 2013 to desist from such practice or else severe disciplinary action would be taken against him.

The complainant was requested on 18 November 2014 to explain in writing the reason for failing to report for duty since October 2014 and why disciplinary measure should not be taken against him.

The complainant was again requested on 29 July 2015 to explain in writing the reason for absenting himself from duties without permission for five days and why disciplinary measure should not be taken against him. He apologised and asked for forgiveness on humanitarian grounds but his service was terminated on 4 August 2015.

CONCLUSION

The complainant's records showed he was found wanting for unauthorized absence from duty on a number of occasions from the period 2008 to 2015. Despite numerous warnings, the complainant failed to change his attitude. The Ombudsman observed that due process was followed in terminating the complainant's services. However, the Ombudsman recommended that the complainant's terminal benefits be processed and paid accordingly.

COMPLAINT

The complainant was appointed by a public institution and served in different places. In December 2010, she got admission to the University of The Gambia School of Education (B.Ed.) program. She applied for study leave with salary and approval was granted by the relevant authority covering 2011 to 2015. She applied for scholarship from her ministry which was also granted.

At the end of 2015, she could not finish her courses. She wrote to the ministry in 2015 to extend her scholarship and approval was granted. Unfortunately, she did not know that she had to write to extend the study leave. In May 2016, her salary was stopped and when she made enquiries, she was told that they could not accept the extension because she had not written to them. She was told to apply for retrospective study leave with salary extension, but when she wrote, she was told that her request was not approved.

When she finished her program in December 2017 and reported to the relevant authority, she was dismissed verbally from the government service.

FINDINGS

The complainant was appointed with effect from 1 September 2006 to work for one of the public institutions. She was confirmed in appointment in the permanent and pensionable establishment with effect from 1 September 2011.

She was admitted as student in the University of The Gambia to pursue French for 2010/2011 academic year (2 Semester). She was awarded government scholarship on 14 October 2011 to pursue a Bachelor's degree in French and minor in English effective 2011/2012 academic year. She was bonded for 8 years.

Due to ill health, she was unable to finish her programme on time. On 27 June 2016, her institution granted her approval extending her scholarship to cover the five pending courses during the first Semester of 2016/2017 academic year to enable her complete the programme.

She was strongly advised to use this opportunity to complete on time and to notify the permanent secretary in writing on time after completion. She did not finish her programme in the first Semester of 2016/2017 academic year and failed to notify the permanent secretary in writing. All this period, she was receiving salary until it was stopped in May 2017.

The complainant wrote to the permanent secretary on 20 December 2017 to inform him that she had completed her course and had applied for retrospective study leave with salary for the period January 2016 to 5 October 2017. On 7 February 2018, she was informed that her request could not be supported because she left her duty station since January 2016 without authorization from the relevant authorities and without regularising her status.

The decision to dismiss the complainant from the service came as a result of the nationwide comprehensive staff audit exercise. During the exercise she was not found at her duty station by the staff audit team.

A communication was sent to all heads of department to inform all members of staff who were not physically identified to come before 6 June for them to be identified and failure to do so would result to their salaries being stopped effective 7 June 2017.

The permanent secretary submitted a list of unidentified members of staff that were in various engagements to be identified by the team. However, the complainant's name was not included in the list.

After all procedures were exhausted a recommendation was sent to the Accountant General's Department to stop the salaries of all the remaining unidentified staff.

CONCLUSION

Since she absented herself from work for nine months without authorization and receiving salary from January to May 2016 without going to work, the Ombudsman upheld the decision to dismiss her from the service.

COMPLAINT NO:

70/2018

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant was enlisted into one of the security institutions as electrician. He alleged that there were 3 electricians, each on a shift i.e. morning afternoon and night. Due to the unpunctuality of the 2 officers, he was compelled to work alone for almost 6 months. He complained to his supervisor who promised to take appropriate actions. Few months later, one of the officers was dismissed and the other resigned from the service.

He further alleged that he was the only electrician for 30 months working on stretch duties. He felt ill and applied for annual leave to seek medical attention and it was granted. He went to his place of work before his resumption date to apply for extension of his leave to complete his treatment. To his dismay he was dismissed.

FINDINGS

The complainant was not the only electrician who served for 30 months as alleged. Our investigation further revealed that he was not dismissed but discharged and issued with a discharge certificate.

The complainant was discharged as a result of overstay after his annual leave without permission. It was also evident that he pleaded guilty when he was charged with wilful overstay from the period 17 September to 7 October 2014. He also failed to produce any tangible evidence to defend his allegation.

CONCLUSION

Since there was no convincing evidence to support the complainant's allegation, his discharge was in order and the decision to discharge him 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:

73/2018

NATURE OF COMPLAINT:**Unlawful Termination****COMPLAINT**

The complainant was appointed by one of the ministries on 1 November 2017. He alleged that on 10 May 2018, he was issued with notice of termination of appointment dated 16 April 2018, which stated that his termination would be effective 31 May 2018 in pursuance of the one month notice as stipulated on his appointment letter. The complainant is with the opinion that his notice of termination did not indicate the reason for his termination.

FINDINGS

The complainant's appointment was for a period of one year and subject to renewal upon satisfactory performance and availability of funds. The contract could be terminated either by the complainant or the project upon giving one month's notice or payment of salary in lieu of notice.

The evidence gathered revealed that the area of his responsibility was in a very poor condition and although it was critical to the project it had been abandoned. Therefore a recommendation was made by an expert advice which resulted into the termination of his appointment with effect from 31 May 2018.

CONCLUSION

Since the complainant's performance was not satisfactory and the fact that he had been given one month notice as stipulated in his appointment letter, the Ombudsman upheld the decision of the management to terminate his service. The complaint was dismissed for lack of merit.

COMPLAINT NO:**74/2018****NATURE OF COMPLAINT:****Wrongful Dismissal****COMPLAINT**

The complainant was appointed as caretaker and later redeployed as gardener in October 2009. The complainant alleged that on 9 April 2018, he was riding his bicycle to work, when he suddenly realized a truck coming his way, avoiding a donkey cart, he lost control and fell from his bicycle. As a result of the accident, he experienced pain and sought permission from his supervisor to report to hospital and it was granted. His condition was not improving; hence he informed him that he could not report to work thus the reason for his absence for 2 days.

He resumed work on 17 April 2018 and was issued with a warning letter for absenting himself for 2 days without permission. He called the head of his institution to find out if his supervisor had informed her of his accident but his message fell on deaf ears. To his surprise he was dismissed from the service effective 17 April 2018.

He complained that the decision to dismiss him was very harsh. He appealed for a review of the decision.

FINDINGS

The complainant filed a claim against the institution at the Kanifing Industrial Tribunal and the matter was pending in court.

CONCLUSION

In accordance with the provisions of section 9 (1) (2) (c) of the Ombudsman Act 1997 the Ombudsman shall not have power to question or review any matter which is sub judice. Therefore, the complaint was discontinued.

COMPLAINT NO: 78-79/2018
NATURE OF COMPLAINT: Wrongful Dismissal

COMPLAINT

The complainants alleged that they were staff of a ministry posted to the Lower River Region (LRR). In March 2017, a head count exercise was conducted in the region. They were not able to travel to the region because they were at the Gambia College studying. As a result, their salaries were stopped in June 2017 and they were dismissed from the civil service on 20 February 2018. They finally alleged that they contacted the relevant authorities but to no avail.

FINDINGS

The main purpose of the nationwide comprehensive staff audit exercise in March 2017 was to physically identify all staff at their duty stations in order to wipe out ghost workers in the system. During the course of the exercise, the two complainants were not found at their duty stations by the staff audit team. Before taking any decision against the affected staff, all heads of department were asked to inform their staff who were not physically identified to come before 6 June 2017 to be identified, failing which would result in the stoppage of their salaries.

The complainants' permanent secretary submitted a list of unidentified staff who were in various engagements during the head count for them to be identified by the office as part of their staff but the complainants' names were not included in the list. Having exhausted all possible measures, a recommendation was sent to the Accountant General's Department to stop the salaries of all the remaining unidentified staff including the complainants.

The audit team later recommended that all unidentified staff be dismissed. As a result, the two in accordance with PSC Regulation 57 were dismissed alongside others effective 1 June 2017.

The permanent secretary informed the Ombudsman that the complainants went for study leave without approval from the ministry and before the ministry could do anything, they were dismissed. The complainants were contacted to produce their approved leave letters from the ministry but they could not produce any.

CONCLUSION

The complainants did not follow the right procedures to be granted study leave which led to their dismissal. They should have sought approval from their ministry before proceeding to pursue their studies at the Gambia College. The decision to dismiss them was upheld by the Ombudsman.

COMPLAINT NO: 93/2018
NATURE OF COMPLAINT: Wrongful Termination

COMPLAINT

The complainant alleged that he served as revenue collector for one of the councils for 16 years. He also alleged that on 2 July 2018, while collecting revenue a vendor asked him to give him a

ticket and to come later to collect the cost of the ticket (D10). He issued him the ticket and after collecting all the day's revenue, he went back to the vendor to collect the D10.

He further alleged that while collecting the D10, a supervisor told him that he should not have given the man the ticket without the man paying. He informed the supervisor that it was a norm that they normally do. They have that understanding with the vendors but the supervisor still threatens to terminate his services. He finally alleged that the following day 3 July 2018, he was issued with a termination letter dated the same day after working for 21 years without any warning letter.

FINDINGS

The complainant was appointed senior market revenue Inspector assigned by management to be part of the early morning bags collection team.

During that period, management received information that he was in the habit of recycling revenue tickets given to market vendors. On 25 June 2018, he was invited by management to react on the said allegation but he said the allegation was baseless and not true.

As a result, management decided to make a further investigation by putting him on strict surveillance. On 2 July, 2018 between the hours of 4:00am to 7:00am while on official assignment, he was given market receipt number (0604101- 0604200) for duty tax collection. He sold all the 100 tickets but he was seen moving around the early morning bag to pick their thrown away tickets for his recycling deal.

With continuous surveillance (they saw) him recycled ticket serial 0604176. The supervisor then intervened and reported the matter to the unit heads who were present at the scene. After a long push and pull, he was asked to retire all the tickets in his possession which he did. Later ticket serial number 0604129 was found on him.

For further confirmation, he was asked to surrender all the money in his possession which he did. Thereafter, both the complainant and the unit heads confirmed that the cash in hand was more than the tickets issued to him on that day.

Management conveyed an emergency meeting on that same day to discuss the matter. After a thorough consideration of all the dubious activities he had been doing, coupled with the fact that he was even given one week leave without salary to desist from such activities, they agreed to terminate his services effective 3 July 2018.

CONCLUSION

The Ombudsman upheld the decision by management and dismissed the case for lack of merit.

COMPLAINT NO:

104/2018

NATURE OF COMPLAINT:

Unlawful Dismissal

COMPLAINT

The complainant said that she was enlisted into a security institution in 2014. In 2015 she alleged that in April 2015, she was pregnant and when the head of institution knew about it, he dismissed her.

FINDINGS

During recruitments by the institution, all female recruits were strictly warned to serve two years before getting pregnant; failure to comply would result to dismissal.

