



MAURITIUS

14th Annual Report of the Ombudsman

January — December 1987

No. 7 of 1988

14th
Annual Report
of the
Ombudsman

January — December 1987

Government of Mauritius

OMB. 13/04/Vol. XIV

Ombudsman's Office,
4th Floor, Bank of Baroda Building,
Sir William Newton Street,
Port Louis,
Mauritius.
25th March, 1988.

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 1987.

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 Recommendations under S. 100 of the Constitution	...	...	...	...	...	...	17		
6. Cases Explained	...	...	...	...	...	...	18	—	20
7. Acknowledgements	...	...	...	...	...	...	21	—	23
8. Historical Notes on Institution of Ombudsman	...	...	...	...	...	...	24	—	28
9. Appointment and Jurisdiction of Ombudsman	...	...	...	...	...	...	30		
10. Comment on Section 97 of the Constitution	...	...	...	...	...	...	31	—	35
11. Conclusion	...	...	...	...	...	...	36	—	37

APPENDICES

Pages

Appendix A

12. Selected Cases:									12
Co-operatives	...	...	...	...	...	...			13
Finance	...	...	...	...	...	...			13
Health	...	...	...	...	...	...			14
Housing, Lands and the Environment	...	...	...	...	...	...			16
Income Tax	...	...	...	...	...	...			17
Labour and Industrial Relations	...	...	...	...	...	...			21
Police	...	...	...	...	...	...			
Prisons	...	...	...	...	...	...			25
Registrar of Associations	...	...	...	...	...	...			31
Rodrigues	...	...	...	...	...	...			32
Social Security	...	...	...	...	...	...			32
Telecommunications	...	...	...	...	...	...			34
Trade and Shipping	...	...	...	...	...	...			35
Works	...	...	...	...	...	...			36

Appendix B

13. Statistical Summary of Complaints dealt with department-wise	...	...							38
--	-----	-----	--	--	--	--	--	--	----

Appendix C

14. Schedule of Complaints for period 1st January 1987—31st December 1987	...								39
(All complaints with departments concerned, nature of complaints and results of investigation).									

Appendix D

15. Cases outside jurisdiction	...	...	...	...					45
--------------------------------	-----	-----	-----	-----	--	--	--	--	----

Annual Report of the Ombudsman

January—December 1987

This is the fourteenth annual report of the Ombudsman and it covers the period 1st January to 31st December 1987.

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

3. Mr. S. Mootosamy, 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 1986	19
Case intake in 1987 ...	203
Cases dealt with during period under review ...	222
Cases declined for want of jurisdiction	51
Cases declined in exercise of discretion	3
Cases explained ...	47
Cases discontinued ...	12
Cases discontinued in exercise of discretion ...	4
Cases not justified ...	52
Case justified ...	1
Case partly justified/rectified ...	1
Case justified (technically) ...	1
Case withdrawn ...	1
Cases pending as at 31st December 1987 ...	49

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 maladministration 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 *Justitieombudsman* (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, 1986 to June 30, 1987 shows that out of a total of 2,947 cases completed, 997 were dismissed without investigation and 79 were referred to other agencies or state organs. In 1,508 cases no criticism was made after investigation, in 361 cases admonitions or other criticism were made and in 1 case prosecutions or disciplinary proceedings (which are within the jurisdiction of the Swedish Ombudsmen) were started. In 1 case proposals to Parliament or the Government were made.

(c) The Annual Report of the British Parliamentary Commissioner for Administration (Ombudsman) for 1986 shows that during the Parliamentary Session 1986-87 a total of 719 complaints were received during 1986, 40 fewer than in 1985. The complaints came from 387 Members of Parliament. 195 cases had been carried forward from 1985 and of the combined total of 914 complaints 719 were disposed of during the year. 549 were rejected; 168 full investigations were completed and the results reported to Members and 2 investigations were discontinued. 195 cases were carried forward into 1987 of which 121 were under investigation.

(d) The Annual Report of the Northern Ireland Parliamentary Commissioner for Administration for 1986 shows the following statistics:—

"Number of uncompleted cases brought forward ... 27		
Complaints received ... 150		
TOTAL ... 177		
Rejected (e.g. outside jurisdiction, no prima facie evidence of maladministration)	134	
Completed and reported to Members	18	
Discontinued after partial investigation and reported to Members	4	
Under investigation at the end of the year	21"	

(e) No Annual Report from the Fiji Ombudsman has been received yet for 1986-87 as Sir Moti Tikaram has resigned as Ombudsman and Ratu Jone Mataitini has been appointed Ombudsman.

The new Ombudsman will probably have to write the report for the above period and we may have it soon.

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 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 disposal. It is there that the Ombudsman, having access to all the information, with some exceptions, plays the role of the public relations officer and having investigated the whole case uses his judgment 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 the 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 22 visits to my office during 1987 by members of the public individually or in groups. Their representations were about the Court,

Council of Registered Professional Engineers, Judiciary, Master's Court, Mahatma Gandhi Institute, Morison Son and Jones Ltd., Ministries of (i) Agriculture, Fisheries and Natural Resources, (ii) Education, Arts and Culture, (iii) Health, (iv) Housing, Lands and the Environment, (v) Social Security; Police, Prisons, private company, Public Service Commission, and the Waqf Board of Commissioners.

(b) In two (2) cases the visit was followed, on my advice, by a complaint in writing. In 6 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. Thirty-nine (39) copies of complaints addressed to the Central Water Authority, Commissioner of Police, Conseiller Pedagogique Antananarive (Madagascar), Development Works Corporation, 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 parastatal bodies. In cases where the original was and is addressed to the Minister by name, I have considered proper to write to the Permanent Secretary concerned and enquire and the Permanent Secretary invariably replies. To sum up, no action was taken in 17 cases for want of jurisdiction, action was taken in 22 cases and case files were opened in 13 of these 22 cases.

Report and Recommendations under Section 100 of the Constitution

17. During the year under review, one complaint was found *justified* on the ground of a *manifestly unreasonable failure to act*. (Vide case No. C/128/87 under heading "Telecommunications" in this report.) Two other anonymous complaints by inhabitants of RicheMare and Queen Victoria were in the first case against the licence holder of a taxi car which operated outside its base of operation and in the second case against the licence holders of 6 taxi cars. Both these complaints concerned the National Transport Authority and, although I have no jurisdiction over this Authority, I referred the cases to the Chairman of the Authority, and he readily obliged by causing a thorough investigation which confirmed that in fact the taxi car with Riche Mare base of operation was in fact operating from Central Flacq during the day but was available at night as its garage was at the former place. As for the second case, 4 of the taxis were found defaulting i.e. they were not complying with the conditions of

the licence as regards operation. Eventually, the Authority revoked the Public Service (Taxi) licences of 2 of them. Therefore it can be said *without passing any judgment on the Authority* that the complaint from Riche Mare was *technically justified* and the complaint from Queen Victoria was *justified/rectified*.

In accordance with Section 100(2) of the Constitution, a report was made by me to the Director of the Telecommunications Department and a copy sent to the Prime Minister and to the Minister of Energy and Internal Communications in the *justified* telephone case.

Cases Explained

18. There were 47 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.

22. At home, I am glad to record that generally in the discharge of my functions I have had the 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 Sawyer 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 Hand Book 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 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 Mediateur*), 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*), Israel (*Commissioner for Complaints from the Public*), Tanzania (*Permanent Commission of Enquiry*), Nigeria, Zambia (*Investigator-General*), Tanzania, Bophuthatswana, Zimbabwe, Alaska, Hawaii (*Ombudsman*), Papua New Guinea (*Ombudsman Commission*), Guyana (*Ombudsman*), Fiji (*Ombudsman*), 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 any 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 infor-

mation 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 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 should have been given for the decision; or

(g) that any other steps should be taken, the ombudsman shall report his opinion, and his reasons therefor, 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.

Comment 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 parastatal 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, whether 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.

25th March, 1988.

R. SEWGOBIND
Ombudsman

Case Notes

CO-OPERATIVES

Case No. C/105/87

Registrar's inaction

A co-operative tea marketing society complained that the Registrar of Co-operatives did not prevail upon the credit co-operative society to rent a room to them in the new concrete building which the latter society had just constructed. The marketing society further complained that both societies had been located in a wooden building ever since 1940. But in spite of this the credit co-operative society declined the marketing society's offer of contribution towards the cost of the new building. The second society had planters of canes and tea growers as members, but the tea growers later created their own society, the first one mentioned above.

The contention of the complainants was that the Registrar should have compelled the credit society to accept them as tenants instead of tolerating that part of the building was being let to a third party to operate a bakery.

Now, the truth was that the credit society was registered as far back as 1913 whereas the marketing society was registered in 1956. It was a founder member of the credit society who had donated a plot of land to his society.

The Registrar's explanation ran thus:—

"In spite of the separation of activities which had led to the creation of the tea society, both societies continued to use the same office built on the plot of land aforementioned, until year 1985, when the wooden building had to be pulled down. Consequently, each society had to occupy separate rented premises.

Members of the C.C.S. being the legitimate owners of the plot of land resolved initially to erect thereon a concrete storey building that would serve as a Co-operative centre which would accommodate a Branch of the Mauritius Co-operative Central Bank and house various co-operative societies of the locality.

Some joint meetings between Management of both the C.C.S. and the C.T.M.S. were held to obtain a consensus on this project. It would appear that they came to a deadlock concerning the financial contribution of the tea society.

Eventually, the C.C.S. went ahead, alone, with its project, tapped the required resources and erected a concrete storey building on this plot of land.

The Committee of the C.C.S. decided to rent the 1st floor of its new building to a third party for use as a bakery.

Some members of the Credit and Tea Marketing Society subsequently resented Committee's decision on the plea that the 1st floor should have been rented to them instead; hence their petition dated 14.7.87 addressed to you, (i.e. the Ombudsman)

I have under Section 44(1)(a) of the Co-operative Societies Act No. 10 of 1976 requested Committee to convene on 19.8.1987, a special general meeting of the C.C.S. which also groups members of the C.T.M.S. in their capacity as cane planters.

There was no quorum on 19.8.87. I suspected the Secretary of not having notified his members properly. I caused notification letters to be prepared on 28.8.87 at this Ministry and despatched by our registry section.

On 10.9.87, 89 members attended the Special General Meeting; quorum being 30. Fifteen members voted against the renting of the 1st floor to the third party for use as a bakery. Two members abstained, but seventy-two approved Committee's decision. The motion was carried and members' decision, democratically arrived at, is final."

The Secretary of the tea marketing society and a member called at my office at my request. I explained the reply of the Registrar stressing that no-one

could compel the owner (in this case the C.C.S.) to let part of the building against their wish and their wish was evident from the resolution at the Special General Meeting. I advised them that the only course open to their society was to find another building to carry on their activities.

The marketing society's complaint to me was

made on 14.7.87 and upon my intervention the Registrar actively looked into the matter. It also appears that he was aware of the tense relations but could not be of much help to the complainants who wanted him to intervene where his intervention would not have been legally justified. He could not, therefore, be blamed for being inactive in solving the problem.

FINANCE

Case No. C/156/87

No refund of export duty on sugar

B complained as above.

The investigation showed the following facts:—

"Mr. B who cultivated sugar cane on a plot of land at Palmar belonging to Sugar Estate Co. Limited applied for a refund of export duty on sugar. He was requested to submit a copy of the contract witnessing the lease of the land. But he failed to do until very recently.

However from an enquiry at the Sugar Insurance Fund Board, the Ministry of Finance was informed that Mr B entered into a contract of metayage with the Sugar Estate in February 1983, but started cultivating canes on the land in 1985.

Further Mr B was not a registered planter in 1983 but was first registered in 1985.

After further requests, Mr. B finally produced on the 23rd September, 1987 a registered document certifying that he was a metayer of Sugar Estate Co. Ltd.. since 1st February, 1983. His request for a refund was then considered and it has been decided to refund to him the export duty paid by him as from crop year 1985 since he started cultivating canes in 1985.

Necessary action is being taken to effect the refund. Mr. B has been informed accordingly."

When I asked B to confirm the above he never replied to me. I concluded that he was satisfied with the Ministry's action.

HEALTH

Case No. C/163/86

Disappearance of donated clothes, shoes, etc.

T on behalf of a "group of people" of complained on 12th December 1986 that after reading an appeal in a newspaper to donate old clothes, slippers, shoes, plastic cups, etc., for use by poor inmates of the Brown Sequard Hospital (nervous and mental disorders, etc.), she and the group collected such articles and sent them to the hospital to ease the plight of the inmates concerned. They later learned that belongings of the inmates were disappearing by theft.

Presumably the same lady published a letter dated 10th February 1987 to the editor of another daily newspaper making the same allegations as above.

Replying to my query, the Permanent Secretary, Ministry of Health, sent me the report of the Superintendent of the hospital in question dated 10th February 1987:—

"We are glad that Mrs. T is trying to help the inmates of this hospital in whatever way she can.

We opine that Mrs. T has been misinformed and that her fears are unjustified. Due to the nature of their mental illness, it is characteristic of the patients to hoard things that do not belong to them. To call this robbery is a misconception.

On the 5th December, 1986, Mrs. T handed over a donation of the following secondhand items:—

8 shirts, 3 shorts, one pair trousers, 12 plastic plates, 5 plastic mugs, 4 pairs of stockings,

2 safari shirts and 1 pyjama. We cannot imagine who will steal these items.

We assure Mrs. T that the patients—about 800 of them do get the necessary care and treatment. We choose this opportunity to invite Mrs. T to stand a day at the hospital in the capacity of an observer and see for herself instead of listening to rumours and hearsay. Her suggestions and contributions towards bringing improvement at this hospital would be welcome.”

I communicated a copy of the report to Mrs. T and invited her remarks, if any, but she made no reply.

Case No. C/6/87

No registration as medical practitioner granted

B who had graduated from a university in Libya and thereafter worked as a medical practitioner for one year complained that on his return to Mauritius his application dated June 1986 for registration as such a practitioner had not been granted by the Ministry of Health as at 20th January 1987. His aim was to practise in Mauritius as a doctor.

The reply of the Permanent Secretary, Ministry of Health, to my intervention was:—

“It is a fact that Dr. B has submitted his documents to this Ministry with a view to

obtaining his registration as a medical practitioner in Mauritius.

To allow for Dr. B to be registered, it is necessary to have regulations made by the Minister to provide for the institution from which he has graduated, which is the Faculty of Medicine of Benghazi of Libya, to be on our list of recognised institutions for registration of medical practitioners

However, the Ministry is not quite clear about the position regarding relations between Libya and Mauritius and, in the circumstances, whether such regulations could be made. It was therefore decided to seek the advice of the Secretary to Cabinet on the matter. In this connection, the latter has raised a few points with me which have to be cleared, after which a decision could be taken about the case of Dr. B.”

