



MAURITIUS

15th Annual Report of the Ombudsman

January — December 1988

No. 6 of 1989

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Annual Report
of the
Ombudsman

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Government of Mauritius

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Ombudsman's Office,
Port Louis,
Mauritius.
24th March 1989.

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 1988.

Respectfully yours,
R. SEWGOBIND
Ombudsman

Table of Contents

	<i>Paragraphs</i>
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	7 — 9
4. Some Comparative Statistics	10 — 14
5. Report and Recommendations under S. 100 of the Constitution	17
6. Cases Explained	18 — 20
7. Acknowledgements	21 — 23
8. Historical Notes and Jurisdiction of Ombudsman	24 — 29
9. Appointment and Jurisdiction of Ombudsman	30
10. Comment on Section 97 of the Constitution	31 — 35
11. Conclusion	36 — 37

APPENDICES

	<i>Pages</i>
Appendix A	
12. Selected Cases:	
Accountant-General	11
Agriculture, Fisheries and Natural Resources	11
Customs and Excise	12
Education, Arts and Culture	13
Finance	14
Health	15
Housing, Lands and the Environment	18
Income Tax	24
Industry	26
Labour and Industrial Relations	27
Police	29
Posts and Telegraphs	32
Prisons	33
Reform Institutions	40
Telecommunications	42
Works	42
Appendix B	
13. Statistical Summary of Complaints dealt with department-wise	45
Appendix C	
14. Schedule of Complaints for period 1st January 1988—31st December 1988	46
(All complaints with departments concerned, nature of complaints and results of investigation)	
Appendix D	
15. Cases outside jurisdiction	55

Annual Report of the Ombudsman

January—December 1988

This is the *fifteenth* annual report of the Ombudsman and it covers the period 1st January to 31st December 1988.

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

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

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

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

Statistics

(a) Caseload

6. Cases pending at 31st December 1987	...	49
Case intake in 1988	...	201
Cases dealt with during period under review	...	250
Cases declined for want of jurisdiction	...	48
Cases declined in exercise of discretion	...	1
Cases explained	...	59
Cases discontinued	...	32
Cases discontinued in exercise of discretion	...	3
Cases not justified	...	65
Cases rectified	...	11
Cases pending as at 31st December 1988	...	31

Comments on Statistics

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

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

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

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

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

Some Comparative Statistics

10. (a) In connection with the above statistics, it is worth noting that even in Sweden, the country of origin of Ombudsman, "in the first 100 years of the Office's existence, the *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, 1987 to June 30, 1988 shows that of a total of 3,109 cases completed 1,131 were dismissed without investigation and 59 were referred to other agencies or state organs. In 1,538 cases no criticism was made after investigation, in 380 cases admonitions or other criticism was made and in 1 case proposals to Parliament or the Government were made. In no case were prosecutions or disciplinary proceedings started, although these measures are within the jurisdiction of the Swedish Ombudsmen.

(c) The Annual Report of the British Parliamentary Commissioner for Administration (Ombudsman) for 1987 (Session 1987-88) shows that a total of 677 complaints were received during that year—42 fewer than in 1986. The complaints came from 379 members of Parliament. 195 cases had been carried forward from 1986 and of the combined total of 872 complaints 656 were disposed of during the year. 509 of these were rejected; 145 full investigations were completed and the results reported to the Members of Parliament and 2 investigations were discontinued. 216 cases were carried forward into 1988 of which 148 were under investigations.

(d) The Annual Report of the Northern Ireland Parliamentary Commissioner for Administration for 1987 shows the following statistics:—

Number of uncompleted cases			
brought forward	...	21	
Complaints received ...	...	207	
			228
Rejected	...	156	
Completed and reported to Member	...	20	
Discontinued after partial investigation and reported to Member		3	
Cases withdrawn by complainant		1	
Cases settled after a preliminary investigation	...	4	
Under investigation at the end of the year	...	44	
			228

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 complainants are welcome and should there be overburdening as suspected by Professor de Smith, the

Constitutional Commissioner (vide end of quotation in paragraph 28 of this Report), an enlargement of the staff would be the obvious solution.