The complainant knew all this and willingly signed the declaration paper that all officers on enlistment signed. Before the end of her two years, she got married and became pregnant and when the head of institution knew about it, he dismissed her.

CONCLUSION

Based on the above findings, it was certain that the complainant was not dismissed unlawfully as she alleged, rather her dismissal was based on the rules and regulations of the institutions. The case was dismissed accordingly.

5.3 UNFAIR TREATMENT

COMPLAINT NO:	1/2018
NATURE OF COMPLAINT:	Unfair Treatment

COMPLAINT

The complainant said he was appointed as labourer in 2012 and later re-designated as security guard. In 2014 he retired voluntarily based on ill-health. He was re-appointed as security guard and served in that capacity until 5 July 2017 when he was informed that he had been due for statutory retirement since 16 January 2012. The complainant was retired with immediate effect. He contacted the finance department for payment of his gratuity but was informed that he was not entitled to gratuity or pensions

FINDINGS

The complainant was due for statutory retirement on 16 January 2012 before his confirmation in appointment as security guard on 1 March 2013.

His service with the council upon retirement was equivalent to 4 years as a result; he was not eligible for gratuity. The number of years he served was insufficient and does not attract any gratuity or pension allowance.

CONCLUSION

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

COMPLAINT NO:	13/2018
NATURE OF COMPLAINT:	Claiming Part Payment of NPF Contribution

COMPLAINT

The complainant was appointed by a project as early childhood development (ECD) facilitator on 10 September 2003. He was registered under the National Provident Fund. When his contract ended in September 2016, he got another appointment with a project as facilitator. During the 2016 rainy season his house was destroyed by the rains and he requested for part payment from his contribution to construct his house, but he was informed that he was not qualified for such

payment.

FINDINGS

After the complainant's appointment he got another appointment where he served as facilitator.

The complainant was informed that in order to qualify for withdrawal benefit under sub-section 29 (4) of the institutions ACT 1981, he must attain 45 years or out of employment for at least 2 years.

CONCLUSION

The complainant was advised to be patient and to wait until he attained forty-five years. The complaint was discontinued under section 9 (3) (1) (b) of the Ombudsman Act 1997.

COMPLAINT NO:

37/2018

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

The complainant explained that he was verbally appointed by a school committee as caretaker/watchman effective October 2017. The school chairman informed him that he would be paid salary of D5000 (five thousand dalasi) being salary for his dual functions (caretaker/watchman).

He alleged that around 15 November 2017, the chairman directed someone to pay him D1,450 (one thousand, four hundred and fifty dalasi) and asked him to hold on as advance salary for October 2017. He further alleged that on 17 December 2017, the school chairman called the complainant to his house and gave him D2500 (two thousand and five hundred dalasi) and dismissed him verbally from the school.

The complainant therefore claimed salary differences for October and November 2017 and December salary arrears amounting to D7300 (seven thousand and three hundred dalasi) in total.

FINDINGS

The headmaster confirmed that the allegations made by the complainant were true. He also confirmed as true the salary differences and arrears mentioned by the complaint.

He disclosed that the school chairman acted on his own without consulting the school committee by directing the payments without consultation especially regarding auxiliary staff.

The school chairman was consulted and he agreed to have paid the complainant in two instalments: D5500 (five thousand and five hundred dalasi) on 1 August 2018 and D2000 (two thousand dalasi) on 5 March 2019.

RECOMMENDATION

The Ombudsman recommended that the school chairman follow administrative procedures and financial instructions in addressing matters relating to employees of the school.

CONCLUSION

The complainant was reinstated and paid his claim amounting to D7500 (seven thousand and five hundred dalasi) on 1 August and 5 March 2019. The complaint was settled.

COMPLAINT NO:
NATURE OF COMPLAINT:

46/2018
Unfair Treatment

COMPLAINT

The complainant was enlisted into one of the security institutions on 2 September 2013.. She complained of her medical condition and requested to be excused from night duties. Even though her plight was understood, she was surprised that on 1 November 2017, she was put on night duties.

The complainant complied with the posting on night duty but she had a serious attack and was escorted to Fajikunda Health Centre. She later reported for duty and was posted to a different duty. Her name was later published on the relief roster and the relief commander asked her to remain on night duties. She failed to comply with the request of the relief commander due to her health condition. The relief commander insisted that she should report for night duties, but she failed to comply and as a result she was charged and matched before their commanding officer, who found her guilty and fined her D150 to be deducted from her salary. Despite her health condition with evidence of medical prescriptions and diagnosis, they continued to put her on night duties.

FINDINGS

The complainant was contacted for clarification and she informed the Ombudsman that after lodging her complaint, the issue was resolved and she was removed from night duties on 21 May 2018.

CONCLUSION

The investigation was discontinued under section 9 (3) (b) of the Ombudsman Act 1997.

COMPLAINT NO:
NATURE OF COMPLAINT:

67/2018
Unfair Treatment

COMPLAINT

The complainant said that he was appointed as driver effective 1 September 2002. He alleged that his transport allowance from the date of his appointment was D500 and that he continued to receive the same amount even after government had increased the transport allowance of civil servants in 2018.

In April 2018, the institution implemented the transport allowance increment. A drawback of D3000 was paid to each staff covering January to March 2018 except the complainant despite his request. The head of institution informed him that he was not entitled to the transport allowance increment. He claimed spending D70 daily on transport.

CONCLUSION

The complainant was paid his transport allowance increment and drawback. He wrote to the office on 5 November 2018 informing the Ombudsman that his complaint against the institution had been resolved.

COMPLAINT NO:
NATURE OF COMPLAINT:

69/2018
Claiming Part Payment of National
Provident Fund

COMPLAINT

The complainant worked for a private institution from 1 September 2008 to 28 February 2014. He was a member of the National Provident Fund.

In January 2018, he attained 45 years and wrote for part payment of his NPF contribution. He was asked to fill a form, submit his identity card and a sworn affidavit which he did but to no avail.

He further alleged that on 10 March 2018, he went to enquire about his benefits but was told to provide a document from his former employer. He told them that he could not, because the proprietress of the school is a non-Gambian and was on her sick bed in the UK.

The complainant also alleged that the institution had the power to consult his employer for the said document and process his benefits but they failed to do so.

FINDINGS

In a letter dated 10 August 2018, the institution informed the Ombudsman that the complainant never submitted any claim for processing his benefits. They further informed the Ombudsman that the complainant came to their office for his benefits but did not bring along his termination letter (which is a cardinal requirement for benefit payment) from his last employer. They advised him to get it because the office does not have the mandate to compel any employer to provide his/her employee with a termination letter.

The complainant's former employer gave him a letter to take to them but they initially rejected the letter because it only indicated the period from which the complainant started working for them and the time he stopped. Nothing about his termination was mentioned because according to the proprietress of the school, the complainant's service was never terminated. He resigned from the job.

Based on this information, the institution was reluctant to give the complainant his benefits because they wanted a letter from the school indicating "Termination" to enable them process his claim.

CONCLUSION

Upon the Ombudsman's intervention, the institution paid the complainant D23, 457.39 on cheque number 00001987 on 6 February 2019. The case was settled.

COMPLAINT NO:
NATURE OF COMPLAINT:

99/2018
Claiming Accrued Overtime Arrears

COMPLAINT

The complainant was appointed as security officer on 4 June 2012. He alleged that he served on morning and night shifts from 2012 to 2015. In 2016, he was posted on night shift for one year two months.

He said that his appointment letter stated that his working hours would be from 8:00am to 4:00pm but he was subjected to work for 10 hours during his night shift. He further alleged that in July 2017, he appealed to management for change of shift but to no avail.

FINDINGS

The complainant was appointed as security officer on 4 June 2012 and he served on morning and night shifts from 2012 to 2015. In 2016, he was also posted on night shift for one year two months.

According to the institution's service rules, it was observed that the complainant was posted on different shift duties required by the security unit of the institution. He also enjoyed the privilege of having 2 days off in all his shifts. It was found out that overtime was never paid to any security staff posted on night shift.

The complainant had been disobedient to the chief security and series of reports indicated that he had been absenting himself from duties without permission. Whenever he was cautioned for absenteeism his reaction was always aggressive towards the chief security.

The complainant could be eligible for overtime as provided for in the institutions service rules: Chapter IX Code: 0901 (1) if the overtime was required by the director general or head of department to work overtime which did not happen in this case.

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:

107/2018

NATURE OF COMPLAINT:

Claiming 1X6 Loan and August 2018 salary

COMPLAINT

The complainant was employed by a ministry. In August 2018, he got clearance from his former bank to transfer to another bank. When salaries were paid in August 2018, his 1x6 loan and August salary were not paid into his new account.

He alleged that when he contacted the relevant institution, he was informed that it was a B-Ban problem which would be corrected. Since then, he made several attempts to get his August salary and 1x6 loan paid into his new account but to no avail.

FINDINGS

When the institution was contacted; they informed the Ombudsman that the complainant had been paid.

CONCLUSION

The complainant was paid D2, 896 into his Guaranty Trust Bank account and the case was settled.

5.4 INJUSTICE

COMPLAINT NO: 11/2018
NATURE OF COMPLAINT: Injustice

COMPLAINT

The complainant was appointed as temporal driver on 16 April 1992. He was offered permanent appointment as motor driver on grade 1 effective 1 February 1993. Again on 9 November 1995; he was offered appointment as driver on grade 2 with effect from 1 October 1995.

On 17 December 2008, he was promoted to the position of senior driver effective 8 August 2008. The complainant stated that in 2011, he was among the convoy escorting former president Jammeh to Kanilai. He alleged that the president was throwing biscuits to the crowd and children were scrambling for the biscuits. The vehicle in front of him made a sudden stop to avoid hitting the children. Due to the high speed at which they were driving, the vehicles knocked each other. The president blamed them and said that they should not have stopped. A week later he was verbally dismissed from the service.

FINDINGS

The complainant was appointed as temporal driver on 16 April 1992. Upon confirmation he was appointed as motor driver on grade one on 1 February 1993. He was later appointed by PMO as driver on grade two on 1 October 1995.

The complainant was promoted to senior driver effective 8 August 2008. Sometime in 2001, he was among the convoy escorting the former president to Kanilai and the vehicle he was driving had an accident. Consequently, he was verbally dismissed from the service.

The PMO informed the SG that the complainant's dismissal was not legal. Since he was about 55 years old and there was no vacancy, they recommended that he should be reinstated and retired from the service in line with the criteria set by the panel that was established to review wrongful dismissal/termination of officials by the former regime.

They further advised that the period from the date he was dismissed to retirement date would not attract any payment of salary. However, his service was connected for the computation of his benefit.

CONCLUSION

The complainant was paid D35, 696.37 as gratuity.

COMPLAINT NO:	31/2018
NATURE OF COMPLAINT:	Injustice

COMPLAINT

The complainant alleged that she was a member of the Federated Pension Scheme. She worked for a year when her institution ceased operation in 1995. She was issued with an authenticated certificate of entitlement to deferred benefit dated 19 September 1996. She attained 45 years in January 2017 and claimed her benefit. To her utter dismay, the management refused to pay her without giving any reason. She made several visits to the benefit unit but to no avail. During all these visits, she was always told to be patient. She had waited enough only to be told that the audit unit would not endorse the payment.