B called at my office at my request and read the reply of the Ministry. I told him that—

(a) it was a matter of external affairs and involved diplomatic relations between Mauritius and Libya, and

(b) I could not investigate any further.

B understood the position.

HOUSING, LANDS AND THE ENVIRONMENT

Case No. C/17/87

Unjust division of plot leased

H. L. complained that his late father had a lease of a plot of 10½ p of Crown land. The father was owner of a small wooden house on the plot through purchase. H. L. tried several times to have the “lease” transferred to his name after his father’s death but he alleged that the letters addressed to him by the Ministry of Housing, Lands and the Environment informing him that the transfer had been effected never reached him. Later he was informed that the plot of 10½ p would be subdivided into two smaller plots of which he would be offered one of 0A6½ p on lease if he wished. He felt it was an injustice towards him.

The facts as related by the Permanent Secretary, were as follows:—

“(a) In August, 1969, Mr. P who held a lease on a portion of land of about 10 perches

over part of the former Railway track at Vacoas, shown edged blue on the edged blue on the attached plan, sold the building on the land and applied for the transfer of the lease, to Mr. M. L. H’s father;

(b) before the transfer was effected, Mr. M. L. died and, in October 1969, the lessee made another application for the transfer of his leasehold to Mr. G. L. In October 1977, all the heirs of Mr. M. L., including Mr. G. L., consented in writing to the lease being transferred in the name of Mr. H. L.;

(c) in December 1981, the Minister approved a building site lease in the name of Mr. H. L. for the period 1 June 1980 to 30 June 1990 at a rental of Rs 600 per annum;

(d) in October 1982, Mr. P. was informed of the termination of his lease and of the grant of a lease to Mr. H. L. The latter was informed accordingly by a copy of the letter to Mr. P. which was posted to his known address at....., St. Paul, Phoenix;

(e) letters addressed to Mr. H. L. at....., St. Paul, Phoenix, in November 1983, February and October 1985, requesting him to call at the Ministry, for the signature of the deed of lease and payment of the rental due were returned undelivered;

(f) in February 1986, he called stating that he had not been informed during his visits to the Ministry that letters addressed to him about his lease had returned undelivered. In March 1986, he wrote applying for a reduction in rental from Rs 600 to Rs 150 per annum;

(g) in 1982, Government decided to reduce the rental in respect of building site leases from Rs 600 to Rs 150 per annum;

(h) part of Crown land Former Deviation Line at Floréal has now been subdivided to provide more building sites for the low income group and the Minister has approved a 20-year building site lease to Mr. H. L. over lot 2 of the land of an extent of about 264 square metres, shown hatched red on the enclosed plan, with rental at Rs 150 per month up to 30.6.1995 and Rs 225 per annum thereafter;

(i) no arrears of rent is being claimed from Mr. H. L.;

(j) the land now leased to him is a better building site than the portion of land he applied for, shown edged blue on the attached plan."

H. L. commented on the Permanent Secretary's explanation saying that the lot in question had always been 10½ p right since its "lease" to his father. He also contended that the plot had been split in order to lease 4 perches to a lady squatter who was proposing to erect a building thereon to house an infant school.

The Permanent Secretary at my request clarified further:—

(a) the 10½ p in question had been sub-divided partly to provide more building sites to the low income group,

(b) the subdivision is such that part of the land, which Mr. H. L. claims should have been included in the land leased to him, now forms part of other lots. In order to compensate Mr. H. L. a rectangular plot of 0A 06½, shown hatched red on the plan, has been allocated to him as compared to the triangular shape of the original plot; and

(c) the alleged squatter was already running an infant school since 1960 on the plot allocated to her with the wooden building which H. L. claimed to be his late father's.

Finally, to clarify the whole situation, I convened the Permanent Secretary with three files at my office. The Permanent Secretary accompanied by the Principal Assistant Secretary called as requested and produced the files. With the help of the Principal Assistant Secretary, who was thoroughly conversant with the matter, I went through the bulky files and read all the minutes and relevant letters. Minute 52 of the main file showed that the then Minister of Housing, Lands and the Environment had approved on 3rd December 1981 the granting of the lease of a plot of 0A 10½ p to H. L. There was also a letter dated 21st March 1986 signed by H. L. wherein he acknowledged the grant of a lease but pleaded for a reduction of the annual rent from Rs 600 to Rs 150. It was not clear to which lease he was referring.

Minute 96 signed by the Chief Surveyor of the Ministry on 2nd April 1987 read thus:

"PAS.,

Min. (95) transmitted.

2. As building sites are personal to the lessees, Govt is free as a lessor to agree to a transfer after subdividing the plot if it is in the interests of the policy to put more sites at the disposal of the low income group.

3. In the present case I do not see also how arrears of rent may be claimed since we have altered the limits of the land and the new limits have not been shown to the party."

Consequently the Minister's approval was sought for a 20-year building site lease to H. L. over lot 2 to the extent of 0A 6½ p referred to earlier in this report with rental at Rs 150 p.a. up to 30th June 1995 and Rs 225 p.a. thereafter. The Minister in office approved the above at minute 132 in file 1273/37 which I saw.

The Minister's approval of Crown land lease is governed by Section 6 of the Crown Lands Act which empowers him to grant leases of Crown land on such terms and conditions, not inconsistent with the Act, as he decides.

H. L. was duly informed by me and advised to contact the Ministry for the signing of the lease of the smaller plot if he wished. The official file showed that H. L. had been seeing legal advisers who tried with the Ministry to make him have the lease of

the plot of 0A 10½ p. It was clear that he was wrong in assuming all along that his late father was the lessee of that plot. The evidence showed that the original lessee Mr. P. intended to transfer it to the father but the latter passed away before the formalities were finalized.

H. L. was therefore advised by me, in view of his wrong determination to have the lease of 0A 10½ p, to seek legal advice and act accordingly or sign the lease offered to him without delay.

INCOME TAX

Case No. C/47/87

Unjust new assessment

R complained to me on 6th April 1987 that his wife had received an unjustified claim of Rs 18,995 for the years of assessment 1982-83 and 1985-86 to be paid on or before 10th April 1987. He alleged that Income Tax for 1982/83 had been paid on 9th October 1982 and 1st April 1983 and that the tax for 1985/86 had been paid on 5th October 1985 and on 4th April 1986.

Considering the race against time in view of specific delays laid down by law for appeals against assessment and the time that my investigation might take, interest and distress of goods, etc., I replied to R as follows on 9th April 1987:—

“I consider that the best course for your wife is to appeal to the Tax Appeal Tribunal after consulting her legal adviser. As your wife has a remedy by way of legal proceedings (appeal as stated above), I have no jurisdiction to investigate her complaint.

Your wife has a delay of 28 days from the date of the notification to her of the decision of the income Tax Commissioner under Section 4 of the Tax Appeal Tribunal Act 1984.

Your wife should seek legal advice about making objection, with the grounds clearly stated, to the new assessment to the Income Tax Commissioner under Section 13(b) of the same Act.”

Indeed, the creation and the establishment of the Tax Appeal Tribunal was a measure for the *speedy* disposal of appeals against tax considered by the taxpayer to be undue or exaggerated. Section 18 of the Act provides as follows:—

“Transitional Provisions”

“The Chief Justice may, on the establishment of the Tribunal, transfer to the Tribunal any appeal relating to tax imposed under the Revenue Acts pending before the Judge in Chambers or before the Supreme Court.”

LABOUR AND INDUSTRIAL RELATIONS

Case No. C/29/87

Not assisted by Labour Officer to obtain severance allowance

A bus driver of a garment manufacturing company who had been in its employ for three years had a discussion with the personnel officer, Mrs. P., and matters had deteriorated so much that, he alleged, the personnel officer charged him with having used abusive language towards her. The driver said it was a false charge and he was "released" on that day itself.

He reported the matter to the local labour office, but, according to him, he was told that nothing could be paid to him.

Replying to my query the Permanent Secretary, Ministry of Labour and Industrial Relations, Women's Rights and Family Welfare, sent me the following report:—

"On the 30th January, Mr. R. registered a complaint of unjustified dismissal against his employer at the Curepipe Labour Office.

An enquiry carried out by the Labour Inspectorate of this Ministry has revealed the following.—

- (i) Mr. R. (the driver) reckoned continuous employment at the since the 1st December, 1983 and was last drawing Rs 1,399 a month;
- (ii) On the 19th January, Mrs P. Personnel Officer of the enterprise, questioned him as to why he had refused to transport back home on the night of the 17th January, another driver of the company, one L.
- (iii) following a discussion which followed between the two in the presence of three witnesses, Mr. R. addressed the following words to Mrs. P. "Mo pas fine passe par aucaine p pou rentre travail dans sa l'usine la". (meaning that he had not had recourse to the help of a whore to get the job at the factory.) When he was invited by Mrs. P. to follow her to the Manager's office, he again uttered very loudly the word "p."at her;

- (iv) as a result of this misbehaviour, Mr. R. was suspended from duty for having "misbehaved yourself by using abusive language towards Mrs. P.";
- (v) on the 23rd January, he was heard by a Disciplinary Committee, where he was assisted by Mr. B., Labour Officer; he had no witness to support his avowment that he did not misbehave towards Mrs. P.;
- (vi) on the 28th January, he was dismissed as he was found guilty of gross misconduct by the Disciplinary Committee;
- (vii) on this Ministry's intervention, management agreed to refund to Mr. R. wages in lieu of his annual leave as an *ex-gratia* payment;
- (viii) on the 23rd February, Mr. R. agreed to accept management offer as an amicable settlement;
- (ix) however, on the 11th March, he made a new claim for severance allowance for unjustified dismissal as well as wages as indemnity in lieu of notice.

A copy of the report of Mr. B., Labour officer, who was present at the Disciplinary Committee, is enclosed.

In view of the evidence against Mr. R. and of the employer's adamant stand not to reinstate him, this Ministry is not in a position to proceed further with this case."

The Labour Inspector in his report stated that the driver had admitted to him having used the abusive language towards Mrs. P. as he was frustrated with the attitude of this lady who was not being fair to him on the question of overtime work etc.

The only witness produced by management was so convincing that the Labour Officer did not think it worthwhile to call the two others who according to the driver had also witnessed the incident. The Labour Officer thought that the other two's evidence might be more damaging to the complainant. The Labour Officer's plea with management to re-instate the driver was in vain.

The driver was called at my Office where he was explained the above versions but said he was not interested in re-instatement but in obtaining a

severance allowance for what he called wrongful dismissal. He also remarked that he was not called by the Labour Officer to present his defence. But what defence he could have after his admission to the Labour Officer?

I finally advised him to seek legal remedy with the help of a lawyer before the Industrial Court but stressed his case seemed weak for want of witnesses in his favour and in view of his admission to the Labour Officer.

Case No. C/61/87

No adequate action re wrongful dismissal

A who was kitchen help in a coastal hotel complained that the Labour Officer of his region did not deal seriously with his complaint of unjustified dismissal by the hotel management.

The version which the Permanent Secretary, Ministry of Labour, sent me was:—

“An enquiry carried out at the hotel has revealed that—

- (a) Mr A who was a kitchen help employed on a casual basis since 11th October, 1985 was scheduled to work on 31.12.86—1.1.87, 4.1.87—5.1.87 and 8.1.87—9.1.87;
- (b) he worked on 31.12.86 but was absent during period 1.1.87 to 7.1.87 without notification;
- (c) when he called at the Hotel to resume work on 8.1.87, he was told that he had broken his contract of employment.

In the course of the enquiry, the management of the hotel was prevailed upon (sic) to re-instate Mr. A but management declined to reinstate him as he had already been replaced by another person. Instead, management proposed to pay him his end-of-year bonus together with a sum of Rs 1,775 representing wages as indemnity in lieu of notice, severance allowance at the normal rate and outstanding annual leave.

Mr A has agreed to cash only the end-of-year bonus which has already been paid to him. He has refused the offer of Rs 1,775 made by management and has requested that the sum of 5,000 be claimed from his employer for:

- (i) severance allowance at the punitive rate on ground of unjustified dismissal;
- (ii) wages as indemnity in lieu of notice;
- (iii) 14th month bonus; and
- (iv) wages for outstanding annual leave not taken.

It would seem that the contention of Mr A that his dismissal is unjustified does not rest on solid grounds. In fact, section 7(1) of the second schedule to the Catering Industry (Remuneration Order) Regulations 1987 provides that a worker, who is absent due to sickness, shall notify his employer of the fact on the first day of absence. Further, section 30(4)(a) of the Labour Act provides that an agreement shall be broken by the worker, where he is absent from work, exclusive of any day on which the employer is not bound to provide work, without good and sufficient cause for more than 2 consecutive working days.

However, in the absence of an amicable settlement between the parties, this Ministry referred the matter on the 18th May to the Magistrate of the Industrial Court in Chambers for disposal. The claim made on behalf of the complainant amounts to Rs 4,218.75 and is based on items (i), (ii) and (iv) of the preceding paragraph. No claim has been made in respect of item (iii) of the preceding paragraph as complainant is not eligible for the 14th month bonus.”

Only one day after receipt of the above report from the Permanent Secretary, A sent me a letter saying that he would not attend the Industrial Court in Chambers as the Labour Officer had not included a claim for the 14th month, etc., and as he did not consider the matter to be *sub-judice*.

When he called at my office at my request on 4th June 1987 I impressed upon him the necessity to co-operate with the Labour Officers who had spared no effort to refer his case to the Magistrate of the Industrial Court in Chambers. That was the first step taken normally. I also advised him:

- (a) to attend Chambers on 5th June 1987 as convened, and to inform me of the outcome in due course; and
- (b) to contact immediately the Labour Officer as well as the Clerk of the Industrial Court to inform them that he had made up his mind to attend.

Eventually on 12th August 1987 the Permanent Secretary wrote to me as follows:—

“The case was heard in Chambers on the 12th June, when the management of the Hotel offered Mr A Rs 1,700 to settle the matter. Mr. A turned down the offer and the case was struck out in court.

However, on the 15th June, Mr. A wrote to the Labour Inspector of Central Flacq to state that he was accepting the offer. The management of the Hotel, which was reluctant at first to effect payment, finally changed its stand and Mr. A was paid the above sum on or about the 13th July.

Mr. A was convened to the Labour Office to confirm the payment but he failed to turn up."

It was clear from the above that A was trying to extract as much as possible although the Management could have not paid him a single cent for breach of contract of employment.

Case No. C/62/87

No action re complaint of non-compliance with Remuneration Orders

A group of workers sent me a copy of an anonymous letter dated 16th April 1987 (but received on 30th April 1987) in which they alleged that their employer—company was not complying with the Remuneration Orders as regards pay for work on Sundays, end-of-year bonus etc.

