

Price : Rs. 50.



MAURITIUS

13th Annual Report of the Ombudsman

January — December 1986

No. 15 of 1986

13th
Annual Report
of the
Ombudsman

January — December 1986

Government of Mauritius

OMB. 13/04/Vol. XIII

Ombudsman's Office,
4th Floor, Bank of Baroda Building,
Sir William Newton Street,
Port Louis,
Mauritius.
25th March, 1987.

His Excellency Sir Veerasamy Ringadoo, G.C.M.G., Kt., Q.C.
The Governor-General of Mauritius
Government House
Le Réduit.

Your Excellency,

I have the honour to submit, in accordance with section 101(3) of the Constitution, a report on the discharge of my functions which is to be laid before the Assembly. The report covers the period 1st January to 31st December 1986.

Respectfully yours,

R. SEWGOBIND

Ombudsman

Table of Contents

Paragraphs

1. Introduction	...	...	...	...	...	...	1	—	5
2. Statistics:									
(a) Caseload	...	...	...	...	...	...			6
(For details vide Appendices and Selected Cases)									
(b) Visits	...	...	...	...	...	...			15
(c) Copies of Complaints	...	...	...	...	...	...			16
3. Comments on Statistics and Some Comparative Statistics	...	...	...	...	...	...	7	—	14
4. Report and Recommendation under S. 100 of the Constitution	...	...	...	...	...	...			17
5. Cases Explained	...	...	...	...	...	...	18	—	20
6. Acknowledgements	...	...	...	...	...	...	21	—	23
7. Historical Notes on Institution of Ombudsman	...	...	...	...	...	...	24	—	29
8. Appointment and Jurisdiction of Ombudsman	...	...	...	...	...	...			30
9. Comment on Section 97 of the Constitution	...	...	...	...	...	...	31	—	35
10. Conclusion	...	...	...	...	...	...	36	—	37

APPENDICES

Pages

Appendix A

11. Selected Cases:									
Accountant-General	...	...	...	...	...	...			11
Civil Aviation	...	...	...	...	...	...			11
Co-operatives	...	...	...	...	...	...			12
Education, Arts and Culture	...	...	...	...	...	...			17
Employment	...	...	...	...	...	...			17
Health	...	...	...	...	...	...			19
Housing, Lands and the Environment	...	...	...	...	...	...			22
Labour and Industrial Relations	...	...	...	...	...	...			24
Police	...	...	...	...	...	...			26
Prime Minister's Office	...	...	...	...	...	...			30
Prisons	...	...	...	...	...	...			32
Reform Institutions	...	...	...	...	...	...			36
Registrar-General	...	...	...	...	...	...			38
Telecommunications	...	...	...	...	...	...			39
Works	...	...	...	...	...	...			40

Appendix B

12. Statistical Summary of Complaints dealt with department-wise	...	...			41
--	-----	-----	--	--	----

Appendix C

13. Schedule of Complaints for period 1st January 1986—31st December 1986 (All complaints with departments concerned, nature of complaints and results of investigation)	...				42
---	-----	--	--	--	----

Appendix D

14. Cases outside jurisdiction	...	...	...	...	48
--------------------------------	-----	-----	-----	-----	----

Annual Report of the Ombudsman

January — December 1986

This is the thirteenth annual report of the Ombudsman and it covers the period 1st January to 31st December 1986.

2. The first Ombudsman, Judge Gunnar Lindh from Sweden, was appointed in March 1970 and he resigned in January 1972.

3. Mr. S. Mootoosamy, C.M.G., was appointed Ombudsman on the 23rd January 1973 and he passed away on the 16th July 1974.

4. I was appointed Ombudsman on the 20th February 1975.

5. The State of Mauritius consists of the islands of Mauritius, Rodrigues and some other islands in the Indian Ocean. Total population: 1,023,934 as at 31st December 1984. Total area: 2,040 sq. km. It achieved independence from colonial status in 1968.

Statistics

(a) Caseload

6. Cases pending at 31st December 1985	16
Case intake in 1986 ...	168
Cases dealt with during period under review ...	184
Cases declined for want of jurisdiction	58
Cases declined in exercise of discretion	4
Cases explained ...	24
Cases in which investigation discontinued ...	21
Cases not justified ...	48
Case justified ...	1
Cases justified/rectified ...	2
Cases rectified ...	3
Cases withdrawn ...	4
Cases pending at 31st December 1986	19

Comments on Statistics

7. (a) Not all the cases are within my jurisdiction and several of them are cases concerning matters of appointment, promotion, transfer, discipline, etc., within the public service, para-statal and other statutory bodies. Such cases are outside my jurisdiction. But that does not mean that

public officers or employees of para-statal or statutory bodies can never complain to the Ombudsman. They can always contact him about any problems they may have with a government department or officer so long as these problems do not concern their employment. Some day, a government activity is quite likely to affect them in one way or another and they will then be fully entitled to bring their grievance to the Ombudsman; they would thus be complaining not as public officers or employees as described above but as members of the public.

(b) I reiterate that I investigate complaints from *members of the public* against acts of mal-administration of Government Departments or Officers or the Tender Board as a consequence of which they have sustained injustice.

8. It may be argued that the number of *justified complaints* is low but that is not the most important point in the Ombudsman's work. What is important is that people want more and more to be enlightened about the whys and wherefores of an administrative action which concerns them, are ventilating their grievances against the public administration instead of taking things lying down and have a place and a third party where and to whom they can do so. That is already meeting a great need of the public.

9. The *number* of complaints may appear to be comparatively *small*. The extent of the jurisdiction, the standard of the public service, publicity and the vigilance of the public have a direct bearing on the number of complaints.

Some Comparative Statistics

10. (a) In connection with the above statistics, it is worth noting that even in Sweden, the country of origin of Ombudsman, "in the first 100 years of the Office's existence, the *Jutitieombudsman* (Ombudsman) received only about 70 complaints a year. Since then the number has risen rapidly". (Vide *The Swedish Parliamentary Ombudsmen*. Stockholm 1976. published by the Ombudsmen of Sweden).

(b) The Swedish Parliamentary Ombudsmen's Report for the period July 1, 1985 to June, 30, 1986 shows that out of a total of 3,374 complaints dealt with, 1,228 complaints were dismissed without investigation and 113 were referred to other agencies or state organs. In 1,535 cases no criticism was made after investigation, in 490 cases admonitions or other criticism were made and in 8 cases prosecution or disciplinary proceedings (which are within the jurisdiction of the Swedish Ombudsmen) were started. In no case were proposals to Parliament or the Government made.

(c) The Annual Report of the British Parliamentary Commissioner (Ombudsman) for 1985 shows that during the Parliamentary session 1985-86 a total of 759 cases were received of which 373 came from Members of Parliament. 224 cases had been carried forward from 1984 and of the combined total of 983 complaints, 788 were disposed of, 606 were rejected, 177 fully investigated and the results reported to Members of Parliament. 5 cases were discontinued, 195 were carried forward into 1986 and 146 were under investigation.

(d) The Annual Report of the Northern Parliamentary Commissioner for Administration for 1985 shows that out of a total of 176 (including 12 brought forward from 1984) complaints received 128 were rejected as being outside jurisdiction or showing no *prima facie* evidence of maladministration, 16 were investigated and reports thereon were made to Members of Parliament, 5 were discontinued after partial investigation and reported to Members of Parliament and 27 were under investigation at the end of the year.

(e) The Annual Report of the Ombudsman of Fiji for the period March 1985—February 1986 shows the following statistics:—

"Total number of cases brought forward ... 110			
Total number of cases received	...	408	518
Total number of cases disposed of	...		433
Total number of cases pending	...		85

The 433 cases disposed of were classified as follows:—

Justified	...	44
Partially Justified	...	25
Rectified	...	64
Explained	...	87
Settled	...	1

Referred	...	3
Not Justified	...	12
Not Sustained	...	48
Discontinued	...	22
Withdrawn	...	7
Request	...	11
Abandoned	...	5
No Jurisdiction	...	63
Declined	...	41
		433"

Fiji is an archipelago in the South West Pacific and consists of some 844 islands and islets with a total area of 18,333 square kilometres and a population of 646,561 (1981). Fiji is multiracial and multilingual as is Mauritius, although the ethnic composition is slightly different. Just as in Mauritius, Chapter IX of its Constitution deals with the institution of Ombudsman and its provisions are virtually the same as those of our Chapter IX.

11. The investigation of complaints takes time involving lengthy correspondence and the study of files and documents of the Ministries and the Departments concerned. Of course, any number of complaints are welcome and should there be overburdening as suspected by Professor de Smith, the Constitutional Commissioner (vide end of quotation in paragraph 28 of this Report), an enlargement of the staff would be the obvious solution.

12. It may also be said that there are not many important complaints. But what appear to be small grievances to some critics are really big problems for the vast majority of people in any country. A retiring benefit not paid in time, action on a complaint to a police officer or a labour officer or any officer or Ministry or Department being unreasonably delayed, a medical report not being available, or a patient's record not easily traceable in a hospital, (to cite only a few cases), may appear small matters to those who look for sensational news. But to the persons concerned such matters are of great importance as they affect them adversely.

13. The curt and classic bureaucratic reply "it is regretted that your request cannot be granted" really leaves the citizen most perplexed as he does not know the reasons for the rejection of his request, specially when he sees other similar requests have been granted. The public officer cannot always afford the time to sit down and explain all the circumstances to the party concerned and in some cases cannot and should not reveal to the public all the information at his dis-

posals. It is there that the Ombudsman, having access to all information, with some exceptions, plays the role of the public relations officer and having investigated the whole case uses his judgement in making a suitable reply to the complainant. His main task is to satisfy himself whether there is or there is not any act of maladministration e.g. error, negligence, delay, discrimination, misapplication or misinterpretation of the law, etc. Sometimes, it is not the refusal to grant something but the lack of proper and complete explanation for such refusal that is at the root of the grievance.

14. The statistics should also be read together with the number of visits (see below) and in light of the learned comments on the British statistics of Professor K. W. R. Wade, Q.C., given at the end of paragraph 36 under the heading "Conclusion" in this Report.

(b) Visits

15. (a) There were 26 visits to my office during 1986 by members of the public individually or in groups. Their representations were about the Customs Department, District Courts, Film Censorship Board, Income Tax, Ministries of (i) Co-operatives, (ii) Housing, Lands and the Environment, (iii) Rodrigues and the Outer Islands, (iv) Social Security, (v) Trade and Shipping, and (vi) Works; Police, Postmaster General's Office, Prime Minister's Office (Passport Office), Prisons, private individual, sanitary office and the Sugar Industry Pension Fund.

(b) In seven (7) cases the visit was followed, on my advice, by a complaint in writing. In 8 cases, the visitors never wrote to me although they had agreed to do so. In the remaining cases they went away satisfied with the explanation I gave them about the absence of jurisdiction and wherever

required, about the need to seek legal advice, or, if they had no means, to apply for legal aid. I offered some personal advice in appropriate cases.

(c) Quite often, the complainants are called at my office for clarifications (dates and circumstances) of their complaints or for communicating to them orally lengthy and detailed explanations of Ministries. Sometimes, hearings are held at my office which are attended by the officers of the Ministries concerned, the complainants and their witnesses, if any, and official files and documents and authoritative books (in scientific e.g. medical fields) are also produced for my information and investigation.

(c) Copies of Complaints

16. Twenty-three (23) copies of complaints addressed to the Central Water Authority, Chief Justice, Civil Status Office, Commission on the Prerogative of Mercy, etc., were sent to me. Some of them were signed and the addresses were given. In suitable cases I enquired from the Department concerned as to what action was taken and the writers were informed of the replies received. There were other cases of anonymous copies or copies without addresses of the writers. Obviously, I could not act on such letters not only because of the anonymity etc., but because the anonymous writers did not appear to be aggrieved persons, or the letters related to private disputes or personnel matters within the public service or para-statal bodies. In cases where the original was addressed to the Minister by name, I did not take any action at all as I thought that it would be trespassing on the prerogatives of the Minister. Obviously, it was for the Minister to see what steps to take and I had no right to tell him what to do or enquire as to what action he proposed to take. To sum up, no action was taken in 13 cases for want of jurisdiction, action was taken in 10 cases and case files were opened in 7 of these 10 cases.

Report and Recommendation under Section 100 of the Constitution

17. During the year under review, 3 complaints were found *justified* on the grounds of (a) action based wholly on a mistake of fact, (b) manifestly unreasonable action, i.e. negligence, and (c) unjust action, respectively. Of these 3 complaints, 1 was rectified during my investigation. For details *vide* Appendix A under heading "Housing, Lands and the Environment" Case No. 103/86 and "Police" Cases Nos. 41/86 and 47/86.

In accordance with section 100(2) of the Constitution, a report was made by me to the Permanent Secretary, Ministry of Housing, Lands and the Environment and to the Commissioner of Police. (No report in Case No. 41/86 as the negligence did not result in any financial hardship to the complainant — a prisoner — and the complaint was rectified). Copies of the reports were sent to the Minister of Housing, Lands and the Environment and to the Prime Minister.

Cases Explained

18. There were 24 cases which were classed "Explained". They were cases which were fully investigated but which did not fit into the "Justified" or "Not Justified" straitjackets.

19. Some case reports are given in *Appendix A*.

20. *Appendix B* contains a statistical summary of the complaints dealt with department-wise. *Appendix C* shows the departments concerned, the nature of the complaints and the result. *Appendix D* shows the number of complaints received against officers, authorities, statutory bodies, individuals and private companies over whom or over which the Ombudsman has no jurisdiction.

Acknowledgements

21. Ombudsmen from many countries continued sending to this office their reports which are a source of useful information about the nature and

variety of complaints and the modes of investigation. The International Ombudsman Institute situated at the Law Centre, University of Alberta, Edmonton, Alberta, Canada, sends a Newsletter every two months with the aim to keep us in touch with all major developments in the world of Ombudsmen.

26. To-day, to cite at random a few more examples known to me country-wise or state-wise, in order fullest co-operation of Ministries, Government Departments and Officers, the Police and even of certain statutory bodies outside my jurisdiction.

23. I also wish to record my appreciation of the work performed by the Staff of my office in their respective fields. Investigation remained my exclusive responsibility.

Some Historical notes on the Institution of Ombudsman

24. The institution of Ombudsman originated in Sweden as long ago as 1809. The word too is Swedish and means a representative. According to Professor Geoffrey Sawer of the Australian National University, parallels can be found much earlier, between 800 and 80 B.C. in such institutions as the Roman Censor and dynastic China's Censorship called the *Control Yuan*, whose functions were to supervise the performance of officials and hear complaints in cases of maladministration. Of course, other examples of offices for the purpose of similar investigations could probably be found in other countries as well.

25. It was in 1809 too that Finland was separated from Sweden whilst retaining the institution of the office of the Chancellor of Justice. The office of the Parliamentary Ombudsman was established by the Constitution Act of Finland of 1919. "The most proximate model for the new post was the Chancellor of Justice who functioned as high guardian of the law within the executive branch." (Jorma S. Aalto, Finnish Parliamentary Ombudsman, in an article in the International Handbook of the Ombudsman (Volume II "Country Surveys") published and edited by Professor Gerald E. Caiden of the University of Southern California, U.S.A., in 1983. This means that in Finland, both offices i.e. that of the Chancellor of Justice and that of the Ombudsman exist side by side.

Other European countries like Denmark, West Germany and Norway followed suit and in 1955, in 1957 and in 1962, respectively, had their Ombudsman. The 1960's saw an upsurge of this new idea of handling people's complaints against the Administration and it swept through Europe, United States, Canada, Australia, New Zealand, Asia, parts of Africa and other developing countries.

26. To-day, to cite at random a few more examples known to me country-wise or state-wise, in order to illustrate the world-wide prevalence of the institution, New Zealand (1962) (*Parliamentary Commissioner (Ombudsman)*), Great Britain (1967) (*Parliamentary Commissioner for Administration*), France (1973) (*Le Médiateur*), U.S.S.R. (*Procurator*), Canada, Japan, the Philippines, Singapore, Malaysia, India (*Lokayukta*), Sri Lanka, Pakistan (*Wafaqi Mohtasib*), Bangladesh, Western Australia (*Parliamentary Commissioner for Administrative Investigations*), South Australia (*Ombudsman*), Israël (*Commissioner for Complaints from the Public*), Tanzania (*Permanent Commission of Enquiry*), Nigeria, Zambia (*Investigator-General*), Tanzania, Bophuthatswana, Zimbabwe, Alaska, Hawaii (*Ombudsman*), Guyana (*Ombudsman*), Fiji (*Ombudsman*), Papua New Guinea (*Ombudsman Commission*), Dominica (*Parliamentary Commissioner*), Trinidad and Tobago, Solomon Islands, Tasmania, Cook Islands and Mauritius (*Ombudsman*) have all appointed an officer or officers to look into the grievances of citizens or members of the public against government activities amounting to maladministration.

27. As a result of the Constitutional Review Talks held at the Colonial Office in 1961, a Constitutional Commissioner for Mauritius was appointed by the British Secretary of State in order to make proposals as to the kind of institution best suited to the conditions and the needs of Mauritius. At the Conference there had been suggestions for the creation of a "Council of State" or "high-powered-tribunal".

28. The Constitutional Commissioner was no less a person than Professor A. S. de Smith of the University of Cambridge. He visited Mauritius with a view to making an on-the-spot study and made proposals which are contained in Sessional Paper No. 2 of 1965. It would not be out of place to give here certain extracts from the Sessional Paper:

The Ombudsman

37. In 1961 suggestions were being made for the creation of a high-powered tribunal to inquire into abuses of power by those in positions of authority. I found that in 1964 those who had been putting forward this idea were instead advocating the appointment of an Ombudsman. I found, also, that no Minister belonging to any party was opposed to the principle of establishing an Ombudsman in Mauritius, and that many Ministers were strongly in favour of this principle. Shortly after my arrival in Mauritius I circulated to Ministers a paper entitled "An Ombudsman for Mauritius?" I received a number of helpful comments on this paper from Ministers, officials and the Chairman of the Public Service Commission. I am now in a position to make detailed proposals which, I believe, will command a very wide measure of agreement in Mauritius.

40. In New Zealand, as in Denmark, the main reason for establishing the new office was a widespread feeling that existing parliamentary, judicial and administrative safeguards against improper, unfair and negligent action (or inaction) by public authorities and their officers were inadequate. Ministers were responsible to Parliament; the courts dispensed justice to aggrieved persons; statutory tribunals had been set up to deal with special classes of claims and controversies; yet each kind of remedy had significant limitations, and there was no doubt that some legitimate grievances entertained by ordinary citizens against the administration were not being redressed. It was hoped that the appointment of an independent officer to investigate complaints would rectify isolated cases of injustice and strengthen confidence between administrators and the man in the street without impeding the business of government. These hopes have already been substantially fulfilled both in Denmark and in New Zealand.