FINDINGS

The complainant became a member of the Federated Pension Scheme on 10 March 1994. She was issued with a certificate of entitlement to defer benefits prematurely retiring her with effect from 31 December 1995 on the ground that her institution had wound up in 1995.

she was further informed that she had satisfied the condition of rule A and having retired prematurely from her institution, she was entitled to unadjusted deferred benefits based on annual pension rate of D133.89 payable with the suitable base current power adjustment upon the date she attains the minimum retirement age of forty-five.

Upon attaining the age of 45 in January 2017, she wrote to claim her benefits but she was informed that her claim would not be endorsed.

The Ombudsman was informed that she had been mistakenly issued with a deferred certificate in 1996. According to rule 3 (1) of the Federated Pension Rules, she was not qualified for any pension benefits as she had not completed five years of service with her institution. The corporation sincerely apologized to her for any inconvenience this might have caused her.

CONCLUSION

Rule 3 (1) of the Federated Pension Rules clearly states in order for a member to be entitled for retirement benefits he/she must at least complete five years of service. The only exception to this rule is on the grounds of disability (where a member who has not completed five years of service is only entitled to retirement benefits at the request of the employer) which is not applicable in this case. Since she served less than five years with her institution the Ombudsman upheld the decision by the pension body.

The Ombudsman further recommended that the institution should avoid such serious mistakes and ensure that mechanisms are put in place to avoid giving incorrect information to customers.

COMPLAINT NO: 84/2018
NATURE OF COMPLAINT: Injustice

COMPLAINT

The complainant was appointed by a public institution in 2002 and posted to the regions. In 2008 he did further studies after which he was transferred to another part of the region.

He alleged that in 2009 while on posting his superior at his place of work in the region accused him of being mentally imbalance. He was referred to Edward Francis Small Teaching Hospital for medical examination, but the result was negative. He was again transferred where he pursued a diploma in procurement.

The complainant further alleged that in September 2016, he was accused of stealing certain equipment; As a result; he was suspended for 4 weeks and transferred to another unit of the ministry. He complained that since he was accused on two occasions but was not found wanting, he claimed compensation for damages done to him.

FINDINGS

The complainant was appointed in 2002 and posted to the regions where he served in different places. He also did further studies in certificate courses while working for the institution.

The ministry wrote to the Ombudsman dated 31 October 2018 that they had dealt with the issues surrounding the complaint internally. After a meeting with the complainant and the Ombudsman, the following agreements were reached:

- the complainant to report to his unit.
- the complainant be given responsibilities as per his terms of reference.
- advised the complainant to build the relationship with other staff rather than isolating himself.
- The human resource manager to engage the head of the unit to involve him in the day to day work of the office.
- The ministry to work with the complainant to assist in improving his image.

CONCLUSION

The head of complainant's unit was very responsive to the idea in fostering a cordial working environment with the complainant. The case was thus settled.

COMPLAINT NO:

85 – 86 /2018

NATURE OF COMPLAINT:

Unlawful suspension

COMPLAINT

The complainants were trained as instructors by an institution from 13 November 2016 to 13 November 2017 and were later appointed as instructors on 1 November 2017. They alleged that they were allocated with a staff bus to facilitate their movement during working days. On 27 April 2018, the bus was hired by a private institution to transport participants to a workshop. When they closed from work, the bus was not available and they had to walk for about 2 kilometres before the bus came to pick them up. As a result, they arrived home around 8:00pm.

Due to the long distance, they were tired and could not report to work the next day. On 30 April 2018, they went to meet the project coordinator to explain the reason for their absence but he failed to listen to them. To their dismay, they were issued with indefinite suspension letters dated 30 April 2018 for alleged act of indiscipline.

FINDINGS

The complainants were indefinitely suspended as a result of acts of indiscipline ranging from refusal to report to work, use of derogatory language and threatening violence. These actions do not conform to ethical conducts and values of any institution.

On 28 April 2018, the complainants failed to report to work and when contacted by a senior official, the reason given was that the driver was late for 30 minutes to take them home which led them to trek for about two kilometres before they were picked up.

Despite the driver waiting at their routine picking points the following day for almost 30 minutes, they still failed to report to work.

On the allegation of derogatory language, the complainants assembled the students without authority to bid them farewell but they antagonized their concept and influence them to demand explanation for their suspension that resulted to the students' misdemeanour. However, management consulted an assistant superintendent of police who brought his team and they intervened.

In this regard, the head boy revealed that he was not joining the students in their plan because the complainants had no genuine reason for their refusal to report to work and as the head boy; he would not participate in their conspiracy to lead the students to demand explanation on the decision leading to their suspension.

The report concluded that the decision was not based on personal vendetta but to jealously guard the ideals of promoting a healthy youth population with the right mind set, morals and attitude because the complainants were not indispensable and there should not be any room for complacency.

The complainants were invited to a meeting with the permanent secretary, of the ministry on 7 August 2018 to discuss the issue. As a follow up to the meeting, they informed the Ombudsman that the suspension was lifted effective 1 October 2018 but one of them failed to return because he was appointed by another company.

RECOMMENDATION

The complainants were advised to execute their duties with dedication and desist from all forms of violence and demonstrate good leadership as they should serve as good role models.

COMPLAINT NO:

94/2018

NATURE OF COMPLAINT:

Maladministration

COMPLAINT

Staff of a public institution complained about their head of institution. Their complaints were addressed to the secretary general and head of civil service and copied to the Ombudsman.

The staffs were not happy with the head of their institution on account of so many things as a result they had a vote of no confidence in him and wanted his removal from office.

They alleged many things including that he was the biggest waster of pensioners' money in his uncountable overseas trips, endless medical trips to Dakar, private internet bill at his residence, private entertainment budget, utility fleet running cost, private dinners, receiving more than five board sitting allowance.

They alleged that he promoted one of the female members of staff in a space of seven months and awarded her scholarship to study in Ghana in violation of existing protocol and at the detriment of other members of staff who were on the training list and also more trainable, eligible, qualified, served more years at the institution than her.

They stated that all the staff working in the finance department and investment and internal audit directorates must start their ACCA in-country and when they progress to the final three papers of the intermediate and professional level then they would be considered for completion overseas. This person did not pass any proper ACCA paper that should warrant her being awarded scholarship over others within her department who were more qualified.

She was paid her gross salary while all members of staff on scholarship were paid basic salary as per standard terms.

They further alleged that in August 2017, the managing director was paid five days per diem amounting to D73, 000 for a short –term overseas mission to Zimbabwe and the Republic of Sierra Leone, a trip the managing director never embarked on and decided to keep the per diem and never retired it.

He spent within twelve months D100, 000 on mobile phones for his personal use. The institution spent D50, 000 annually on his private home internet which contradict his austerity measures.

They alleged that the managing director did not have the powers to approve a consultancy but had awarded a contract which they believed technically should have been a consultancy requiring board

approval because it would likely run into two years and the amount involved was up to two million US dollar. They believed it was their MD's plan to roll over the six-month's contract to two years.

Other allegations were that he hijacked one of the board seats and gave it to a friend without the approval of the institution's board, left other board seats vacant when there were competent and qualified directors within their institution who can man those seat; and through favouritism and nepotism compromised the interview of a lady who is now appointed as the managing director's confidential secretary when there are competent and qualified staff members within the ranks to take up the position.

They alleged that there were many director positions that were vacant and little move had been taken to fill them

They accused him of favouritism by reserving the office of one of the staff for him while he was away almost one year despite repeated demands by the directorate of internal controls for the staff to use the office in view of the acute lack of sitting space within the institution

They stated that the payment of D400, 000 to one member of staff by the managing director for so called medical insurance was unjustifiable because two former managing directors refused to endorse the payment.

They further alleged that the other member of staff who made a claim for the payment of her medical insurance was not paid.

They pointed out that there were vacant director positions that were not filled and little moves have been made to fill them.

They alleged that very little had been accomplished under their MD due to lack of a clear plan and that he brought draconian rules to administer loans.

They alleged that the managing director through his unfounded austerity had decided to cut the single Mecca ticket which was given to staff annually. He stopped the bag of sugar given to low paid staff during Ramadan. After being pressurized he gave each a half bag of sugar.

FINDINGS

Following the fifteen months the managing director was appointed to head the institution, there was tension, mistrust, acrimony and bad blood between him and the staff. The staff petitioned the Secretary General and sought the removal of the MD by expressing a vote of no confidence.

The staffs are not an appointing authority and by the same token, they do not have the powers to dismiss/terminate the services of the managing director, or recommend his dismissal or seek to engineer his removal by such means as they have employed in this case. This power is only vested in the president. They have overstepped their bounds.

The staff also embarked on a sit down strike. The sit-down strike that they embarked on was not justifiable in view of the fact that means of addressing their grievances existed despite the fact that they claimed to know about the alleged acts of maladministration they failed to bring it to the notice

of the Ombudsman and chose a line of action which contravened the legal and administrative instruments governing public officers.

It was established that the said female member of staff was selected by the MD to be trained in Ghana, despite the fact that she was on the list of staff earmarked for sponsorship to pursue the ACCA in-country and the fact that there were other staff members on the waiting list for overseas training. It was only when the MD was reminded about this fact that he gave instruction to identify another staff to go with her. Those who were initially approached turned down the offer and one eventually agreed to go. He was chosen with this female staff member to study ACCA in Ghana from 29 June 2018 to 15 October 2021 at the tune of D5, 901,752. The sum of D1, 149,299.14 being tuition fees, stipend, book allowance, clothing allowance, boarding fees and air ticket for both was paid. They were each bonded on the sum of D2, 950,876 for a period of five years.

The institution has no formal appraisal system for the past 10 years or a training policy to train staff. The corporation's service rules did not mention any time frame upon which an employee has to serve before being sent for overseas training. However, the norm was before any member of staff was eligible for overseas training, he/she must serve the corporation for at least two years but the managing director discarded the practice and went ahead to award her the scholarship despite other members of staff being more deserving of it.

Her selection for overseas training was unprecedented in the history of the institution. She was not confirmed in her appointment as cashier at the time she was sent on training. This is a clear sign that there was favouritism and preferential treatment regarding her award of scholarship for the simple fact that there were members of staff that served the corporation for more than 3 years with a similar qualification but were not given the opportunity to be trained overseas. One can deduce that the awarding of scholarship to the other employee that went with her was just a cover up to conceal the favouritism and preferential treatment given to her.

The managing director's statement that his priority is not to train staff in their 40's but to train younger staff that were more likely to serve the institution longer, was discriminatory and contravened section 33(3) of the 1997 Constitution of the Republic of The Gambia which states "...no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority".

The allegation that she travelled two months prior to the commencement of the ACCA course was incorrect. She left on 21 May 2018 when the course was supposed to commence on 29 June 2018. She therefore left five weeks before the commencement of the program.

She was paid basic salary on overseas training and not gross salary as alleged.

On the MD's alleged frequent travels, since his assumption of office in 2017, he travelled overseas seven times and not ten times as alleged. He obtained clearance from the Office of the President for the payment of per diem and air ticket on all these travels. All his travels were approved by the Office of the President except the trip to Freetown, Sierra Leone.