Replying to me the Permanent Secretary, Ministry of Labour and Industrial Relations, Women's Rights and Family Welfare, stated:—

"An unsigned letter from a group of workers of . . . was received at the Labour Inspectorate of this Ministry on the 28th April, Enquiries were started as from the 30th April and continued on the 4th and 5th May. The enquiry has revealed the following:

- (a) work done on public holidays was remunerated at twice the basic rate whilst work done on Sundays was remunerated at the normal rate, contrary to the Security Guards (Remuneration Order) Regulations 1986 (G.N. 126 of 1986);
- (b) the end-of-year bonus for 1986 was incorrectly paid;
- (c) work done on cyclonic day (13th February) was paid according to the law for day shift workers. The enquiry is still proceeding as regards night shift workers.

The employer has been asked to comply with the relevant provisions of the Security Guards (Remuneration Order) Regulations. The Labour Inspectorate of this Ministry is following up the matter closely.

As regards the case of Mr. J. referred to at sub-paragraph (4) of your letter, the matter was reported to Flacq Labour Office on the 9th March. It was referred to Port Louis Labour Office for enquiry from the employer, when subsequently a settlement was reached between parties, whereby Mr. J. was paid Rs 1,200 to his full satisfaction, as compensation for his past services. The payment was effected on the 4th May.

A further report will be submitted to you in due course."

The Permanent Secretary wrote to me further reporting the following:—

"Follow-up inspections have now revealed the following:—

- (a) Management has negotiated an agreement with the workers to the effect that payment of arrears for work done on Sundays will be paid in instalments, the first having been made in May 1987 and the last expected in October 1987;
- (b) Management is not agreeable to the fact that the end-of-year bonus for 1986 has been incorrectly paid;
- (c) Night shift workers on cyclone day (13th February 1987) have also been paid the appropriate cyclone allowance.

Follow-up action on the issue mentioned at (b) above will be taken and a report will be submitted to you in due course."

A further report dated 16th September 1987 read thus:—

- "(i) Management is paying the arrears due as agreed;
- (ii) Management has ultimately agreed to adjust amount due as end-of-year bonus for 1986 and to effect payment by the end of October, 1987."

The above was followed by a final report on the 14th December 1987:—

"Follow-up inspections carried out by the Labour Enforcement Branch have now revealed that all arrears of wages and end-of-year Bonus for 1986 have been duly paid to the workers.

The case is now settled."

As the Labour Officers started investigating the complaints of the workers as soon as they received their complaints (albeit anonymous), no blame for inaction could be laid at the door of the Ministry or its Inspectorate Division.

Case No. C/134/87

Inaction re complaint of non-payment of travelling allowance

Three workers of a knitwear factory complained of inaction of the Ministry as regards non-payment by the employer of travelling allowance to and from house/factory and this non-payment was in violation of the Export Processing Zone workers regulations.

In fact the three workers had made their complaint at their local labour office on 9th July 1987. The explanation dated 25th September 1987 of the Permanent Secretary of the Ministry was as follows:—

“Out of the three workers, the case of one who happened to be the Labour Inspector’s neighbour, was settled as the Labour Inspector was able to prove that the distance from her residence to the factory was, in fact, over two miles.

Regarding the other two, it has not been possible for the Labour Inspector to measure the distance from their respective residence to the factory as the road leading to the factory was undergoing heavy excavation work and had been closed to traffic. I am annexing hereunder a report of the Labour Inspector in this respect.

The Management of the factory has, however agreed that, should the distance exceed 2 miles, it would pay the allowance claimed together with all arrears due, as it has done in the case of one of them.

I am giving instructions to see if the National Transport Authority can be of help on the determination of the distances.

The matter is being followed up. You will be kept informed of developments, in due course.” Later, on 9th December 1987 the Permanent Secretary sent me the following report:—

“As the road is now open to traffic, the Labour Inspector concerned measured on the 1st October, the distance between the residence of both the workers and the factory and he has reported that the distance in each case to be as follows—

(a) Mrs. M — 1.25 miles

(b) Mrs. J. — 1.8 miles

Paragraph 7(1) of the Export Enterprises (Remuneration Order) G.N. of 1984 (as amended) stipulates:

“Every worker shall be entitled to free transport or be paid the return bus fare where no free transport is available, if the distance between his residence and the place where he reports for work exceeds 3.2 km (2 miles)”.

As the distance between the residence of Mrs M or that of Mrs J and their place of work does not exceed two miles, I fear there is not much this Ministry can do in law to help them.

Mrs M and Mrs J will be informed accordingly.”

I informed all the three workers of the above reports and invited their remarks, if any, but none were received.

I also saw the report of the Labour Inspector concerned which explained the comparative delay in solving the problem, the main reasons being the excavation works on the road and the temporary absence from the factory of the Manager.

POLICE

Case No. C/160/86

Unjustly accused of larceny

Prisoner R complained on 4th December 1986 that the Police was unjustly prosecuting him for the offence of larceny alleged to have been committed by him on 18th September 1985, since on that date he was at the Beau Bassin prison under remand which took effect from 16th December 1985.

When questioned by me the Commissioner of Police explained as follows:—

"In fact, during period 18.9.85, R was serving a term of imprisonment at Beau Bassin Prisons. He was released on 14.11.85.

On 28.11.85, he was arrested in the above case (larceny with violence). He was provisionally charged with the offence of larceny with violence and was, on 16.12.85, remanded to jail.

In his statement, he has denied having committed any larceny at the place of Dr. Mrs. on 18.9.85. He has, however, made a confession that he had, in March 1985, conspired with 6 other confederates to commit a larceny at the place of Dr. Mrs.

On his own confession, prosecution for Conspiracy was suggested against him before the Intermediate Court and the Director of Public Prosecutions vide PF 100 No. 108/86 PWBR, PMP 797/86, advised in that sense.

The Prisoner will be standing trial for the offence of Conspiracy and not larceny with violence."

I saw a photocopy of R's statement sent to me by the Commissioner of Police. I informed R as above and added that I could not investigate further as the matter was before Court and as I could not question the decision of the Director of Public Prosecutions for want of jurisdiction.

Case No. C/166/86

Police impassive in face of acts of damage

The representatives of a Tamil association complained that they had organized a fancy-fair on the premises of a government school with the collaboration of various societies and clubs and that a

notorious ruffian Tic started damaging the sonorization effects around 4 p.m. in the presence of some police constables. The latter, it was alleged, remained impassive and did not intervene at all.

After one or two reminders the Commissioner of Police sent me a long report signed by the Superintendent of Police of the District saying that the Superintendent could not complete the inquiry earlier owing to the unco-operative attitude of the complainants.

The occurrence was reported to the local Police station by one T and not anyone of the signatories of the letter addressed to me or to the Superintendent in the first instance. T mentioned D as witness but the latter declined to give a written statement to the Police by saying: "Mo pas conne narien" (I do not know anything). A visit to the *locus in quo* by P.S. showed that both the cassette recorder and the amplifier were damaged. The alleged culprit stated to the Police that he did go to the fancy-fair but as he was so drunk on that day he did not remember having damaged anything.

The Police Sergeant and a Constable were on duty in uniform at the fancy-fair. The Sergeant said he booked Tic for disturbance as Tic was shouting abusive words towards the organizers and the Sergeant's version was corroborated by the Constable.

Subsequently followed declarations to the Police about the damage by six others among whom were the President and the Secretary of the Association.

The fancy-fair was on 14th December 1986 and on 10th March 1987 and on 14th March 1987 both the Secretary and the President respectively in a statement given to the Police asked that no further action be taken. On the other hand witnesses named shied away saying they knew nothing. It was most surprising that the President had acted that way after having asked in writing for the intervention of the Commissioner of Police and the Superintendent and sent copies of their letters to the Governor-General and the Ombudsman.

I, therefore, called the Secretary of the Association in writing to meet me at my office so that I could clear up matters but when he took cognizance of the Superintendent's report, he agreed that the case was weak as no witnesses were coming forward to support their case. In the circumstances the Police could not proceed further.

Slapped and insulted by Police

B, a watchman of National Transport Corporation, complained that he was slapped and insulted while he was on duty by a Police Constable. He alleged that as the Constable was found in the Cashier's room of the Corporation bus depot at night at . . . he as in duty bound asked the Constable to leave. The latter, who allegedly was under the influence of drink, then slapped B and copiously insulted him and his family in presence of all the other workers there.

Upon my intervention the Commissioner of Police sent me a full report signed by the Superintendent of Police of the District concerned. The report stated that B had reported against the Constable as alleged above. His two witnesses, the Cashier and a bus conductor, who were in the Cashier's room at the material time denied that the Constable had slapped or insulted B and his family and said that they found the behaviour of the Constable normal. Indeed the conductor said that he saw the Constable standing under the verandah of the Cashier's office.

The Constable denied the charges and said that it was out of spite that B had made the allegations against him. They had grown up in the same village and before joining the Police Force the Constable had worked with the Corporation as Clerk while B was working as watchman. As Clerk the Constable said he had to issue certain orders to B and this was hard for B to digest.

B informed the Police later that the case be dropped as the Constable had apologized to him. The Constable denied ever having apologized. The Superintendent added that B was known as a hot-tempered man and was considered to be a nuisance in his surroundings. In 1979, 1981 and 1986 B had been sentenced to pay fine and costs by the Court for "outrage and molesting a public officer" and on 9th July 1987 B had been sentenced to pay a fine of Rs 150 for assault. The Superintendent did not think that the Constable was the type of man who would behave as alleged by B, who was jealous of the Constable—at one time a fellow worker with the Corporation—who has gone up in life while B was still a watchman.

The whole inquiry was submitted to the Director of Public Prosecutions who later advised the Police: no further action. As I have no jurisdiction over the Director of Public Prosecutions I discontinued my investigation.

Passport impounded; Expulsion from France, Government non-intervention

C, a Mauritian citizen, had been settled in France since 1981 but in June 1986 he, his Mauritian wife and his son (born in Paris in 1982) were expelled from that country; he alleged that the expulsion was arbitrary and against French Law. He had claimed "réparation et dommages". His passport was impounded on his landing in Mauritius.

C had written to the Prime Minister, the Chief Justice and the Governor-General of Mauritius for their intervention in the matter of his expulsion and his allegation that there was "trafic de passeport entre La France et l'Ile Maurice". He also spoke of complicity between the Government of Mauritius and "l'Etat français" for his tribulations and expulsion. He said that he had received no reply from the Prime Minister. The Chief Justice replied he could not intervene and the Governor-General replied that his letter had been referred to the Ministry of External Affairs of Mauritius.

As regards the impounding of the passport the explanation of the Commissioner of Police was as follows:—

- "(i) Mr. C who was born in Mauritius on the 22nd September, 1950, was issued with passport on the 17th September, 1976.
- (ii) The passport was renewed by the Mauritius Embassy in Paris on the 6th January, 1982.

(iii) He has travelled as follows:

Arrival	Departure	Destination
	15.10.76	Reunion Island
9.11.76	14. 9.78	do
25. 9.78	21. 5.81	do

- (iv) He was deported from France on the 15th June, 1986 at the expense of the French Government and his passport was impounded.
- (v) The passport expired on the 16th September 1986 and is no more valid for travel.
- (vi) Mr. C may apply for another passport if he so desires."

I informed C of the reply of the Commissioner of Police.

I had also referred his letter to the Permanent Secretary, Prime Minister's Office, and the Permanent Secretary, Ministry of External Affairs. The

Permanent Secretary of the Prime Minister's Office sent me the case file from which it was clear that after advice received from the Solicitor-General's Office, a reply was sent to C by the Permanent Secretary, Ministry of External Affairs after consultation with the Prime Minister's Office. The reply to C dated 22nd April 1987 was as follows:—

"I am directed to refer to your petition of 19th December 1986 addressed to H.E. the Governor-General and to inform you with much regret that the Government of Mauritius cannot intervene in your case.

You may, if you so wish, and after consultation with your legal adviser, take your case before the European Court of Human Rights."

C had written to the Governor-General on 19th December 1986 and on reference by the Governor-General's Office the above reply issued to him on 22nd April 1987. What with consultation with the Solicitor-General and what with consultation with the Prime Minister's Office, the reply could hardly be held to be unduly delayed.

Case No. C/117/87

Buses using church grounds as bus stop. No action by Police

The Parish priest and the President of a Fabrique of lower Plaines Wilhems sent me a copy of a complaint dated 25th July, 1987 which they addressed to the General Manager of the National Transport Corporation and to the Assistant Commissioner of Police (Traffic). The Complaint was as per the heading of this report. They also sent me a copy of the same complaint made to the Chairman, National Transport Authority, alleging in detail that the "buses are daily encroaching upon the private property of our church to lay off passengers and the drivers of those buses use our alleys in order to effect their reverse operation . . . Finally, the wear and tear of our grounds is being accelerated and, if the present practice is not stopped immediately, we shall have to incur expenditure for resurfacing our alleys. This is a prejudice to us."

I asked in writing the Commissioner of Police and the Chairman of the National Transport Authority for their comments. The Assistant Commissioner of Police (Traffic Branch) replied as follows:—

"I am to inform that the church ground at . . . is no more in use by buses. Father X and Father Y have been contacted about the prevailing

situation. They are satisfied about the steps taken by the traffic officers of the region. At present the buses are making use of the yard of the Municipality of I have given special instructions to the traffic officers to keep an eye on the whole matter and to report to me about any infringement."

The Chairman, National Transport Authority, although not strictly within my jurisdiction, unhesitatingly replied thus:—

"I have the honour to refer to your letter C/117/87 dated the 6th August, 1987 and to inform you that no letter of protest from Reverend Father and others against the use of the ground of Church by buses as a reversing point or as a bus stop has been received at this Office so far.

I wish to point out that no authorization has been granted to any bus operator for using the ground of the church.

Be that as it may, the Managers of the bus companies concerned are being requested to stop this practice forthwith."

I communicated both answers to the complainants and asked for their comments.

The Parish priest replied to me that the letter to the Chairman, National Transport Authority, was sent under registered cover (thereby implying that it was strange that it had not been received there) and added:—

"On behalf of the parish of, I wish to thank you for the action taken concerning our protest against the use of the church premises by buses. The bus drivers, with few exceptions, do now comply with the instructions given not to use the church ground. We are satisfied with the present situation."

I marked the file as explained.

Case No. C/119/87

No action of Police on declaration of ill-treatment while in custody

X complained to me as above and described the ill-treatment as beating and introduction of pieces of ice into his anus which resulted in anal bleeding. A PF 58. was issued to him after he made a declaration to that effect at a Police Station and was examined by a hospital doctor who filled in the PF. 58. But since then, X alleged, there had been no action taken by the Police.