44. He should be authorised to investigate complaints made against all Government Departments and their officers, tender boards, the police, and prison and hospital authorities. I found that there were differences of opinion over the question whether he should be empowered to investigate the acts and decisions of Ministers themselves. In view of this conflict it might be better to exclude the personal acts and decisions of Ministers from his purview in the first instance. I also found that many people thought that he should be entitled to investigate the recommendations and decisions of the Public Service Commission, the Police Service Commission, certain public corporations and local authorities; though nobody thought that he should be allowed to encroach upon the preserves of the Judiciary or the Judicial and Legal Service Commission. There is, however, an important reason why he should not be empowered to investigate the recommendations of the Service Commissions (or their decisions, when they acquire executive powers). At present no reason is given for the appointment or promotion of A, or for the refusal to appoint or promote B, C and a hundred others, to any given post. If persons who had been passed over were entitled to complain to the Ombudsman, the Commissions would be obliged to give him reasons for their decisions in every such instance; and the burden cast upon them, which in any event would be heavy with responsibility, would, I believe, become insupportable. The question whether the Ombudsman should have power to investigate the acts and decisions of public corporations which are not direct organs of the Central Government presents difficulties which I was not able to explore adequately during my time in Mauritius. In some instances (perhaps,

for example, the Central Electricity Board and the Mauritius Broadcasting Corporation) outside scrutiny might be inimical to independent initiative; in others the balance of advantage may be tilted towards outside scrutiny. This is matter which could well receive further consideration locally. There is no reason of principle why the Ombudsman should be denied jurisdiction over the acts and decisions of local authorities, but there is a possibility of his being overloaded with complaints in the early stages; and if he is a non-Mauritian it may take him some time to find his feet. I suggest that, for the first year at least, local authorities (but not Civil Commissioners) should be outside his province; the matter of his jurisdiction could then be reconsidered.

29. Finally, after the Constitutional Conference of 1965 and in accordance with Chapter IX of the Constitution of 1968, the first Ombudsman was appointed in 1970.

The Ombudsman's Appointment and Jurisdiction in Mauritius

30. The provisions relating to the appointment and the jurisdiction of the Ombudsman are set out in Chapter IX of the Constitution which reads as follows—

CHAPTER IX

The Ombudsman

Office of Ombudsman.

96. (1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the Governor-General, acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons, if any, as appear to the Governor-General, acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(3) No person shall be qualified for appointment as Ombudsman if he is a member of, or a candidate for election to, the Assembly or any Local Authority or is a local government officer, and no person holding the office of Ombudsman shall perform the functions of any other public office.

(4) The offices of the staff of the Ombudsman shall be public offices and shall consist of that of a Senior Investigations Officer and such other officers as may be prescribed by the Governor-General, acting after consultation with the Prime Minister.

Investigations by Ombudsman.

97. (1) Subject to the provisions of this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of maladministration in connection with the action so taken and in which—

- (a) a complaint under this section is made;
- (b) he is invited to do so by any Minister or other member of the Assembly; or
- (c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities—

- (a) any department of the Government;
- (b) the Police Force or any member thereof;
- (c) the Mauritius Prison Service or any other service maintained and controlled by the Government or any officer or authority of any such service;
- (d) any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the Government or any such officer or authority;
- (e) such other officers or authorities as may be prescribed by Parliament:

Provided that it shall not apply in relation to any of the following officers and authorities—

- (i) the Governor-General or his personal staff;
- (ii) the Chief Justice;
- (iii) any Commission established by this Constitution or their staff;
- (iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;
- (v) any person exercising powers delegated to him by the Public Service Commission or the Police Service Commission, being powers the exercise of which is subject to review or confirmation by the Commission by which they were delegated.

(3) A complaint under this section may be made by any individual, or by any body of persons whether incorporated or not, not being—

(a) an authority of the Government or a Local Authority or other authority or body constituted for purposes of the public service or local government; or

(b) any other authority or body whose members are appointed by the Governor-General or by a Minister or whose revenues consist wholly or mainly of moneys provided from public funds.

(4) Where any person by whom a complaint might have been made under the last preceding subsection has died or is for any reason unable to act for himself, the complaint may be made by his personal representatives or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Mauritius (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section in so far as it relates to any of the following matters, that is to say—

(a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Mauritius; or

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that—

(i) the Ombudsman may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right or remedy; and

(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of this Constitution has been contravened.

(7) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister or Parliamentary Secretary in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section where it appears to him—

(a) that the complaint is merely frivolous or vexatious;

(b) that the subject-matter of the complaint is trivial;

(c) that the person aggrieved has no sufficient interest in the subject-matter of the complaint; or

(d) that the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter if he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Mauritius.

(10) In this section "action" includes failure to act.

Procedure in respect of Investigations.

98. (1) Where the Ombudsman proposes to conduct an investigation under the preceding section, he 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 in question, an opportunity to comment on any allegations made to the Ombudsman in respect thereof.

(2) Every such investigation shall be conducted in private but except as provided in this Constitution or as prescribed under section 102 of this Constitution the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Ombudsman may obtain information from such persons and in such manner, and

make such enquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or attorney-at-law or otherwise, in the investigation.

Disclosure of information etc.

99. (1) For the purposes of an investigation under section 97 of this Constitution the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Ombudsman shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by and law in force in Mauritius or any rule of law shall apply to the disclosure of information for the purposes of any such investigation; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee thereof; and for the purposes of this subsection a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(6) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under section 97 of this Constitution to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

Proceedings after investigation.

100. (1) The provisions of this section shall apply in every case where, after making an investigation, the Ombudsman is of opinion that the action that was the subject-matter of investigation was—

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;
- (c) unreasonably delayed; or
- (d) otherwise unjust or manifestly unreasonable.

(2) If any case to which this section applies the Ombudsman is of opinion—

- (a) that the matter should be given further consideration;
- (b) that an omission should be rectified;
- (c) that a decision should be cancelled, reversed or varied;
- (d) that any practice on which the act, omission, decision or recommendation was based should be altered;
- (e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;
- (f) that reasons have been given for the decision; or
- (g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefore, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of the steps (if any) that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering the comments (if any) made by or on behalf of any department, authority, body or person affected, may send a copy of the report and recommendations to the Prime Minister and to any Minister concerned, and may thereafter make such further report to the Assembly on the matter as he thinks fit.

Discharge of functions of Ombudsman.

101. (1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) In determining whether to initiate, continue or discontinue an investigation under section 97 of this Constitution the Ombudsman shall act in accordance with his own discretion; and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the Governor-General concerning the discharge of his functions, which shall be laid before the Assembly.

Supplementary and ancillary provision.

102. There shall be such provision as may be prescribed for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter, including (without prejudice to the generality of the foregoing power) provision—

- (a) for the procedure to be observed by the Ombudsman in performing his functions;
- (b) for the manner in which complaints under section 97 of this Constitution may be made (including a requirement that such complaints should be transmitted to the Ombudsman through the intermediary of a member of the Assembly);
- (c) for the payment of fees in respect of any complaint or investigation;
- (d) for the powers, protection and privileges of the Ombudsman and his staff or of other persons or authorities with respect to any investigation or report by the Ombudsman, including the privilege of communications to and from the Ombudsman and his staff; and
- (e) the definition and trial of offences connected with the functions of the Ombudsman and his staff and the imposition of penalties for such offences.

Comments on Section 97 of the Constitution

31. Section 97, quoted above, needs some comments in order to clarify some of its provisions. The action complained of must be action taken in the course of administrative and not judicial functions. An administrative act includes the application of departmental rules, so that any member of the public aggrieved by the mis-application of any such

rules would be entitled to complain to the Ombudsman who would then decide whether the action complained of amounts to maladministration.

32. The two words "maladministration" and "injustice" occurring in the section would appear to have sinister and rather grave connotations. In the light of Section 100(1) of our Constitution, maladministration may be defined as an action which is:

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;
- (c) unreasonably delayed; or
- (d) otherwise unjust or manifestly unreasonable.

It is evident that maladministration, in the Ombudsman context, does not always imply turpitude. Injustice, equally, has no rigid meaning. Any legitimate sense of frustration or outrage or having been adversely affected may amount to injustice. But it must be the result of the alleged maladministration.

33. The person complaining need not be a citizen of Mauritius. Any person who is resident in this country may present his grievances against any Government Department or officer, the Police, the Prisons Department or the Tender Board to the Ombudsman. In other words, even a foreigner who is residing here can complain. But the complainant need not be present in Mauritius at the time of his complaint. It suffices that the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

34. The present jurisdiction is, broadly speaking, in accordance with the Constitutional Commissioner's recommendation contained in Sessional Paper No. 2 of 1965, the main reasoning being that the institution might be overburdened if its field of scrutiny were wider right at the start. There is provision in Section 97(2)(e) of the Constitution for Parliament to extend at its discretion this field to scrutiny over other *officers* or authorities by the passing of a mere Act. In answer to Parliamentary Question No. B/565 of 1975, in the Legislative Assembly, the Right Honourable the then Prime Minister said:

"There can be no question of empowering the Ombudsman to investigate the actions of Ministers or Parliamentary Secretaries.

On the other hand it is not necessary to amend the Constitution to bring para-statal bodies within the jurisdiction of the Ombudsman. This could be done by an Act of Parliament within the framework of our present Constitution."

35. The activities of the modern Welfare State spread almost everywhere and they are bound to affect the members of the public in one way or another. They are so multifarious that the rules and regulations and the administrative acts that result therefrom sooner or later give rise to complaints. These complaints cannot always be taken to Court as, in many cases, no properly defined rights in the legal sense have been infringed. Litigation is often time-consuming too. This is not to say that the Ombudsman's Office can ever be a substitute for Courts of law. It simply means that not all grievances against Government Departments are cognisable by Courts and a great number of them are dealt with at Ombudsman level in an informal way. Legal remedies, wherever they exist, should be resorted to unless in the particular circumstances of any given case it is not reasonable to expect the complainant to avail or have availed himself of such remedies. Of course, the Ombudsman's Office cannot take sanctions but can only recommend in appropriate cases what steps could be taken to remedy the grievances. Generally, complaints if justified are rectified in the course of the investigation and whenever recommendations are made they are given careful attention. The Ombudsman performs a useful function in the sense that a mere letter addressed to him (with copy to a Member of the Legislative Assembly) sets in motion the machinery of investigation and he can, for this purpose, require and have access to files and documents, although privileged in the legal sense. There are, of course, provisions where such scrutiny is ousted but, generally speaking, investigation by the Ombudsman means going to the source.

Conclusion

36. In conclusion, paragraph 27 of the Ombudsman's Report published in 1974 may be reproduced below as the observations contained therein will always have their importance:

"27. Finally, there is a grave misconception about the Ombudsman which must be dispelled. He should not be regarded as someone prying into the affairs of the Administration for the sole purpose of fault-finding. Although primarily appointed to secure the redress of grievances, the Ombudsman can be a friend of the public and of the administration at the same time. He may tender advice to complainants whose complaints he cannot investigate. He may even conciliate with the administration in such matters. Indeed, I have done so in certain cases to the mutual satisfaction of the administration and of the *administré*. There is also an important factor which should not be overlooked. In Mauritius and elsewhere a very

high percentage of the complaints made are rejected and, in rejecting those complaints the Ombudsman, is in effect, showing justification for the official action taken. In this connection, it would be pertinent to refer to the following observations which Professor K. W. R. Wade, Q.C., of the University of Oxford made—

"So for the time being the Commissioner's productivity factor, if I may so describe it, may be taken to be about 10%. One would like to think that this modest figure is due to the standard of public administration in Britain. However that may be, there are those who say it is excessively wasteful to hold a hundred investigations in order to remedy ten grievances.

But this overlooks an important factor. In the 90 negative cases the Commissioner is by no means doing nothing. He is explaining to the *administré*, as the French call him, that in fact the official action was right, even though this was not understood and a sense of injustice resulted. This is a valuable service, since it is just as desirable to remove genuine grievances where the action is right as where it is wrong. In all his investigations, accordingly, the Commissioner is pouring oil on some point of friction between government and citizen. Government departments are, generally speaking, very good at avoiding mistakes. What they are often not good at is explaining themselves. In the Ombudsman they have, as to nine-tenths of him, a public relations officer who justifies their doings to those who are most aggrieved at them. This shows that the public service ought to look on the Ombudsman as a friend rather than an enemy. He is a lightning-conductor for *bona fide* grievances and will keep the departments out of many political storms in the long run."

37. Professor Wade's reference to the "Commissioner" is of course to the "Parliamentary Commissioner for Administration" who performs the functions of Ombudsman in Great Britain. His observations were made in 1971 in a paper entitled *The Ombudsman: The Citizen's Defender*, published in *Law and The Commonwealth* a collection of occasional papers for the Fourth Commonwealth Law Conference, New Delhi, India.

R. SEWGOBIND

25th March, 1987.

Ombudsman

Case Reports

ACCOUNTANT-GENERAL

Case No. C/70/86

Transport expenses not paid arbitrarily

A retired foreman of the Ministry of Local Government who had retired from Service on 29th July, 1982 submitted on 14th October, 1984 his claim for the refund of bus fare for the period 1st October, 1979 to 8th May, 1982, i.e. over 2 years after his retirement. The reason given by him for the late submission of his claim was his ill-health and ear-operation.

The Establishment Officer of his Ministry while referring the claim to the Accountant-General certified that "in fact Mr. . . . (the complainant) had attended duty from 1st October, 1979 to 8th May, 1982 except for period 1st June to 22nd June 1980 when he was on sick leave and that he had not been paid any travelling during that period."

The version of the Accountant-General in disallowing the claim was that according to sick leave

records, the complainant had been on sick leave for the *short* period of 1st June to 22nd June 1980 and his sickness could not have prevented him from submitting his claim in time as he was well enough to attend duty after the short period of sickness till his retirement. The Accountant-General considered that there had been gross negligence on the part of complainant in the submission of his claim and he maintained his decision of 4th July, 1984 of disallowing the claim.

In support of his decision the Accountant-General explained to me G.O.E. 3/VI/8 which stipulates that any claim not submitted *within one month* immediately succeeding that in which the expenditure was incurred may be disallowed and that this rule was applied after taking full consideration of the circumstances.

I could not but agree with the Accountant-General and find the complaint unfounded.

CIVIL AVIATION

Case No. C/149/86

Refused access to airport

Three workers who had been offered employment by an international company at the Plaisance Airport complained on 21st November 1986 that their application for passes to have access to their place of work had been turned down by the Civil Aviation Department. They were therefore suffering great hardships, especially as they were all married and the only breadwinners of their families.

The explanation of the Director of the Department of Civil Aviation, after my intervention, was as follows:—

"The three persons had been issued with the necessary passes as from October 1986. Their passes were withdrawn in the beginning of November 1986 following an adverse report, but were reinstated towards the end of November 1986 after the matter was cleared with the Prime Minister's Office."

In the circumstances I found their complaint not justified.

COOPERATIVES

Case No. C/114/85

Undue delay in registration of a Credit Union

In a letter dated 7th October, 1985 Mr. X made the allegation of unreasonable delay by the Registrar for the registration of their Credit Union still in formation and tabulated the following facts by way of illustration:—

"23rd November 1984—

The Registrar of Cooperatives attend (Sic) a briefing session when he stated that 'it is high time Government Servants set up a Credit Union as their common bond is very strong' and 'promised to give all help needed to set up the Society'.

26th February 1985—

After a series of formation meetings, application for registration under the name Y was submitted to the Registrar.

13th March 1985—

The Registrar authorised the Secretary of the proposed Society to buy relevant books and documents from the Mauritius Co-operative Union (Ref: Temp. 2630).

25th March 1985—

At a meeting with the prospective members, the representative of the Registrar objected to the title Y and proposed Z Co-operative Credit Union Ltd. which was unanimously approved, together with the Rules and a Provisional Committee.

9th April 1985—

A Deposit Account with the Mauritius Co-operative Central Bank was opened on the authorisation of the Registrar and Rs 2,000 deposited.

10th July 1985—

At a meeting convened by the P.A.S., Ministry of Cooperatives and his technical staff and our representatives, it was agreed that registration would be granted after amendment to be effected to Rule No. 3 of the Bye-Laws.

19th July 1985—

At a Special General Meeting, Rule No. 3 of the Bye-Laws was amended to read 'Membership of the Society shall be opened to officers of the Government belonging to the General Services' instead of 'who are employees of the Government'.

23rd July 1985—

The Registrar was informed, in writing, of the amendment as per above."

Mr. X concluded by saying that the promoters were responsible to about 125 members who had fully paid their entrance fee and subscribed for a share each. Hence they were "deeply aggrieved and affected" by the delay.

Replying to my query dated 11th October, 1985 the Registrar in a letter dated 30th October, 1985 informed me that "after careful consideration of the application for registration of the "Z Co-operative Credit Union Limited" I have finally registered the society and issued the Certificate of registration to-day to the Secretary".

When informed of the decision of the Registrar, Mr. X confirmed the registration and the Secretary (not Mr. X) on behalf of the Executive Committee sent a letter of thanks to me for my intervention.

But I further queried the Registrar about the apparent unreasonable delay and this was explained by—

- (a) the presence of personal intrigue etc. within the Union and jockeying for the position of Secretary which carried an attractive remuneration;
- (b) enlistment of members of another category which was against the original aim, and
- (c) it took him some time to help put things in order.

I found the explanation satisfactory and the complaint not justified.

Case No. C/17/86

Not communicated information to complainant's Attorney-at-Law

A co-heir to the succession of the deceased member of a co-operative credit society complained to me as per the above heading.

My investigation showed that all monies due to the succession were illegally paid to the widow of the deceased member instead of to the succession by the President and the Secretary of the Society. When the irregularity came to light, the Committee took disciplinary action against the above office-bearers. Clearly, that was a family issue which had to be thrashed out and solved by the heirs themselves with the assistance, if they wished, of legal advisers.

All information regarding the case was given to the complainant's Attorney-at-law by the Co-operative Society, the Registrar of Co-operatives concluded.

After receiving my explanation on the above lines, the complainant thanked me but insisted on knowing what disciplinary action had been taken. I replied as follows:—

"It was the Committee of the Co-operative Society concerned which took the disciplinary measures in question. Co-operative Societies are not Government departments. A Co-operative Society is a body of persons which has as its object the promotion of the economic interest or the welfare of its members in accordance with co-operative principles. Therefore, I cannot question the Committee of a Co-operative Society about its acts or omissions. If you are a member, you can raise the question at Committee level."

I found his complaint against the Registrar not justified.