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

13. The curt and classic bureaucratic reply "it is regretted that your request cannot be granted" really leaves the citizen most perplexed as he does not know the reasons for the rejection of his request, specially when he sees other similar requests have been granted. The public officer cannot always afford the time to sit down and explain all the circumstances to the party concerned and in some cases cannot and should not reveal to the public all the information at his 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 judgement in making a suitable reply to the complainant. His main task is to satisfy himself whether there is or there is not any act of maladministration e.g. error, negligence, delay, discrimination, misapplication or misinterpretation of the law, etc. Sometimes, it is not the refusal to grant something but the lack of proper and complete explanation for such refusal that is at the root of the grievance.

14. The statistics should also be read together with the number of visits (see below) and in 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 nine visits to my Office during 1988 by members of the public individually or in groups. Their representations were about the Environmental Unit (Ministry of Housing, Lands and the Environment), Judiciary, Mauritius Government Tourist Office, Ministry for Civil Service Affairs and Employment, Police and the Registrar of Associations.

(b) In one (1) case the visit was followed, on my advice, by a complaint in writing. In two (2) 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. Forty-two (42) copies of complaints address-

sed to the Attorney-General, Central Water Authority, Commissioner of Income Tax, Commissioner of Police, Comptroller of Customs, Director of Public Prosecutions, 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 24 cases for want of jurisdiction, action was taken in 18 cases and case files were opened in 17 of these 18 cases.

Report and Recommendations under Section 100 of the Constitution

17. During the year under review, no complaint was found justified although in one or two cases some criticism of delay in payment of mileage credits was required but, in view of the sudden increase in the volume of work in the financial sections of Ministries following the application of the Pay Research Bureau, the few cases required more understanding than, so to say, a strict recourse to the ferule. My intervention in these cases did result in their expedition and in the payment in cash of the credits involved.

Cases Explained

18. There were 59 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 Sawer of the Australian National University, parallels can be found much earlier, between 800 and 80 B.C. in such institutions as the Roman Censor and dynastic China's Censorship called the *Control Yuan*, whose functions were to supervise the performance of officials and hear complaints in cases of maladministration. Of course, other examples of offices for the purpose of similar investigations could probably be found in other countries as well.

25. It was in 1809 too that Finland was separated from Sweden whilst retaining the institution of the office of the Chancellor of Justice. The office of the Parliamentary Ombudsman was established by the Constitution Act of Finland of 1919. "The most proximate model for the new post was the Chancellor of Justice who functioned as high guardian of the law within the executive branch." (Jorma S. Aalto, Finnish Parliamentary Ombudsman, in an article in the International 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*), 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 a 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 public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

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

Proceedings after investigation.

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

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

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

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

(f) that reasons 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, wherever they exist, should be resorted to unless in the particular circumstances of any given case it is not reasonable to expect the complainant to avail or have availed himself of such remedies.

Of course, the Ombudsman's Office cannot take sanctions but can only recommend in appropriate cases what steps could be taken to remedy the grievances. Generally, complaints if justified are rectified in the course of the investigation and whenever recommendations are made they are given careful attention. The Ombudsman performs a useful function in the sense that a mere letter addressed to him (with copy to a Member of the Legislative Assembly) sets in motion the machinery of investigation and he can, for this purpose, require and have access to files and documents, although privileged in the legal sense. There are, of course, provisions where such scrutiny is ousted but, generally speaking, investigation by the Ombudsman means going to the source.

Conclusion

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

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

Date 24th March, 1989.

R. SEWGOBIND
Ombudsman

Case Notes

ACCOUNTANT-GENERAL

Case No. C/159/87

No answer and no action re letter in case of unlicensed trader

The complaint was that although S had written to the Accountant General informing him that his (S's) tenant was running a Boarding House and selling liquor and rum without having any licences as required by law but the Accountant-General had not even replied to his letter.

The version of the Accountant-General was:—

"Whilst I should confirm that no written reply was given to S I should like to stress that it was clearly explained to him that in fact the Police had never liaised with us on the matter. He was also informed that we had on our part already refused the renewal of his tenant's licences and it was up to the Commissioner of Police to whom his letter dated 11 August, 1987, was copied, to take action against the apparently defaulting trader—vide Section 2, 3 and 15 of the Licence Act.