In fact X was arrested in connection with a suspected case of murder and brought before Court and he complained to the Magistrate that he had been beaten up by the Police while in custody. The Detective Superintendent's report read, *inter alia* as follows :—

“on the same date 11.8.86 in presence of his legal adviser, he made a declaration in which he stated that since his arrest, he had been ill-treated, harassed and beaten up by CID officers who introduced a bamboo stick in his anus. He was so much harassed that he took a broken piece of glass and injured him with it at the chest.

X was brought to Dr. Jeetoo Hospital on 11.8.86 and examined by Dr . . . who found that he bore the following injuries :

“Ecchymosis both soles—sharp septic abrasion from chest extending to abdomen.”

X was, on 15.8.86, interviewed in presence of his Legal Adviser Mr..... for a written statement in connection with his complaint, but he declined. He was again on 18.8.86 and 9.10.86 interviewed but verbally said that he would not give any statement and wished that no further action be taken into the matter.

The enquiry into the case of Murder and the complaint against Police has been submitted to the Director of Public Prosecutions for advice.”

It will be noted that the doctor's findings do not show any anal interference or injury and despite the assistance of his counsel he did not denounce the acts of which he later complained to me. How his complaint could be sustained?

Case No. C/144/87

Forfeiture of Savings

Prisoner G's complaint was that his 22 months of remand in jail was not taken into account by the Court sentencing him to imprisonment on a charge of swindling. His counsel's motion for his release on bail was rejected by the Court. I replied to him that I had no jurisdiction over the judiciary and that the decision to release or not on bail was entirely that of the trial Court. The second point of his complaint was that after the sentence the Police had not returned to him the sum of Rs 5,000 which it had secured from his bank's savings account during the inquiry into the case.

In fact, that sum was secured by the Police as alleged and was produced in Court as exhibit. The prisoner was prosecuted before the Intermediate Court on 10 counts of swindling. While passing sentence on him (three years of hard labour under each count) the Court ordered the Police to distribute the sum among the victims of the swindler i.e. the prisoner. That was done by an Inspector of Police by remitting to each of the victims Rs 500. I saw their names and addresses and their receipts sent to me by the Commissioner of Police.

I also saw a photocopy of the Court's judgement which included the order.

The Police only executed the Court order and could hardly be blamed for that.

Case No. C/148/87

Harassment of wife

Prisoner M complained that his wife was being regularly harassed by hooligans in the vicinity of her residence and the local Police was not helping her in spite of repeated declarations.

The Commissioner of Police sent me a report of the Superintendent concerned giving full details of reports by M's wife and her mother and of action taken by the Police. This is the full report :—

“On 25.9.87 at 23.32 hours Mrs R, wife of prisoner M of . . . Street rang up the local Police Station and sought for assistance as she alleged that vagrants were seeking trouble with her.

The request had been attended to by PS . . . and PC . . . a warning had been given to Mr. O of . . . Street and to one C of . . . Street respectively. The area had also been policed.

On 27.9.87 at 2040 hours Mrs R again made a similar request.

The request had been attended to by PCs S and M and a warning had been given to one . . . (also called Z) of Port Louis.

On 28.9.87 at 09.35 hours Mrs K aged 55 years, tobacconist of . . . , made a declaration at . . . Police Station to the effect that on 27.9.87 at about 20.30 hours in her tobacco shop one Z had insulted her as follows: ‘. . .’. Her witness is her daughter R (OB2148/87 refers).

On 28.9.87 at 19.12 hours a severe warning had been administered to the accused, also called Z.

On 2.10.87 at 23.00 hours R, aged 25 years, no calling of . . . Street made a declaration at . . . Police Station to the effect that on the same night around 22.00 hours she had been insulted by one . . . (OB. 2189/87 refers).

On 3.10.87 at 12.17 hours a severe warning had been administered to . . . to keep the peace with complainant.

Since then no complaint has been received either by R or her mother.

The situation is quiet.

No complaint of any sort has been received from Mrs R or her mother on 26.9.87."

That was ample evidence of police action which was in proportion to the kind of language used by the hooligan, viz: calling R a prostitute and declaring that he would have sexual relation with her as her husband was in jail.

Police making case drag etc.

A who is settled in France had come to Mauritius on holidays leaving his wife and his ailing old mother behind. He arrived here in March 1986 and learnt of his brother H's arrest by the Police. All his efforts to get his brother released on bail with the assistance of Counsel proved unsuccessful.

In June 1986 he was swindled of a certain sum of money by somebody who promised him that he would get his brother released as he had excellent connections with people in power. The swindler had handed over to A his own identity Card in order to convince him.

In December 1986 the officers of the Central Investigation Department (C.I.D.) called on A and

took away the Identity Card. A was arrested after giving his statement to the C.I.D. and was released on bail. Since then he had been appearing every month before the District Court on a provisional charge of conspiracy.

He had to return to France in mid-June but with the charge levelled against him still not disposed of (December 1987) and with his non-return to France his newly-wed wife was threatening to divorce him. He was worried about the plight of his mother and younger sister and feared that he might forfeit his residence permit in France.

The truth is that the brother whom he wanted to be released on bail was arrested as a notorious drug pedlar. Release on bail was entirely a matter for the Court to decide. To crown it all A was staying at his brother's place when he came to Mauritius. The case file concerning swindling of A by the man with the supposed excellent connections and the inquiry into A's own acts was submitted to the Director of Public Prosecutions by the Police and the advice was that after the case of swindling was over the case of conspiracy in smuggling a parcel containing drugs into Mauritius could be taken to Court.

As I have no jurisdiction over the Director of Public Prosecutions I advised A to see his legal adviser who might try to get matters move faster. The Police was hardly to blame in the matter.

PRISONS

Case No. C/1/87

Mischievous acts of fellow prisoners

Prisoner B's complaint was that he was a victim of the following mischievous acts of his fellow prisoners:—

- (i) soaking his blanket with urine;
- (ii) attempting to incriminate him by placing a piece of cigarette and some gandia in his cell;
- (iii) throwing urine in his cell;
- (iv) wrapping up 3 chamber pots in his blanket, etc.

He also complained that he was placed in a single cell.

The official explanation was that B was removed from a cell which he shared with another prisoner

as the latter had made a complaint against him alleging that B tried to have oral contact with his copulatory organ.

On various occasions he had seen Senior Prison Officers but he had never complained of acts (i)—(iv) mentioned above.

I informed B accordingly and advised him to report any of the acts to a Superior Officer if they were to occur again.

Case No. C/13/87

Too many restrictions

Prisoner M's complaint was that he was being kept longer than necessary at the Phoenix prison (a high security prison) and had to face too many restrictions.

The investigation revealed that M had a series of terms of imprisonment between April 86 and March 87—all the sentences being inflicted by the Intermediate Court for very serious offences like larceny by night breaking, assault against a Magistrate, possession of offensive weapon, resisting by force a Police officer, etc.

The Assistant Commissioner of Prisons stated further:

“Under the remission system, he is due for release on 28.9.96.

On the night of 11th August, 1986 aided by two other prisoners, he effected his escape from Beau Bassin prison by sawing off an iron bar from his cell window, scaling the Prison wall, jumping outside and running away.

On 13th August, 1986 he was recaptured by Police and brought back to Beau Bassin Prison.

On 14th August, 1986 he was transferred to Phoenix Prison and he is still there.

In fact prisoner is no longer under the Phoenix Prison regime.

On 30.4.87 he was interviewed by the Commissioner of Prisons in presence of the Assistant Commissioner at Phoenix Prison when he said he would prefer to stay at Phoenix Prison if he were to be on special watch on his transfer back to Beau Bassin Prison. Besides, he failed to satisfy the Commissioner that he won't be a threat to security if he were returned to Beau Bassin Prison.

Prisoner is still deemed unsuitable to be in association with the prisoners of Beau Bassin Prison.

Having stayed at Phoenix Prison for nearly 9 months he was on 6.5.87 removed from the Phoenix Prison regime and is since receiving treatment as follows:—

- (i) he has re-entered the earnings scheme and is enjoying the scheme's privileges except cigarettes;
- (ii) he is allowed to associate in corridor for 2 hours when he can play domino or ludo. Carrom and draughts are not allowed for security reasons;
- (iii) radio is not allowed on account of those who are under the regime;
- (iv) he is allowed 2 hours exercise in association in yard;
- (v) he is made to work for one hour cleaning cells and corridors and is out of cell for five hours daily.

The Phoenix Prison is a high security Prison with a regime proper for this type of prison.

All prisoners of Phoenix Prison are regularly seen by the Prison Medical Officer who will immediately direct the transfer back to Beau Bassin Prison of any prisoner whose state of health is getting impaired due to a long stay in that prison.

On admission to Phoenix Prison on 15.8.87 he was explained the Phoenix Prison regime, the stage system and his rights and privileges by the Chief Officer. Besides he may at any time come on application before a Senior Officer to have more details about his rights and privileges.

On no instance has the Assistant Commissioner of Prisons refused to give him information about his rights.

The prisoner saw the Deputy Commissioner on application on 15.10.87 when he was advised about his rights and privileges.

In addition to his religious books which he can keep permanently he is allowed to have in his possession two books at a time which he can regularly exchange.

According to standing orders he is allowed to have envelopes and stamps at his expense to write additional letters in reply to letters received.

On 29.9.87 he was taken to Beau Bassin Prison to appear before the Prisons Board on application. Unfortunately the Board could not hear his application and postponed it to its next meeting.”

M is clearly an indisciplinable prisoner, more conscious of his own rights and privileges and unmindful of those of others. He cannot reconcile himself to the blunt fact that a criminal's place is the prison with all its restrictions.

Case No. C/25/87

Brutal treatment and insufficient medical treatment

Prisoner Z's complaint was that searches on his person were made in a brutal way and that he was not receiving proper treatment for skin disease.

The official explanation of the Assistant Commissioner of Prisons was: —

“(a) Prisoner Z is one of the various prisoners suspected of being a security risk and potential escapee at Beau Bassin Prison.

(b) Surprise Special searches are carried out on all those belonging to this category of prisoners referred to above.

- (c) Prisoner Z was searched at irregular intervals i.e. on 8.1.87, 26.1.87, 5.2.87, 12.2.87, 1.3.87. (Extracts from special search register annexed please).
- (d) The search was carried out on all occasions by Prison Officers under the Supervision of a Principal Officer. Prisoner Z was treated decently and humanly. He was never brutalised or insulted."

The Prison Medical Officer made the following comments:—

- "1. The complaint of the prisoner for not receiving proper treatment for his skin problem is unfounded. It would be observed that he has had discoloration of skin (Pteriasis Versicolor) as early as 1982 for which he was treated. It is a common skin disease (fungal infection) and recurrence is very common and every case does not respond to the same treatment. At present he is put on an alternative treatment to which he is showing some response but a complete cure is not guaranteed. In the past, skin specialist treating similar problem with the same treatment faced the problem of recurrence.
2. He never made a request for a razor for whatever purpose he wanted to use it.
3. Slips are not issued to prisoners.
4. With the increase in the number of prison officers and their relatives who complain sick as well as the increase in the number of inmates who complain sick I have authorised the nursing staff to sort out simple cases as scabies and leave the serious cases for me to deal with."

I communicated both explanations to Z and said that I found both of them reasonable.

Case No. C/42/78

Bitten by dog instigated by officers

Prisoner B complained that (a) after his unsuccessful attempt to escape from prison, some prison officers instigated a dog to bite him and in fact he was bitten, (b) he was kept locked in cell day and night and (c) was not provided with bananas.

The official explanation was as follows:—

"On 26.3.87 he was brought before the Prisons Board to answer a Charge of escaping from legal custody under Section 43(i) (a) (i) of the Prisons

Act, Vol. iv, Revised Laws of Mauritius, 1981. He was found guilty as charged and awarded the loss of 300 remission days. He subsequently appeared before that Board on application when he had the opportunity to say everything he knew about the escape and to voice all his complaints contained in his letter, yet he only complained that he was not allowed exercise in yard at Phoenix Prison.

He is now due for release on or about 7.9.96.

The prisoner's allegations, have been enquired into and shown to be unfounded.

Neither the medical examination of the prisoner nor the departmental enquiry made in connection with his escape of 11.8.86 revealed that he was tortured or bitten by dogs.

According to his penal record he has never made the complaints contained in his letter to the Prison authorities.

It is strange that he has waited eight months to forward such complaints to the Ombudsman —(11.8.86 (attempt to escape) to 17.3.87 (complaint to Ombudsman)).

On 11th August 1986 following his struggle with the officers who apprehended him and escorted him back to cell, he was examined by the Prison Medical Officer and referred to Dr. Jeetoo Hospital for an Xray of his humerus which revealed to be negative.

The Prisoner was denied the privilege of walking exercise in yard on 7.2.86 on the suspicion that he was looking for an opportunity to effect his escape from Phoenix Prison and in lieu thereof he was made to exercise in corridor.

On 19.1.87 he applied to the Officer in Charge to have this privilege restored. He was replied that his application would be considered on 1st February, 1987 provided the Officer-in-Charge was satisfied that he had no more the intention to escape. He was not satisfied with the reply and asked to see the Prisons Board.

On 27.1.87 he was allowed by the Officer-in-Charge to resume exercise in yard but he declined and said he would see the Prisons Board first. He saw the Prisons Board on 26.3.87 and resumed outdoor exercise the following day."

Searches were also made by an officer of my office at Dr. Jeetoo Hospital to see whether B was referred to that Hospital on 11th August 1986 for treatment for dog bites. There was no trace in the records of such reference or treatment at the Casualty section of the hospital. The complaint was not supported by any evidence.

**Unjust transfer from block : not considered
for release on parole**

The complaint was as above.

The official explanation was as follows:—

“This inmate has been in and out of prison from his teens. Whilst undergoing this present sentence, he has already darkened his Penal Record with twelve cases of breach of Prison Discipline. He has even experienced a stay at Phoenix Prison, between 1.9.83 to 30.11.83. Security wise he is considered as a dangerous prisoner.

Before 13.9.87, this prisoner was located in Block B. His cell was adjacent to Association Yard No. 5 where Remand prisoners spend the whole day. On 13.9.87 information was received that each time he is prescribed ‘Rest in Cell’ by the Prison Medical Officer, he gets into conspiracy through his cell window, which falls in the said association yard with well known dangerous Remand Prisoners to traffick prohibited articles. Under this circumstance he was transferred to Block A. Prisoner was informed of his transfer on the same day.

Prisoner was prescribed Rest in Cell on the following occasions:—

- | | |
|-------------|------------|
| (1) 18.5.87 | ... 1 day |
| (2) 12.6.87 | ... 3 days |
| (3) 19.8.87 | ... 2 days |
| (4) 8.9.87 | ... 3 days |

After his transfer prisoner has never officially seen a Senior Officer to ask for the reason of his transfer.”