Case No. C/43/86

No action re. arbitrary action of Society's Committee

Mr. B. alleged that (a) he had been an active member of his co-operative society in a village for 29 years, (b) the Committee on which he sat took measures which "flaunted the very rules and regulations" and (c) his representations to the Registrar had fallen on deaf ears.

In reply to my query, the Registrar stated the following:—

"Mr. B. held office as committee member of the . . . Co-operative Credit Society.

At a meeting of the committee held on 28.9.84, he objected to the issue of loans on the ground that these should have been applied for by loanees at least 15 days earlier. There is no provision in the law regarding the delay for issue of loan. However mention is made on loan application forms that loans are issued 15 days following application.

Be it as it may, the Managing Committee dismissed his arguments and decided by a majority of votes to issue the loans then and there.

On 19.10.84, the committee resolved to suspend Mr. B., pending a final decision at society's next Annual General Meeting, on the ground that he had divulged to outsiders, information of a confidential nature.

At Annual General Meeting held on 9.5.86, members confirmed Mr. B.'s suspension.

As the supreme authority is vested in members at society's Annual General Meeting, I have no alternative but to abide by their decision which is final."

I found the Registrar's explanation reasonable and Mr. B. took note of it at my Office and went away saying that he had no comments to make.

Case No. C/71/86

No sufficient action for affiliation of a Co-operative Society to the Federation

A Credit and marketing Co-operative Society complained on 12th May, 1986 to the Prime Minister with copy to me that after having been registered as a Co-operative Society after persistent efforts, it was not being affiliated to the Mauritius Agricultural Marketing Societies Federation and it attributed this to the insufficient action of the Registrar or his Officers and to the indifference of the Federation.

In the course of my investigation, I found that the Registrar had registered the Society on 4th April 1985 after its application dated 28th February 1984. As usual a lengthy inquiry had to be made by the Registrar's Officers since one of the objects of the Society was the production and marketing of potatoes. The Registrar therefore was not to blame in any way in this respect and the President and the Secretary of the Society who were explained the position understood this. But their worry remained the question of affiliation.

The Registrar's explanation on this score was as follows:—

"The society applied on 30th May, 1985 for affiliation with the Mauritius Agricultural Marketing Co-operative Federation.

The Agricultural Marketing Board laid down a policy in March 1985, due to glut in the production of potatoes, imposing a seed quota based on the seed distribution figures of previous year. Hence, no new society which envisaged the production of potatoes could be affiliated with the Federation just to obtain potato seeds as potatoes were and are still a control product.

The society in question, before its birth, was made aware of the situation prevailing within the potato industry. The society through representations made pressure on the Registrar to join the said Federation to get seeds. (Copy letter attached). As Registrar of Co-operatives. I attended many sessions of the Board of Directors (of the Federation) in order to convince the members to accept V (the co-operative society) as a member, but my request was turned down due to the following:—

- (a) unavailability of potato seeds for distribution to existing societies whose membership were clamouring for more seeds.
- (b) New societies with unemployed youth were mushrooming to enter the potato production on account of the viability of the industry, given the subsidy element enjoyed by planters.
- (c) The quota granted by the Agricultural Marketing Board to the Federation for the Primary Societies has been reduced from 600 tons to 560 tons of seeds, and yet many are the actual planters who are claiming for more.
- (d) Should new societies also dealing with vegetables be allowed to join the Federation, the delegates of the newly formed societies will destabilize the very structure of the Federation to such an extent that the Federation will not be able to cope with the Marketing requirements. The right to claim for seeds is bound to occur on a greater scale as all other societies, because the delegate of these societies can form part of the board of directors and impose their full rights and obligations."

I saw evidence of the averments of the Registrar and was satisfied that he had all along advocated the case for affiliation very strongly with the Federation but the latter for reasons which cannot be considered unreasonable was unable to admit more members. I showed the evidence to the Society's President and the Secretary at my Office and they were satisfied that the Registrar had done all in his power to further their cause but in vain.

The legal provisions were also explained by me to the complainants. In particular, I drew their attention to the definition in Section 4 of the Co-operative Societies Act of a co-operative society as:

" any body of persons which—

- (a) has as its object the promotion of the economic interest or the welfare of its members in accordance with co-operative principles; or
- (b) is organised with the object of facilitating the operations of a society",

and to Section 2 where a federal society is defined as "a society of which not less than three-fourths of the members are societies".

The Registrar could not compel the Federation (a federal society) to admit more members against the decision of its Managing Committee taken on 30th May, 1986 and approved by the general assembly on 25th June, 1986.

I too had and have no jurisdiction over Co-operative Societies or their Federation as these are not ministries or government departments.

The investigation was discontinued at this stage.

Case No. C/99/86

Service of Notice not satisfactory

A salesman of a co-operative store society appeared before the arbitrator and the award went against him finding him liable to a refund to the Society of a sum of Rs 5,681.50. He appealed against the award on several grounds within the prescribed delay and the Minister disposed of the appeal in his absence upholding the award.

The salesman complained to me that (a) he was never informed of the date of the hearing of the appeal, (b) the appeal was "heard" by the Minister on 27th July, 1984 in his absence and that of his counsel and (c) the official letter informing him of the date of hearing of the appeal had been returned to the Ministry by the Post Office *undelivered*.

The questions that occurred to me immediately were: was the Minister made aware by the officer or officers responsible of the non-delivery of that letter and was the post-award administrative procedure followed a fair and reasonable one?

To find out the answers I held a hearing at my Office. The Officers concerned and the complainant were present and the former produced the case file. The following facts emerged:—

- (i) although the undelivered letter with the envelope marked *Undelivered* and *Gone Away* were in the case file, there was no

record in the minutes of appeal proceedings drawn up by a Principal Co-operative Officer that the attention of the Minister dealing with the appeal was drawn to the fact that the letter and envelope were in the file and that that explained the absence of the appellant and his counsel.

- (ii) The appellant having been informed on 28th December, 1984 of the rejection of his appeal and of his liability in the sum of Rs 5,681.50 met the Acting Deputy Registrar at the latter's office on 30th January, 1985 and stressed the fact that the appeal had been disposed of in his absence and requested a fresh hearing of his case.
- (iii) Minute 39 of the Ministry's case file ARB.174/707: a Principal Co-operative Officer showed the appellant "provisions of the law regarding proceedings ex parte."

After the hearing, I wrote as follows to the Permanent Secretary, Ministry of Co-operatives, with copies to (a) the former Minister (to whom the appeal was made on 5th August, 1981 against the award dated 7th July, 1981 and who had on 29th April, 1982 ordered the Registrar of Co-operatives to "investigate again the matter."), (b) the Minister in Office and (c) the two Counsels of the Solicitor-General's Chambers who had advised the Registrar in this case at different times:—

"While I have no jurisdiction to question the acts or omissions of a Minister or the arbitrator (the latter and even the Minister in this case exercising quasi-judicial functions), I cannot help expressing some concern at the administrative practices as reflected by the case file and the evidence of the officers referred to above.

Section 64(2) of the Cooperative Societies Act stipulates that:—

"The Registrar or arbitrator or Tribunal shall record a brief note of the evidence of the parties and witnesses who attend before him and, on the evidence produced by either side, give a written decision or award, as the case may be."

The appeal against the award made by Mr.....(folio 23) was finally upheld by Minister.....in the absence of Mr....., the appellant or his Counsel. Mr....., a Principal Co-operative Officer, who had produced the case file to the Minister in his office and who took notes admitted to me that he did not draw the attention of the Minister that the convocation letter addressed to the appellant had been returned to the Ministry with the mention UNDELIVERED—GONE AWAY on the envelope. He was satisfied with the fact that the letter and the envelope were

in the file which was before the Minister. That, in my view, was not enough. A responsible officer is expected to know the elementary principles of fairness. Had he made the Minister aware of the *cause* of the absence of the appellant, who knows whether the Minister would not have thought it fair to postpone the hearing of the appeal?

Arbitration proceedings can never be construed as, or confused with, *arbitrariness*.

All the officers present at the meetings referred to above were not sufficiently aware of the purport and the grave nature of certain provisions of the law that they were expected or called upon to apply for they had been applying them for quite some time in not adhering to some of the procedural requirements of the Cooperative Societies Act (which was passed in 1976 but which came into force on 1.12.78 by Proclamation No. 12 of 1978 under Section 90 of the Act and re-enacted as such under the Revision of Laws Act—vide Revised Laws of Mauritius 1981—Vol. I).

Their defence was that such non-adherence had been a long-standing practice. No higher authority or officer had ever required them to act otherwise.

Although I cannot make and I am not making any pronouncement on the merit or demerit of the decision of the award, I should like to make the following recommendations which will help your officers to adhere to the strict provisions of the law, especially as regards the procedural safeguards:—

- (a) the attention of the arbitrator, especially where he is not a legally qualified person, should be drawn to the procedure laid down in Section 62(2) of the Cooperative Societies Act as regards the recording of the evidence of the parties and witnesses;
- (b) decisions in the absence of the other party should only be taken when the procedure laid down in Section 64(3) has been followed. Section 64(3) of the Act reads as follows:—

"Where a party *who has been served with a summons* to attend before the Registrar or arbitrator or Tribunal, *in the manner prescribed by section 66*, fails to do so, the dispute may be adjudicated upon in his absence."

(The underlining is mine.)

- (c) Service should be effected in the manner laid down in Section 66(2) i.e. an officer should act as an usher and *serve* the summons on the party concerned; although Section 79 says that service of any notice or order may be effected by post it takes care to restrict this latitude by making the choice *subject to Section 66*.

(d) In the specific cases mentioned in Section 66(2), namely, in proceedings before a District Court, an arbitrator, the Tribunal, a liquidator or the Registrar, service should be effected in the same way as an usher's service.

In my view, it can be safely assumed that when the Co-operative Tribunal is one day established and constituted under Section 75, the Minister will refer appeals to it in virtue of sub-section (1)(b) and of Section 74 (2). As Tribunal is included in Section 66 (2), service in appeal proceedings before the Minister should reasonably be the usher-type and not by post. Determination as defined by Section 2 includes a decision or order made, *inter alia*, under Section 64. It thus includes an arbitrator's award, which may be appealed against under Section 74 (1) to the Minister who may or, as is to be reasonably expected, will refer the appeal to the Tribunal when it comes into being. Anyway, notice of hearing of appeal, whether by Minister or Tribunal, should be served by an officer acting as an usher.

An "ex-parte" decision, to use the expression of the Principal Co-operative Officer in his Minute 39 of the case file, may be taken, but this is possible only if and after service has been effected according to the procedure laid down in Section 66.

In my opinion, Section 66 is an *overriding* section and service of notice and summons in serious cases such as arbitration, appeal, etc., should be the usher-type as these are cases that often if not invariably entail *financial liabilities*. I understand some officers have been trained for that purpose in the past but, unfortunately, the time-honoured practice at the Ministry has been service by post.

I am glad to note that the opinion (Min. 68) of Mr. of the Solicitor-General's office and my views on service of notice, summons, seem to converge although he has not specifically made any mention of appeal proceedings. But he takes care to mention arbitration and appeal is the culmination of arbitration proceedings.

I hope this rather elaborate note will be given careful consideration and, if need be, the Solicitor-General will be consulted. The principles of natural justice or "fair play in action" (*Ridge v Baldwin* (1963) 1 O.B. 530, 578 per Harman L.J.) should always be borne in mind, which means that the other party should be given every chance of being heard (*audi alteram partem*). I emphasized this point again and again at the meetings at my office with Messrs., and, all officers of your Ministry.

From this case stem certain questions of some legal nicety which provide food for thought viz:

- (1) Minister..... having heard the parties and Counsel on appeal decided and ordered on 29.4.82 a re-investigation of the case (Min. 27) , could Minister..... who succeeded him re-hear the appeal and superimpose a decision—final again—upon the final decision of the previous Minister? (Section 62 (3)).
- (2) The opinion (folio 29) of Mr. of the Solicitor-General's Office is that an appeal is not a re-hearing and that the Minister should decide the appeal on the facts on record. His quotation from Stroud's dictionary can advantageously be juxtaposed with what Lord Haldane, L. C., said in the famous case of *Local Government Board v Arlidge* (1915) A.C. 120 at p. 32:

"When the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice."
(The underlining is mine.)

In this connection (i.e principles of natural justice), *Garner-Administrative Law 4th edition pp. 115-154* and *de Smith's Judicial Review of Administrative Action 3rd edition pp. 155-161* make instructive reading.

- (3) Are not Section 62(3) of the Act which says that Minister's order on appeal shall be *final* and Section 74(1) which says Minister may make such order *as he thinks fit* in conflict with each other? The answer can be in the negative, if the opinion of Mr. is interpreted as meaning that the decision of the first Minister was no decision at all in law. But then what about "such order as he thinks fit" in Section 74(1) ?

The draftsman could perhaps put some finishing touches in the light of the above questions to the Co-operative Societies Bill which is, so to say, in gestation. Determination as stated earlier includes "award" (Section 2, Section 64)."

EDUCATION, ARTS AND CULTURE

Case No. C/19/86

Daughter admitted to far-away secondary school

The father of a girl complained that he and his daughter were facing undue hardships since she had been admitted to a very distant State secondary school after her passing the Certificate of Primary Education Examination. In fact he was living in Plaines Wilhems and the school was in the South. That required rising very early, travelling over a long distance to and from the school and a sizeable drain on his monthly earnings of Rs 920 for transport etc., not to speak of the stress caused to the daughter.

After my intervention, the Permanent Secretary, Ministry of Education, Arts and Culture, explained that Mr M's daughter aged 13 was admitted to Loreto Convent Mahebourg in 1985. She sat the CPE in 1984 and was ranked 1073. The responsible party did not request a transfer in the course of 1985. As for the parent's request he should apply for a transfer to Loreto Convent Curepipe through the Private Secondary Schools Authority. There were no vacancies at the Dr Curé State Secondary School. Vacancies are normally filled at the beginning of the school year after an assessment according to vacancies available in schools.

I communicated the explanation to the complainant and heard no more from him.

EMPLOYMENT

Case No. C/4/86

Not referred for job as clerk

The reply of the Permanent Secretary of the Ministry to the above charge was as follows:—

"Mr. V is registered as unemployed with the Employment Service since 21st April, 1981, and possesses the following qualifications:

(i) *School Certificate 1980*

Credit : Hinduism
 French
 Mathematics
 Principles of Accounts
Pass : English
 Physics

(ii) *Higher School Certificate 1983*

Principal Level : Hinduism
 Mathematics
Subsidiary Level : General Paper
 Further French
 Studies

(iii) *Institute of Secretaries 1984*

Typewriting : Elementary Stage

As Mr. V. does not possess five credits including English, French, and Mathematics at one and same sitting, his chances of securing an employment at clerical level are fairly remote. However, Mr. V could be considered for employment at a lower level should he be so interested but he will have to wait his turn, as there are candidates on the Registration List possessing similar qualifications with priority of registration much earlier than April 1981."

While communicating the above reply to the complainant I added that he should change his attitude towards work and not insist on an office job and that, in view of the labour market situation, he should inform his Employment Exchange about his alternative choices. On receipt of the explanation, he came to the charge again insisting that he should be provided with a job.

I replied to him that I wished to make it clear that my Office does not provide jobs nor does the Ministry for Employment. All that the latter can do is to refer him for interview whenever requests for candidates are made to it by prospective employers. But even then the choice or selection for employment rests with the prospective employer. Priority of registration coupled with qualifications required by the employer is an important factor which governs reference for interviews.

Never referred for employment

On reference by me of this complaint to the Ministry, the Permanent Secretary submitted the following explanation:—

"Mr. M of Central Flacq (born on 22 July 1963) was registered for the first time with the Employment Service on 8th April 1982. But he did not maintain his registration regularly and it is only as from 24th March 1983 that his name is borne on the priority register.

Mr. M is reported to possess the following qualifications:

(i) Primary School Leaving
Certificate ... 1975

(ii) Cambridge School Certificate ... 1981

Credit:—

English Language, Economics, French Language, Mathematics, Commerce and Principles of Accounts.

(iii) Higher School Certificate 1984 (fail)

Principal Level:

Mathematics (E)

Accounting (E)

Subsidiary Level:

General Paper (6)

French Language (0)

Although Mr. M possesses a credit in English Language, French and Mathematics at one and same sitting at Cambridge School Certificate level, unfortunately we would not be aware of the posts for which he applied in the Public Sector nor of the reason why he has not been selected.

However, in view of his priority date of registration being 24th March, 1983, it could take some time before Mr. M's name would be submitted for consideration of employment as there are candidates on the priority Register as far back as 1979, with similar qualifications."

Of course, the Ministry could not question the Public Service Commission nor could I, for want of jurisdiction, for non-appointment in the public service. I therefore found the official explanation reasonable and I informed the complainant accordingly.

Improper discrimination

Although the complainant had been registered at the Employment Exchange since 1971, she alleged that (a) she was still unemployed in spite of interviews on three occasions on reference by the Ministry and (b) there had been improper discrimination against her as she knew of two persons who though not more educationally qualified than she had been employed as domestic servants in State hospitals. She too wanted such a job i.e. in the Ministry of Health which is a public service where appointments are made under the Constitution by the Public Service Commission or the responsible officer of the Ministry in exercise of delegated authority from the Commission.

A meeting was held at my office which was attended by the Deputy Controller of the Ministry and the complainant who was accompanied by her father. The documents produced revealed that although the complainant had followed the VI Standard of her Primary School and had sat the examination, she had not passed and therefore did not hold the Primary School Leaving Certificate. The two other persons named by her had each her certificate with the following results:—

Miss.....: 1967—

Very Good ... —

Credit ... English

Pass ... Arithmetic, French,
Geography

Miss.....: 1967—

Very Good ... Arithmetic

Credit ... English

Pass ... French, Geography.

It was evident there had been no improper discrimination against the complainant.

HEALTH

Case No. C/38/86

Insufficient action re. water nuisance

J complained to me on 7th March 1986 of inadequate action on the part of the Ministry's Health Inspectors regarding (a) absence of latrine and (b) absence of a proper absorption pit to receive waste water from the washing place on his neighbour's land. These were a source of sanitary nuisance to him and his family

In fact J first complained at the Port Louis Health Office of the above sanitary problems on 15th March 1985 and not in 1982 as averred by him. The premises were visited by the Health Inspectors on 18th March 1985 and Notices were served upon the owner to provide a latrine and an absorption pit.

However, on 24th April 1985 the owner submitted to the Health Office a letter from her Attorney-at-Law to the effect that the then neighbour of J (the owner's tenant) had been ordered to vacate the premises by virtue of a judgment by the Court concerned on 8th March 1985. In view of this, compliance with the above notices was not followed up by the Inspectors. But by 31st March 1986 the premises were being occupied by the owner's son but the Health Office was not aware of this development.