Further I understand that a case has been brought against the defaulting trader by the Municipality of Beau Bassin/Rose Hill. We thus had reasons to believe that the matter would be settled as far as the Municipal clearance is concerned.

You may perhaps wish to pursue the matter with the Commissioner of Police as regards alleged trading without the appropriate licences.

I am at your disposal for any further information regarding this case which I feel has unnecessarily gone to your level at this stage".

As a matter of fact judgement went against the trader and he was fined Rs 400+Rs 30 costs for trading without licences. I felt that S had a deep-rooted sense of red-tape and I was satisfied that the Accountant-General had taken action on S's letter by copying it to the Commissioner of Police.

**AGRICULTURE, FISHERIES AND NATURAL RESOURCES
(Fisheries Division)**

Case No. C/161/87

Gill net licence not renewed

N, a fisherman, complained that his gill net fishing Licence was not renewed by the Ministry of Agriculture even after the expiry of a year since its forfeiture following his conviction by the District Court of Flacq for possession of unauthorized fishing implement.

The non-renewal was in accordance with condition 11 of his gill net's licence.

When I questioned the Permanent Secretary as to why despite the lapse of a year since the forfeiture and despite N's persistent contacts with the Fisheries Officers of his Ministry he had been bypassed, as he alleged, by others, the Permanent Secretary replied to me that (a) the number of

gill net licences is limited by law to 20, (b) therefore the Ministry did not consider it fit to allow a gill net licence to remain idle for a long time, the more so as the operation of such a net is already restricted to only seven months in the course of a year. He also added that "N had not been bypassed and that he would be given priority of consideration as soon as a vacancy arises." I considered that his complaint was not justified although I could understand his impatience.

Case No. C/201/87

Statement of service not sent to present employer

G was appointed Sampler with the Cane Planters and Millers Arbitration and Control Board on 2nd July 1976. On 31st March, 1977 he joined the Posts and Telegraphs Department as Postal

Officer. He complained that although he had sent two letters in 1987 to the Board to request them to send his statement of service with the Board to his new Department for the computation of payment in cash of his passage benefits as per Pay Research Bureau Report, he had not received any reply. He therefore was in the dark as to the fate of his letters and also concerned about delay in payment of his passage benefits.

The Permanent Secretary, Ministry of Agriculture, Fisheries and Natural Resources, commented as follows:—

“Normally, searches are made in voucher rooms in respect of statement of service of former employees of this Ministry who have been transferred to other Ministries or para-statal bodies at the time of their retirement/death, whenever records of their service are not available in their Personal Files. Priority of consideration is therefore given

to those cases. Moreover, following the implementation of the report of the Pay Research Bureau, this Ministry had to attend to a considerable number of requests from other Ministries/para-statal bodies for statement of service of our former employees who were eligible for passage benefits.

Searches were being made to trace out the service of Mr. G. when we received your letter dated 8th January, 1988. The information contained in the statement of service of Mr. G is available in his Personal File which was sent to the Postmaster-General, Post and Telegraph Department on the 16th June, 1977.”

This reply was communicated to G by this Office who was asked to confirm. We never heard from him again.

CUSTOMS AND EXCISE

Case No. C/17/88

Spiteful Customs Officer

X, a travel agent, complained that every time he or his relatives returned by air from abroad, they were subjected to harassing searches of their luggage by a Customs Officer to whom X had sold a brief-case which the Officer liked very much. X alleged that because the Officer was made to pay for the brief-case he bore him a grudge.

The comments of the Comptroller of Customs, on my intervention, were:

“An enquiry has been made and has revealed the following:—

- (i) Officer... was not on duty on 23rd August, 1987
- (ii) It appears quite improbable that Officer... has asked ADSU officers to search the luggage of Mr. X when he himself is empowered to carry out such search.
- (iii) On 10th January, 1988 duty was correctly levied after the normal allowances were granted to the passenger.