The Sierra Leone trip which the staff alleged he did not attend was found to be true. He was paid 7 days per diem without approval from the Office of the President. He did not travel to Sierra Leone and failed to retire the 7 days per diem amounting to D103, 040 to the corporation. The exchange rate of £1 at the time was equivalent to D64.

This was gross administrative misconduct on the part of the MD.

However, the allegation of the staff that he did not travel to Zimbabwe despite receiving per diem was found to be untrue. It was a trip that he got approval for from the Office of the President and travelled with the finance and investment director.

The managing director travelled to Dakar, Senegal once for medical treatment and not many trips as alleged by the staff.

Regarding Board seats, the allegation that the MD occupied five seats was incorrect. Investigation revealed that the institution does not have board seats at one of the institutions believed to be the fifth seat.

For the MD as head of institution to be on all four seats when the seats are multiple, providing opportunities for other members of staff to serve along with him on the boards was in order.

It was established that the MD did nominate an outsider for a board seat which was meant for his institution as alleged. The institution has three seats on the Board of Directors of a bank where it has shares. The two seats are occupied by the MD and the institution's director of finance and investment while the MD used his discretion to nominate someone from a different public institution with 5% shares in the bank for the third seat.

We understand that the MD according to the practice at the institution has the discretion to nominate anyone to the boards; however, it would not be justifiable to nominate outsiders when there are competent and skilful individuals within the institution to occupy the seats.

Regarding the position of principal personal administrative assistant, investigations did not support the allegations made by the staff. On the contrary due process was followed by advertising the vacant post. Out of the five shortlisted candidates, she had the highest mark during the interview and was therefore given the post.

As regards the issue of loans, Section 0902 of SSHFC service rules gives the managing director the discretion to grant loans to staff according to the financial rules of the institution provided the take home pay is at least 50% of the staff gross salary. Loan is a privilege and not a right. The managing director should rationalize loans. He should be prudent in the approval of loans to ensure that members of staff are not indebted which could affect their productivity.

On the six-month contract awarded by the MD, management made a request to the board to endorse the replacement of the IT system. Approval was granted based on management's assurance that the new system would address all the issues and challenges management were facing with the then system putting into consideration the amount that would be committed to the project was D75 million.

Following the Board's approval to replace the IT system, the contractor was given a contract of appointment for six months on 5 February 2017, which power was vested in the managing director in line with section 0101 (2) of the Service Rules of the institution. Following the expiry of the contract, he was given an additional three months contract.

He prepared a budget for the project which was estimated at 1,922,340 US dollars equivalent to D92, 272,303.20. The tender was closed but the contract was yet to be awarded to the successful bidder.

On the issue of insurance payments made to one of the staff members which complainants said was unjustifiable, the investigations revealed that the said employee and her colleague were sponsored to study Actuarial Science at the Roosevelt University in Chicago, Illinois, USA. The institution agreed to pay their health insurance premium, among others, all of which were met except their health insurance premium. The two employees therefore paid their health insurance premium from their stipend and money earned from part time jobs.

Upon their return to The Gambia, they claimed refund of their health insurance premium but it was rejected by previous MDs. The current MD paid one of them but was yet to pay the other employee.

Regarding the private internet facility, the institution paid D54, 000 annually. This was created for the institution's managing director as a form of motivation. Therefore, the managing director did not commit any wrong by enjoying the same facility that previous managing directors had enjoyed.

On the iPhone issue, it was found out that approval had been given on 5 June 2017 to purchase iPhone 7 Plus, costing D55, 000 for the managing director's official use. After some time, the managing director claimed that his phone was faulty. He submitted an invoice on 28 November 2017 claiming £999 equivalent to D64, 435.50 being the cost of iPhone X Space Gray 64GB. He was refunded D64, 435.50 being the cost of the iPhone X. Phones are not capitalized but treated as miscellaneous and no inventory is taken. It was also found that the alleged faulty phone was never returned to the corporation.

Regarding the private entertainment allowance, the managing director and his family had a dinner at Coco Ocean Resort and Spa. The sum of D19, 750 was incurred and the corporation paid the bill in December 2017. The institution also made other payments in the sum of D8, 234.85 also to Coco Ocean and D1, 885 to KORI D"OR both being cost of food and beverage consumed by the managing director.

The managing director's claim that he spent D27, 000 on the entertainment vote was incorrect as the total amount spent was D29, 869.85. It was wrong for him to spend this on his family because the entertainment vote is meant for entertaining official guests and not family members.

On the allegation of low performance, the managing director declared that during his tenure there has been a significant reduction in operating cost for instance in 2016, the institution had D271,703 million as operating cost and it came down to D178,791 million during his tenure. It made a loss of D1.5 million in 2016 and D81, 827 million profits in 2017, which was more than the profit made from 2013 to 2016 combined.

The institution had a difficult past in terms of its finances. The 2016 Audited Accounts revealed a true image of the mismanaged funds through executive directives by the former regime on loans and investments without due process, resulting in heavy provisioning on impaired loans and non-performing investment amounting to over D1.7 billion, of which a consolidated shortfall of over D1.78 billion was registered.

Looking at the past challenges of the corporation, for the managing director to cut administrative cost by such a margin and register profit after a year of losses was commendable.

However, the figure of D81, 827, 000 profits in 2017 was obtained from the 2017 unaudited accounts, which may be affected by provisions for non-performing investment during an external audit exercise.

The members of staff had been getting increment every year and in January 2018 they enjoyed 25% increment

On the sugar and hajj issue, there is a tradition of giving out sugar for Ramadan and Hajj package to the staff. The managing director decided to break with tradition by not giving out a hajj package and by giving less amount of sugar to staff after initial refusal as part of his austerity measures.

This is not a right but a privilege, the managing director had the discretion to approve or disapprove such incentives especially at a period when the finance of the corporation was in a precarious situation.

Regarding the payment that the MD made to a senior government official which the staff considered to be bribery, investigations revealed that there was a High Court judgement in favour of the man which all put together was D1.7 million. The managing director did the right thing by honoring the judgment of the court.

Concerning the issue of the staff member on secondment to the Directorate of Internal Control did request for his office to be used by the staff due to lack of office space. The managing director did not approve the directorate's request on the ground that its previous occupant was not on permanent transfer. The office was still vacant.

The allegation of the managing director's contravention of his own austerity measures was found to be true. Sending the said female employee overseas with an additional staff member instead of allowing them to pursue the ACCA in country, purchasing two mobile for the managing director costing D119, 435 .50 within a period of one year and the managing director's failure to retire the 7 days per diem amounting to D103, 040 to the institution contradicts the managing director's austerity measures

RECOMMENDATIONS

The said institution is tasked with the responsibility of managing the funds of workers. This task must be performed by people who have high regard for procedural correctness and observance of the tenets of administrative uprightness. The events leading to this investigation, as manifested in the indiscipline and lack of respect for the rules and regulations that guide the institution by staff and some acts of maladministration on the part of the managing director did not conform to expected standards. There is need for a redirection, a reversal of certain actions and a strong stance to discourage behaviour that has the potential to undermine institutional effectiveness. In light of the above, the Ombudsman recommended as follows:

A new board be constituted a month before the expiry of the term of any existing board for proper handing over to the new board to avoid the existence of a gap. This had contributed to the problem as at the time of the strike there was no existing board.

The 7 days per diem paid to the managing director amounting to D103, 040 to attend a meeting in Sierra Leone which he never attended should be refunded to the institution without delay.

All staff members should be confirmed in appointment before promotion or sent on training. Our findings revealed that the said employee was not confirmed in her position.

Management should ensure that there is a training policy in place to guide the training needs of the institution.

Promotion and training should depend on appraisal of staff and institutional needs. It is important that members of staff be appraised and their training needs, weakness identified for building their capacity and that of the institute rather than giving staff the choice to accept or decline training offer.

Any mobile phone bought for any member of staff that costs more than D10, 000 should be capitalized thereby taking inventory.

Competent members of staff should be nominated to fill the existing vacant board seats to represent the institution's interest on the various boards without delay. Our investigation revealed that the board seats were vacant.

For effective measures, the institution should train members of staff locally where preferable before training them overseas such as in the case of the two employees. ACCA programs are available locally

There should be equal treatment of members of staff. The other staff member should equally be refunded her health insurance premium.

Aggrieved staff should channel their complaints through the right procedures at the level of the institution. In the event the matter cannot be resolved, the staff can lodge their complaints with the Office of the Ombudsman rather than embarking on strike.

The Ombudsman recommended that the managing director should refund to the institution the sum of D29, 869.85 being money spent on dinners at Coco Ocean Resort Spa and KORI D'OR with his family members without delay. This is because the entertainment vote was not meant for his family but for office and official guests. Misusing of Public funds must be discouraged.

The Ombudsman recommended that the shortlisting and interviewing process of the current vacant position be quickened so that the vacant positions can be filled.

The board should take appropriate action in relation to the misbehaviour of staff during the strike.

The managing director should be guided by the relevant laws, service rules and policies in taking and making administrative and management decisions.

The managing director should use the institution's funds judiciously.

CONCLUSION

At the time of investigating this case the president had already set up a panel to investigate and come up with recommendations. According to the findings of the panel, there was wrongdoing on the part of the staff but not on the part of the managing director. Before any decision was announced regarding the findings of the panel, the report of the Ombudsman had also been submitted to the Office of the President. The president decided to rely on the findings of the panel;

therefore, the Ombudsman cannot go any further after the president had taken a decision to implement the recommendations of the panel. The president is not within the jurisdiction of the Ombudsman therefore his decision in relation to this complaint cannot be reviewed by the Ombudsman.

KEREWAN CASES

CHAPTER 6

6.1 CASES REGISTERED (KEREWAN OFFICE)

COMPLAINT NO: 1/2018
NATURE OF THE COMPLAINT: Unfair Treatment

COMPLAINT

The complainants, who were members of a village committee, complained that one of the employees of the water and electricity company always denied them water supply for weeks and sometime months. Whenever they complained, he would respond that they don't have enough fuel to supply the whole community.

They further stated that whenever the said employee was on his annual leave, the whole community would enjoy abundant water supply.

FINDINGS

The company's officer in charge of the power station informed the Ombudsman that they were aware of the plight of the village and had reported the matter to their company's regional director.

On 23 March 2018, the regional director stated that they had detected a blockage somewhere on the main supply pipe and had connected the said area to another main pipe from another village but the problem still persisted. He asserted that the problem was technical and needed equipment

that had to come from headquarters. He promised that the problem would be solved in the soonest time possible.

CONCLUSION

The executive of the village Kaffo in June informed the Ombudsman that they had started receiving water supply regularly. They expressed satisfaction with the intervention of the Ombudsman.

COMPLAINT NO:

3/2018

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT

On Tuesday 13 March 2018, it was reported on GRTS “Good Morning Program” from 8:00am to 9:00am by the GRTS Regional Correspondent that a community in one of the largest settlements in the North Bank Region had complained of lack of adequate water supply.