His release on parole could not be considered since the Parole Board envisaged under Section 54 of the Reforms Institution Act 1985 has never been constituted as the Act itself can come into force only by proclamation made by the Governor-General. No such proclamation has yet been made and I have written to the Permanent Secretary, Ministry of Reform Institutions to expedite matters for such proclamation. The Permanent Secretary replied on 1st October 1987 that necessary steps would be taken in due course. On 3rd February 1988 the Permanent Secretary informed the Secretary of my office that the procedure had been finalised and that the Act would be proclaimed in two or three weeks’ time.

The prisoner’s complaint was also that he was not allowed to observe fast as a Hindu and to follow a vegetable diet. My investigation showed that the two official prison diets are the vegetarian

and the ordinary diets. Prisoners may take either diet depending on their choice provided they make a request by way of application.

The prisoner is registered as a Roman Catholic and as such cannot claim to observe fast as a Hindu. On 21st March, 1985, he applied to observe fast up to Easter 1985. His request was acceded to and he was permitted to draw vegetarian diet.

Cause No. C/75/87

Not allowed to write to his MLA

Prisoner was a C.M., that is, a condemned man—a term which in prison jargon means that he was found guilty of murder and was under a death sentence. He was waiting for his appeal to be decided by the Judicial Committee of the Privy Council. His complaint was that he was not allowed to write to his MLA who at the material time was a Minister.

The Commissioner of Prisons explained that (a) the prisoner was a persistent offender who had been in and out of Prison since 1946. On 16th April, 1987 he wrote a letter to the Honourable . . . , Minister of . . . , expressing the wish to be visited by the latter. His request was not entertained and the letter was accordingly suppressed; (b) Section 78 of the Prison Regulations provides that: “No person except the medical officer and other prison officers in the course of duty and (if required by the prisoner) a minister of the persuasion to which he belongs shall have access to such prisoner without a written order from the Permanent Secretary, Prime Minister’s Office; and he shall not be compelled to receive any such visitor unless it is so provided in the order of admission. All such visits shall be within sight and hearing of a Prison Officer even though the visit is ‘in connection with an appeal.”

The provision of the above regulation was clearly explained to the prisoner and he was advised to include the Minister’s name in his list of visitors but he declined to do so.

I found the explanation reasonable and communicated it to the prisoner who did not make any comment.

Case No. C/108/87

**Can a prisoner write to the Minister of Justice
or the Prime Minister ?**

When Corporal punishment allowed ?

The prisoner had no complaint but simply wanted to have the answers to the above questions.

Hereunder are the answers sent to me by the Commissioner of Prisons and transmitted to the prisoner:—

"A prisoner may be allowed to write to the Minister of Justice and the Prime Minister by way of statement under the covering letter of the Commissioner of Prisons, provided the content thereof is not objectionable.

In accordance with the Prisons Legislation the Assistant Commissioner of Prisons is empowered to reduce the remission days of a prisoner who has committed a prison offence by not more than 30 days in accordance with the gravity of the offence.

Corporal punishment can be inflicted upon a prisoner only by virtue of section 43, Vol. IV of the Prisons Act, revised Laws of Mauritius, 1981."

"Section 43 states that corporal punishment may be inflicted on a prisoner when he has committed the offence of mutiny or incitement to mutiny or escape from legal custody or commits gross personal violence on an officer or servant of a prison and the Commissioner of Prisons reports the offence to the Central Prison Board. The Board has power to order such punishment if it finds the prisoner guilty of one of the above offences but the punishment can be effected only after confirmation of the Board's order by the Minister of Reform Institutions."

As the questions and the answers are of interest to prisoners in particular and to the public in general, I have deemed it proper to include them in this report.

Case No. C/135/87

Punished twice for same offence

S complained that he had escaped from prison and after recapture he was prosecuted for the offence, found guilty and sentenced to four months' imprisonment with hard labour. The prison authorities also made deductions from his earnings at the prison.

The official explanation was:—

"On 17.7.86 when prisoner S effected his escape from legal custody, he was wearing a complete set of prisoners uniform and was also in possession of a mug and a towel belonging to Government. On his recapture all these articles were not recovered. He pleaded guilty to a charge of Wilfully destroying articles belonging to the Prison (breach of section 41 of Prisons Act Vol IV part 3) and he was awarded by the Officer in

Charge, Beau Bassin Prison on 27.10.86 to pay the cost of these articles i.e. Rs 53.50 from his earnings. It is not true to say that he was punished twice for the same offence as the charges rested on two different offences.

Since his recapture the prisoner has been placed on special watch 'A' as he is considered as a high security risk prisoner. This measure falls within the ambit of standing order No. 1 coupled with internal order 8/86. On 13.7.87 his case was reviewed and he was reduced to Special Watch 'B'. His case is coming for review on 13.10.87 i.e. three months as from the date of the last review."

I found the action of the Prison Authorities reasonable.

Case No. C/138/87

Tooth extracted in prison cell, etc.

A "Condemned man" i.e. a prisoner under sentence of death complained that:—

- (a) his tooth was extracted by the Dental Surgeon in his cell and not at the prison dental clinic;
- (b) not allowed sun bath as recommended by the doctor;
- (c) food served not as recommended by the doctor and not allowed to write to a Minister.

The Commissioner of Prisons sent me the following explanation:—

"The Dental Surgeon did not raise any objection at first to have dental care of prisoners under sentence of death at the "block" in which they are presently confined and he did in fact attend to this prisoner in the block. The Dental Surgeon subsequently changed his mind about that and decided that all dental care and treatment should be done at the dental clinic. The matter was discussed with the Dental Surgeon by management and he explained the reason why he has changed his mind. He, however, said that he would raise no objection if special security precautions are taken and special arrangements are made.

The statement from the Chief Hospital Officer and Principal Hospital Officer shows that the prisoner's food is checked by the Hospital Staff, and that what has been prescribed for him by the Prisons Medical Officer is issued to him.

The report of the Senior Superintendent of Prisons covers the question of sun bath. The Prisons Medical Officer has confirmed the statement.

As regards his application to write to the Minister, the prisoner was advised that he should request permission under section 78 of the Prison Regulations for such visit. No person can visit a prisoner under sentence of death unless the prisoner makes a request which should be approved by the Permanent Secretary, Prime Minister's Office."

I saw photocopies of (a) the explanation of the Dental Surgeon who said the tooth was extracted in the block as a measure of security, (b) the Deputy Commissioner of Prisons' minute to the Commissioner of Prisons, (c) the Chief Hospital Officer's statement that the tooth was a loose one and that all aseptic precautions were taken for extraction, (d) the statement of the Principal Hospital Officer who said that there was no trace of any complaint about prisoner's food in the Food Register and that hospital staff sees to it that the food prescribed by the Prisons Medical Officer is duly issued and served direct to the C.M., (e) the statement of the Officer in charge of the prison who said that the extraction of the tooth was made at the block and prisoner never protested.

On 24th April, 1987 prisoner was informed of the suppression of the letter and advised to submit the name of the said Minister for approval as visitor. Thereafter the prisoner submitted a list of visitors but he did not include the name of the Minister.

Case No. C/141/87

Unjust transfer to Phoenix prison, etc.

Prisoner J complained that he was unjustly transferred to the high security prison of Phoenix, kept on special watch and had no access to newspapers.

The Commissioner of Prisons' explanation was:—

"Prisoner was admitted to Beau Bassin Prison on 14th September, 1982.

He is since undergoing a series of terms of imprisonment.

Under the remission system he is due for release on 13.7.89.

In the course of his current imprisonment he has on several occasions been incarcerated in the Phoenix Prison. He was last transferred to that Prison on 11.9.87 for continually committing major offences and thereby considered as incorrigible and he is still there.

The idea of placing prisoners who return to Beau Bassin Prison from Phoenix Prison on Special Watch is to enable a proper follow-up in view of returning them safely in association with other prisoners.

When he was last transferred back to Beau Bassin Prison from Phoenix Prison on 25.6.87, he was placed on Special watch 'A' and made to wear bi-coloured clothing. At no moment there has been a shortage of this clothing at Beau Bassin Prison.

There is no restriction to prisoners getting access to newspapers which are daily issued to them on request with the exception of those who are undergoing punishment.

The special watch cells are just the same cells in which other prisoners are located except that they are rendered more secure. Furthermore while on special watch the prisoner was regularly seen by the Prison Medical Officer who at no moment had advised that he be removed from the special watch cell on ground of health.

Prisoners on Special watch 'A' are after the distribution of labour at 07.30 hours, removed from their cells and escorted to their respective places of work. They are escorted back to their respective cells before cease labour at 10.30 hours. The same practice prevails at resume labour at 11.40 hours and cease labour at 15.20 hours."

I informed the prisoner accordingly and said that the explanation was reasonable.

Case No. C/154/87

Unjustly placed on special watch

On being required to let me have his comments on the above complaint of a prisoner, the Commissioner of Prisons had this to say:—

"Abovenamed prisoner was admitted to Beau Bassin Prison on 30th May, 1986.

He is since undergoing a series of imprisonment.

He is due for release on or about 17.12.89.

On 26.10.86, he was placed on Special Watch 'B' because according to information emanating from different reliable sources, he was on the point of attempting to escape from prison. This was the only security measure resorted to in such situation.

Since then, the inmate has regularly applied for a removal from the Special Watch 'B' regime. It has not been possible to entertain his request as he has been persistently committing offences

against the Prison discipline. In fact he reckons 12 cases of misconduct since he is on Special Watch 'B'. He has been made to understand that so long he persists in his negative attitude he will not be removed from Special Watch 'B'. Up to now, it appears that the advice has fallen in the ears of a deaf fellow.

On Special Watch 'B' he is benefitting from all privileges enjoyed by other inmates except that he is being escorted by a Principal Officer and invariably 'rubbed down' on returning from and back to labour by an officer."

Case No. C/171/87

Rights and privileges, no transistor radio and no coco fibre mattress

Prisoner J complained that he was never informed of his rights and privileges as a prisoner, was not allowed to keep a transistor radio in his cell and was not issued with a coco fibre mattress.

The comments of the Commissioner of Prisons were:—

"Prisoner J was admitted at the Central Prison, Beau Bassin on 14th February, 1986 to undergo

a Life sentence imprisonment upon a charge of murder.

On admission, all prisoners are informed about their rights and privileges. They are always at liberty to enquire about anything concerning these matters. It is not possible for obvious reasons to inform them in detail about all their constitutional rights, but in case they came on application for any specific query about their rights, they are so informed.

All Blocks and Association Yards of Beau Bassin Prison are equipped with a radio network which operates after labour up to 20.00 hours on working days and in addition throughout association time on Sundays and Public Holidays. It is not advisable to issue prisoners with personal transistor radios during working hours.

Generally sponge mattresses are in use at Beau Bassin Prison. Provision is made, however, for issue of coco fibre mattresses to prisoners strictly on medical recommendations. It appears from his record that this inmate has not even made an application to that effect to the medical authorities."

REGISTRAR OF ASSOCIATIONS

Case No. C/163/87

No reply to denouncement of irregularities

The treasurer of an association concerned with rural development complained to the Registrar of Associations, with copy to me, that some financial irregularities had taken place at the Association and that his intervention was required to redress matters. He also ended his letter by saying that in case the Registrar did not reply to his letter he would contact his legal adviser.

I queried the Registrar and his reply to the complainant, with copy under covering letter to me, was:—

"This office carried out an investigation into the various points mentioned therein as well as your previous letter: it was revealed that in fact the finance of . . . (the association) was not organised properly, this situation prevailed also during the period that you were acting as Treasurer of the Association.

Consequently quite a number of irregularities existed in the accounts. In view of this situation

the Managing Committee instituted an ad-hoc committee to enquire therein and to report thereon.

For a number of reasons quoted in its report among which your failure to attend the meetings, the ad-hoc committee could not perform properly its job.

This office is following closely the situation and it is expected that the "accounting" of . . . will be set on a firm basis and properly organised.

This office also enquired on what you called "your sacking from . . . In fact it was revealed that you were only suspended for organising activities as member of . . . Your suspension was due to come to an end in November last. The Committee of . . . will surely inform thereof, after which you will be excepted to resume your activities as a member of the association.

This office is not in a position to say whether the Managing Committee of . . . was right in taking the decision to suspend you or not. Should you feel unjustly victimised, you may refer the matter to the competent Court for redress.

The cases of (i) alleged forgery in connection with the statement of accounts for year ending December 1984 and (ii) alleged irregularities relating to spending and receiving of money by the association have also been looked into. In the absence of any evidence this office does not propose to take any further action."

I then told the complainant that I found the reply of the Registrar reasonable and that if he was not satisfied he could seek legal advice and act accordingly as he had hinted in his letter to the Registrar with copy to me. I heard no more from him.

RODRIGUES

Case No. C/95/87

Unjustified dismissal as labourer in public service

X complained to me about his unjustified dismissal as labourer in the public service in Rodrigues.

The Ministry for Rodrigues provided me with the following explanation:—

"After joining the public service in July 1964,

X was appointed Labourer on the Permanent and Pensionable Establishment in July 1974 and Tradesman Assistant in May, 1978.

Following involvement in a case of wounds and blows in 1981, X was fined Rs 250 plus Rs 10 costs by the Court for which he was severely reprimanded by the Public Service Commission. In the same year, he became again involved in another case of wounds and blows which led to his being fined Rs 300 plus Rs 10 costs by the

Court and suspended from work without pay for a period of five days. In June 1985, he was prosecuted for attempt upon chastity and was sentenced to undergo six months imprisonment with hard labour plus Rs 50 costs. The Public Service Commission decided to dismiss him from the Service in the light of the judgment. In a letter dated 11th July, 1986 copy of which is enclosed, he appealed to the Commission for a review of his case. He was informed that the decision could not be varied because of the seriousness of the offence."

I communicated the above explanation to X adding:—

"It is not within my jurisdiction to investigate matters of appointment, dismissal, promotion, etc., within the public service. Exceptionally I asked for explanation which has been reproduced above. I regret I cannot pursue the matter any further."

SOCIAL SECURITY

Case No. C/167/86

No social aid

Prisoner J complained that no social aid was paid to his family while he was on remand in prison. Before being remanded to jail he was receiving social aid for disability as he had one artificial leg. His wife received the aid while he was on remand but from the date he was found guilty by a Court and sentenced to imprisonment that aid was stopped.

My investigation showed that J was awarded the basic invalidity pension from May 1979. He was remanded to jail on 5th August 1983 and was subsequently sentenced to life imprisonment. He left

his pension card in the custody of his grandmother who continued to cash the pension of J until May 1985.

Now, Regulation 5 of the National Pensions (Claims and Payment) Regulations 1977 provides that no benefit is payable to a beneficiary for a period during which he is serving a term of imprisonment or is detained in legal custody. Hence payment for period September 1983 to May 1985 was not justified and an amount of Rs 3,764 had been overpaid.