Officer... has denied having purchased a brief case from Mr. X. It is not the first time that Customs Officers are subject to such criticism when the work has been correctly done. Officer

... has so far done his job very satisfactorily and no adverse report has been received. I can not blame him for good work done.

I can understand X's attitude, a travel agent, when he is subject to some control. It appears that Mr. X travels a lot and was not subject to searches in the past. Nothing in the customs legislation provides that he shall not be subject to examination and checked”.

I found the complaint not justified as X clearly and wrongly thought that he should not be subjected to customs control as any other passenger.

Case No. C/133/88

Non-delivery of a consignment of shrimps

The complaint was that some Customs Officers were unfairly holding a suitcase containing shrimps for want of “tag No. Identification mark” or a letter from the Responsible Officer of the host baggage counter at Plaisance Airport. The complainant thought he was blacklisted by the Customs Officers and that is why they were creating unnecessary problems about the identification of the owner of the suitcase. He even suggested that the main reason was “Pe rode la monnaie” (they are expecting bribe).

When asked for his comments and those of the officers named in the complaint, the Comptroller of

Customs sent me photocopies of the complaint and the explanations of the officers concerned. His own comments were as follows :—

“All goods stored in a Queen’s warehouse (Government owned warehouse in which seized goods pending sale or payment of duty are kept) are released after production by the owner of the goods of either a Customs detained receipt, or a delivery order from the agents of the aircraft or ship or a sales note from the auctioneer.

Besides payment of any duty or other taxes payable on any goods stored in a Queen’s warehouse, a warehouse rent is payable before delivery. Payment of the rent as well as the quantum payable is provided under section 76 and section 44 respectively of the Customs Act.

The allegation of Mr that he should have “*glisse la monnaie* as is the normal practice with some of our officers” has been referred to the Commissioner of Police for inquiry. No reply has been received yet. The reports of the officers concerned on that matter is quite convincing.

The other allegation of Mr that he has been put under a black list is also unfounded. All Customs formalities have to be completed before release of goods from Customs. Normally priority is given for the quick clearance of

perishable goods (shrimps). In this connexion, documents concerned are checked at Customs Headquarters. Customs Officers ensure that these documents are correct and carry all required information. When documents are rejected and clearance of goods delayed through lack of correct information, people tend to think that they are being harassed.”

The following comments of the officer directly concerned are interesting :—

“However, as he was unable to produce evidence (tag No. identification mark or a letter from the Responsible Officer of the host baggage counter at Plaisance Airport), I refused to release the suitcase to him. Mr.....got excited and addressed me in the following terms—(foul language and threat).

A few minutes later after he had calmed down, he came back and told me that the suitcase contained his personal diary with his name and address written therein. He was allowed to examine the contents of the suitcase but nothing was found.”

In my opinion the Customs Officers acted properly in insisting on evidence of ownership of the suitcase before handing it over to the complainant.

EDUCATION, ARTS AND CULTURE

Case No. C/202/87

Unjustified naming of primary Government school

The President and the Secretary of the Parent-Teachers’ Association of the Government primary school in a village X complained to me on 24th December 1987 that their Association had just been informed by the Ministry of Education, Arts and Culture that their school would be re-named T school. They argued that Mr. T was a man of another village and had done absolutely nothing for the welfare of village X, their inhabitants or their school and were therefore protesting against the proposed appellation.

They stated that they had proposed to the Ministry the name of another gentleman, the late M, “who had devoted quite a long period of his life with the village people and had contributed much in the welfare of the people and their interest,

especially in social, cultural and educational aspects.” But the Ministry had not taken any heed of their proposal and was about to impose the name of T. They further stated that if the Ministry did not revise its decision they would organise a sit-in at school and hold a press conference. They asked me to intervene.

The comments of the Permanent Secretary, Ministry of Education, Arts and Culture after my intervention were :—

“It is the policy of Government to name Government primary and secondary schools after well known *deceased personalities who have contributed to social, cultural, educational or economic development.*

In line with this policy, on 13th August, Government decided that the village X Government School should be renamed after Late Mr. T.