The community further stated that it had a population of about 5000 inhabitants and since the creation of the community, they were not fortunate to have access to water and electricity supply. They further stated that their women had to walk long distance to fetch water.

On 26 March 2019, the chairman of the development committee submitted to the Office of the Ombudsman a copy of the letter sent to the company responsible for water supply dated 20 November 2017.

FINDINGS

The regional director of the company stated that the company was aware of the concern of the said community and that plans had been put in place for the electrification and supply of pipe borne water to the settlement.

He further stated that the community would benefit from the on-going rural electrification and water expansion project.

CONCLUSION

When the message was relayed to the development committee they appreciated the effort of the Ombudsman. The councillor of Farafenni ward North Bank Region informed the Ombudsman that the work was partially done and that extension of the project is expected in due course.

COMPLAINT NO:

5/2018

NATURE OF COMPLAINT:

Wrongful Dismissal

COMPLAINT

The complainant stated that he was appointed as Alkalo of a village in 2005. He stated that since then, he had been executing his responsibility and had never been found wanting by the chief or the governor.

He further stated that to his dismay, he received a letter from a governor, stating that the minister had approved his termination as Alkalo with immediate effect.

The complainant stated that no reason was advanced for his termination but he was with the conviction that his termination was caused by the chief.

FINDINGS

The complainant was appointed as Alkalo in 2005. On 7 December 2017, he received a letter terminating his appointment as the Alkalo and his brother was appointed as the new Alkalo.

The termination of the complainant's service did not come from the chief of the district as alleged by the complainant. It was as a result of a letter dated 3 August 2017, signed by thirteen (13) compound heads which was sent to the chief on 13 September 2017 for the removal of the Alkalo. The chief acted on the recommendation of the compound heads by writing a detail letter justifying the termination of the complainant's service which was sent to the governor of the region and then to the minister.

It was revealed that the complainant was not residing in the village but in Banjul. He was appointed as messenger by a ministry and this had adversely affected the execution of his responsibility as the Alkalo of the village. The villagers found it difficult to certify their documents and attestations whenever the need arise and had to go to nearby villages. It was also evident that he always travelled with the Alkalo's stamp to Banjul where he worked and seldom visit the village to undertake his responsibility.

The complainant was invited on several occasions by the villagers and the chief of the district to find a lasting solution to the stalemate but he always refused to attend such meeting and in some instances, he delegated his wife to attend such meetings. It was also recommended to him by the villagers to handover the Alkalo's stamp to his brother and for his brother to be acting on his behalf in his absence which he failed to honour leaving them with no option but to recommend for his removal as the head of the village.

The complainant was found to be short tempered and lack the ability to comport himself when faced with challenges while in the execution of his duties as the village head. His relationship with the villagers was stained and, on several occasion, resulted in fighting. On one occasion, he burnt someone's house, beat his elder brother's wife and inflicted serious injury on her leg and also threatened to burn down the cashew farm of another person.

CONCLUSION

The Ombudsman upheld the decision of the ministry to terminate the service of the complainant based on his negative attitude towards the villagers. The complaint was therefore dismissed under section 9 (3) (a) of the Ombudsman Act as frivolous and not made in good faith.

COMPLAINT NO:	6/2018
NATURE OF COMPLAINT:	Unfair Treatment

COMPLAINT

The complainant was appointed as graduate teacher at senior secondary school. He alleged that his June 2018 salary was stopped by the principal a few days before the Koriteh feast. He stated that he had an agreement with the principal since September 2017, which he promised to honour.

He stated that he was pursuing a bachelor's degree in education at the International Open University formerly Islamic Online University. He added that he had an agreement with the principal

that he would be absent from school on Thursdays and Fridays in order to concentrate on his degree program which involved online tutorials and live sessions. He stated that the principal also agreed to pay him the salary he was receiving from his former school and to provide him with internet facility.

He further stated that in February 2018, the principal breached the agreement by paying him less and the internet he promised was not functional. He further alleged that in June 2018, the principal wrote to him a letter asking him to submit his acceptance letter from the university and a deadline of one week was given to him which he was unable to provide. The principal sent him a reminder stating that if he failed to submit the requested documents, he would stop his June salary. He produced the said document on 11 June 2018, but the principal went ahead to stop his salary. He further alleged that the principal promised to deduct all the days on which he had been absent.

FINDINGS

The complainant was appointed as graduate teacher by the Board of Governors of the school effective 1 September 2017 on grade 8.5 of the Gambia Government Integrated Pay Scale.

It was further revealed that during the course of his appointment at the school, he had an admission at the International Open University the Gambia (IOU). Based on his intension to pursue a degree in education, he was permitted by the school administration to attend lectures at the university on Thursdays and Fridays.

On 21 May 2018, he was written to by the principal to submit all admission documents relating to his programme at the university by Monday 28 May 2018, which he failed to honour. A subsequent letter dated 4 June 2018 was sent reminding him to submit the said document, which he failed to do.

His failure to adhere to the request of the school's administration resulted in the stoppage of his June 2018 salary pending the submission of the requested documents.

He was offered a scholarship by the International Open University in the fall semester 2017(September to February 2018). The scholarship was revoked due to his underperformance and he was promised to be reinstated into the said scholarship scheme if he passed the entire course in the spring semester (May to August 2018). Since May 2018, it was confirmed by the university that he had not registered for any course and was not attending lectures..

On 10 September 2018, he tendered a resignation letter due to alleged lack of trust the principal had in him in the pursuit of his degree.

CONCLUSION

Since the complainant decided to resign wilfully whiles investigation was on-going, investigation was discontinued as frivolous and not made in good faith under section 9(3)(a) of the Ombudsman Act.

COMPLAINT NO:

10/2018

NATURE OF COMPLAINT:

Unfair Treatment

COMPLAINT:

A community complained that whenever they visited their health centre to seek medical attention, the nurses on duty would delay in attending to them. They further alleged that sometimes instead of attending to patients, they are usually busy using mobile phones or watching television.

FINDINGS

The health centre has a television set placed at the reception for visitors.

Nurses on duties are not allowed to watch television whiles patients are on the queue waiting for medical attention.

CONCLUSION

The staffs at the health centre were advised to professionally handle patients that seek their services.

MANSAKONKO CASES

CHAPTER 7

7.1 CASES BROUGHT FORWARD

COMPLAINTNO:

5/2017

NATUREOFCOMPLAINT:

Claiming Hardship Allowance

COMPLAINT

The complainant stated that he was appointed as qualified teacher with effect from 1 September 2015 and posted to a senior secondary school. He alleged that following his appointment, he had not been paid hardship allowance. He stated that officials from his ministry included his name in a list of teachers who were eligible for hardship allowance but did he not receive anything.

FINDINGS

The complainant was appointed on 23 February 2016 as qualified teacher but his appointment was backdated to 1 September 2015. He was posted to the regions and was entitled to hardship allowance.

The ministry wrote to the Ombudsman on 28 August 2017 to confirm that the complainant was a staff member of the ministry and that his claim was received with concern.

The ministry explained that the non-payment of hardship allowance for the academic year 2015/2016 was as a result of non-provision of the complainant's employment number following his appointment in September 2015. The issues were verified and the accounts department was instructed to facilitate the payment of his hardship allowance.

CONCLUSION

The complainant's hardship allowance was paid and the case was settled accordingly.

COMPLAINT NO: 12/2017
NATURE OF COMPLAINT: Requesting Permanent Appointment

COMPLAINT

The complainant said that she worked on voluntary basis as cleaner at a public institution from 2008 to January 2010. She was appointed as cleaner on daily wage on 18 January 2010. She alleged that she had worked on daily wage for eight years without being considered for permanent appointment.

FINDINGS

On 18 January 2010, the complainant was appointed as cleaner on daily wage with effect from 1 January 2010

CONCLUSION

The complainant was appointed on 24 April 2018 as cleaner on permanent basis. The case was settled

COMPLAINT NO: 15/2017
NATURE OF COMPLAINT: Requesting for Permanent Appointment

COMPLAINT

The complainants stated that they were appointed as watchmen on daily wage in February 2011. They alleged that they had worked on daily wage for seven years without being considered for permanent appointment.

FINDINGS

On 8 August 2018, the institution informed the Ombudsman that complainants had been appointed on permanent basis with effect from 2 May 2018.

CONCLUSION

The complainants were appointed on permanent basis with effect from 2 May 2018 and the case was settled accordingly.

7.2 CASES REGISTERED IN 2018

COMPLAINT NO:	2/2018
NATURE OF COMPLAINT:	Torture

COMPLAINT

The complainant alleged that he was tortured by the police for being drunk. He also alleged that during detention, he lost D35, 000 in the station.

FINDINGS

Investigation revealed that the complainant went to the police station on 26 June 2018 drunk and had a bottle of wine in his possession. He misbehaved at the police station and as a result was arrested, detained and later released unconditionally.

It was found that, the complainant's allegation of losing D35, 000 was false.

CONCLUSION

The Police denied torturing the complainant and he could not provide any evidence to proof that he had been tortured. As a result, investigations were discontinued for lack of merit.

COMPLAINT NO: 3/2018
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The complainants alleged that they were not enjoying their rights to education. They asserted that they have no school in their village. The school they attend is very far as a result none of their children were attending school at the time of complaining to the Ombudsman.

FINDINGS

It was found that there was no school in the village and that the distance between the villages to the nearest school (Buiba Lower Basic) is about 2.9 kilometres

The director of education in the region stated that they were aware of the community's problem and had even provided a donkey cart as means of transportation which was not sustainable.

The distance between the village and the nearest school is below the educational policy of 3 kilometres. The road to Buiba is very bushy and not safe for children to walk in such remote condition.

CONCLUSION

Two classrooms were provided and teaching and learning commenced.

COMPLAINT NO: 6/2018
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The complainant alleged that his identity card was seized by an immigration officer. The immigration officer stated that the complainant was not a Gambian and should not be issued with a Gambian identity card.

FINDINGS

It was found out that the complainant's identity card was seized by an immigration officer. The parents of the complainant were from Guinea Conakry.

According to the Laws of The Gambia on citizenship, one of the parents must be a Gambian before one is entitled to citizenship. By virtue of this law, the complainant was not qualified to be issued with a Gambian identity card.

CONCLUSION

The complainant was advised to apply for alien identity card or naturalize.

COMPLAINT NO: 10/2018
NATURE OF COMPLAINT: Unfair Treatment

COMPLAINT

The complainants alleged that between 2013 and 2014, they were informed by a public institution of a bridge construction at Yelle Tenda and Bamba Tenda River. The shops and canteens were evaluated. Each canteen owner's name was written and his /her dependents. They promised that those names on the list would be compensated and a new market would be built for them before the completion of the bridge. The complainants further alleged that to their dismay, they were asked to vacate and their shops were demolished without compensation or construction of new market as promised.

FINDINGS

The complainants were approached by the said institution between 2013–2014 pertaining to the construction of a bridge between Yelle Tenda and Bamba Tenda.

The institution promised to compensate the affected shop owners and promised that a new market would be constructed before the completion of the bridge.

The shop and canteen owners were asked to vacate without being compensated and there was also no construction of a new market.