The Regional Public Health Superintendent further reported that—

"An inspection was carried out on 27th March 1986 by the Health Inspectorate, and no water nuisances were detected on the complainant's premises. However, fresh notices regarding absence of latrine accommodation and absorption pit have been served upon the owner once more and a delay of 30 days allowed to enable her to comply with sanitary conditions required."

During a follow-up inspection on 20th May 1986 it was found that the fresh notices had been complied with. When made aware by me of this, J remarked that a latrine had in fact been built by the owner but there was still no absorption pit.

Replying to this remark, the Superintendent reported further on 23rd July 1986 as follows:—

- "(a) The ground on the premises of J was soaked, but there was no visible stagnation of water;
- (b) the 'water nuisances' mentioned in J's letter would appear to be caused mainly by water coming from his own kitchen discharge, and not from his neighbours, and he has been requested to channel this waste water into his sewer;

(c) the waste waters from the neighbours are discharged into an earth drain which empties into another drain on the premises of another neighbour and bypasses entirely the premises of J;

(d) the owner has provided an absorption pit some time ago, but due to the rocky nature of the soil, the specifications for digging such a pit have not been respected. However, she has now undertaken to provide a proper absorption pit, to avoid her waste waters flowing on the premises of the other neighbour who has, so far, not complained of any water nuisances.

I therefore submit that this new complaint of J is not justified, and that this matter has in fact been blown out of proportion on account of personal conflicts between the two neighbours. The owner has recently been fined Rs 487—for non-compliance with sanitary requirements, and in my view any tougher action would amount to persecution. However, the matter will be closely followed up."

Finally, on 15th October 1986, the Permanent Secretary, Ministry of Health, informed me that a proper absorption pit had been provided as required.

J called at my Office to confirm that there were no nuisances any more and he thanked me for my intervention.

I marked this case as "Explained" since in truth the Inspectors and the Regional Public Health Superintendent had been dealing with the problems all along until they were satisfactorily resolved.

Case No. C/83/86

No action re. stench and fly nuisance caused by a nearby pigsty

C complained on 18th June 1986 to me that the "Health Authority" was not active enough to tackle the sanitary problems caused by a neighbouring pigsty where 25 pigs were being bred for commercial purposes.

The facts turned out to be that after receiving a complaint from C on 11th April 1986 the Regional Public Health Superintendent made an inspection on 14th April 1986 in company of the Principal Health Inspector and the findings reported on 3rd July 1986 were:—

"The pigsty is at a distance of 32.4 ft from C's house and 33 feet from the road. There are about 25 pigs in the sty. All the waste waters are being

diverted into an improved pit. The floor and drains were found in a clean state. All waste matters from the pigsty are being collected in bins which are buried. No sanitary nuisances were detected in the course of that visit and a follow-up visit effected on 15th May, 1986.

The pigsty was again inspected on 1st July, 1986 and no excessive fly or smell nuisances were detected on the premises of Mr. C."

When informed of these findings, C again expressed his dissatisfaction with the official action and maintained that the sanitary problems were still there. I took up the matter again with the Permanent Secretary, Ministry of Health, on 18th September 1986 and on 2nd October 1986 the Permanent Secretary replied to me and sent me the reports of the Regional Public Health Superintendent and of the Engineering Assistant. The Superintendent's report was made after a site visit on 29th September 1986 accompanied by the Principal Health Inspector and the Senior Health Inspector and it read:—

- "1. No excessive fly or smell nuisances were detected on the premises of Mr. C. It was also noted that Mr. C is himself breeding poultry (on a domestic scale) and has erected a poultry shed at a distance of about 2 feet from his house, and that this could also contribute to some extent to the fly and odour nuisances. Moreover, other neighbours in the vicinity of Mr. C are also breeding pigs on a smaller scale.
2. The owner of the pigsty, Mr. P, has already reduced the number of pigs from 25 to 10 and has proposed either to transfer his pigsty elsewhere, or discontinue this activity by the end of the year. Meanwhile, he has been warned to keep the pigsty thoroughly cleaned at all times and a notice has been served upon him to that effect.
3. The question as to whether Mr. P is breeding pigs on a commercial basis in a residential area is debatable, since present legislation (Pigs Regulations 1921 and 1927), and Classified Trade Regulations 1934, governing Pigsties and Piggeries make no provisions regarding:—
 - (i) the maximum number of swine to be allowed for purposes of domestic or commercial breeding;
 - (ii) the statutory distance between a pigsty and the boundary line or adjoining premises.

The distances of 8 metres from any house or dwelling and 30 metres from any street, road etc. stipulated in the Pigs Regulations 1921 and 1927 are being respected.

If it is argued that Mr. P is breeding pigs on a commercial basis, then the distance of 100 feet from the pigsty to human habitation (Classified Trade Regulation 1934 Part XV) is not being respected. However, since the annexure of Roche Bois to Port Louis Municipal area, pig breeders in that area have not been required (and would have been unable) to comply with the provisions of these regulations, and are operating without licences, since it cannot be established that they are in fact breeding pigs on a commercial basis.

Until such time as the proposed Pigs Regulations, at present under preparation, in connection with the Ministry of Housing, Lands etc. Outline Scheme, come into force, this matter will remain contraversial.

Nevertheless, sanitary action will be taken whenever pig breeding creates nuisances likely to be injurious to health."

The report of the Engineering Assistant was by and large consistent with the above report.

As the Ministry's superior officers were actively looking into the matter and as their observations struck me as very pertinent, I allowed matters to rest there. Indeed no further complaint was received from C. There was clearly no laxity on their part.

Case No. C/III/86

Mental patients roaming freely

A leading daily newspaper headlined an article on the above subject as follows: "*Des malades mentaux en liberté*". "*Un danger public*." (Mental patients at liberty. A public danger).

I sent a cutting of the article with the name of the newspaper and the date of publication to the Permanent Secretary, Ministry of Health, and required his comments. His reply incorporated the explanation of the Medical Superintendent of the Brown Sequard Hospital and his own comments and read thus:—

"The Medical Superintendent of Brown Sequard Hospital has commented as follows—

- (i) The hospital has 800 patients out of which 550 are long stay patients who are inmates since several decades, abandoned by their relatives or have none at all;

- (ii) in the absence of a proper canteen in the precincts of the hospital, some patients are allowed to nearby shops for cigarettes or other things;
- (iii) about 235 certified mental patients are outside the hospital, on probationary leave, living with their family, in the community itself, and come to the hospital for treatment now and then or whenever required. They have been progressively integrated in the community and have become productive. This is in line with the modern psychiatric approach;
- (iv) in line with this approach, an outpatient service has been started from 1971, and attendance has increased to 44,000 annually entailing a lot of movement in the vicinity of the hospital;
- (v) to avoid overcrowding at the outpatient section, psychiatric sessions are being provided at other health institutions since 1981.

It has not been possible to carry out specific inquiries at the Brown Sequard Hospital regarding the incidents reported in.....(the newspaper), as the identity of the persons have not been disclosed. The lady who was apparently harassed by a mental patient, was requested to make a written complaint and to disclose the identity of the patient, by the hospital authorities. She has not done so up to now

My Ministry is conscious that the public, especially those residing in the vicinity of the hospital has to be protected, and the patients, specially inmates, should be located in secure conditions taking into account their welfare. We have therefore initiated the following steps—

- (a) the inpatient area has been physically separated into two sections—one for acutely ill patients and the other for harmless long stay ones;
- (b) drug addicts have been transferred to a newly opened centre in Vocoas;
- (c) a separate complex between the prison and the hospital is being executed for criminal mental patients who have to be kept under strict custody;

- (d) a perimeter wall with only one entrance/exit is under construction. A gatekeeper's lodge and a police post are also going to be put up;
- (e) the outpatient department will be extended;
- (f) the Brown Sequard Welfare Association proposes to re-start a hospital canteen in the hospital compound.

The hospital authorities are proposing to introduce measures to tighten control on the movements of these inpatients, and to prevent them from going outside the hospital premises.”

I marked the case as “rectified” in view of the remedial measures taken or seriously proposed to be taken. In fact, I have seen for myself that a concrete block wall has been built all round the hospital and a gate also is provided.

Case No. C/115/86

Not provided with blanket

S's complaint to me was that in June, when it was cold, he went to the casualty section of the state hospital with a heart problem and was placed on a couch. At night, feeling cold he asked for a blanket but was told by a nurse that no blanket was available and was provided with a mere cotton bed-sheet. The next day he was sent to the Intensive Care Unit and again he was left without a blanket.

The Permanent Secretary, Ministry of Health, sent me the reports from the Charge Nurse of the Unit, the casualty section and the Nurse of the ward where the complainant had been admitted. They all showed that there were only 18 patients in that ward on the night concerned and there were enough blankets available. The patient had never complained that his request for a blanket had been ignored by any nurse. The practice was to provide every patient with a blanket after “bed-making and nursing care”.

I had no reason to doubt the above reports, the more so as the complainant was rather incoherent and absent-minded.

HOUSING, LANDS AND THE ENVIRONMENT

Case No. C/30/86

Undue delay re. application

R complained on 18th February 1986 that his application for the lease of a plot of what he called Crown land was not being attended to within a reasonable delay. The plot was in front of his house and he wanted it so that he could build a garage for his car. His application was duly received by the Ministry as attested by a letter of acknowledgement of receipt.

But to his great surprise a neighbour of his had, without any lease or permit, erected a building in concrete on the same plot (after R's application). He reported the matter to the Ministry. R said that some inquiry was made by two officers of the Forest Department but matters had rested there.

After an interim reply on 1st April 1986 the Principal Assistant Secretary reported to me on 11th June 1986 that searches carried out at the Registrar General's Office had revealed that the plot of land in question was not Crown land. I informed R accordingly. *Nemo dat qui non habet*. (No one gives who possesses not.)

Case No. C/91/86

Undue delay

The lessee of a building site on a plot of Crown land complained on 10th July 1986 that (a) he had applied to the Ministry for the transfer of the lease on the name of his son, (b) 14 months after this application, his son was requested to call on one of the Ministry's land surveyors with several documents to furnish additional information on 4th November 1985 and (c) at the date of the complaint eight months had elapsed without any progress.

In replying to me on 13th August 1986 the Permanent Secretary of the Ministry conceded that the son had in fact produced all the documents on 4th November 1985 as requested but added that "searches to establish whether he was not already a landowner or had not been assisted under any low-income housing scheme were completed in July 1986." He went on to say "the Minister had now approved Mr..... (the complainant's) application for the transfer of the building site lease over a plot of land of 0A15 at..... to his son Mr..... with rent at Rs 150 per annum up to June 1995 and Rs 225 from July 1995 to June 2005, and Mr..... (the complainant) had been informed accordingly."

I was sent a copy of the letter addressed by the Ministry to the complainant which subjected the granting of the application to the production of a deed witnessing the transfer of ownership of the building standing on the land in the name of his son. He was granted three months' delay within which to do so.

He was also required to pay Rs 400 representing rent for use and occupation of the land for the period 1st July 1981 to 30th June 1981.

He attended my Office on 25th August 1986 at my request and was explained the position. When asked whether he had transferred the building on the name of the son he answered in the negative. Then I advised him to see a Notary and have the transfer done immediately since the Ministry had stipulated a delay of three months.

He thanked me for my intervention and agreed to act as advised.

Case No C/103/86

Unreasonable delay: unwarranted claim for rent

The main points of the complaint from the applicant for the lease of a plot of Crown land were:

- (1) undue delay in transfer of the plot;
- (2) undue delay in replying;
- (3) discrimination;
- (4) the complainant's application dated 12th October 1984; delaying tactics although survey done in July 1985;
- (5) reply dated 26th June 1986 i.e. after a year;
- (6) unwarranted claim of Rs 750 for use and occupation of the land in question for period 1st July 1980—30th June 1985 whereas complainant had never occupied that land.

When called to explain, the Permanent Secretary of the Ministry replied to me as follows:—

"(1) *Non-transfer of lot 490*

The transfer was approved by the Minister on 14.5.86 and the decision conveyed to applicant on 26.6.86;

(2) *Undue delay in replying*

This is admitted and regretted. The explanations of the officers concerned are being sought. I must point out, however, that the matter was a complex one and required many searches as evidenced by the attached copy of minutes dated 17.4.86 and 28.4.86 from Senior Surveyor..... and Chief Surveyor.....;

(3) *Discrimination*

I have absolutely no evidence of this. This accusation is a very common one unduly levelled against the administrator by persons who feel frustrated;

(4) *The complainant's application dated 15.10.84; delaying tactics although survey done in July 1985*

See reply to (2) above;

(5) *Reply dated 26.6.86 i.e. after a year*

See reply to (2) above;

(6) *Unwarranted claim*

This is admitted. It was wrongly assumed, as no rent had been paid since 1.7.80. That the new lessee had been in occupation as from that date. The mistake is regretted and remedial action is being taken.

The delay in replying to your letter is regretted. Both the Minister and myself insisted on having a full picture of the problem."

I sent the explanation to the complainant and he expressed his satisfaction and thanked me for my intervention. I also made the following report to the Permanent Secretary with copies to the Minister concerned and the Prime Minister under Section 100 of the Constitution:—

"I appreciate that the delay was caused by the complex nature of the case which involved searches by your Ministry's surveyors.

But on the ground of unwarranted claim of rent of Rs 750 for a plot never occupied by the complainant, I find his complaint justified. Besides, this had been admitted by you and I find your frankness and fairness commendable on this point and also note with satisfaction that remedial action is being taken. I am sure your personal attention and that of the Minister had much to do with this rectification—again a highly commendable step.

As the complaint regarding the unjust claim is being rectified *ex-officio*, I have very little to suggest by way of recommendation except to note that this claim was wholly based on a mistake of fact—which mistake would not have come to light had Mr.....not complained to the Ombudsman. The obvious lesson for the officers concerned is to be more serious in future as no member of the public should be exposed to unjustified claims and worries, especially where *financial* liabilities are concerned."

Not knowing what my report was, the complainant wrote again to me to speak of "violation of constitutional rights, discrimination, etc."

I finally deemed it proper to reply to his second letter as follows:—

"Before receipt of your above letter, I had already reported to the Permanent Secretary, Ministry of Housing, Lands and the Environment, with copies to the Minister of Housing and the Prime Minister, under Section 100 of the Constitution, stating that I had found your complaint of unwarranted claim for rent of Rs 750 justified.

I enclose a copy of the report for your information.

As far as your reference to constitutional rights is concerned, all I can say is that there is no fundamental right guaranteed by the Constitution to the lease of a plot of Crown land. On the point of discrimination, I would refer you to Section 16 of which sub-section 3 reads as follows:—

"In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description."

Your letter of 14th October 1986 expressing your satisfaction after receipt of my letter of even number of 8th October 1986 sharply contrasts with your second letter under reference. I see no point in pursuing the matter any further."

LABOUR AND INDUSTRIAL RELATIONS

Case No. C/49/85

Delay in taking action

Seven women field labourers of a sugar cane planter complained in several letters between April and June 1985 that the Labour Inspector of their region was not diligent enough in tackling their cases with the employer in the matter of payment of adequate severance allowance after notice of termination of their employment. The employer's reason for the termination was that the land had been inherited from his father after the latter's death and a division-in-kind of the land was on among all the heirs including himself.

The Permanent Secretary of the Ministry in an interim reply to my query explained that in view of the number of cases involved and in view of the complexity of the problem (division-in-kind, etc.), he needed some more time to probe the matter thoroughly. It was obvious to me that that was so.

On 23rd August, 1985 the Permanent Secretary again wrote to me to say that the employer had been summoned at the Labour Office on 16th May, 1985 when he declared that the workers were on 28th February 1985 given notice of termination of employment with effect from 28th May, 1985 in view of the division-in-kind referred to above. The workers in fact had worked till 1st June, 1985 and the division had taken place on 31st May, 1985. The amount payable as severance allowance was being computed by the Ministry's officers and the employer would be eventually informed of it.

Indeed, in October 1985 I was informed that the computation showed a total amount of Rs 35,916.44 which was to be shared among the seven women field labourers as follows: Rs 5,145.84, Rs 6,294.68, Rs 6,320.79, Rs 6,320.79, Rs 3,161.48, Rs 5,903.03, Rs 2,769.83, and that a first payment of Rs 1,000 to each of them was effected on the 4th September, 1985.

Further developments were:—

- (a) a second payment of Rs 1,500 was effected to each of the workers on 16th October, 1985; and
- (b) on 14th December, 1985 five of them received Rs 1,000 each and the two others were paid Rs 661.48 and Rs 269.83 respectively.

Further payments were made by the employer by instalments. The case was finalized on 9th April, 1986 by the payment of the following total amount to the seven workers: Rs 6,294.68, Rs 6,320.79, Rs 6,320.79, Rs 5,903.03, Rs 3,161.48, Rs 2,769.83 and Rs 5,145.84.

I communicated this information to the complainants but never heard again from them. The obvious conclusion was that they were satisfied. They were kept informed of all the developments by this Office. The charge of unreasonable delay on the part of the Ministry's enforcement officers could not be sustained in the light of the history of the case as a whole.

Case Note No. C/126/85

No action against unregistered factory

A group of workers of a garment factory which had not renewed its registration with the Labour Ministry for a little over a year complained that, although a Labour Inspector came often to the factory to talk to them about safety, yet he never took action against the company for the non-renewal of its certificate. They feared, as a consequence, that they might not be secure if ever such a factory closed down.

After my intervention, the owner company was prosecuted before the Industrial Court by the Ministry for operating a factory without a valid registration certificate as required under Section 44(1) of the Labour Act which reads as follows:—

"No person shall operate a factory unless it is registered under this Act."

Sub-section 3(b) enacts that the renewal of a registration certificate shall be applied for not later than 30 days before the expiry of the certificate and under sub-section 5 a certificate of registration shall be valid for a period not exceeding 12 months from the date of issue. Non-compliance with these provisions is made an offence under Section 55.

Eventually, the Permanent Secretary of the Ministry informed me that the company had pleaded guilty to the charge and had been fined Rs 500+ costs and it was also ordered by the Court to pay the overdue registration fee amounting to Rs 1,210. I marked this case as rectified.

Case No. C/129/85

Inadequate action

The complaint of V was that he had worked for 8 years as stone breaker for a private employer. He made a declaration to the regional Labour Office about sick leave, local leave and non-payment for work done, etc., but he saw no sufficient action from their part.