On the 3rd June 1986 the grandmother subscribed to an agreement to the effect that an amount of Rs 100 be retained every month from her basic retirement pension as repayment of the amount overdrawn.

The Ministry was therefore recovering the overpayment from the pension of the grandmother as agreed by the latter.

J was informed of the facts and had no comment to make.

Case No. C/79/87

No Unemployment Hardship Relief

S's complaint was that he had not been paid unemployment hardship relief for June and July 1984 after his retirement at the age of 60 in November 1986.

S in fact had applied for such a relief on 13th June 1984 and was paid for the period 13th July 1984 to October 1986. When he attained the age of 60 on 1st November 1986 he was paid the basic retirement pension at the rate of Rs 211 monthly.

The Ministry of Social Security relied on Section 3(5) of the Unemployment Hardship Relief Act 1983 to refuse payment of the hardship relief for the period 13th June 1984 to 12th July 1984, as this period of unemployment did not exceed 30 days as prescribed in the Act.

I found the Ministry had acted in accordance with the law and the law in my view was not unreasonable.

Case No. C/100/87

Pension inadequate

J's complaint was that while working as a bus conductor he fell on his back and sustained injuries on 9th October 1984. He was admitted to Victoria Hospital where he stayed for twelve days and thereafter followed treatment as an out-patient. On the strength of nine medical certificates issued to him between 17th September 1984 and 26th March 1985 he was paid industrial injury benefit.

Eventually, J was referred to two Medical Boards who found that he was suffering from motor neurone disease and that this disease was not the result of the accident. It was, therefore, neither an industrial injury nor an occupational disease.

On 22nd January 1986 the National Pensions Officer decided to disallow J's claim for industrial injury allowance and the payment of the allowance was stopped. He had been paid this allowance amounting to Rs 6,155 in all.

In the letter bearing the above date informing J of this decision the Principal Social Security Officer stated at paragraph (c) the following:—

"If you are not satisfied with this decision, you may appeal to the Medical Tribunal on a medical question or to the Appeal Tribunal in other cases. You should in that case write to this Office or call at your nearest Social Security Office for an appeal form. The appeal should be made within one month of the date of this letter."

J never appealed as advised.

The Medical Board's finding was 70% incapacity for three years and his case would, therefore, be reviewed in February 1989. J was and is being paid a basic invalidity pension and is drawing a child allowance in respect of his two children.

After receiving the first reply from the Permanent Secretary of the Ministry, I called the officers concerned and I examined the case file including all the medical certificates, the composition of the two Medical Boards and their findings and recommendation.

I was satisfied that the stoppage of the industrial injury allowance was justified and that J was being assisted according to the provisions of the National Pensions Act.

Case No. C/143/87

Social Aid Not Adequate

M, a prisoner, complained that the social aid his wife was receiving from the Ministry of Social Security was not sufficient to meet the needs of his child aged 4 years and to pay the rent of the house (Rs 175 per month). M's wife was earning a meagre wage of Rs 15 per day.

An enquiry made at the prison in presence of M revealed that his wife's name was R. O. and was residing at N Road, Port Louis. However, one R. O. who was in fact residing at the above address but who had moved to another area in Port Louis declared to the Ministry's officers that she knew M quite well but that she was neither his wife nor his concubine. This R. O. was in fact receiving social aid on medical grounds. It was, therefore, pointless to pursue the matter any further as M did not make any comment when I communicated the Ministry's reply to him.

TELECOMMUNICATIONS

There were five 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 wellnigh 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.

One exception to the usual pattern was a justified complaint which is reported herein.

Case No. C/128/87

Failure to act

J's complaints were:—

- (a) no outside calls were possible as the telephone dial was broken;
- (b) the bell was out of order i.e. not ringing properly,

- (c) several officers contacted about his problems but no action was ever taken and the telephone was out of order for over a fortnight.

The comments of the Director of Telecommunications were as follows:—

“When a fault is reported to the Complaint Unit the procedure followed is a test from the exchange to identify the nature of the fault as well as its location. The technicians at the exchange will issue a repair order to field staff only when they are sure that the fault is in the field.

The reported fault was difficult to detect from a distance and in spite of several tests, technical staff could not find any fault on the line and subscriber's apparatus.

We agree that the Inspector should have visited the subscriber's place after the second complaint and this is very unfortunate.

We consider this to be very serious and have issued letters of warning to the officers concerned.”

I communicated the Director's reply to J and asked for his remarks, if any. He made none.

Nonetheless I found the complaint of J justified in that the failure to act by the Inspector was unjust for the reasons stated by the Director, viz:— despite repeated complaints by J to the local Complaint Unit, the Inspector failed to visit his place and take remedial steps as regards J's telephone set.

In accordance with Section 100 (1) and (2) of the Constitution, I reported my finding to the Director and sent a copy to the Prime Minister and to the Minister of Energy and Internal Communications. The Secretary to the Cabinet acknowledged with thanks receipt of the copy.

C/97/86

Inaction in case of charging higher prices

B complained to me on 22nd July 1986 that the Enforcement Division of the Ministry of Trade and Shipping was not taking sufficient action on his complaint to that office that his shopkeeper, a lady, had withheld his ration card and had over-priced many items in his "carnet" (notebook) as he used to buy, as almost all workers, on credit and settle accounts at the end of the month. He had reported the case to the Enforcement Division on 25th June 1986.

The Permanent Secretary confirmed the above report and sent me a chronological account of the Principal Enforcement Officer which was as follows:—

"On the same day a statement was recorded from him by Enforcement Officer A. M. in which he claimed that he was made to pay higher prices for several articles which were recorded in his 'ration book'. The articles mentioned were purchased from 27.6.85 to 28.4.86.

Complainant called again on 30.6.86 to have another statement recorded and produced another 'ration book' with articles purchased from 20.6.84 to 27.4.85.

On 22.7.86 he gave a further statement to clarify certain facts recorded in his previous statement recorded on 30.6.84.

On 1.7.86 Mrs. C, the shopkeeper, refused to have her statement recorded and declared that her son, Mr. B. R. would shoulder all responsibilities regarding this case. On the same day Enforcement Officers called on Mr. B. R. to record his statement. But he refused arguing that he would have to consult other members of the family.

On 9.7.86 Enforcement Officers called again on Mr. B. R. who this time declared that he would not take charge of the case but that his mother would do so. Mr. B. R. was therefore asked to request his mother, the Licensee to be present on 16.7.86 at 10.30 hrs to have her statement recorded.

Enforcement Officers, P and M called again at Verdun. The Licensee was again absent. Mr. B. R. was asked to request her to call at the Ministry during working hours. But she never turned up.

On 25.7.86 she was again absent when these two Enforcement Officers called at her trade premises. A message was left with Mr. B. R. requesting her to call at the Ministry on 28.7.86, but once again she did not turn up.

On 4.8.86 at 11.35 hrs Enforcement Officers, M, P and N called at her place and this time she was present and willing to have her statement recorded.

In her statement she declared that Mr. S. D., her Shop Clerk was responsible for the day to day management of the shop and responsible also for any offence committed.

Mr. S. D., the Shop Clerk is no longer working in her shop according to her and is no more living in the locality. He will have to be traced out and a statement recorded from him before the case be submitted to the DPP."

On 7th August 1986 B was met at his place by an Enforcement Officer and he promised to call at the Enforcement Division on 11th August 1986 to give his statement in writing but he failed to turn up. The Permanent Secretary told me that it was then proposed to refer the case file to the Director of Public Prosecutions for advice. The case file was referred to the latter on 11.9.86 who advised prosecution before the Profiteering Court. The case was lodged and was called *proforma* on 5th February 1987 when the lady shopkeeper pleaded not guilty. The case was, therefore, postponed to 7th May 1987 for trial.

On 10th June 1987 the Permanent Secretary informed me that the case had been heard and that the lady shopkeeper had been sentenced to pay a fine of Rs 500. on six counts plus costs.

From the above it is clear that the Enforcement Division had been pursuing the matter actively ever since the complaint of B was made to it. The charge of inaction could not be retained against it. Rather it was the lady shopkeeper and her sons who were of bad faith and who were doing their best to let matters drag unduly.

WORKS

Case No. C/178/83

No action for demolition of offending part of building

B had been issued a permit for the construction of a building which according to the plan submitted and approved should have been put up at a distance of 19 feet from the boundary dividing his land and that of the complainant Z.

An inquiry made by the Ministry's Inspector following the complaint of Z made at the Ministry's local office against B for building at less than the statutory distance of five feet from the boundary line revealed that B had built at only three feet from the boundary.

Consequently B was prosecuted by the Ministry, found guilty by the Court and fined Rs 300+Rs 15 costs for building at less than the statutory distance.

On being questioned whether the Ministry was taking action for the pulling down of the offending part of the building in virtue of Section 78(3) of the Building Act, the Permanent Secretary replied that the matter was being examined. Later the Ministry requested the Solicitor-General to start the procedure for the pulling down by serving the necessary notice.

After an exchange of information between the Solicitor-General's Office and the Ministry, a Notice (*mise-en-demeure*) was served by a Supreme Court Usher on 8th January 1985 to pull down the offending part within a delay of one month from the service of the Notice. As at 8th May 1985 B had not complied with the Notice and the Ministry requested the Solicitor-General to take appropriate legal action. In spite of repeated reminders by my Office to the Ministry and by the Ministry to the Solicitor-General's Office, no action had been taken until 16th September 1986.

Replying to a query the Ministry informed my Office that the matter had been referred to the Minister. Finally, the building regulation 10 enacting the statutory distance of five feet was amended by the Minister repealing and replacing "5 feet" to read (3,000 mm) i.e. 3 feet. This new regulation was published in Government Notice No. 48 of 1987 on 1st June 1987. In the light of this, naturally no action could be started against B as he had

allowed three feet from the boundary. With hindsight the reason for the silence of the Solicitor-General's Office which surely was involved in preparing the amendment of the regulation becomes obvious.

Case No. C/5/85

No amenities in morcellement

On 9th January 1985 the purchaser of a plot of land in a "morcellement" (Parcelling) complained that he had built a small house on it but the morcellement had not been provided with water and tarred roads despite his repeated representations to the Ministry of Works which authorizes "morcellements". He purchased the plot on 6th May 1983.

The official explanation to me dated 28th January 1985 from the Permanent Secretary was as follows:—

"Heirs T made an application to subdivide a portion of land of 3A into 26 lots at..... for residential purposes on the 30th June, 1981. They were granted a morcellement permit on the 27th May, 1982 after having submitted a bank guarantee of Rs 71,000 to this Ministry for roadworks, a bank guarantee of Rs 40,000 to the Central Water Authority for laying of water pipes, and paid Rs 37,778 to the Central Electricity Board for electricity supply.

The bank guarantee for the construction of the access road expired on the 23rd June, 1983. This Ministry wrote to spokesman of the heirs T on the 23rd June 1983, 18th August 1983, 28th February 1984, 19th November 1984 in order to renew the bank guarantee, and no reply was received.

According to present practice applicants for morcellement permits are requested to submit either a deposit or a bank guarantee for constructing the access roads. The deposit or the bank guarantee is returned after the applicants have constructed the access roads. If the roads have not been constructed the applicants are requested to renew the bank guarantee.

As regards the bank guarantee for water supply, this falls under the responsibility of the Central Water Authority. The matter has been taken up with the Central Water Authority.

Since October 1984 this Ministry has introduced new procedures with regards to the construction of access roads on approved morcellement. Applicants are given a time limit, usually 9 months, to complete the construction of access roads. If after the time limit the roads have not been constructed, the Ministry would seize the deposit or bank guarantee in order to perform the construction of the roads. An inflationary cost of 10% and an administrative cost of 5% are also included in the estimated cost.

As Heirs T have not yet constructed the access road, advice is being sought as to whether legal action can be taken to obtain compliance with the conditions laid down in the approval of morcellement."

On 25th April 1985 the Permanent Secretary informed me that the access roads had been constructed by the heirs T owners of the land parcelled. After some correspondence with the Permanent Secretary about the water supply, I wrote to the complainant on 24th July 1985 to confirm that roads had already been built and that the Ministry was pressing the Central Water Authority to provide water supply. By letter dated 31st July 1985 the complainant informed this office that no water supply had been provided yet. By the end of November 1985 the complainant again wrote to say that there was still no water supply.

The Ministry of Works, in reply to reminders, stated on 31st January 1986 that:—

"The Central Water Authority has informed this Ministry that Heirs T have not completed the required pipe laying work. The Central Water Authority has therefore requested the Mauritius Commercial Bank to deposit the Bank guarantee of Rs 40,000 in the Central Water Authority's accounts in order to complete the work. In this connexion, a copy of the letter dated 24.12.85 addressed to the Manager, Mauritius Commercial Bank Ltd., by the Central Water Authority is attached for your information."

The question of water supply was followed up regularly by this office and the Ministry of Works until August 1986. By September 1986 heirs T had laid the required pipes as requested by the Central Water Authority since the beginning and the Authority had supplied the water to the morcellement.

On 30th September 1986, the complainant thanked me in writing saying that roads, water and electricity had all been provided and that he and all the other purchasers were satisfied.

The result of this investigation was the streamlining of procedures by the Ministry of Works and the decision to use the guarantee for doing the road works.

Case No. C/88/87

No action re. obstruction of public road

The complaint was that the Ministry had taken no action to stop the extension of a temple in Flacq on what was alleged to be a "tarred public road" 10 feet wide which prevented the complainant R and others from using the road to reach the sugar cane fields close to the temple, although several complaints had been made to the local Ministry of Works office.

The Permanent Secretary sent me the following report from the Senior Inspector (B) East:—

"Mr. R sent a letter to our office at Flacq on the 18th January, 1987. Mr. L. S., Inspector of Flacq Buildings Section, on receiving the letter, sent a notice to stop construction to Mr. M. M. on the 20th January, 1987. Two other letters were received at Flacq Office on the 17th March and 6th May 1987. Mr. L. S. called there again but could not take any action as only four columns were cast at that time.

Mr. M. M. affirms that he is now constructing an open hall.

There is an existing stone wall built many years ago together with an existing temple. The tarred road known as "Kalchand Road" ends in front of the hall under construction. It does not go beyond the temple.

There is another tarred road in good condition not far away which leads to the cane fields. I cannot understand how the construction of the temple will not allow R to reach the fields, especially as there exists a wall behind the temple."

A sketch of the *locus in quo* (the spot in question) was attached and it fully confirmed the official version.

R was called to attend this office to see the official reply and the sketch but he never came. I therefore discontinued the investigation.