CONCLUSION

The institution compensated each of the affected shop owners an amount of D14, 000(fourteen thousand dalasi) and promised to build a new market.

COMPLAINT NO: 11/2018
NATURE OF COMPLAINT: Claiming for Salary

COMPLAINT

The complainant stated that she started work in January 2018 as assistant secretary. She alleged that she had been going to work regularly without being paid salary even though she was promised.

FINDINGS

Investigation revealed that the complainant worked for a public institution as assistant secretary on voluntary basis and may be considered for employment depending on availability of vacancy. It was found out that there was no vacant post.

CONCLUSION

The complainant was working on voluntary basis and since there was no vacant position, she could not be considered for appointment. The case was dismissed for lack of merit.

COMPLAINT NO: 21/2018

NATURE OF COMPLAINT: Claiming Drawback Allowance

COMPLAINT

The complainant stated that she was appointed on 1 November 2013 at a health centre as orderly. She alleged that in March 2018, drawback allowance was paid to some members of staff. To her surprise, some of her colleagues with whom she was appointed on the same grade received D15, 000 as drawback in allowance while she received D6, 800.

FINDINGS

The complainant was appointed 25 November 2013 as orderly with effect from 1 November 2013.

The variation in allowance payment arose as a result of the risk allowance the complainant had been benefiting while her colleagues were not. The health centre paid drawback allowance to those members of staff who had not been benefiting from risk allowance. This brought about the difference in earning between the complainant and her colleagues.

CONCLUSION

The case was dismissed accordingly.

BASSE CASES

CHAPTER 8

8.1 CASES REGISTERED

COMPLAINT NO:

1/2018

NATURE OF COMPLAINT:

Abuse of power

COMPLAINT

The complainant alleged that he was riding a motorcycle heading to Basse and upon reaching a police check point, he saw two police officers sitting under a tree. He hooted three times but the officers failed to attend to him, so he decided to go. One of the officers blew the whistle and he stopped. The officer asked him to park his motorcycle for failing to stop at the police check point. He parked the motorcycle and reported the matter to the Ombudsman for redress.

FINDINGS

The officer commanding said that it was two officers who parked the motorcycle at the police station.

The complainant did not commit any traffic offence. Upon arrival at the police check point, he stopped and hooted three times but the officers failed to attend to him. The officers were unable to give any genuine explanation for parking the complainant's motorcycle.

CONCLUSION

The police ordered the release of the complainant's motorcycle. The officers were advised to desist from such practice failing which recommendation would be made for disciplinary action to be taken against them. The officers apologized to the complainant and the case was closed accordingly.

COMPLAINT NO:

2/2018

NATURE OF COMPLAINT:

Unlawful Detention

COMPLAINT

The complainant alleged that on 3 January 2018, a forestry officer caught his six brothers with five donkey carts loading ten logs. He escorted them to a police station where all the logs were offloaded and the donkey carts seized. On 4 January 2018, his brothers were taken to another police station where their statements were obtained but denied bail.

FINDINGS

The donkey carts and the ten logs were seized and the complainant's brothers escorted to the said police station. The accused persons were charged for illegal logging contrary section 98 of the Forestry Act. They were granted bail but could not fulfil the bail condition.

On 15 January 2018, the accused persons were arraigned before the district tribunal. They pleaded guilty to the charge preferred against them and they were sentenced to a fine of D63, 000 in default to serve 3 years imprisonment with hard labour.

CONCLUSION

The case was sub judice and the investigation was discontinued.

COMPLAINT NO:

3/2018

NATURE OF COMPLAINT:

Unlawful Detention

COMPLAINT

The complainant had rented a shop for 22 years. He alleged that he had never owed her landlady rent arrears. He further alleged that on 20 January 2018, his landlady reported him to a CID officer and demanded that he should vacate the shop without notice. The CID officer arrested the complainant and detained him.

FINDINGS

The complainant was detained behind the counter. The officer commanding CID was not aware of the detention of the complainant.

When the CID officer was contacted, he could not give any genuine reason for the complaint's detention. As a result, a police chief inspector ordered for the immediate release of the complainant.

The arrest and the detention of the complainant were not registered in the station diary.

CONCLUSION

The CID officer was told that rent issues should be referred to the rent tribunals. He apologized for his conduct and the case was closed accordingly.

COMPLAINT NO:

4/2018

NATURE OF COMPLAINT:

Failure to pay gratuity

COMPLAINT

The complainant retired as Islamic studies teacher at a lower basic school in 2014. On 3 May 2016, he was offered contract from 1 September 2015 to 31 December 2016 in the same School. At the end of the contract, he claimed his gratuity, but he was not paid.

FINDINGS

The regional director and head master of the school were both aware of the expiry of complainant's contract.

The director prepared the complainant's documents and forwarded them to the permanent secretary for approval. The documents were later sent to the accountant for computation.

On 1 February 2018, the accountant explained that the complainant's voucher had already been prepared and he should go to the ministry to sign the relevant documents for onward transmission to the accountant general.

CONCLUSION

On 12 February 2018, the complainant informed the Ombudsman that he was paid D7817 (seven thousand eight hundred and seventeen dalasi) as gratuity.

COMPLAINT NO: 5/2018
NATURE OF COMPLAINT: Abuse of Power

COMPLAINT

The complainant alleged that on 5 February 2018, a police sergeant and his men were on patrol at his village when they found a chainsaw in his possession. They suspected that he was using the chainsaw to cut down trees in the bush. They seized the chainsaw and escorted him to a police post. He explained to the sergeant that the chainsaw was not in good condition and that he was taking it for repairs. The sergeant did not believe his story and refused to hand over the chainsaw.

FINDINGS

The commanding officer of the paramilitary posts said that he was not aware of the complainant's arrest and seizure of his chainsaw. However, the said police sergeant confirmed that the complainant was arrested and his chainsaw seized.

CONCLUSION

The commanding officer ordered the sergeant to handover the chainsaw to the complainant and the case was settled.

COMPLAINT NO: 6/2018
NATURE OF COMPLAINT: Supplied with a Faulty Electric Meter

COMPLAINT

The complainant alleged that in February 2018, he was issued with a cash power meter No 07141201309. He bought cash power units which could not be loaded. He reported the matter to the regional manager but no action was taken.

FINDINGS

The regional manager confirmed that the complainant did report the matter to his office. He explained that, the technician responsible for checking cash power meters had travelled to the Kombos. He promised that as soon as he returned from the Kombos, he would fix the complainant's meter.

CONCLUSION

On 24 February 2018, the complainant informed the Ombudsman that the cash power meter was repaired and functioning properly.

COMPLAINT NO: 7/2018

NATURE OF COMPLAINT:**Unlawful Detention****COMPLAINT**

The complainant alleged that on 25 February 2018, his wife was arrested by a police officer who suspected her of stealing D1, 600 from a man. His wife was detained without charge being preferred against her.

FINDINGS

The complainant's wife was detained behind the counter. She was suspected of stealing D1, 600. Her cautionary statement and that of her alleged victim were obtained.

CONCLUSION

Since there was no ample evidence against her, she was released unconditionally.

COMPLAINT NO:**9/2018****NATURE OF COMPLAINT:****Unlawful Arrest****COMPLAINT**

The complainant alleged that his driver, who plies between Banjul and Basse, was asked by a police officer to take D5000 to his brother who works at a certain police station. The driver charged him D300 for the service. The police officer was not happy with the amount charged and as a result a quarrel ensued between them. He called two police officers at a police station and when the driver arrived, he was arrested and detained.

FINDINGS

The station officer was not aware of the incident. The station diary was checked, but no entries were made in relation to this incident.

A police sergeant explained that the complainant's driver was brought to the police station because he wanted to fight with him.

The sergeant could not produce any witness to substantiate his claim that the complainant's driver wanted to fight with him.

CONCLUSION

Since there was no witness to support the police officer's claim, the Ombudsman recommended for the immediate release of the complainant's driver. The driver was released and the case was settled.

COMPLAINT NO:**10/2018****NATURE OF COMPLAINT:****Abuse of Power**

COMPLAINT

The complainant said that he had been selling some condiments near a police station since 2013. He said that on 20 April 2018, a new commissioner of police to the region, ordered him to move out of that area because it's near the police station. He complied but in the same month, he saw a lady selling at the same location. He was afraid to ask the commissioner about it so he decided to report the matter to the Ombudsman.

FINDINGS

The lady was found at the complainant's place as alleged. When she was asked, she explained that the place was allocated to her by the same police commissioner.

When the police commissioner was contacted, he confirmed that he allocated the said place to the lady. He explained that the complainant was not selling at the place at the time that was why he gave the place to her.

CONCLUSION

The Ombudsman recommended that the lady be removed from the complainant's selling place. The lady was asked by the police to vacate the place and she complied.

COMPLAINT NO:

11/2018

NATURE OF COMPLAINT:

Abuse of Power

COMPLAINT

The complainant said that he had cut down a mahogany tree in his compound. A forestry officer confronted him as to why he cut down the tree without a permit. The forestry officer seized the axe and hammer he was using.

FINDINGS

The forestry officer confirmed seizing the complainant's axe and hammer because he did not have a permit to cut down the tree.

CONCLUSION

The Ombudsman recommended that the complainant be summoned before a court of law for illegal felling of tree.

COMPLAINT NO:

12/2018

NATURE OF COMPLAINT:

Injustice

COMPLAINT

The complainant alleged that on 7 June 2017, a group tribunal presided over a case concerning a land dispute between two villages. The group tribunal entered judgment in favour of his village. On 7 May 2018 the inhabitants of the opposing village went to the land which was in dispute to clear it for the farming season. The complainant reported the matter to the governor and the governor

ordered that the villagers should not interfere with the complainant's farm but the villagers paid no heed to the governor's directives.

FINDINGS

The governor advised the village to adhere to the decision of the group tribunal.

The chief confirmed that the group tribunal had entered judgment against the defendants. He advised them to maintain peace in the district.

CONCLUSION

Since the matter was handled by a group tribunal, the Ombudsman does not have the mandate to review the decision, in line with section 9(2) (b). The investigation was discontinued.

COMPLAINT NO:

13/2018

NATURE OF COMPLAINT:

Undue delay in investigation

COMPLAINT

The complainant alleged that he was arrested on 7 July 2018 for alleged cattle theft. The case was assigned on 9 July 2018 for investigation. The complainant stated that he was granted bail while the investigation was on-going. He had spent ten days in police custody and believed there was undue delay in the investigation of his case.

FINDINGS

The complainant was detained for more than 72 hours. He was not released because he was unable to provide a surety.

CONCLUSION

It was recommended that the suspect be taken before a magistrate. On 20 July 2018, the Ombudsman was informed that the suspect had been taken to court and he was remanded.

The complainant was later arraigned before the Bansang Magistrate Court, he was found guilty and sentenced to one year six months imprisonment.

COMPLAINT NO:

15/2018

NATURE OF COMPLAINT:

Non Issuance of Retirement Letter

COMPLAINT

The complainant was appointed as night watchman with effect from 1 January 2008. He was receiving his salary until October 2017 when the paymaster informed him that he had been retired. He alleged that he was never issued with a retirement letter.