The official reply was that—

- “(a) he worked as stone breaker with Mr. X since January 1978 and was paid on a tonnage basis at fortnightly intervals;
- (b) during the period 8th July to 13th July, 1985 he was certified sick, suffering from “bronchitis” by Dr.....(a private medical practitioner);
- (c) during the period 14th to 16th August he was again on sick leave suffering from “medical problems”, as certified by Dr.;
- (d) from the 19th to the 24th August, 1985 he was certified sick and suffering from “flu and bronchitis” by Dr.....;
- (e) following written application made, V was granted six days annual leave by Mr. X on the 26th August for period 19th to 24th August, 1985;
- (f) V was again on sick leave during the period 2nd to 8th September, 1985 (medical certificate not available);
- (g) V resumed work on the 9th September and worked up to the 13th September;
- (h) as the employer had not collected the stones he had broken, V went to see him on the 13th September and he was dismissed;
- (i) the worker has 3 days wages outstanding as at 24th August.

The employer on the other hand contends that—

- (a) on the expiry of his sick leave on the 24th August, 1985 V did not resume work immediately but only called back on him around the 28th August asking for 6 days annual leave. His request was not granted. He again called some 15 days later and was refused work on the ground that he had broken his contract of employment;
- (b) no wages are outstanding. He further denies all the claims put in by V.

The employer has a witness in his foreman who states that V called on the latter on the

10th September with a medical certificate covering the period 2nd to 8th September, 1985. The certificate was not accepted by the foreman.

V has no witness to substantiate his averments. He is now claiming:—

- (a) unpaid additional remuneration for period 1.7.85 to 26.8.85;
- (b) 6 days' wages for annual leave (26.8.85 to 31.8.85);
- (c) 6 days' wages for sick leave (2.9.85 to 8.9.85);
- (d) balance of annual leave for 1985;
- (e) wages in lieu of notice for summary dismissal;
- (f) severance allowance at punitive rate for unjustified dismissal.

Parties were convened to the Labour Office and as no settlement could be reached, the case was referred to the Magistrate of the Industrial Court in Chambers.

On the 14th March, 1986 the case was heard and struck out as no agreement could be reached.

The Ministry is presently investigating whether the matter can be pursued further before Court. This is motivated by the fact that the contract between V and Mr. X does not seem to be one which falls within the ambit of our labour legislation being given that the complainant used to sell the stones to the latter after he had himself looked for the stones and broken them outside the control of Mr. X or his agents.”

Finally, following the advice of the Solicitor-General, the Ministry informed me that it could not intervene any further as the complainant was not a “worker” under the Labour Act. I too was satisfied that he was rather a special type of independent contractor than a “worker”. I found that the officers concerned had inquired fully into V's case which led to the need for legal advice in the light of which they stopped further action. The complaint of inadequate action was therefore not justified.

POLICE

Case No. C/133/85

No further action

The complaint dated 5th December 1985 was that the Police had not taken further action (usually prosecution) on a declaration made about sequestration, administration by injection of a noxious substance, wounds and blows, etc., on the complainant in October 1985 by a private medical practitioner, although statements from him and witnesses had been recorded corroborating his version including Police Form 58 completed by a medical officer at a State hospital where the complainant had been referred by the Police.

After an interim reply on 28th January 1986 enclosing a full report by the Central Criminal Investigation Department, the Commissioner of Police finally informed me on 13th March 1986 that as advised by the Director of Public Prosecutions to whom, as is normal in such cases, the case file had been submitted, prosecution was being started against the said practitioner for:—

- (a) unlawful sequestration
- (b) administering noxious substance ,
- (c) wounds and blows
- (d) making use of forged document.

This complaint had been referred to me by a Member of the Legislative Assembly in accordance with Section 97(1)(b) of the Constitution.

I found there was no unreasonable delay and that in fact further action by way of prosecution was about to start.

C/14/86

Not satisfied with Police inquiry

R complained to me on 3rd February 1986 that the statement he had made to a Police Sergeant after a street accident in which his private van and a car driven by a foreigner hereinafter referred to as M were involved did not contain certain "important" details.

My investigation revealed that, according to M, immediately after the accident R and M came to an agreement in which R admitted that he was at fault and that he would request his insurer to make good the damage caused to the car. In fact, both vehicles were damaged but neither driver was injured and there was nobody else in either vehicle. In case the insurer refused to make good the damage to the car, R undertook to do it himself with his own means. M made a declaration at the regional Police Station reporting the accident and the agreement on the very day of the accident. The declaration was signed by both M and R.

The next day R called at the Police Station accompanied by his counsel and stated that he had never come to an agreement with M and wanted the inquiry to proceed. R called there again the day after and gave a statement to a Police Sergeant. After his statement was read over to him, he refused to sign it saying that he was going to see his Counsel. On the following day he wrote to the Commissioner of Police giving his version of the accident and stating that he had not signed his statement as he was not satisfied with its contents.

After my intervention, a statement was recorded by a Chief Inspector of Police in which he filled up the omissions for which, he alleged, the Sergeant was responsible. The Police Sergeant denied that he had omitted to record anything said by R and added that he had faithfully recorded the statement, taken down notes and measurements according to the "exact instructions" of R.

It is to be noted that (a) both vehicles had been removed before the arrival of the Police on the spot of the accident, (b) the statement recorded by the Sergeant had even been read to R in presence of his counsel who stated that it was accurate and (c) R refused to sign the statement saying that he was going to find another counsel.

M left Mauritius leaving the car with the owner—a Mauritian.

All the circumstances tended to show that R was behaving frivolously, what with the Police, what with his first counsel in a disguised effort to escape prosecution.

The Commissioner of Police finally reported that since M had left the country and even assuming that R was to blame for the accident, the case was not likely to go to Court as there was no other witness of the accident.

I found the complaint of R of no further action by the Police not justified. If M had not left Mauritius, it would be R who would have been prosecuted in the light of the inquiry.

Case No. C/41/86

Savings Account Book not returned after trial

A prisoner complained to me on 18th March 1986 that he had been sentenced on 3rd August 1981 after conviction to undergo eight years' imprisonment with hard labour and that he would be released from prison by the end of December 1986. The cause of his complaint was that when he was arrested by the Police in 1981 in connection with a series of larcenies his Savings Account book witnessing an account of Rs 10,000 to his credit

at a bank had been seized by the Police and not returned to him although, according to him, the book had nothing to do with the larcenies. He wished to have his book back in view of his forthcoming release and, clearly, the money in his account would stand him in good stead then.

From the Commissioner of Prisons, I learnt that in fact the prisoner had been prosecuted on 11 counts before the Intermediate Court, found guilty and sentenced as above for committing the following offences:—

- (a) larceny by scaling (4 counts)
- (b) larceny by breaking by night (2 counts)
- (c) larceny by breaking (5 counts).

The Commissioner of Prisons added that (a) on admission to prison, the prisoner had not brought any "cheque book", (b) on 14th October 1981 he had written to the Police Headquarters of the district concerned for the restitution of his property which was in Police custody and (c) no reply had been received and the prisoner did not raise the matter again.

The Police version signed by an Officer for the Commissioner of Police dated 9th May 1986 was in substance that following a declaration of larceny that several articles including money to the value of Rs 9,000 had been stolen from the declarant's place, the prisoner was arrested and charged with that offence. During the inquiry, his Bank's Savings Accounts book had been secured and was subsequently produced in Court at the trial.

The Court had ordered that a sum of Rs 4,599.70 be withdrawn from his account and remitted to the declarant. After execution of this order, there was a favourable balance of Rs 9,577.27 in his savings account.

The Police Officer's reply on behalf of the Commissioner of Police concluded that "Mr . . . (the prisoner) *has been* issued with a memo to have a duplicate pass book and he has expressed satisfaction." But I was not satisfied and queried the Commissioner of Police further about the reason for the undue delay in issuing the said memo.

The Commissioner of Police himself replied to me saying that he too was not satisfied and promised to write again after further inquiry.

Finally, on 13th November 1986, the Commissioner of Police informed me that (a) he had queried the Police Superintendent of the District concerned on the question of undue delay, (b) the Superintendent had on 5th November 1986 explained that the "hiatus occurred through forgetfulness", and (c) he had warned the Superintendent to be more careful in future "to avoid the recurrence of a lapse of such a nature."

When communicating the explanation of the Police to the prisoner, I had asked him to confirm to me whether in fact the Police had given him a memo to obtain a duplicate pass book but I never heard again from him.

My conclusion was that the complaint was justified/rectified. I did not consider a report under Section 100 of the Constitution was desirable under the circumstances.

Case No. C/45/86

Connivance re. a brothel in a respectable area

A number of inhabitants of a respectable area in Curepipe complained in March 1986 that "immoral activities" were going on in a house where college girls also were coming after changing their uniforms for other clothes. The authorities concerned were alerted (les autorités averties) were obviously conniving at the operation of what was indeed a brothel.

The reply of the Deputy Commissioner of Police to me was that the building was used as a boarding house, the owner having been issued a licence as "keeper of boarding house with more than 8 but less than 50 letting rooms" since 26th August, 1985. It went on as follows:—

"As a result of representations to the effect that the building was being used for immoral purposes, the local Police visited the place on three occasions in March and April last and also kept watch, but nothing irregular was detected. In fact, the building was not then being used for the purpose for which it was licensed as it was under repairs. The repairs having been completed recently, the owner has resumed his business.

The complaint is being given special attention and a further report will follow."

When asked by me for their remarks on this reply, the complainants kept quiet.

On 22nd August, 1986 the Deputy Commissioner of Police replied further that the Police had raided the premises on 23rd April and 5th August 1986 and, on both occasions, found couples who had come "to make love". It was established that they had hired the rooms for that purpose. As a result of these "irregularities", the Deputy Commissioner of Police objected to the renewal of the owner's boarding house licence and in fact it was not renewed by the Accountant-General.

Undaunted by this Police action, the owner appealed against the decision of non-renewal to the District Magistrate but on the date of the hearing, 26th November 1986, he withdrew his appeal which was consequently set aside by the Magistrate.

The so-called "pensionat" was thereafter closed for good.

Unjust objection to departure overseas

In connection with a case of forgery and larceny of bags of turmeric which had been found unfit for human consumption and were lying at the Customs shed, the Police Superintendent in charge of the inquiry raised on 24th May 1982 an objection to the departure from Mauritius of the complainant, an officer of the Ministry of Health, and several other persons including two Customs Officers. The objection was duly entered in the register at the Passport and Immigration Office.

On the advice of the Director of Public Prosecutions, the complainant was cleared of any involvement in the case and the others were duly prosecuted before the Intermediate Court.

Unfortunately, the Police Superintendent failed to waive the objection before his retirement from the Police Force on 8th July 1985. In fact he should have done so much earlier i.e. immediately after the Director of Public Prosecutions's advice that there was no case against the officer of the Ministry of Health.

When the latter presented himself with his wife and his son at the Immigration counter at Plaisance Airport on 15th February 1986 for departure to South Africa, he alleged in a letter dated 21st March 1986 to me, he was told that there was an objection to his departure for overseas in the Register of the Airport Immigration Office and was subjected to great tribulations by way of undesirable questioning in front of curious onlookers who knew him very well as he was a regular visitor at the airport in the course of his duties as a food inspector. His wife and his son had already boarded the plane and as the moment of the flight was nearing his state of tension became unbearable, especially with the air-hostess urging him to say whether his wife and his son should get down or go without him.

When questioned by me on the 1st April 1986 the Commissioner of Police submitted the comments of the Assistant Commissioner of Police (Crime) and those of the Passport and Immigration Officer. The gist of these was that, after processing, the application for passport was passed on to a Constable at the Passport Office to check in the register for any objection to the departure of complainant but "through oversight" the Constable did not find any objection and a passport was therefore issued to the applicant on 6th January 1986. There was also an official denial of any humiliation or undue questioning.

It was clear that the objection to departure entered on 24th May 1982 by the Superintendent referred to above remained in the Passport and Immigration Officer's register both in Port Louis and at the airport until 15th February 1986.

I therefore wrote to the Commissioner of Police as follows:—

"The main point seems to be that the retirement of Superintendent . . . and his failure to cause the objection to departure of Mr . . . (the complainant) to be lifted at the Passport Office were at the root of the tribulation of the passenger.

It is indeed astounding to hear that the retirement of an officer from the Police Force causes a disruption in the continuity of Police action. Surely, Mr. . . 's successor or the other officers who were concerned with the Customs case should have known what to do as regards the objection."

To this the Deputy Commissioner of Police replied in substance that (a) the waiving of the objection was definitely the responsibility of the now retired Superintendent, and (b) the Police Constable concerned had been negligent and departmental proceedings were being taken against him for "neglect of duty", in breach of "Section 4 (i) of the Code of Offences against discipline of the Force". A copy of the charge was produced to me. On 8th October 1986 I was informed by the Commissioner of Police that the Constable had been severely reprimanded.

Finally, in accordance with Section 100 of the Constitution, I reported my opinion to the Commissioner of Police which read thus:—

"While I agree that it was for the Superintendent who was in charge of the case to have waived the objection and that no departmental action is possible against him as he has retired since 8th July, 1985, I nonetheless find Mr.....'s complaint justified in a general sense.

It is clear that if the Police objection to Mr.....'s departure had been waived once it had been established that there was no case against him and once the trial of the co-suspects was over, Mr..... would never have had to undergo such mental anguish as he did at Plaisance Airport with his wife and children and all other passengers having boarded the plane and him being retained by the Police for questioning. That was a definite source of mental anguish both to him and to his family. Mr..... was and is a Food Inspector of the Ministry of Health and was and still is well known to the

Plaisance Airport personnel. I believe him when he says that it was a humiliating experience for him to be singled out by the Police for questioning at the Airport. One can easily understand the many suspicious thoughts that must have crossed the minds of those who witnessed the incident.

Such an action of the Police (by the Superintendent and the Constable at least) cannot but be qualified as unjust which I hereby do.

The other aspect of laxity in such serious matters as the deprivation of freedom of movement of citizens, without *just and valid cause*, including the right to leave Mauritius, is a matter of grave concern. (Section 15 of the Constitution.—Fundamental Rights and Freedoms of individuals.)

That laxity was the act or omission of the Police Constable who was responsible on the material date to check properly the Register of Objections at the Passport Office to whom Mr.....'s application for a passport was referred on 8th January 1986.

This omission resulted in a passport being issued to Mr.....and then his facing all the unhappy consequences. Had the Constable exercised care and seen the objection, the passport would not have been issued there and then but this would have allowed Mr.....to see the proper authorities (for example the Passport and Immigration Officer) to have the objection waived and a passport issued which would have allowed him to board the plane along with his family without let or hindrance.

Although the Police Constable concerned has been severely reprimanded by the Passport and Immigration Officer for neglect of duty. I am constrained to stress the fact that the complaint of Mr.....is well-founded and that no explanation of oversight, neglect of duty of a retired Superintendent or a Police Constable can mitigate by an iota the gravamen of the complaint.

The redeeming feature is, of course, the pinpointing of the neglect and the disciplinary action.

This case again raises the important question: does or should the retirement of a Superintendent in charge of a case necessarily cause a disruption in the continuity of Police action? Was not Detective Inspector.....who had assisted the Superintendent in the criminal inquiry aware of the objection to departure and was it not his

elementary duty or was it too much to expect him to draw the attention of the Superintendent before his retirement or of the new Superintendent to the need for waiving the objection both at the Passport Office and the Plaisance Airport Immigration Office? All these disturbing questions only show the glaring need for proper briefing and training of junior officers and all concerned in respect of vital matters such as the freedom of movement of citizens.

My recommendation would therefore be that a mere transfer or retirement should not be allowed to lead to such unhappy results and that steps should be taken to ensure that continuity of relevant action is safeguarded."

I also sent a copy of this report to the Prime Minister as required by Section 100 of the Constitution and a due acknowledgement of receipt with thanks was sent to me by the Secretary to the Cabinet as directed by the Prime Minister.

Case No. C/81/86

Some articles not returned even after trial

A prisoner sentenced to five years' and three years' imprisonment with hard labour (sentences to follow each other) for larceny complained to me on 13th June 1986 that some spoons, knives and forks secured from his place by the Police in August 1983 had not yet been returned to him or his wife, although the trial was over on 26th April 1985.

The version of the Deputy Commissioner of Police to me was that the articles were kept by the Police for further inquiries as to their origin as they were suspected of being the proceeds of a larceny. They would have been returned to the prisoner personally in due course i.e. when the Police would have been satisfied that they had not been obtained by means of a criminal offence. The prisoner having, in the meantime, expressed the wish that the secured articles be returned to his wife, the articles were returned, as requested, on 1st August 1986 after the District Superintendent had made sure that they had not come into the possession of the prisoner by unlawful means.

The Deputy Commissioner of Police concluded: "as a matter of fact, those articles may be the property of someone who has been the victim of a larceny and who may not have reported the matter to the Police, hence the unusual delay, at times, in returning such exhibits to the suspect."

The prisoner had no further comments to make.

Case No. C/144/86

No further action on declaration of personation

The agent and proxy of a Mauritian settled since 1956 in London made a declaration on 19th July 1979 to the Police about the sale in August 1974 of a plot of land belonging to his principal by another person without any right, title or capacity. The proxy complained that although there had been a Police inquiry, no prosecution had ever been started against the "vendor" who obviously had personated his principal.

In fact on the date of the sale before a Notary the real owner was not in Mauritius but was in London. According to records at the Passport and Immigration Office, the owner had come to Mauritius from London on 18th April 1973 and gone back on 18th May 1973. The personator was unknown to the purchaser and his identity as the owner was testified to the Notary by two "témoins certificateurs" whom the purchaser had met casually and who were unknown to him.

Of these two witnesses before the Notary, one had passed away in 1975 as witnessed by his Death Certificate and the other had remained untraceable by the Police. The Police inquiry revealed that an unknown individual had personated the owner before the Notary.

The case was therefore filed by the Police on 22nd April 1980 as the author of the personation, which is a criminal offence, was unknown. In the circumstances, the Police was not to blame.

On 12th January 1987 the owner who had come to Mauritius on a visit called on me in the company of his proxy and on hearing the Police version they expressed their satisfaction and also informed me that a Statement of Claim had been lodged in the Supreme Court by them against the purchaser and two other persons. My investigation ended there.

PRIME MINISTER'S OFFICE

Case No. C/62/86

Passport unjustly not renewed

A Mauritian who was residing in England had come to Mauritius on 25th December 1985 and was due to leave for England in mid-February 1986 to pursue his studies in accountancy and continue his part-time job complained to me on 22nd April 1986, while still here, that after the loss of his passport in January 1986 he was meeting with a number of difficulties both at the Passport Office and at the Prime Minister's Office for obtaining a new passport. Also he was being told to travel with a "travel document"—a proposal he refused fearing that he might not be allowed to land in England and might even be sent back to Mauritius.