APPENDIX B

STATISTICAL SUMMARY OF COMPLAINTS

<i>Ministries/Departments</i>	<i>Justified</i>	<i>Partly justified/ rectified</i>	<i>Justified (Technically)</i>	<i>Not justified</i>	<i>Explained</i>	<i>Declined for want of jurisdiction</i>	<i>Declined in exercise of discretion</i>	<i>Discontinued</i>	<i>Discontinued in exercise of discre- tion</i>	<i>Withdrawn</i>	<i>Being investigated</i>	<i>Total number of complaints</i>
Accountant-General ...	—	—	—	—	—	—	—	—	—	—	1	1
Agriculture, Fisheries and Natural Resources ...	—	—	—	—	—	1	—	—	—	—	3	4
Comptroller of Customs ...	—	—	—	1	—	—	—	—	—	—	—	1
Co-operatives ...	—	—	—	1	—	—	—	—	—	—	—	1
Economic Planning and Development ...	—	—	—	—	1	—	—	—	—	—	—	1
Education, Arts and Culture ...	—	—	—	—	—	3	—	—	—	—	1	4
Employment ...	—	—	—	1	—	—	—	—	—	—	—	1
Energy ...	—	—	—	—	1	—	—	—	—	—	—	1
External Affairs ...	—	—	—	1	—	—	—	—	—	—	—	1
Finance ...	—	—	—	—	1	1	1	—	—	—	—	3
Health ...	—	—	—	3	1	2	—	1	—	—	9	16
Housing ...	—	—	—	2	2	—	1	1	1	—	8	15
Income Tax ...	—	—	—	—	—	—	1	—	—	—	—	1
Industry ...	—	—	—	—	—	—	—	—	—	—	2	2
Labour and Industrial Relations ...	—	—	—	5	—	—	—	1	—	—	2	8
Police ...	—	—	—	12	10	5	—	5	—	—	13	45
Posts and Telegraphs ...	—	—	—	—	1	1	—	—	—	—	—	2
Prime Minister's Office ...	—	—	—	1	1	—	—	—	—	—	—	2
Prisons ...	—	—	—	15	3	—	—	1	—	—	3	22
Reform Institutions ...	—	—	—	—	2	—	—	—	—	—	1	3
Registrar of Associations ...	—	—	—	1	1	—	—	—	1	1	—	4
Registrar of Co-operatives ...	—	—	—	1	—	—	—	—	—	—	—	1
Rodrigues ...	—	—	—	—	—	—	—	1	—	—	—	1
Social Security ...	—	—	—	3	1	—	—	—	—	—	—	4
Telecommunications ...	1	—	—	2	2	—	—	—	—	—	—	5
Trade and Shipping ...	—	—	—	—	1	—	—	—	—	—	—	1
Works ...	—	—	—	2	2	—	—	1	2	—	5	12
Officers and Authorities outside the jurisdiction of the Ombudsman ...	—	1	1	1	17	38	—	1	—	—	1	60
TOTAL ...	1	1	1	52	47	51	3	12	4	1	49	222

SCHEDULE OF COMPLAINTS FOR PERIOD 1st JANUARY 1987 — 31st DECEMBER 1987

Accountant-General's Division:

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/159/87	No action on complaint that tenant of complainant trading without licence ...	Being investigated

Agriculture, Fisheries and Natural Resources:

C/ 10/87	Unjust termination of employment as casual labourer in 1980. (Explained to complainant at office)	Declined
C/116/87	Unjustly suspended as member of the Young Farmer's Club ...	Being investigated
C/161/87	No renewal of fishing gill net licence ...	Being investigated
C/201/87	No statement of record of service with the Planters and Millers Arbitration Board supplied to complainant for submission to the Posts and Telegraphs Department where he is now employed	Being investigated

Comptroller of Customs:

C/189/87	No refund to duty on importation of textile piece goods (Solicitor-General advised no refund)	Not justified
----------	---	---------------

Co-operative:

C/105/87	Registrar's inaction in not intervening in order to let the complainant obtain a room on rent from a co-operative	Not justified
----------	---	---------------

Economic Planning and Development

C/ 2/87	No remedial action to prevent flooding of complainant's yard by water flowing from the road just asphalted and slightly raised above his yard. (Remedial action taken by D.W.C.)	Explained
---------	--	-----------

Education

C/ 45/87	Undue influence exercise in appointing an officer at Mahatma Gandhi Institute without passing through the M.G.I. Council or Director	Declined
C/ 48/87	Not appointed to a post of School Psychologist; Discrimination (Appointments in Public Service are for the Public Service Commission or the Responsible Officer acting under powers delegated by the P.S.C.)	Declined
C/ 73/87	No action on declaration to Commissioner of Police of attempt to extort money against two officers of the Ministry. (Director of Public Prosecutions advised no further action)	Declined
C/202/87	A primary government school named after a person who had done nothing useful in the village; the name of a deceased social worker rejected	Being investigated

Employment

C/ 66/87	Improper discrimination; not placed in a job ...	Not justified
----------	--	---------------

Energy

C/195/87	Application for water supply not granted (Low pressure of water prevents new supplies)	Explained
C/ 94/87	Negative attitude of the Ministry in connection with his deportation from France ...	Not justified

Finance

C/112/87	Not promoted in the Valuation Section ...	Declined
C/156/87	No refund of export duty on sugar. (Refund decided — delay explained) ...	Explained
C/186/87	No reply to requests for refund of duties on imported piece goods. (Solicitor-General's advice sought by the Ministry). (No refund. Advised to seek legal advice).	Declined in exercise of discretion

Health

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

APPENDIX C—continued

HEALTH—continued

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/130/86	Complainant's wife delivered still-born baby owing to negligence of Staff at State hospital (Claim for damages filed in Supreme Court by complainant)	Discontinued
C/143/86	Ineffective action by officers against neighbouring factory causing sanitary nuisances	Explained
C/163/86	Reasonable doubts as to the misuse of articles collected and donated to a State hospital for distribution to the inmates (Invited by the Superintendent through Ombudsman to go and see things for herself and discuss matters, complainant kept quiet)	Not justified
C/ 6/87	Non-registration as a medical practitioner although academically qualified (Qualified at Benghazi in Libya; faculty not on list of recognised institutions)	Not justified
C/ 14/87	No satisfactory solution to nuisance problem created by discharge of effluents from factory	Being investigated
C/ 21/87	Persecution by a superior officer; complainant being a subordinate employee of the Ministry	Declined
C/ 23/87	No satisfactory solution to nuisance problem created by discharge from factory	Being investigated
C/ 89/87	No responsibility allowance paid for discharging duties of a higher grade ...	Declined
C/158/87	Inadequate action re. building and operation of a factory close to residence ...	Being investigated
C/173/87	Comments that the Ministry of Health replied to my query on 23rd May 1979 was incorrect (Impossible to check veracity of comments now after over 8 years)	Not justified
C/185/87	No action on complaint of operation of a livestock feed factory in residential area: nuisance	Being investigated
C/187/87	No action re. operation of a stone-crusher causing dust and noise pollution ...	Being investigated
C/191/87	No sign of action on complaint re. intended use of a building or industrial purposes in a residential area. (Industry not started yet as at 12.2.88)	Being investigated
Housing, Lands and the Environment		
C/157/84	No action re. complaint about removal of sand and construction of 'jetée' on public beach (Alleged remover of sand prosecuted. Case dismissed by Court)	Explained
C/ 55/86	Sand removing licence withdrawn unjustly (File sent to Director of Public Prosecutions by Ministry to seek advice re. prosecution of complainant (Prosecutions case dismissed; licence re-issued to complainant)	Explained
C/ 86/86	No adequate action re. complaint about obstruction of public access to public beach	Being investigated
C/ 16/87	No effective action re. discharge from Factory; Nuisance ...	Being investigated
C/ 17/87	Unjustly subdivided plot of land leased to complainant's father who had built on it (Minister's own decision. Lease to father not finalised)	Discontinued in exercise of discretion
C/ 49/87	Ordered to demolish structures on a Crown land plot leased to his late father and plot subdivided	Being investigated
C/ 99/87	Undue delay in making squatter vacate a plot of Crown land; squatter hindering normal view and enjoyment of complainant's bungalow	Not justified
C/124/87	Delay in granting lease of a plot of Crown land for building (Plot requested situated in landslide area. Another plot suggested)	Being investigated
C/142/87	Defamatory allegations against a Surveyor of the Ministry by anonymous writer ...	Declined in exercise of discretion
C/149/87	No reply to application for the lease of a plot on Crown land for residential purposes	Discontinued
C/168/87	No lease granted of a plot of Crown land; Discrimination ...	Being investigated
C/175/87	Refund of unwarranted recovery of rent not made as promised (Accounts adjusted by way of set-off)	Not justified
C/183/87	Delay in dealing with application for revising his lease for 20 years so that complainant could obtain a loan from the Mauritius Housing Corporation	Being investigated
C/192/87	No sign of action on complaint re. intended use of a building for industrial purposes in a residential area (Industry not started yet as at 12.2.88)	Being investigated
C/196/87	No action re. operation of a stone-crusher causing dust and noise pollution ...	Being investigated
Income Tax		
C/ 47/87	Unjust new assessment of Income Tax (Advised to see legal adviser for appeal to Tax Appeal Tribunal)	Declined in exercise of discretion
Industry		
C/190/87	Allowing livestock feed factory to operate in residential area (Les Guibies) ...	Being investigated
C/193/87	Objection to proposed setting up of a factory for ready-made garments close to complainant's residence. (Industry not started yet as at 12.2.88)	Being investigated

APPENDIX C—continued

No.	Subject of Complaint	Result
Labour and Industrial Relations		
C/ 29/87	Although assisted by a Labour Officer at a Disciplinary Committee where complainant's case was heard, complainant was not helped by the officer to obtain severance allowance	Not justified
C/ 54/87	No immediate action by the Labour Inspector on declaration of termination of employment. (Complainant a few days after declaration asked labour officer to withdraw inquiry as he was filing a plaint through his legal adviser against the employer for severance allowance etc. In fact both he and his employer had entered counter-claims)	Discontinued
C/ 61/87	No adequate action by local Labour Officer on complaint of wrong dismissal as kitchen help by a hotel	Not justified
C/ 62/87	No action re. complaint against non-compliance with Remuneration Orders ...	Not justified
C/134/87	Non-payment of travelling expenses by employer and inaction of the Ministry's officers on complaint	Not justified
C/162/87	No action re. declaration of unjust termination of employment ...	Being investigated
C/176/87	Unjustly sacked by employer — a private company; no adequate action by the Labour Officer	Not justified
C/178/87	Complainant wanted to know whether Geneva Conventions apply to Mauritius and Malawi where he was injured at work	Being investigated
Police		
C/114/86	No sign of firm action on declaration about issue of cheques without provision. (Police inquiry submitted to Director of Public Prosecutions for advice and still lying there)	Explained
C/160/86	Unjustly charged with the commission of an offence on a day he alleges he was in prison	Not justified
C/166/86	Impassive attitude of constables in face of damage caused by " ruffians " at a fancy fair by the Association. (No witnesses wanted to come forward as witness or to identify constable who tolerated the scene)	Discontinued
C/168/86	Delay in taking action on declaration re. letter of threats received by registered post	Not justified
C/ 3/87	Not informed of action taken on several declarations re. violent behaviour of wife towards complainant with husband. (Prosecution started in some cases; in others advice of Director of Public Prosecutions sought)	Explained
C/ 4/87	No action re. declaration of noise and smoke nuisances caused by a factory. (Police contacted Ministry of Health. No nuisance)	Not justified
C/ 8/87	No further action re. report of bribery against an Inspector of Police by complainant. (Inquiry with Director of Public Prosecutions)	Being investigated
C/ 12/87	Wishes to make a statement re. Inspector of Police who " said something " to his wife. (Advised to make it with permission of Prison Authorities)	Explained
C/ 15/87	No action on declaration of cutting hedge on boundary line by his neighbour. (Civil case)	Declined for want of jurisdiction
C/ 32/87	Unjustly terminated employment in the Police Force. (Commissioner of Police acting under delegated authority from the Police Service Commission.)	Declined
C/ 36/87	No further action on declaration of " abus de confiance " committed by a Notary.	Being investigated
C/ 38/87	No prompt action in alleged case of swindling. (Inquiry submitted by Police to Director of Public Prosecutions for advice)	Discontinued
C/ 41/87	No action re. declaration of threats against his person. (In fact it was made as a precautionary measure)	Not justified
C/ 50/87	No action by Police against drivers of motor vehicles who parked them just in front of complainant's tobacconist shop although there is a " no parking sign ". (Police patrolling, Parking stopped)	Explained
C/ 58/87	No particulars re. names and addresses of the driver of the other vehicle involved and of the insurer re. an accident in which complainant's car involved (matter sub-judice)	Explained
C/ 59/87	Persecution by Police in siding with a family where 2 Police officers live and are his neighbours. A series of offences established against him. (Cases pending before Court. Complainant has counsel to defend him)	Discontinued
C/ 60/87	" Authors of murder " not traced yet	Being investigated
C/ 68/87	Provisional case of larceny of complainant's pine plants struck out on motion of Police. Why? (In fact Police is prosecuting alleged author of larceny)	Not justified