FINDINGS

It was confirmed that the complainant applied to proceed on statutory retirement. His application was sent to Banjul to be processed. The regional director, who was not in the region at the time,

confirmed receipt of the complainant's retirement letter and promised to hand it over to the complainant upon his return.

CONCLUSION

On 26 August 2018, the complainant was issued with his retirement letter.

COMPLAINT NO: 17/2018
NATURE OF COMPLAINT: Delay in Installation of Cash Power Meter
COMPLAINT

On 18 July 2018, the complainant applied for cash power meter for his workshop. He was charged D22, 000 which he paid but his cash power meter had not been installed.

FINDINGS

The complainant's cash power meter was among 350 meters collected from the company's head office.

A senior linesman was instructed to install the complainant's cash power meter on Monday, 17 September 2018.

The delay to install the cash power meter was caused by the company's head office.

CONCLUSION

On 17 September 2018, the complainant informed the Ombudsman that his cash power meter was installed.

COMPLAINT NO: 19/2018
NATURE OF COMPLAINT: Abuse of Power

COMPLAINT

The complainant bought condiments from Basse on 19 September 2018. On his way back riding a motorcycle; he was stopped at a police checkpoint. His motorcycle documents were inspected and found to be provisional driving licence. He was then ordered to park the motor bicycle. The Complainant appealed but to no avail.

FINDINGS

The complainant's provisional driving licence issued on 11 March 2018 was expired.

CONCLUSION

The Ombudsman recommended that the complainant be summoned for un-licensing driving.

Since the complainant was having perishable goods, the Ombudsman further recommended for the release of his goods pending his trial. The case was closed accordingly.

COMPLAINT NO: 20/2018
NATURE OF COMPLAINT: Abuse of Power

COMPLAINT

The complainant alleged that a mahogany tree, which grew in his farm, was cut down by a person in the village on the orders of their Alkalo without permission from the Forestry Department.

FINDINGS

The forestry officer at the village was aware of the matter and both the Alkalo and the person who cut down the tree were summoned for illegal logging contrary to section 121 of the Forestry Act.

They pleaded guilty before the district tribunal. The said individual was fined D2000 in default to serve 1 year imprisonment at Janjanbureh Prison and the Alkalo was cautioned and discharged. The logs were to be sold by the Forestry Department and the proceeds paid into state coffers.

CONCLUSION

Since judgement was delivered at the district tribunal; the matter was dismissed on the grounds that the Ombudsman does not have the powers to review the decision of any court.

COMPLAINT NO: 21/2018
NATURE OF COMPLAINT: Injustice

COMPLAINT

On 16 May 2012, the complainant was offered scholarship under the Global Fund HIV/AIDS Round 8 Grant for the academic year 2012-2013 to pursue a General Nurses and Midwives Training Course at The Gambia College School of Nursing and Midwifery, the school for Community Health Nurses in Mansakonko and the School for Enrolled Nurses and Midwives at Bansang. After completing the training in 2014, he was posted. On 2 August 2017, he tendered a resignation letter, but his resignation was not accepted.

FINDINGS

The relevant authority had no objection to the complainant's resignation but insisted that the complainant should hand over to the officer in-charge of his place of work.

A senior officer checked in the correspondence file, but could not trace the complainant's letter. The complainant was asked to re-submit his resignation letter, which he did on 10 October 2018.

CONCLUSION

On 11 October 2018, the complainant informed the Ombudsman that his resignation was approved.

COMPLAINT NO: 23/2018
NATURE OF COMPLAINT: Injustice

COMPLAINT

The complainant said that on 13 September 2018, he applied for cash power meter but there was a delay in installing his meter; whereas, a neighbour, with whom he applied on the same day, had his meter installed. He said whenever he contacted the linesman; he would ask him to wait.

FINDINGS

The regional manager said that the complainant's meter was among the 350 cash power meters that he received from their headquarters on 4 October 2018. He asked the senior linesman about the reason for not installing complainant's meter. He replied that the linesman who was supposed to install the cash power meter had travelled to the Kombos. The regional manager instructed him to ask another linesman to install the meter.

CONCLUSION

The complainant's cash power meter No. 14309723832 was installed.

COMPLAINT NO:

25/2018

NATURE OF COMPLAINT:

Malpractice

COMPLAINT

The complainant alleged that on 3 December 2018, he rode a motorbike to visit his sick mother at the Basse Major Health Centre. He was stopped by a police officer who requested for his particulars. He was unable to produce the particulars of the motorbike and as a result the police officer impounded his motorbike and demanded D1500 or else he would not release it. He appealed to the officer but to no avail. He recorded their conversation and lodged a complaint with the Ombudsman.

FINDINGS

The police officer impounded the complainant's motor bicycle on the grounds that he was unable to produce the particulars of the motorbike. The recorded conversation revealed that he demanded D1500 from the complainant or else his motorbike would not be released.

RECOMMENDATION

Police officers are expected to execute their duty without engaging in any action that could tarnish the reputation of the police. The Ombudsman recommended that disciplinary measures be taken against the said police officer and be urged to desist from such corrupt practice.

CONCLUSION

The Ombudsman was informed that the officer in question was charged with discreditable conduct, fined D300 and transferred to a police post.

COMPLAINT NO:

26/2018

NATURE OF COMPLAINT:

Unlawful Impound of Vehicle

COMPLAINT

The complainant lodged a complaint to the Ombudsman that on 5 December 2018, he was driving a red-coloured Benz 190 when he was stopped by a senior police officer who ordered him to park the said vehicle because it was not painted in taxi colour (green and yellow).

FINDINGS

The said vehicle was found to have been impounded by the police.

The complainant had violated regulation 178 of the Motor Traffic Regulation. He should have painted his vehicle with the approved taxi colour before using it as a taxi.

CONCLUSION

The Ombudsman recommended that the complainant be issued with a summons for violating regulation 178 of the Motor Traffic Regulation. He was spot fined D500 by Chief Inspector.

STATISTICAL APPENDICES

CASE SUMMARY OF THE YEAR 2018

TABLE 1: NO. OF CASES REGISTERED BY OMBUDSMAN'S HEAD OFFICE AND REGIONS

CASES REGISTERED BY LOCATION		
LOCATION	NO. OF CASES	PERCENTAGE COMPLETED
Head Office	220	79.5
Kerewan	13	5
Mansakonko	21	7.5
Basse	26	9
TOTAL	280	100

TABLE 2: TREND IN THE NUMBER OF CASES REGISTERED BY THE OMBUDSMAN AT HEADQUARTERS

TREND IN THE NUMBER OF CASES REGISTERED BY THE OMBUDSMAN YEARLY				
YEAR	2015	2016	2017	2018
No. of Cases	128	131	376	220

TABLE 3: NUMBER OF CASES REGISTERED AGAINST VARIOUS INSTITUTIONS

NO.	INSTITUTIONS/DEPARTMENTS	ABBREVIATION	NO. OF CASES	PERCENTAGE
1	Tallinding Upper Basic School	TUBS	34	15.0
2	Department of Labour	DOL	22	9.7
3	Ministry of Basic and Secondary Education	MOBSE	11	4.9
8	National Water and Electricity Company	NAWEC	11	4.9
4	Personnel Management Office	PMO	11	4.9
5	Armitage Senior Secondary School	ASSS	10	4.4
6	Gambia Armed Force	GAF	10	4.4
7	Kanifing Municipal Council	KMC	10	4.4
9	Social Security and Housing Finance Corporation	SSHFC	9	4.0
11	Gambia Police Force	GPF	9	4.0
10	Gambia Prisons Service	GPS	8	3.5
12	Gambia Ports Authority	GPA	5	2.2
13	National Drug Law Enforcement Agency	NDLEAG	5	2.2
14	Ministry of Youths, Sports and Culture	MOYSC	5	2.2
15	National Food Security Processing and Marketing	NFSPMC	4	1.8
16	Ministry of Agriculture	MOA	4	1.8
17	Edward Francis Small Teaching Hospital	EFSTH	4	1.8
18	State Intelligence Services	SIS	3	1.3
19	Banjul City Council	BCC	3	1.3

20	Gambia Immigration Department	GID	3	1.3
21	Brikama Area Council	BAC	3	1.3
22	Gambia Technical Training Institute	GTTI	3	1.3
23	State Intelligence Services	SIS	3	1.3
24	Gambia Immigration Department	GID	3	1.3
25	Department of Treasury	DOT	2	0.9
26	Charles Jow Memorial Academy	CJMA	2	0.9
27	Gambia Fire and Rescue Service	GFRS	2	0.9
28	Gambia Senior Secondary School	GSSS	2	0.9
29	Ministry of Health and Social Welfare	MoHSW	3	1.3
30	Gambia Telecommunication Company Ltd.	GAMTEL	1	0.4
31	Ministry of Justice	MOJ	2	0.9
32	Ministry of Foreign Affairs	MOFA	1	0.4
33	Gambia Radio and Television Service	GRTS	1	0.4
34	Office of the President	OP	1	0.4
35	Gambia College	GC	1	0.4
36	Chief of Kombo South	CKS	1	0.4
37	St. Francis Senior Secondary School	SFSSS	1	0.4
38	Garba Jahumpa Upper and Senior	GJUSS	1	0.4
39	Ministry of Local Government	MOLG	1	0.4
40	Nemasu Senior Secondary School	NSSS	1	0.4
41	Kuntaur Area Council	KAC	1	0.4
42	National Disaster Management Agency	NDMA	1	0.4
43	Asset Management and Recovery Corporation	AMRC	1	0.4
44	Brufut Upper and Senior Sec. Sch.	BUSSS	1	0.4
TOTAL NO. OF CASES AND PERCENTAGE			220	100

CASES REGISTERED AGAINST VARIOUS INSTITUTIONS

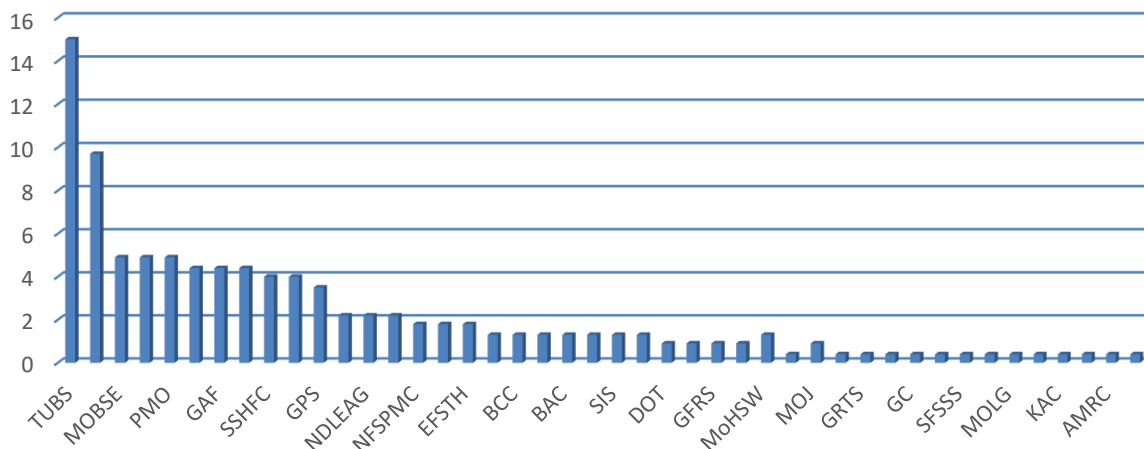


TABLE 4: NATURE OF COMPLAINTS REGISTERED IN 2018 AT HEAD OFFICE

NATURE OF COMPLAINT	NUMBER OF CASES	PERCENTAGE
Unfair treatment	74	35
Injustice	45	20
Unlawful Dismissal	45	20
Salary Related	16	7
Retirement Benefits Related	14	6
Unlawful Termination	11	5
Maladministration	4	2
Unlawful Suspension	3	1
Torture and Abuse of Power	3	1
Medical Claim	2	1
Wrongful Discharge	2	1
Vote of no confident	1	1
TOTAL	220	100