After my intervention, the Permanent Secretary of the Prime Minister's Office explained the position as follows in a letter dated 12th May 1986:—

"Mr R (the complainant) was issued with Passport No. in September 1980. He left the country in January 1982 for Zurich. He reported the loss of his passport in Paris and obtained Passport No. in March 1982. He travelled back to Mauritius on the 27th December 1985 on the strength of his second passport which he lost at his place of residence

between the 26th December 1985 and the 20th January 1986. On the 25th February 1986 he applied to the Commissioner of Police for a new Mauritius passport to travel to the United Kingdom.

This Office, viewing with concern the number of cases of Mauritians abroad losing their passports for a second or even a third time and applying for new ones, had decided, after consulting the Solicitor-General, to issue in such cases a travel document valid for one trip only in lieu of a passport.

It was, therefore, decided to issue a travel document valid for one trip to Mr R who was informed accordingly.

Subsequently Mr R called at this Office and explained that he was studying in United Kingdom and working on a part time basis there. He feared that he might not be allowed to enter the United Kingdom on the strength of a travel document. He gave the guarantee that he would be more careful in future.

In order not to cause any hardship to Mr R this Office reviewed his case and decided on 22nd April last to issue, exceptionally a new passport to him.

Mr R has already been issued with a new passport bearing number

In fact the complainant Mr R had called at my Office on 28th April 1986 to say that he would be receiving a new passport "in a couple of days" and that he had paid the sum of Rs 121. for that. He also expressed his thanks for my intervention but also asked that further action by me be discontinued.

I have reported this case in view of its importance which is obvious from the Permanent Secretary's letter.

Case No. C/112/86

Unjust non-renewal of passport

A Mauritian student T in France since 1984 alleged on 3rd September 1986, while in Mauritius, that he lost his passport in Paris on or about 30th November 1984. He reported the matter to the Police of Chichy and after investigation a "duplicate passport" was issued to him by the Mauritian Embassy in Paris. In December 1985 his passport came to expire. The student was then deported to Mauritius after termination of his studies on 18th April 1986. He was thereafter enrolled at the City College of Higher Education in London for a two-year course leading to the B/TEC National Diploma in Business and Finance which would commence on 17th September 1986.

T complained to me that the Passport Office "refused to renew" his passport and asked him to produce the old passport. But, he said, how could he produce a lost passport? He was naturally anxious about his course of studies.

I took up the question with the Permanent Secretary, Prime Minister's Office, on 4th September 1986 stressing the impossibility of producing the lost passport and the immediacy of his case.

On 23rd September 1986, an officer signing for the Permanent Secretary confirmed in a letter addressed to the Secretary of my Office that the expired passport held by T has been extended to the normal period of five years.

I further queried the Permanent Secretary about the reason for the refusal in the first instance by the Passport Officer to renew T's passport and on 8th October 1986 the Permanent Secretary sent me an explanatory letter in the following terms:—

"In cases of lost passports the Passport and Immigration Officer has to conduct an exhaustive enquiry before submitting such cases to this Office for approval. I also invite your kind attention to the Notes on the inside back cover of a Mauritius passport.

In this connexion, please find enclosed a copy of letter (No IP 21/70—600) of the 6th October from the Passport and Immigration Officer submitting his explanations."

The explanation of the Passport and Immigration Officer read as follows:—

"T was deported from France and he returned to Mauritius on the 17th April 1986 travelling on a *sauf-conduit* issued by the French Authorities.

He reported on his arrival that his passport No.....valid for one year, has been kept by the French Authorities in France.

On the 20th August 1986 he informed this Office that he has received passport No..... from France by post and he applied for the extension of its validity.

After the usual enquiries made the matter was on the 4th September 1986 referred to the Prime Minister's Office for approval."

As soon as T got his passport extended he left Mauritius for England.

I fully appreciated the explanations of both the Permanent Secretary and of the Passport and Immigration Officer, remembering that passports are important documents and that reports of "lost" passports in dubious circumstances were not lacking. Therefore the authorities concerned had to be extra vigilant.

PRISONS

Not issued prescribed drugs

Case No. C/3/86

A prisoner's complaint was that (a) at the prison hospital he was not supplied drugs prescribed to him by the psychiatrist treating him at the Brown Sequard Hospital. According to him these drugs were given to him from "l'hôpital dehors" (outside hospital i.e. not the prison hospital) but whenever he did not get them that way, he had them from the prison hospital but after many difficulties and after many squabbles with the prison hospital officers and (b) that once he was placed on a water and diet regime for three days on a baseless charge.

In fact he was following out-patient treatment at the Brown Sequard Hospital at intervals of three months for psychiatric troubles.

As regards (a) the Senior Hospital Officer explained that the prisoner had been last seen by the psychiatrist at the Brown Sequard Hospital on 10th January 1986 and he was regularly issued his prescribed drugs and that he never complained of problems with hospital officers.

As regards (b) the Acting Assistant Commissioner of Prisons replied that following a report of gross misconduct and breach of prison discipline the prisoner was ordered by him to be placed on confinement in a cell pending adjudication. Indeed the record sent to me showed that on charges of (i) disrespect towards a Prison Officer and (ii) breach of Section 41 (K), Part IV of the Prison Act, Vol. IV Part III, Revised Laws of Mauritius 1981, a hearing was held by the Acting Assistant Commissioner of Prisons. The Prison Officer deposed and was cross-examined by the prisoner who had pleaded not guilty. Concluding the hearing, the Acting Assistant Commissioner of Prisons awarded a punishment of cellular confinement for three days on a bread and water diet and loss of three days' remission.

The Prison Officer was also cross-examined by the Acting Assistant Commissioner of Prisons and he admitted that the prisoner had asked for water to drink but as a search was going on and would finish in five minutes he was told to be patient. Indeed, he said, the prisoner was served with water after the search in seven minutes. It was during this search that the prisoner, it was alleged, had used highly abusive language towards the officer coupled with instigation of other prisoners present to rebel against the officers.

The prisoner was serving a ten-year sentence of imprisonment with hard labour on each of the undermentioned counts—all sentences to run concurrently:—

- (a) Larceny 2 in No. (3 Counts)
- (b) Larceny more than 2 in No. (2 Counts)
- (c) Aiding and abetting in the commission of a crime
- (d) Larceny
- (e) Arson

He had, in addition, to serve 988 days, which constituted the unexpired portion of a previous eight-year sentence. He was due for release on or about 13th December, 1990.

In the circumstances, I found the complaint not justified.

Case No. C/22/86

Wrong reckoning of term of imprisonment

The gist of the complaint of X was as per heading. X's contention was that the starting date should have been 22nd March 1984 and not 26th March 1984 as stated by the Prison Authorities to him.

My investigation required an examination of the Court record at the Intermediate Court in the last case of the accused. The Secretary of my Office, in virtue of a standing authority of the Master and Registrar of the Supreme Court, went to the said Court and read the Court record which showed that:—

- (i) there were three accused persons including X who were prosecuted in the same case on six counts one of which was "smoking opium".
- (ii) Found guilty X was sentenced to three years' imprisonment with hard labour + Rs 100 costs.
- (iii) The judgment was signed by two Magistrates. In fact, it was to be delivered on 22nd March 1984 but accused No. 2 produced a medical certificate for accused No. 1 explaining the latter's absence in Court and the judgment was postponed to 26th March 1984.
- (iv) On 26th March 1984 all three accused were present and the judgment was read out by one of the two Magistrates.

The date of the judgment and the commencement of the term inflicted was therefore 26h March 1984. This effective date was also evidenced by the Warrant of Commitment issued by the Court.

The Prison authorities had not committed anything wrong in making his last term start as from that date.

Case No. C/26/86

Several constraints

The complaint of N, a prisoner, was in substance as follows:—

- (a) not allowed to write to the Chief Justice for a retrial of his Assize case and for leave of appeal to the Privy Council;
- (b) not satisfied with video films, vegetables issued and not allowed to see the Commissioner of Prisons.

As it is a futile task to summarize the explanation of the Commissioner of Prisons since it may detract from its value, I reproduce it hereunder:—

"1. Prisoner N. was sentenced by the Assizes Court on 6th December, 1983, to undergo 15 years penal servitude on Count I for "Rape" and 10 years penal servitude on Count II for "Manslaughter" concurrently. He is due for release on or about 5th December, 1993.

2. On several occasions the prisoner was allowed to write to relevant authorities in connexion with his conviction.

3. In fact he was authorised on an application made on 24th July, 1984 to write to the Chief Justice for a retrial of his case. On 22nd October, 1984 a reply was received from the Secretary of the Chief Justice to the effect that his request for legal assistance in a new trial could not be granted.

4. On 4th June, 1985, he obtained leave to apply to the Chief Justice for free counsel to assist him in an appeal to the Privy Council. The Secretary to the Chief Justice replied subsequently that this request could not be entertained and that in any case he did not need the permission of the Honourable Chief Justice to write to the Privy Council about his case.

5. On a further application the prisoner made on 5th September, 1985 to write to the Minister of Justice regarding appeal to the Privy Council he was, in view of the negative reply received from the Secretary to the Chief Justice, advised to write to his counsel for further advice.

6. On 3rd October, 1985, he was visited by his counsel, Mr. according to the prisoner, advised him to write to the Secretary to the Chief Justice to change his counsel for his case on appeal. On 17th October, 1985, advice was sought by phone on the issue from the Secretary to the Judge, who spelt out that the prisoner's request could not be considered and the latter was informed accordingly.

7. *Video Films*—Prisoners are allowed to watch video film, French and Hindustani on weekends as and when possible as a recreational activity and not at their request. It was not in the programme of New Year 1986 to allow prisoners to watch a video film.

8. A French film is shown on two consecutive weekends and an Hindustani every third weekend as almost all prisoners understand French films whereas fewer understand Hindustani films. This schedule is reasonable and is made to suit common and not individual liking.

9. The films are taken on loan from Video Clubs and are viewed by the Welfare Officers and Assistant Superintendent of Prisons before projection.

10. *Issue of Vegetables to Kitchen*—Vegetables grown in the Prison Gardens are issued to the Kitchen through the Stores according to established store procedures which are verified and approved by Internal Controllers, Stock Verifiers and Officers of the Audit Department.

11. Prisoners whether on vegetarian or ordinary diet cannot be issued with food of their own choice especially when food is being prepared for over a thousand prisoners at a time.

12. *Application to Headquarter Officers*—Every prisoner who applies to see the Commissioner of Prisons or the Deputy Commissioner of Prisons is allowed to do so, except where the nature of the request made does not warrant such an interview e.g. when matters raised can be settled at more appropriate quarters.

On 9th January 1986 complainant applied to see the Deputy Commissioner of Prisons as he was not satisfied with the issue of vegetarian food from the Kitchen stating that what was then served was not sufficient for good health. He was advised to see the Prison Medical Officer."

I communicated the explanation to N stating that I found it reasonable.

Case No. C/33/86

No leather sandals or safari suit

R complained on 26th February 1986 that he was undergoing eight years' imprisonment with hard labour as from 28th November 1980 after conviction at the Assizes for "murder" and that the practice of issuing a pair of leather sandals and a safari suit to prisoners on release had been stopped. He wanted to know why and expressed his fear that on his release he might not be issued with the above items.

My investigation showed that R had in fact been sentenced to undergo eight years' penal servitude not for murder but for the offence of "wounds and blows causing death without intention to kill". He was due for discharge on or about 15th June 1986. The Commissioner of Prisons said:—

"It is not true to say that a prisoner who is sentenced to three years or over is told on admission that he will be issued with a pair of leather sandals and a safari suit on his release from prison.

As Section 14 of Prison Regulations, 1981 provides for "clothing at the government expense" to long term prisoners, abovenamed being entitled to clothing will be issued with a safari suit as is the practice now."

I communicated the explanation to R and added that I found it reasonable.

Case No. C/42/86

No proper medical treatment

A prisoner's complaint was that (a) he was suffering from varicose veins on his left leg, (b) his work at the prison bakery entailed standing for a long time and this resulted in great pain in his leg and (c) the Prisons Medical Officer after examining his leg prescribed Panadol tablets etc. and told him that he had no varicose veins.

The comments of the Commissioner of Prisons were as follows:—

"The abovenamed who is a persistent offender, was sentenced on 17th February, 1983 by Port Louis (North) Court to undergo 18 months imprisonment with Hard Labour in addition to three years Police Supervision for the offence of "Larceny Breaking". On 17th October, 1983 he was reconvicted by the Intermediate Court to undergo five years Servitude concurrently to the first sentence.

On 18th February, 1983, he was posted for employment in the Builders' party. Following an

application he made on 10th February, 1986 for a change of work, he was transferred to the Bakery on 11th February, 1986 where he earns extra remission for work on Sundays and Public Holidays. He has so far earned five days remission. He is now due for release on or about 6th March, 1987."

The Commissioner of Prisons also enclosed the Prisons Medical Officer's report on this case which read thus:—

"Please note that the said prisoner..... had the following attendances since 1984.

- On 31. 7.84 Urinary tract infection
- 6. 8.84 Insomnia
- 21. 8.84 pain right knee
- 28. 2.85 fitness for ladder work given
- 18. 3.85 wax right ear
- 3.12.85 pain left elbow
- 23. 1.86 pain serotum
- 3. 2.86 { asks for change of diet—vege-
- 4. 2.86 { table diet granted pain p. ankle
- 4. 3.86 do
- 1. 4.86 weakness.

Examined by me and proper drugs prescribed in each case. As you can see no pain in legs is mentioned, the only pains mentioned were in ankle on 3.2.86 and 4.2.86 respectively and pain left knee on 2.8.84. Medically, I have never learnt that varicose veins can exist in a joint. Besides, no sign of any varicose vein has been noticed in this case."

The prisoner had also requested me to intervene so that he could be examined by his private doctor who could be called by his family. On this point, the Commissioner of Prisons commented that it would be an undesirable practice to allow prisoners to be examined by their private doctors as this was bound to lead to abuses and result in chaos.

Sectoin 5A of the Prisons Act further provides that:—

"A Government medical officer designated by the Minister of Health—

- (a) shall be responsible for the health of all prisoners;
- (b) shall cause all prisoners to be examined at such times as may be prescribed;
- (c) may, whether or not the prisoner consents, take or cause or direct the taking of such action as he thinks fit in the interest of the health of a prisoner."

In plain terms it is the Prisons Medical Officer who is responsible for the medical care of prisoners and it is he who decides whether a case should be referred to a Government Specialist doctor. In fact this practice has been resorted to in deserving cases. There is a full-time Government Medical Officer attached to the prisons. The prisoner was informed accordingly.

Case No. C/53/86

Not allowed to petition the Governor-General

On 4th April 1986 a prisoner complained that despite my advice to him to petition the Governor-General through the Commission on the Prerogative of Mercy, he had not been allowed to do so by an Assistant Superintendent of Prisons.

The explanation of the Commissioner of Prisons was as follows:—

"Prisoner was remanded to jail on 11th October 1982 by Port Louis (South) Court on a charge of "Arson". On 30th March, 1983, he was sentenced by the Intermediate Court to undergo five years penal servitude on Count I for 'attempt at larceny night breaking' and seven years penal servitude on Count II for 'Arson' concurrently. He accordingly spent five months and 20 days on remand.

During the current term of his sentence he has petitioned His Excellency the Governor-General on 28th May 1984 and 28th May 1985. In his first petition he prayed His Excellency the Governor-General to grant him the period he spent on remand, but received a negative reply on 29th June 1984 from the Commission on the Prerogative of Mercy. In his second petition he prayed His Excellency the Governor-General to order his release on licence, and he again received a negative reply on 21st June 1985 from the Commission.

In fact, on 4th March, 1986, he applied to Acting Assistant Superintendent of Prisons to purchase cakes from his earnings but never asked to petition His Excellency the Governor-General respecting the period he spent on remand.

He is a persistent offender who is due for release on or about 20th December, 1987."

In communicating the explanation to the prisoner, I added that the Commission on the Prerogative of Mercy had already conveyed to him the reply of the Governor-General on the question of remand and therefore there was no point in petitioning again and again. In fact, in another letter to me the prisoner had admitted that his petition had been rejected once. I found his complaint not justified.

Case No. C/84/86

Borstal Youth sent to Phoenix prison

The complaint was that an adolescent from a 'broken home' was found guilty of an offence and ordered by the Court to undergo industrial training at the Borstal institution and that he was sent to the Phoenix prison (a high security prison) commonly known as "La Bastille" for the period 24th April to 5th May 1986 for no apparent reason.

After my intervention, the Commissioner of Prisons sent me the following detailed report on the case:—

"The abovenamed, an ex-Industrial School boy was admitted to the Borstal Institution on 4th July, 1984 for an offence of 'larceny'. His latest possible time of release was July, 1987 plus a period of supervision ending July, 1988. Under the Borstal Ordinance he was eligible for consideration for release any time after six months.

On 29th January, 1986, he appeared before the Borstal Visiting Committee for a periodical review after he had completed 18 months' detention. The Committee promised to consider his release.

The lad's father and mother had separated. The father is a habitual criminal. The mother has taken another partner and she assumed responsibility for him on his release from the Industrial School on 17th August, 1983. This time she did not want to accept responsibility for him nor did any other member of his family.

At the meeting of February, March and April, 1986, the Borstal Visiting Committee considered the case. The Committee did not want to consider his release until a shelter was found for him.

Whilst this process of release was going on, the inmate grew impatient and it transpired that he was planning to escape and when he was closely watched he started to become hysterical and behaved badly disturbing the smooth running of the Borstal Institution. For his security, he was transferred to Phoenix Prison and the Borstal Visiting Committee informed accordingly. If it was not possible to negotiate his release, it was proposed to recommend the commutation of his unexpired Borstal Sentence into one of prison sentence, as provided under Section 10 of the Borstal Ordinance. At the request of the Borstal Visiting Committee, he was examined by a Psychiatrist. Subsequently, a place was found for him at the "Foyer Vivre Debout". As soon as his release was possible he was returned to Borstal on 5th May, 1986 to appear before the Borstal

Visiting Committee which held a special meeting on Thursday 8th May, 1986. He was released on that day to the care of that "Foyer". Also enclosed are photocopy of extracts of his Borstal records showing action taken together with his records of offences.

The transfer of the inmate to Phoenix Prison was dictated by his aggressive behaviour, his disturbed state of mind and his inclination to escape. As soon as his release was confirmed his state of mind changed and he was returned to Borstal.

The Commissioner of Prisons further explained that Phoenix Prison is a detention centre for escape-risk and badly behaved offenders. Inmate M i.e the adolescent was sent there for his own security. In any case it is the practice to transfer Borstal inmates exercising a bad influence on others to prison pending action under Section 10 of the Borstal Ordinance.