APPENDIX C—continued

POLICE—continued

No.	Subject of Complaint	Result
C/ 74/87	Undue harassment by being followed by Police officers in all his movements. (After inquiry, complainant advised by Police to inform Police of cases of harassment)	Explained
C/ 80/87	No action on report of illegal game of skill enticing youths including students. (Case referred to Director of Public Prosecutions)	Being investigated
C/ 81/87	Fabricated charge of possession of gandia. (Case pending before Court is due for trial)	Declined
C/ 91/87	Police Constable insulted and slapped complainant while the latter was on duty at the CNT bus park at Souillac. (Director of Public Prosecutions advised Police no further action)	Discontinued
C/ 93/87	Passport impounded unfairly	Not justified
C/ 97/87	No action on various declarations	Being investigated
C/104/87	No speedy action on declarations of larcenies from complainant's yard and verandah (Police officers produced Police diary, occurrence book etc to prove action)	Not justified
C/117/87	Buses using church grounds as bus stop (Remedied)	Explained
C/119/87	Tortured while in Police custody after arrest in connection with a case of homicide	Not justified
C/121/87	C.I.D. offered assistance to a retired Police officer who was creating nuisance by poultry breeding. (Complainant informed Ombudsman. Case pending.)	Discontinued
C/122/87	Denouncing the larceny of goat at Flic-en-Flac. C.I.D. officers charged with taking bribes. (The goat-owner has not complained to me. Writer not an aggrieved person.)	Declined
C/123/87	Conductor unjustly booked for taking passengers in excess in bus. (Police inquiry still on). (Complainant advised to defend himself in court if ever prosecuted)	Explained
C/126/87	No action re. declaration of throwing of a heavy metal door in complainant's yard presumably from a factory close to her house	Being investigated
C/129/87	Biased decision of "no further action" and of simple assault in case of wounds in occipital region and two broken teeth.	Being investigated
C/131/87	No action re. declaration against the action of a Police officer	Being investigated
C/136/87	Not aware of what action Police would take after taking a statement from complainant at the prison	Explained
C/144/87	Rs 5,000 withdrawn from complainant's account on a charge of swindling by the Police not returned to him after judgement. (Court ordered money to be distributed equally among the victims)	Not justified
C/146/87	No action on letter to Commissioner of Police denouncing the brutality of Police officers during inquiry into complainant's case	Not justified
C/148/87	Complainant's wife being harassed by hooligans and Police inactive despite declarations	Not justified
C/150/87	No action re. complaint to Commissioner of Police against two Police officers for extorting money from complainant who was charged with a drug offence. (Case was being investigated and inquiry would be sent to Director of Public Prosecutions for advice)	Being investigated
C/160/87	No action on declarations re. trading without licence, connivance of local Police etc against complainant's tenant	Being investigated
C/170/87	Trial being postponed unduly on ground that Police inquiry not yet completed ...	Not justified
C/179/87	Although case struck out in Court complainant still appears in Court on bail; case unduly dragging. (In fact formal charge laid before Intermediate Court. Sub-judice)	Explained
C/184/87	Falsely charged with offence of larceny. (Case sub-judice)	Declined
C/188/87	No action on declaration of encroachment by neighbour who built on complainant's land	Being investigated
C/200/87	No action re. declaration of nuisance caused by the operation of driving school in front of complainant's house	Being investigated
C/203/87	Perfunctory manner of inquiring into a case of homicide by a Policeman while driving a vehicle	Being investigated
Posts and Telegraphs		
C/ 65/87	Visiting orders sent by ordinary post not received by wife. (Despatch too old for enquiry. Registered letters not feasible)	Explained
C/181/87	Unjustly refused some parcels destined for Canada. (Writer not the aggrieved person.) (Advised to ask the aggrieved persons to complain even from Canada)	Declined

APPENDIX C—continued

No.	Subject of Complaint	Result
Prime Minister's Office		
C/ 83/87	No reply to letter requiring intervention of Government about his deportation from France. (After consultation, Ministry of External Affairs replied to complainant)	Not justified
C/164/87	Certificate of Civil Marriage not obtained at local civil status office despite repeated requests; (complainant told they had been lost. Reconstitution of Civil Status Act passed in 1984)	Explained
Prisons		
C/ 1/87	Mischievous acts like soaking of blankets with urine etc. (Never reported these to any high officer)	Not justified
C/ 13/87	General complaints about deprivation of liberty, restriction on movement in prison etc	Not justified
C/ 25/87	Searches on person made brutally and medical treatment for skin disease not adequate	Not justified
C/ 42/87	Referred to hospital for dog bites instigated by the Prisons officers after recapture after escape	Not justified
C/ 51/87	Unfairly confined to Phoenix Prison; light all night in cell; not allowed to meet the Commissioner of Prisons etc. (Complainant — a prisoner — most unruly and aggressive towards fellow-prisoners and officers etc)	Not justified
C/ 57/87	Unjustly confined to the Phoenix Prison — a high security prison	Not justified
C/ 69/87	Unjustly transferred from one block to another. Not considered to be released on parole. (The Act passed by Parliament not yet proclaimed; therefore no force of law yet)	Explained
C/ 72/87	Not transferred from Phoenix Prison to Beau Bassin Prison and not issued with bananas or alternative fruits	Not justified
C/ 75/87	Not allowed to write his M.L.A. (in this case a Minister)	Not justified
C/ 96/87	Brutally made to vomit something which he had in his mouth; not allowed to depose before the Commission of Inquiry on Drug Traffic	Not justified
C/108/87	Information required: can a prisoner write to the Minister of Justice and the Prime Minister? When corporal punishment is allowed?	Explained
C/118/87	Not allowed the privileges of "Condemned Man" i.e. one convicted of murder and seeing his sentence pending final decision on his appeal. (Complainant signed a written statement in which he says he is satisfied with the explanation of the Prison Authorities and that he has no complaint)	Discontinued
C/133/87	Unduly prolonged imprisonment. (Consecutive imprisonment for escaping by breach of prison)	Not justified
C/135/87	Punished twice for same offence: escaping from legal custody. (Not true. In fact two offences: (1) damaging property, (2) not returning prison property)	Not justified
C/138/87	Tooth extracted by the Prison Dental Surgeon in prisoner's cell and not at prison's Dental Clinic; letter to Minister by prisoner suppressed unjustly	Not justified
C/141/87	Unjustly transferred to Phoenix prison, kept on special watch, no access to newspapers etc.	Not justified
C/145/87	Various allegations against fellow-prisoner's acts hostile to him	Being investigated
C/154/87	Unjustly placed on special watch	Not justified
C/166/87	Questions about consecutive sentences and release on licence. (Advised to seek information through application to Commissioner of Prisons)	Explained
C/171/87	Not informed of all his rights and privileges as prisoner; not allowed to use a transistor radio in his cell and not issue with a coconut fibre mattress	Not justified
C/182/87	Unjustified forfeiture of earnings, deprived of canteen facilities, no amenities at Phoenix prison. (At Phoenix prison no work. Therefore no earnings)	Being investigated
C/198/87	Not provided with certain amenities e.g. pillow etc in hospital; not allowed to do his Namaz in the prison mosque during Ramadan	Being investigated
Reform Institutions:		
C/116/86	Unjust deduction of 50% of salary	Being investigated
C/139/87	Expression of concern about the delay in establishing the Parole Board as provided by Act 41 of 1985. (Proclamation by Governor-General to make the Act come into force would soon follow on my advice to the Permanent Secretary of the Ministry)	Explained
C/140/87	Expressing concern about delay in the establishment of a Parole Board as provided in Act 41 of 1985	Explained

APPENDIX C—continued

No.	Subject of Complaint	Result
Registrar of Associations:		
C/ 55/87	No action re: complaint of misapplication of funds by a trade union. (Same issues civil actions pending before Court)	Withdrawn
C/ 67/87	No adequate action re. complaints about his Union. (Registrar present at my office and explained to complainant the position)	Explained
C/163/87	Inaction re. complaint as Treasurer of an association about irregularities	Not justified
C/167/87	No action on complaint of irregularities of association of which he is a member. (Complainant has started legal proceedings through an Attorney-at-Law)	Discontinued in exercise of discretion
Registrar of Co-operatives:		
C/106/87	No action on complaint re. irregularities at Co-operative Society of which complainant is a member	Not justified
Rodrigues		
C/ 95/87	Dismissed from public service in Rodrigues as a labourer	Discontinued
Social Security		
C/167/86	No social aid paid to family while on remand in prison	Not justified
C/ 79/87	Not paid Unemployment Hardship Relief for two months	Not justified
C/100/87	Basic invalidity pension not adequate for expenses on his family including his two children's education	Explained
C/143/87	Social aid to wife not adequate to meet the needs of the children and pay the rent of the house; complainant being a prisoner	Not justified
Telecommunications		
C/ 34/87	Non-provision of a telephone in spite of long-standing application; discrimination	Not justified
C/ 82/87	No technician did anything to remedy breakdowns reported about his telephone	Not justified
C/128/87	Failure to act re. complaint about the non-functioning of telephone	Justified
C/157/87	Telephone not supplied despite long-standing application and indication that complainant's area would be covered by the 1984-85 plan	Explained
C/174/87	No telephone as a doctor at Vallée des Pretres (Development 1988-89)	Explained
Trade and Shipping		
C/ 97/86	No adequate action re. complaint of overcharging of his account by his shop-keeper by means of inflated prices of rationed commodities	Explained
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)	Discontinued in exercise of discretion
C/ 5/85	Morcellement approved without first making sure that roads and water would be supplied	Explained
C/ 5/87	Compensation paid for injury at work not adequate. (Complainant came to agreement with assistance of his Attorney-at-Law with the Government)	Not justified
C/ 11/87	Statutory distance not left by neighbour from boundary line while erecting a building. (Regulation amended allowing only 3 feet instead of 5 feet)	Explained
C/ 88/87	No action re. construction of a temple by complainant's neighbour on a public tarred road. (Complainant did not call at this office when requested to see explanation of Ministry of Works)	Discontinued
C/102/87	Factory allowed to operate without permit close to complainant's house and without service of notice on him	Not justified
C/152/87	No sign of action on complaint re. intended use of a building for industrial purposes in a residential area. (Industry not started yet as at 12.2.88)	Being investigated
C/165/87	No reply to request for approval of certain documents relating to a plot of land. (Letter obscure, clarifications requested by me not produced)	Discontinued in exercise of discretion
C/169/87	No action for having offending part of building demolished even after court judgement under the Building Act. (Case lying at Principal Crown Attorney's office)	Being investigated
C/177/87	No satisfactory action on complaint of operation of a factory close to his house	Being investigated
C/180/87	No action for demolishing offending part of a building of complainant's neighbour	Being investigated
C/194/87	No action re. operation of a stone crusher causing dust and noise pollution	Being investigated

CASES OUTSIDE JURISDICTION

<i>Complaints registered against</i>	<i>Partly justified rectified</i>	<i>Justified (Technically)</i>	<i>Being investigated</i>	<i>Not justified</i>	<i>Declined</i>	<i>Discontinued</i>	<i>Explained</i>	<i>No. of complaints</i>
Attorney-at-Law ...	—	—	—	—	4	—	—	4
Barrister-at-Law ...	—	—	—	—	1	—	—	1
Central Housing Authority ...	—	—	—	—	1	—	3	4
Council of Legal Education ...	—	—	—	—	1	—	—	1
Council of Registered Professional Engineers ...	—	—	—	—	—	—	1	1
Director of Public Prosecutions ...	—	—	—	—	1	—	—	1
District Council (North) ...	—	—	1	—	—	—	—	1
Governor-General ...	—	—	—	—	—	—	1	1
Husband ...	—	—	—	—	—	—	1	1
Judicial ...	—	—	—	1	11	—	9	21
Local Government Service Commission ...	—	—	—	—	1	—	—	1
Mauritius Marine Authority ...	—	—	—	—	1	—	—	1
Media ...	—	—	—	—	1	—	—	1
Members of a Mosque ...	—	—	—	—	1	—	—	1
Municipality ...	—	—	—	—	3	—	—	3
National Transport Authority ...	1	1	—	—	1	—	—	3
Private Company ...	—	—	—	—	—	—	1	1
Private Insurance Company ...	—	—	—	—	1	—	—	1
Private Secondary Schools Authority ...	—	—	—	—	1	1	1	3
Public Service Commission ...	—	—	—	—	6	—	—	6
Sugar Insurance Fund Board ...	—	—	—	—	1	—	—	1
Supreme Court ...	—	—	—	—	1	—	—	1
Wife ...	—	—	—	—	1	—	—	1
TOTAL ...	1	1	1	1	38	1	17	60
Cases falling under proviso of SS 97(2), 97(8), 101(2) of the Constitution, cases outside S 97(1) of the Constitution								... 16
GRAND TOTAL								... 76

3563/6/88—600

MONTHLY REPORT OF THE

DATE	NAME	AGE	SEX	RELATIONSHIP	STATUS	REMARKS
1	1	1	1	1	1	1
2	2	2	2	2	2	2
3	3	3	3	3	3	3
4	4	4	4	4	4	4
5	5	5	5	5	5	5
6	6	6	6	6	6	6
7	7	7	7	7	7	7
8	8	8	8	8	8	8
9	9	9	9	9	9	9
10	10	10	10	10	10	10
11	11	11	11	11	11	11
12	12	12	12	12	12	12
13	13	13	13	13	13	13
14	14	14	14	14	14	14
15	15	15	15	15	15	15
16	16	16	16	16	16	16
17	17	17	17	17	17	17
18	18	18	18	18	18	18
19	19	19	19	19	19	19
20	20	20	20	20	20	20
21	21	21	21	21	21	21
22	22	22	22	22	22	22
23	23	23	23	23	23	23
24	24	24	24	24	24	24
25	25	25	25	25	25	25
26	26	26	26	26	26	26
27	27	27	27	27	27	27
28	28	28	28	28	28	28
29	29	29	29	29	29	29
30	30	30	30	30	30	30
31	31	31	31	31	31	31
32	32	32	32	32	32	32
33	33	33	33	33	33	33
34	34	34	34	34	34	34
35	35	35	35	35	35	35
36	36	36	36	36	36	36
37	37	37	37	37	37	37
38	38	38	38	38	38	38
39	39	39	39	39	39	39
40	40	40	40	40	40	40
41	41	41	41	41	41	41
42	42	42	42	42	42	42
43	43	43	43	43	43	43
44	44	44	44	44	44	44
45	45	45	45	45	45	45
46	46	46	46	46	46	46
47	47	47	47	47	47	47
48	48	48	48	48	48	48
49	49	49	49	49	49	49
50	50	50	50	50	50	50
51	51	51	51	51	51	51
52	52	52	52	52	52	52
53	53	53	53	53	53	53
54	54	54	54	54	54	54
55	55	55	55	55	55	55
56	56	56	56	56	56	56
57	57	57	57	57	57	57
58	58	58	58	58	58	58
59	59	59	59	59	59	59
60	60	60	60	60	60	60
61	61	61	61	61	61	61
62	62	62	62	62	62	62
63	63	63	63	63	63	63
64	64	64	64	64	64	64
65	65	65	65	65	65	65
66	66	66	66	66	66	66
67	67	67	67	67	67	67
68	68	68	68	68	68	68
69	69	69	69	69	69	69
70	70	70	70	70	70	70
71	71	71	71	71	71	71
72	72	72	72	72	72	72
73	73	73	73	73	73	73
74	74	74	74	74	74	74
75	75	75	75	75	75	75
76	76	76	76	76	76	76
77	77	77	77	77	77	77
78	78	78	78	78	78	78
79	79	79	79	79	79	79
80	80	80	80	80	80	80
81	81	81	81	81	81	81
82	82	82	82	82	82	82
83	83	83	83	83	83	83
84	84	84	84	84	84	84
85	85	85	85	85	85	85
86	86	86	86	86	86	86
87	87	87	87	87	87	87
88	88	88	88	88	88	88
89	89	89	89	89	89	89
90	90	90	90	90	90	90
91	91	91	91	91	91	91
92	92	92	92	92	92	92
93	93	93	93	93	93	93
94	94	94	94	94	94	94
95	95	95	95	95	95	95
96	96	96	96	96	96	96
97	97	97	97	97	97	97
98	98	98	98	98	98	98
99	99	99	99	99	99	99
100	100	100	100	100	100	100