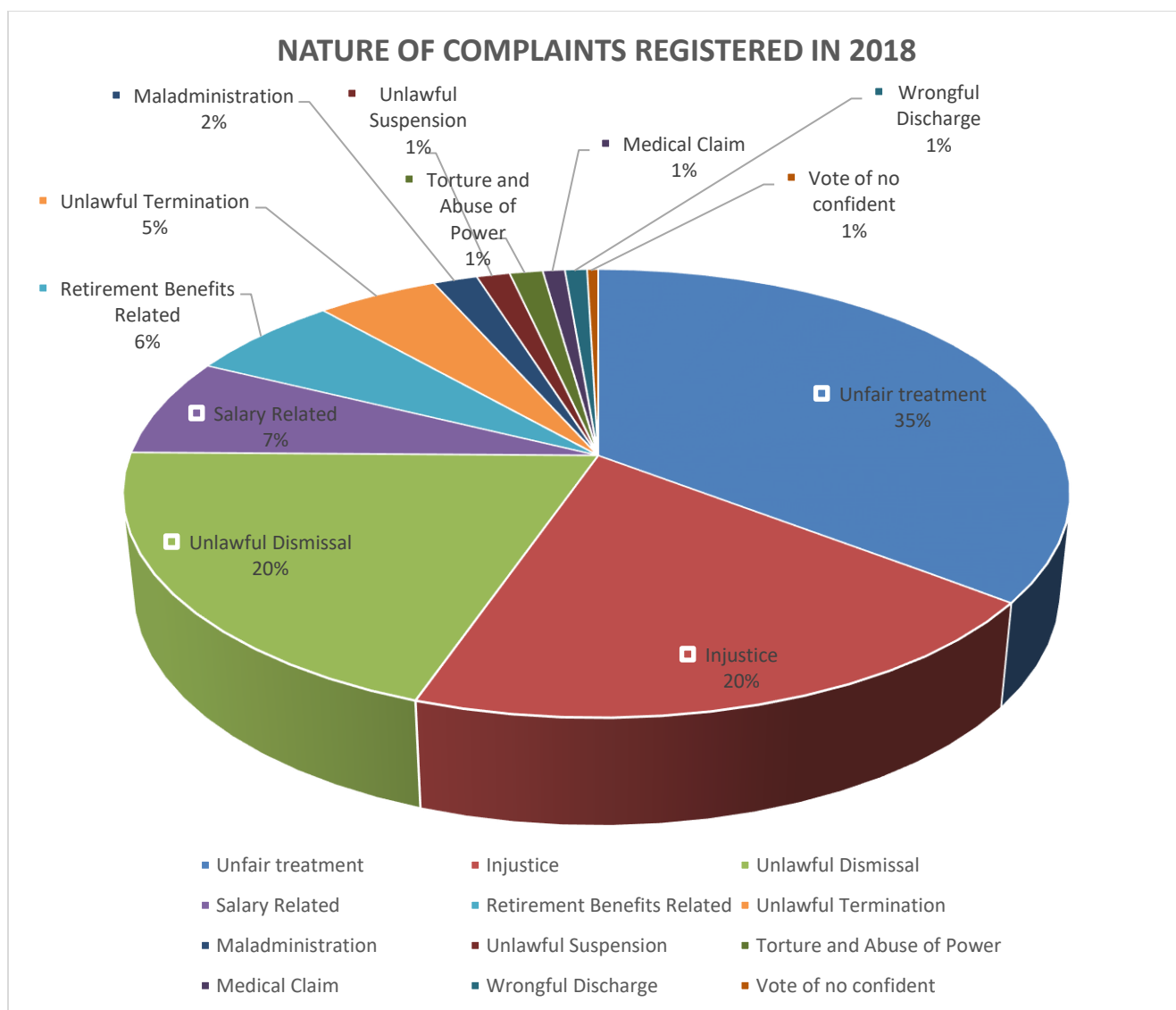


TABLE 5: NATURE OF CLOSURE OF CASES REGISTERED AT THE HEAD OFFICE IN 2018

NATURE OF CLOSE	NUMBER OF CASES	PERCENTAGE
Settled	55	25
Dismissed (After full investigation)	37	17
Discontinued (for lack of merit)	20	9
Withdrawn	3	1.4
Pending	105	47.6
Total	220	100

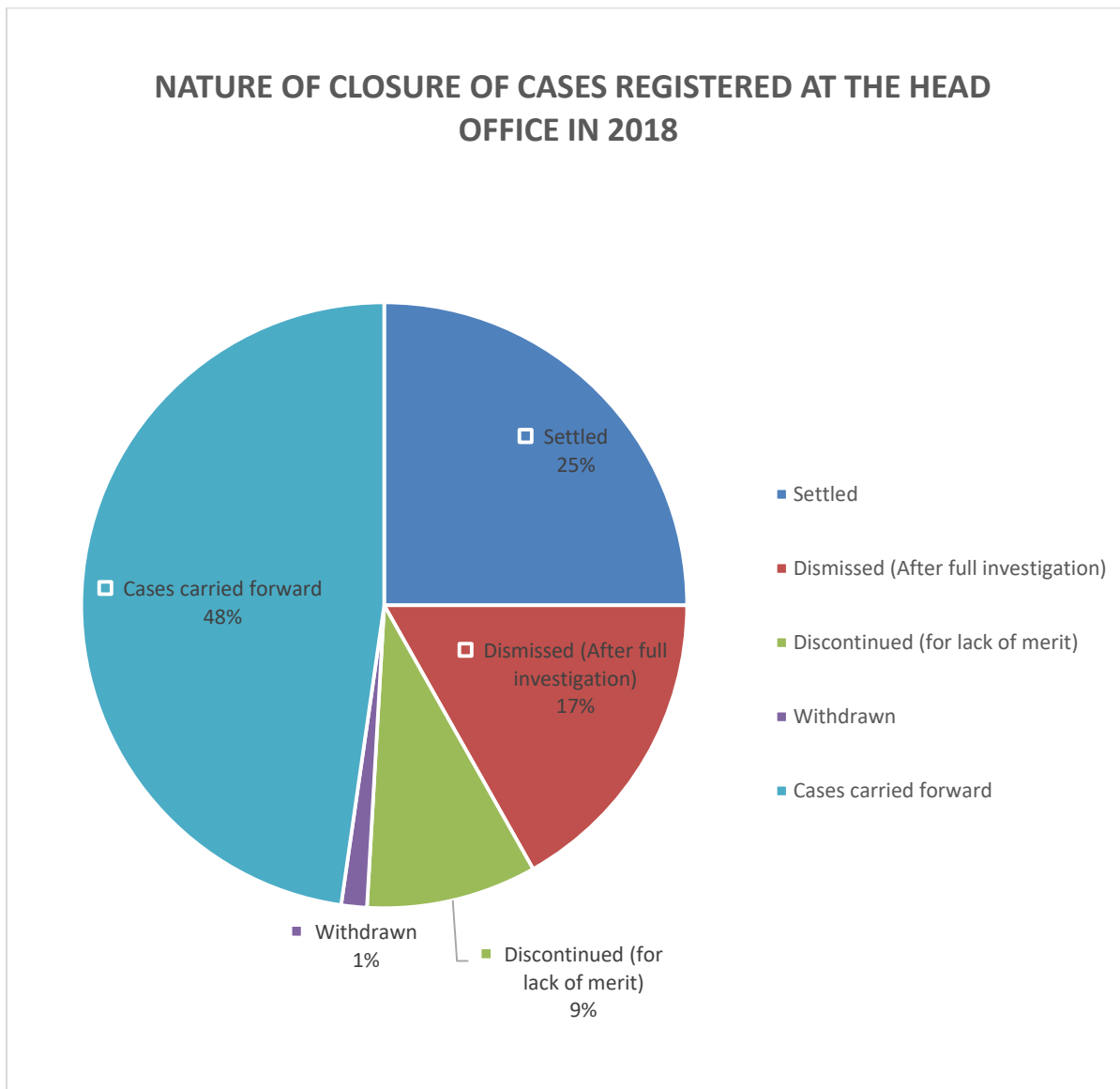


TABLE 6: SUMMARY OF CASES INVESTIGATED IN 2018 AT HEADQUARTERS AND THE REGIONS

CASE SUMMARY	NUMBER
Brought forward cases in 2017	130
Cases registered in 2018 at Headquarters & the Regions	280

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

CHAPTER X THE OMBUDSMAN

- 163. National - Assembly to**
- (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.

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 | <p>2. (1) There is hereby established the Office of the Ombudsman which shall consist of the Ombudsman and two Deputy Ombudsmen.</p> <p>(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.</p> <p>(3) The Ombudsman and Deputy Ombudsmen shall be appointed for a period of five years and shall be eligible for re-appointment.</p> <p>(4) The Ombudsman and Deputy Ombudsmen shall, before entering upon the duties of office, take an oath of office.</p> <p>(5) The Ombudsman and Deputy Ombudsmen shall not hold any other public office.</p> <p>(6) The Ombudsman and any Deputy Ombudsman shall constitute a quorum for the purpose of arriving at any decision.</p> |
| Functions of the Ombudsman | <p>3. (1) In addition to the functions of the Ombudsman under the Constitution, the Ombudsman shall have the following functions -</p> <p>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;</p> <p>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.</p> |

- (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.

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

Power summon witnesses	to	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.
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Orders Ombudsman	by	7.Orders, writs and directions issued by the Ombudsman shall have the same force as an order, writ or direction of the High Court.
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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;
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The Ombudsman shall not require the information to be given or the document to be produced.

Jurisdiction Ombudsman	of	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.
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(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.

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

Investigations to be in camera

(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.

Provisions relating to complaints and allegations

(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.

Evidence and procedure

(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.

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

Reports

- (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 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.

Enforcement and notification

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.

Report National Assembly

to

15. (1) The Ombudsman shall submit to the National Assembly an annual report of his or her operations.

(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.

Staff Ombudsman

of

16. The Ombudsman shall employ such staff as he or she shall determine, who shall become public officers.

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.

**Finality of
Ombudsman's
acts**

(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.

**immunity of
Ombudsman and
members of staff
of office of
Ombudsman**

(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 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.

Expenditure

(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.

20. (1) If any person who: -

Offences

- (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.

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:

**Power to make
rules**

- (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.

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Clerk of the National Assembly