After taking cognizance of the report and all the annexes, I concluded that all the steps taken were justified and were, above all meant for the security and well-being of the adolescent himself.

Case No. C/156/86

Doubly punished : by Court and the Prison Authorities

On the insistence of a prisoner I sent the Secretary of my Office to hear his grievances and make a full report to me.

The Secretary's report was a long and detailed one based entirely on the version of the prisoner himself. In short, it was the portrait of an unruly, violent and indisciplinable prisoner.

After this visit the prisoner wanted to know what I proposed to do and I wrote to him as follows:—

"At your request the Secretary of my Office visited you at the Central Prison of Beau Bassin on 3rd October, 1986.

His report to me has revealed that on 7th June, 1983 you had inflicted wounds and blows on another prisoner. You were prosecuted before the District Court of Rose Hill and found guilty as charged. The Court sentenced you to undergo two months' imprisonment with hard labour. To maintain discipline and for the security of other prisoners, you were sent to the Phoenix Prison.

On 15th January, 1985 you committed another offence of wounds and blows on a remand prisoner named..... also called..... You were again prosecuted before the District Court of Rose Hill. You were found guilty and sentenced to undergo eight months' imprisonment with hard labour. For breaking prison discipline, you were again sent to Phoenix prison for a period of three months.

I note from my Secretary's report that you take the law in your own hands and mete out justice yourself.

In order to get a good treatment during your stay in prison, you must avoid getting into trouble. You must follow the prison discipline, obey the orders given to you and behave properly.

I cannot blame any one for what has happened to you."

He did not make any comments on my letter and I concluded that his complaint of double punishment was not justified. The Court sentences were for criminal offences like wounds and blows on fellow prisoners and the confinement to Phoenix prison was for security and the safeguard of prison discipline.

REFORM INSTITUTIONS

Case No. C/102/85

Not paid pension and full gratuity after retirement

An acting Senior Superintendent of Prisons was interdicted from service on 2nd June, 1983 on a charge of conspiracy in the destruction of certain property of the prisons. During the period of interdiction, he received only half of his salary. He retired at the age of 60 on 26th February 1985, and no salary was paid as from that date.

Being in financial difficulties, he applied to the Accountant-General for an advance of Rs 25,000 of his gratuity; this advance was made to him.

He complained to me on 4th September, 1985 stating his financial plight and sought my intervention for the payment of his pension and gratuity. He contended that he was entitled to receive his full pension and gratuity under the Pensions Act.

In reply to my query, the Accountant-General stated on 24th October, 1985 that the pension papers of the complainant were received at his Office on 5th April 1985, were duly processed and forwarded to the Director of Audit on 19th April 1985. As a result of some queries by the Director of Audit the basis for payment of the retiring benefits was taken up with the Solicitor-General and thereafter with the Ministry of Reform Institutions but the matter had not yet been finalized by that Ministry.

The Principal Assistant Secretary of the Ministry of Reform Institutions in his turn replied to me saying that the Public Service Commission had given the direction to the Commissioner of Prisons that 50% of the gratuity payable to the officer should be withheld pending the outcome of the disciplinary action against him. The Principal Assistant Secretary also stated that (a) "the advice received from the Solicitor-General is that if Mr (the complainant) gets convicted, then his case regarding pension rights would be submitted to the Governor-General for such decision as His Excellency may deem fit in the circumstances, and (b) the officer is being prosecuted for conspiracy to do a wrongful and unlawful act, namely, the destruction of Government property."

After a protracted correspondence between me and the Establishment Secretary, the Financial Secretary, the Ministry of Reform Institutions, the Accountant-General and the Solicitor-General and after an examination of the Accountant-General's case file and that of the Ministry, and after hearing some of the officers concerned it transpired that none of these authorities had deliberately delayed action: the Accountant-General was waiting for the Audit clearance and the Ministry of Reform Institutions was following the Solicitor-General's advice which was to withhold payment of pension and the remaining gratuity until the outcome of the criminal case against the complainant.

Finally after receiving my analysis of Section 5 of the Pensions Act which enacts that the *Minister of Finance* may under this section withhold the totality of the pension payable to any officer and after my recommendation that the approval of this Minister and this Minister alone should be sought in the matter of withholding payment of pension, the Ministry of Reform Institutions did eventually refer the matter to the Minister. As a result, the Permanent Secretary of the Ministry of Reform Institutions wrote to me on 4th August, 1986 as follows:—

"I have to inform you that the Minister of

Finance has decided to release the 50% gratuity and the full pension that had been withheld, on the condition that Mr. agrees (a) to his pension being reduced if, as a result of his conviction, the appropriate authority so decides and (b) to refund retiring benefits already drawn if the authority decides he should not have drawn any."

I do not know how the Public Service Commission directed that 50% of the gratuity should be withheld but as I have no jurisdiction over this Commission it is futile to embark on cogitations about the matter. What became clear gradually was that all concerned had acted all along in good faith. Indeed, the complainant wrote to me on 4th September, 1986 to thank me and to say that he was paid the total amount of his pension and gratuity accruing to him on 12th August, 1986 after having been made to subscribe a bond. The complainant was kept in touch with all developments in this case and I classed it as *explained*.

Case No. C/23/86

Rehabilitation after discharge from prison

A prisoner whose date of release was not very far expressed his worries to me about the problems of clothing, work and a lodging as his parents were already dead and his brothers and sisters would not hear anything about him. In prison he had learnt the craft of shoemaker.

I questioned the Permanent Secretary, Ministry of Reform Institutions, about this prisoner's problems and generally about rehabilitation of prisoners after discharge. His reply was as follows:—

"The case of Mr. ... (the prisoner) will be considered along with other cases at the next meeting of the Discharged Persons' Aid Committee, whose functions are as follows:—

- (a) to interview persons about to leave prison in connection with their future plans, prospects and eventual re-integration in the community;
- (b) to perform such welfare work in favour of discharged persons, as is possible;
- (c) to induce discharged persons to live by honest labour, and to that end to make loans and grants in cash or kind in deserving cases, provided funds are available;
- (d) to do everything to secure the complete rehabilitation of discharged persons.

Prisoners are required to submit, in writing, their requests for assistance to the Commissioner

of Prisons, who refers them to the Committee for adjudication after interviewing the prisoners.

The Committee takes note of requests from prisoners and provides them with tools, blankets

and/or cash money in accordance with their needs."

In the light of this reply, which I communicated to the prisoner, I advised him to act in accordance with paragraph 2 thereof.

REGISTRAR-GENERAL

Case No. C/61/86

Cause of death certificate not issued

Mr. X whose father had died two years before complained on 21st April, 1986 that the Civil Status Division of the Registrar-General's Department was not issuing to him "the cause of death certificate" which he and his co-heirs were requested to produce to the late father's life insurer before they could be paid the amount insured.

The Officer-in-charge of the Division told them and "the lawyers of the insurance company" that only "an order from the judiciary can make her change her decision." Being given that the legal procedure suggested would entail costs and long delays, they thought of requesting my intervention in the matter.

Although I raised the question with the Registrar-General, it was dealt with by the Prime Minister's Office which was responsible for that department. After an interim reply the Permanent Secretary of the Prime Minister's Office finally replied to me on 20th June, 1986 conveying the Solicitor-General's advice which was as follows:—

"The Cause of Death Certificate cannot unfortunately be issued without a judge's order. Even an extract of the entry in the Death Register cannot specify the cause of death without the order of a judge. There are reasons for and against such a practice, but the law as it is must be adhered to. Insurance Companies are in the habit, regrettably, of delaying payment by resorting to all sorts of excuses; that cannot but be remedied by law. The violation of the law by the Civil Status Office for that purpose cannot be the answer."

I communicated the opinion to the complainant and added that (a) it was clear that as the law stood then a judge's order was required, and (b) he should seek legal advice and act accordingly or apply to the Chief Justice for legal aid in order to start legal proceedings if he had no adequate financial means.

Case No. C/98/86

Refusal to refund excess duty

X purchased a plot of agricultural land for Rs 40,000 and the deed of sale was drawn up by a Notary. It was registered and transcribed in Mauritius on 2nd August, 1985.

X's complaint was that he was penalized by being required to pay land registration fee of 11% instead of 6% as laid down in "the law passed in 1985—Section 3(2)(a)(i) of Act 2 of 1985".

After my intervention, the Registrar-General sent me the following detailed explanation:—

"Mr X purchased, in virtue of a deed drawn up by Mr Notary . . . on the 25 July 1985 and transcribed in Vol. 1677 No. 159, a portion of land of 1 arpent 43 perches at La Flora for Rs 40,000.

Registration duty and transcription fee amounting to Rs 4,412.10 and made up as follows were levied—

(i) registration duty @ 10% of Rs 40,000. paragraph 1 of item I of the First Schedule to Registration Duty Act	...	4,000.
(ii) 10% surcharge—Finance Act 1981	...	400.
(iii) transcription fee—First paragraph of Third Schedule to Transcription & Mortgage Act		10.
(iv) 10% surcharge—Finance Act 1980	...	1.
(v) 10% surcharge—Finance Act 1981	...	1.10
		4,412.10

Section 3(1) of the Sugar Section Package Deal Act 1985 provides, *inter alia*, that—

"a deed of transfer to any person of one or more portions of land under cane cultivation

of an aggregate extent not exceeding 25 arpents or 10.55 hectares shall where the conditions specified in subsection (2) are satisfied, be registered on payment of registration duty at the rate of 6 per cent of the consideration mentioned in the deed or of the value as determined in accordance with section 28 of the Land (Duties and Taxes) Act 1984".

The main condition applicable in the case under review which is set out in section 3(2)(a)(i) of the Act referred to above reads—

"The deed of transfer shall contain a certificate from the Sugar Industry Insurance Fund certifying that the land transferred has been under cane cultivation for a period of not less than two years during the ten years immediately preceding the date of transfer."

The above condition was not satisfied as the deed of transfer transcribed in Vol. 1677 No. 159 did not contain the certificate referred to above and the amount of duty mentioned in paragraph 2 of this letter was levied in accordance with section 3(2)(b)(i) of the Sugar Sector Package Deal Act 1985 which reads—

"Where a deed does not contain the certificate and the declaration specified in paragraph (a), the duties and taxes leviable under any enactment relating to the transfer of the land shall become due and payable."

As the duty has been properly levied, no refund can be envisaged in view of section 29(1) of the Registration Duty Act which is reproduced for easy reference—

"Where duty has been properly levied on a document in accordance with this Act, the duty shall not be refunded whatever may be the effect of any subsequent event on the transaction witnessed by the document".

A photocopy of the deed transcribed in Vol. 1677 No. 159 is enclosed."

I found that the provisions of the law were properly applied in this case. The only difference between the two versions of facts, i.e. between that of X and that of the Registrar-General, was the absence of mention of the date of purchase before the Notary in the complainant's letter. The photocopy of the deed of sale submitted to me officially showed that the sale was effected and the deed drawn up on 25th July, 1985 as stated by the Registrar-General.

It is to be noted that both the above Acts (including the one relied upon by X) speak of the deed of transfer and that Section 29(1) of the Registration Duty Act speaks of "the effect of any subsequent event on the transaction witnessed by the document." Clearly, the transaction in this case was the sale of the land and it was effected on 25th July 1985 before the Notary, the document witnessing it was also drawn up on the same date but the deed did not contain the Certificate required under Section 3(2)(a)(i) of the Sugar Sector Package Deal Act. This Act was passed by the Legislative Assembly on 16th March, 1985 and came into force under Section 8 on 1st April 1985 by Proclamation No. 4 of 1985.

On the admission of X himself, the Certificate from the Sugar Industry Insurance Fund was issued to him on 6th September, 1985 i.e. over a month after the date of the deed of sale or transfer. I could not question the delay in issue by the Fund or the non-inclusion of the Certificate in the deed by the Notary as I have no jurisdiction over either of them.

I therefore found X's complaint against the Registrar-General unfounded.

TELECOMMUNICATIONS

There were more than nine complaints against this Department and they followed the usual pattern: no provision of a telephone, discrimination, exaggerated bills for calls.

The official explanations were consistently that (a) lines were not available, (b) development works had to be started subject to capital budget and (c) there had been no overmetering and therefore the bills had to be maintained and in cases of non-payment disconnection of telephone had to be effected.

I therefore have not deemed it worthwhile to write any case report as in the past my annual

reports have sufficiently covered similar complaints with similar official explanations. My Office has no engineering or technical personnel who could probe these complaints and the official explanations. Anyway, even if my Office were so equipped, it would have required that personnel to be perpetually sitting at the Telecommunications Department or doing field work to find out the truth since it is obvious that with such a development it would have become well-nigh impossible to cope with the ensuing flood of complaints.

But all this does not mean that I shall not handle complaints from the public against this Department.

WORKS

Case No. C/39/86

No adequate action re. operation of an industry

S. complained that his neighbour was operating a factory manufacturing bolts and nuts without a permit and that this was a source of noise nuisance and that he was deprived of proper light and ventilation.

I took up the matter with the Permanent Secretaries of the Ministry of Health and the Ministry Works.

The report of the Permanent Secretary of the Ministry of Works confirmed that notices served on the factory manager had been complied with and that extension of his building for use as a factory without permit had stopped.

From the report of the Permanent Secretary, Ministry of Health, it transpired that (a) in fact the building occupied by S was let to him by the owner of the factory for commercial purposes and was not meant for residential purposes because of lack of ventilation and lighting and that in spite of that S was using part of the building as a residence; (b) as regards the alleged noise nuisance, the industry had stopped all its activities and nearly all the machines had been dismantled. The Permanent Secretary observed further "as S is using a commercial building for residential purposes, I believe that his complaint cannot be taken into consideration. Accordingly he has been verbally requested to vacate the building."

In a letter dated 21st May 1986 S confirmed the cessation of operation of the factory and added that openings had been made for light and ventilation.

With all this development I stopped further investigation.

Case No. C/76/86

No action re. overhanging eucalyptus branches

On 18th April 1986 S complained to me that he had complained to the Health Office of his region about "encroachment" caused on his property by overhanging branches of eucalyptus trees but no action had been taken.

The Permanent Secretary, Ministry of Health, explained to me that it was a case concerning the Ministry of Works as Building Regulations of 1919 came into question. S was advised by me to complain to the local office of the Ministry of Works, which he did on 18th April 1986. On 18th June 1986 S sent reminders to the Permanent Secretary, Ministry of Works, and the local office, with copy to my Office.

When queried about the apparent inaction, the Permanent Secretary of the Ministry of Works replied:—

"An inspection carried out by the Inspector of Works (North) has revealed that the branches of the Eucalyptus tree on the premises of Mr S's neighbour are at a distance of more than ten feet from Mr S's house.

A copy of the report from the Inspector of Works (North) is herewith attached."

The report of the Inspector said that in fact it was Regulation 9 of the Building Regulations that governed the case but inspections showed that no breach of that Regulation was being caused by S's neighbour.

S called at my Office and after perusing Regulation 9, I explained to him that under this Regulation overhanging branches projecting nearer than 10 feet from houses used only for human habitation amount to a breach or offence. But in his case S admitted after questioning that the building which he called a house was in fact a store and was not used for human habitation. I concluded that in the absence of an offence, the Ministry could not take any action against S's neighbour. However, I also advised him to consult an Attorney-at-Law with a view to taking action under article 672 of Code Napoléon which reads:—

"Art. 672. Le voisin peut exiger que les arbres et haies plantés à une moindre distance soient arrachés. Celui sur la propriété duquel avancent les branches des arbres du voisin peut contraindre celui-ci à couper ses branches directes."

STATISTICAL SUMMARY OF COMPLAINTS

<i>Ministries/Departments</i>			<i>Justified</i>	<i>Justified/ Rectified</i>	<i>Rectified</i>	<i>Not justified</i>	<i>Discontinued</i>	<i>Explained</i>	<i>Declined for want of jurisdiction</i>	<i>Declined in exercise of discretion</i>	<i>Withdrawn</i>	<i>Being investigated</i>	<i>Total No. of complaints</i>
Accountant-General	...	...	—	—	—	1	—	—	—	—	—	—	1
Agriculture, Fisheries and Natural Resources	...	...	—	—	—	—	—	—	2	—	—	—	2
Civil Aviation	...	...	—	—	—	1	—	—	—	—	—	—	1
Co-operatives	...	...	—	—	—	3	2	1	—	—	—	—	6
Customs	...	...	—	—	—	—	1	—	—	—	—	—	1
Education, Arts and Culture	...	...	—	—	—	—	1	1	2	—	—	—	4
Employment	...	...	—	—	—	5	—	—	—	—	—	—	5
Energy and Internal Communications	...	...	—	—	—	—	—	—	1	—	—	—	1
Health	...	...	—	—	1	3	2	3	4	1	—	6	20
Housing, Lands and the Environment...	...	...	—	1	—	1	1	1	—	—	1	3	8
Labour and Industrial Relations	...	...	—	—	1	1	—	1	—	—	1	—	4
Local Government	...	...	—	—	1	—	—	—	1	—	—	—	2
Police	...	...	1	1	—	8	4	7	5	2	1	4	33
Prime Minister's Office	...	...	—	—	—	1	—	—	—	—	1	—	2
Prisons	...	...	—	—	—	11	1	1	1	—	—	—	14
Reform Institutions	...	...	—	—	—	—	—	2	—	—	—	1	3
Registrar-General	...	...	—	—	—	1	—	1	—	—	—	—	2
Social Security	...	...	—	—	—	1	—	—	—	—	—	1	2
Telecommunications	...	...	—	—	—	9	1	1	—	—	—	—	11
Trade and Shipping	...	...	—	—	—	—	—	—	—	—	—	1	1
Works	...	...	—	—	—	1	5	1	1	1	—	2	11
Officers and Authorities outside the jurisdiction of the Ombudsman	...	...	—	—	—	1	3	4	41	—	—	1	50
TOTAL	...	...	1	2	3	48	21	24	58	4	4	19	184

APPENDIX C

Schedule of Complaints for Period 1st January 1986—31st December 1986

ACCOUNTANT-GENERAL'S DIVISION

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/ 70/86	Arbitrarily disallowed payment of transport expenses to sites of work to complainant (a retired foreman of the Ministry of Local Government)	Not Justified

AGRICULTURE, FISHERIES AND NATURAL RESOURCES

C/ 35/86	Not appointed to a higher post while a junior with lesser qualifications so appointed	Declined
C/ 88/86	Technical Officer being "victimized" by superior/s	Declined

CIVIL AVIATION

C/149/86	No passes delivered for access to Plaisance Airport for purposes of work with an International Company — their employer	Not Justified
----------	---	---------------

CO-OPERATIVES

C/113/85	No reply to letter to Registrar re. arbitration award in favour of minor son (Case referred to Solicitor-General for advice)	Discontinued
C/114/85	Unreasonable delay in approving application for registration of a Credit Union ...	Not Justified
C/ 17/86	Not communicated vital information to complainant's Attorney-at-Law ...	Not Justified
C/ 43/86	No action re. arbitrary behaviour of Co-operative Society's Committee towards complainant	Not Justified
C/ 71/86	No sufficient action for affiliation of a co-operative society to the Federation ...	Discontinued
C/ 99/86	Appeal against award disposed of in absence of complainant maintaining arbitrator's award against him. (Recommendations made by the Ombudsman for adherence to procedural requirements of the Co-operative Societies Act).	Explained

CUSTOMS

C/147/86	Unjustly required to pay duties and taxes on E.P.Z. goods	Discontinued
----------	--	--------------

EDUCATION, ARTS AND CULTURE

C/ 18/86	Floating primary school teacher having problems in her job	Declined
C/ 19/86	After passing C.P.E. Examination, daughter admitted to a Secondary school at Mahebourg. Residence: Vacoas. School: Mahebourg. Undue hardship. (Complainant did not apply for transfer in 1985 from Mahebourg)	Explained
C/ 96/86	Unjustly not paid responsibility allowance for temporarily discharging duties of an Executive Officer although substantive post held was that of Clerical Officer in the Ministry	Declined
C/105/86	Complaint of request for bribery from a Ministry's officer made to Minister personally who promised to an MLA to refer matter to Police. No action since. (Complainant asked to produce consent of MLA to Ombudsman to use the letter sent to him by Minister but he never wrote or called again. Finally, he himself made a declaration to the Police against the officers concerned).	Discontinued

EMPLOYMENT

C/ 4/86	Not referred for interview for a job as clerk	Not Justified
C/ 20/86	Never referred to prospective employers despite registration	Not Justified
C/ 85/86	Improper discrimination in providing employment	Not Justified
C/ 95/86	Disappointed by the passivity of the Employment Exchange despite registration as unemployed since 1979. (Complainant referred for interview once but not selected by prospective employer).	Not Justified
C/135/86	Not placed in a job in the public service or a para-statal body	Not Justified

APPENDIX C—continued

ENERGY

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/120/86	Not promoted to post of Reservoir Keeper although performing the duties as such in Rodrigues. (Advised to complain to Administrative Secretary of Rodrigues or to Trade Union).	Declined

HEALTH

C/ 97/84	Nurses in Rodrigues and on call who worked at night not paid their allowance. (Establishment Secretary's Authority sought by Ministry of Health)	Discontinued
C/ 12/86	Local Sanitary Office did not pursue action re. overhanging branches from neighbour's trees after complaint in 1974. (Advised to make new complaint or see legal advisers)	Explained
C/ 24/86	Inaction re. noise nuisance created by nuts and bolts factory. (Another neighbour had made the same complaint and factory closed after my intervention with Ministry)	Not Justified
C/ 25/86	An important post not filled for a long time	Declined
C/ 38/86	Insufficient action re. water nuisance resulting from absence of proper absorption pit on neighbour's land	Explained
C/ 49/86	Construction of new piggery which increases the number of pig farms in a residential area. (Advised to complain to local Health Office first)	Explained
C/ 63/86	No sufficient action re. operation of industrial machines generating great noise close to complainant's residence.	Being investigated
C/ 67/86	No sufficient action re. operation of industrial machines generating great noise close to complainant's residence	Being investigated
C/ 78/86	No sufficient action re. running of an electric bakery emitting smoke and unbearable noise.	Being investigated
C/ 83/86	No action re. stench and fly nuisance caused by a nearby pigsty	Not Justified
C/110/86	Car mileage allowance and maintenance allowance not submitted to Finance Section. (Complainant being a Government Medical Officer)	Declined
C/111/86	Brown Sequard Hospital patients (mentally sick) allowed to roam in streets thus exposing the neighbourhood to harassment etc. (Remedial steps taken).	Rectified
C/115/86	Not issued with blanket at the State hospital at night although admitted in winter. One night's stay	Not Justified
C/130/86	Complainant's wife delivered still-born baby owing to negligence of staff at State hospital	Being investigated
C/138/86	Hawkers trading without licence as victuallers near complainant's tea-shop and causing unfair competition. (District Council collects a daily rental from the hawkers to allow them to trade as such)	Declined
C/140/86	No sufficient action against breeder of poultry on a large scale causing health nuisance to complainant and neighbours	Discontinued
C/143/86	Ineffective action by officers against neighbouring factory causing sanitary nuisances	Being investigated
C/157/86	Vexatious and frivolous	Declined in exercise of discretion
C/162/86	Supervising Nurse not paid any allowances for performing the duties of Matron of a State hospital	Declined
C/163/86	Reasonable doubts as to the misuse of articles collected and donated to a State hospital for distribution to the inmates	Being investigated

APPENDIX C—continued

HOUSING, LANDS AND THE ENVIRONMENT

No.	Subject of Complaint	Result
C/157/84	No action re. complaint about removal of sand and construction of 'jetee' on public beach	Being investigated
C/ 30/86	No consideration to application of a plot of Crown land. (In fact, plot not Crown land)	Not Justified
C/ 55/86	Sand removing licence withdrawn unjustly. (File sent to DPP by Ministry to seek advice re. prosecution of complainant)	Being investigated
C/ 56/86	No action on complaint of transfers and obstruction by another on a "Chemin de Sortie" (allegedly Crown land) used by complainant and other landowners. Complainant did not call at Ministry as requested with title deed and site plan nor to this office)	Discontinued
C/ 58/86	Delaying tactics in renewing lease of Crown land and permit to remove coral for operation of lime-kiln	Withdrawn
C/ 86/86	No adequate action re. complaint about obstruction of public access to public beach	Being investigated
C/ 91/86	Undue delay in transferring the lease of a plot of Crown land to complainant's son	Explained
C/103/86	Unreasonable delay in transferring lease of a plot of Crown land; unwarranted claim for payment of rent for use and occupation of land never occupied	Justified/Rectified
C/ 49/85	Undue delay in dealing with cases of severance allowance payable by employer. (Complexities because division of employer's land). Payments made to complainant's satisfaction	Explained
C/126/85	Factory where complainants employed operating without registration with Ministry of Labour	Rectified
C/129/85	No sufficient action on declaration to a Labour Inspector relating to non-payment of wages by employer	Not Justified
C/142/86	Slow action on part of regional Labour Office regarding complaint of unjust deduction from salary by his private employer	Withdrawn

LOCAL GOVERNMENT

C/ 47/84	Improper discrimination in ordering removal of shop from public beach. (District Council involved). Rectified after intervention of Ministry of Local Government after Ombudsman's intervention	Rectified
C/118/86	Not appointed although interviewed twice	Declined

POLICE

C/ 94/85	(i) Notice to appear in Court sent by ordinary post not received resulting in non-appearance; (ii) Unknown person personated complainant, pleaded guilty and fined ... (iii) Complainant arrested and taken handcuffed together with bad characters in Police truck to Court for non-payment of fine. (Complainant heard personally by me. Not reliable. Not convincing. Full explanation of the Police received. Non delivery of Notices by post extremely rare)	Discontinued
C/100/85	"Abuse of Authority in seizing goods, documents belonging" to complainant's company. (Case pending before Director of Public Prosecutions for advice). (On advice of Director of Public Prosecutions complainant and another prosecuted for conspiracy to do an unlawful act. Trial on 5.2.87)	Discontinued
C/109/85	No action on declaration of larceny (Case pending before DDP for advice). (Director of Public Prosecutions advised no further action to Police)	Discontinued
C/133/85	No further action on declaration of wounds and blows, injection of noxious drugs etc. by a Private Medical Practitioner on complainant's brother	Not Justified
C/ 14/86	Not satisfied with Police action in inquiry into street accident	Not Justified

APPENDIX C—continued

POLICE—continued

No.	Subject of Complaint	Result
C/ 36/86	No action re. declaration to the local Police Station against the acts or behaviour of a National Transport Authority's officer towards complainant and his son. (DPP advised no prosecution of the officer and prosecution against the complainant for molesting the officer)	Declined
C/ 41/86	Savings Account Book not returned to complainant long after trial and sentence	Justified/Rectified
C/ 45/86	Inaction of Police re. complaints that a neighbouring building was being used for immoral purposes	Explained
C/ 47/86	Objection to departure overseas not waived even after Police case was over. (Superintendent responsible for the case retired since)	Justified
C/ 52/86	Unfairly objected to release complainant from Police custody on bail on a provisional Information for Swindling. (The decision to order release on bail or not is solely that of the Court)	Declined
C/ 73/86	Police Sergeant who took statements did not produce the one in which another person had admitted the offence. (Complainant defended by Counsel, found guilty by Court.	Declined
C/ 74/86	Police Constable took a sum of money from complainant to help him. (Advised to write to Commissioner of Police)	Explained
C/ 77/86	No adequate action re. declaration re. liquor shop owner not complying with opening hours laid much to the detriment of the complainants. (Rectified)	Withdrawn
C/ 80/86	No adequate action re. unlawful operation of electric motors	Not Justified
C/ 81/86	Some articles secured from complainant's house during inquiry into a case of larceny not returned to him even after trial was over	Explained
C/ 93/86	Delay in taking further action re. "false and malicious denunciation" of complainant to Police	Explained
C/ 94/86	No prosecution following a declaration of a road accident. (Trifling, no injury, personal feud between complainant and the other party)	Not Justified
C/100/86	Cases before Court made to drag unduly. (Numerous cases of swindling/forgery: several co-accused)	Not Justified
C/106/86	Discrimination in taking action. (Cases pending trial)	Declined
C/108/86	All articles secured at the house of prisoner not returned to him after conviction of larceny although many of them were not exhibits at the trial. (Police suspected these luxury articles to be proceeds of larceny)	Not Justified
C/109/86	No action on declarations. (Connected case <i>sub-judice</i>).	Explained
C/114/86	No sign of firm action on declaration about issue of cheques without provision	Being investigated
C/131/86	Request to Ombudsman to communicate a copy of Police inquiry to complainant into a case of perjury involving a witness of complainant. (Perjuror acquitted)	Declined in exercise of discretion
C/137/86	Absence of action against hawkers of victuals near complainant's victualler's shop duly licensed. (Never made a declaration before. Police action being taken)	Explained
C/144/86	No further action re. declaration of personation in selling complainant's land in Mauritius. (Civil case pending before Supreme Court)	Explained
C/146/86	Unjustly booked for driving offences (contraventions) by a Constable. (Matter going to Court. Advised to seek legal advice and defend himself in Court)	Declined in exercise of discretion
C/148/86	Unjustly charged with failing to report regularly to Police while released on licence	Not Justified
C/152/86	No sign of any further action on declaration of larceny of goods at complainant's company's factory	Discontinued

APPENDIX C—continued

POLICE—continued

No.	Subject of Complaint	Result
C/155/86	Subjected to torture and violence in order to obtain confessions regarding a homicide case. (Complainant related all to Magistrate before whom he appeared on a provisional charge and who ordered his remand to the cell) (Case <i>sub judice</i>).	Declined
C/158/86	No action against neighbour who damaged partition of house and various articles. (No evidence; delusion of persecution; perpetual protestor).	Not Justified
C/160/86	Unjustly charged with the Commission of an offence on a day he alleges he was in prison	Being investigated
C/166/86	Impassive attitude of Constables in face of damage caused by "ruffians" at a fancy-fair by the Association	Being investigated
C/168/86	Delay in taking action on declaration re. letter of threats received by registered post	Being investigated

PRIME MINISTER'S OFFICE

C/ 62/86	Unjust non-renewal of passport without stating reasons thereby delaying return to London of complainant to resume his part-time job and studies in accountancy. (Passport renewed after Ombudsman's intervention)	Withdrawn
C/112/86	Expired passport unjustly not renewed	Not Justified

PRISONS

C/ 3/86	Non-issue of prescribed drugs etc.	Not Justified
C/ 22/86	Wrong reckoning of term of imprisonment as from 26.3.84 instead of 22.3.84 ...	Not Justified
C/ 26/86	(a) Not allowed to write to Chief Justice for retrial of Assize Case; for leave of Appeal to Privy Council; (b) Not satisfied with video films, vegetables issued and not allowed to see the Commissioner of Prisons	Not Justified
C/ 33/86	Not issued with leather sandals and a safari suit on discharge from prison after three years or over	Not Justified
C/ 42/86	Not given proper medical treatment for varicose vein trouble. (Prison Medical Officer found no trace of such trouble. Treatment given for other ailments)	Not Justified
C/ 53/86	Not allowed to petition the Governor-General through the Commission on Prerogative of Mercy on subject of prolonged remand	Not Justified
C/ 65/86	Hostile behaviour of a prisons officer. (Never made complaint to the Officer-in-Charge of the Prison)	Not Justified
C/ 84/86	Borstal Youth sent to Phoenix Prison. (When called to see explanation of Commissioner of Prisons the request letters were returned to this Office undelivered marked "unknown")	Discontinued
C/113/86	Persecution by superior officer, complainant being an Industrial School Officer of the Prisons Service. (Full explanation of the Commissioner of Prisons read out to him and his Counsel by Ombudsman).	Declined
C/123/86	Unfairly treated and sent often to high security prison at Phoenix. (Persistent offender in prison; intimidating young and weak prisoners and extorting from them their canteen purchase).	Not Justified
C/126/86	Not issued with shoes although own private shoes worn out. Complainant wears a prosthesis. (Referred to P.M.O.C.; needful will be done there).	Explained
C/141/86	(a) Insult and assault on complainant by Prison Officer (b) Discrimination in distributing food ration	Not Justified
C/156/86	Unjustly transferred to Phoenix prison from Beau-Bassin prison; doubly punished.	Not Justified
C/159/86	No adequate medical attention by the Prison Medical Officer to complainant's case	Not Justified

A PENDIX C—*continued*

REFORM INSTITUTIONS

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/102/85	Ministry unjustly withheld pension and part of gratuity after retirement of complainant — a Prisons Officer. (Solicitor-General's intervention).	Explained
C/ 23/86	Questions about possibilities of rehabilitation after discharge from prison ...	Explained
C/116/86	Unjust deduction of 50% of salary	Being investigated

REGISTRAR-GENERAL

C/ 61/86	Cause of death certificate not issued on request. (Solicitor-General's opinion was that such issue could not be made without a judge's order).	Explained
C/ 98/86	Unjust refusal to refund excess duty on transfer of sugar-cane land ...	Not Justified

SOCIAL SECURITY

C/125/86	Social aid to children stopped unjustly	Not Justified
C/167/86	No social aid paid to family while on remand in prison	Being investigated

TELECOMMUNICATIONS

C/ 13/86	Delay in providing a telephone	Not Justified
C/ 32/86	Unfairly not provided with a telephone	Not Justified
C/ 40/86	Improper discrimination in allocation of a telephone	Not Justified
C/ 60/86	Exaggerated telephone call bills	Not Justified
C/ 72/86	Unfairly not supplied a telephone	Discontinued
C/ 89/86	Exaggerated telephone bills. (Complainant made no remarks on official explanation although invited to do so by the Ombudsman)	Not Justified
C/ 92/86	Discrimination in provision of telephone	Not Justified
C/104/86	Unjustified disconnection of telephone	Not Justified
C/122/86	Excessive bills for calls and disconnection of telephone for non-payment. (Advised to seek legal advice)	Explained
C/139/86	Improper discrimination in providing a telephone despite long standing application	Not Justified
C/151/86	No transfer of complainant's telephone to another place although lines available. (Lines not available. Development works on. Telephone will be made available in March 1987)	Not Justified

TRADE AND SHIPPING

C/ 97/86	No adequate action re. complaint of overcharging of his account by his shopkeeper by means of inflated prices of rationed commodities	Being Investigated
----------	---	--------------------

WORKS

C/178/83	No sufficient action re. complaint about building by neighbour at less than statutory distance from boundary. (Matter regarding pulling down of offending part referred to Solicitor-General. Pending)	Being investigated
C/ 5/85	Morcellement approved without first making sure that roads and water would be supplied	Being investigated
C/131/85	No action on declaration of building in defiance of building regulations by neighbour. (Not informed this Office whether he submitted a Memorandum of Survey as requested).	Discontinued
C/ 1/86	Unjustly interdicted as roller-driver in the Ministry	Declined
C/ 5/86	Highly probable operation of a textile factory close to complainant's residence after closing down the manufacture of bolts and nuts. (Complainant never sent copies to this Office of his complaints to the Ministry of Works, Ministry of Health etc., as suggested by Ombudsman)	Discontinued

APPENDIX C—continued

WORKS—continued

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/ 7/86	"No waiting" signs put up just in front of a sweet and biscuit factory thus causing hardship to customers in taking delivery. (Rectified)	Explained
C/ 39/86	No adequate action re. operation of a factory without permit close to complainant's residence. (Operation stopped on intervention of Ministry of Works)	Discontinued
C/ 50/86	Mechanical workshop wrongly situated and creating noise nuisance etc. No action by the Ministry. (Unsigned complaint. No reply to request to sign and return the complaint to this Office.)	Declined in exercise of discretion
C/ 51/86	No action re. building for industrial purposes without permit by neighbour ... (Neighbour fined. Complainant agreed to take legal action once industry starts and causes health nuisance.)	Discontinued
C/ 76/86	No action re. overhanging eucalyptus branches from neighbour's trees over his house	Not Justified
C/101/86	No provision of tarred access road and electricity in morcellement by the applicant for morcellement	Discontinued

APPENDIX D

CASES OUTSIDE JURISDICTION

Complaints registered against:

	<i>No. of Complaints</i>
Assize Court ...	2
Attorney-at-Law ...	2
Attorney General ...	1
Central Electricity Board ...	1
Central Housing Authority ...	4
Central Water Authority ...	1
Civil Service Mutual Aid Association ...	1
A Commercial Bank ...	1
Court ...	1
District Council ...	2
Husband ...	1
Industrial Court ...	1
Judicial Department ...	10
Police Service Commission ...	3
Private Individual ...	1
Private Secondary Schools Authority ...	2
Public Service Commission ...	7
Magistrate ...	2
Mauritius Examinations Syndicate ...	1
Municipality ...	2
National Transport Authority ...	2
State Trading Corporation ...	1
Waqf Board of Commissioners ...	1
Cases falling under proviso of SS 97(2), 97(8), 101(2) of the Constitution, cases outside S. 97(1) of the Constitution	21

TOTAL ... 71

<i>Declined</i> 41	<i>Explained</i> 4	<i>Discontinued</i> 3	<i>Being Investigated</i> 1	<i>Not Justified</i> 1
-----------------------	-----------------------	--------------------------	--------------------------------	---------------------------