In November 1987, a request was made by the Parent Teachers' Association of village X Government School for the school to be named after Late Mr. M, former Head Teacher who worked at the school. A similar request was made by the President of the Arya Samaj Federation of a neighbouring village. Copies of letters are attached.

The Secretary of the P.T.A was informed on 10th December that the school had already been named after Mr. T. On 24th December, the Secretary of the Parent Teachers' Association requested the Ministry to name the school after Mr. M and informed it that if a reply is not made by January 1988, the P.T.A. will organise a sit-in. Copy of letter is attached.

On 29th December, Government decided that the naming of Village X Government School after Late Mr. T should not be proceeded with for the time being. The Secretary of the P.T.A was informed accordingly on 30th December. Copy of letter is attached."

I communicated the reply of the Permanent Secretary to the complainants. It is clear that when the complainants wrote to me (24th December 1987) they had not yet received the reassuring reply of the Ministry (dated 30th December 1987). The Ministry had stayed its action after receipt of the complainants' protest and before my intervention.

Case No. C/166/88

Admission to Primary Schools below 5 years

A father who was a government pensioner wrote to the Permanent Secretary of the Ministry of Education, Arts and Culture making a plea for the admission of his daughter from an Infant School to a primary school although age-wise she was disqualified being not yet 5 years old before January of the year of admission.

As the letter was copied to me, I queried the Permanent Secretary, although I knew what the answer would be in view of the legal provisions.

In fact the Permanent Secretary's reply came and read as follows:—

"According to existing regulations, only children having attained the age of five the year preceding their admission to a primary school shall be admitted.

As child will be five on 8 January 1989, she does not qualify for admission in January 1989."

I communicated the reply and added that it was in accordance with the law. There would be no limit to exceptions once made and this, it can be seen, would create problems of classrooms, staffing, etc..

FINANCE

Case No. C/130/88

Non-restoration of full pension

E who on retirement as a Civil servant had opted for a gratuity and a reduced pension made a plea to the Ministry of Finance for the payment of his full pension for the remainder of his life since he considered by a rather strange reasoning that he had "refunded" during 24 years the gratuity paid to him by Government.

He expounded his specious logic thus in his letter to the Financial Secretary:—

"That 90%, if not more, of people who retire from the Government Service opt for a reduced pension plus a Gratuity. They are bound to do so because the gratuity help them either to clear outstanding debts or purchase a little house to shelter their old days. They accept to manage with the meagre reduced pension although they

have to wade through rough surfaces for life; because they can't do otherwise. They refund this gratuity within 12½ years if they survive this period. Those who outlive the 12½ years after their retirement still continue to refund the gratuity which is in fact an allowed part pre-payment of their pension. For those who die before the complete refund of that gratuity their pension is stopped accordingly and this stoppage of pension compensate any unpaid balance of gratuity. It follows therefore that in no case Government is on the losing side.

It may be claimed that at the moment of retirement the to-be pensioned is given an option and it is up to him to choose between a full pension or a reduced one plus a gratuity. The preceding paragraph explains why most of them opt for the reduced pension. It is worthy to note here that when this ordinance was enacted long ago

the lease of life of a pensioner was rarely more than ten years survival of his retirement whereas now with the progress of science, medicine and improved sanitary conditions, a pensioner can expect to reach the age of 75 years and thus refund the gratuity paid to him during 15 years instead of 12½. In my case I have already refunded during 24 years and I continue to refund”.

The Financial Secretary eventually replied to him that his request for the “restoration” of full pension cannot be met.” E then complained to me and asked for my intervention. The only thing I could do was to ask the Financial Secretary to give me the reasons for the turning down of E’s request.

The reply of the Financial Secretary to me came and read thus:—

“The Establishment Division of the Prime Minister’s Office was consulted on the issue before making a reply to Mr. E. You would wish to know that the matter of restoration of full pension after 12½ years, has been raised on many occasions in the past by Government Pen-

sioners either individually or through their associations. They have always been advised that their request cannot be granted.

The main reasons for not acceding to such requests are as follows:—

The law provides for an officer to exercise option to commute a proportion of his full (non-contributory) pension and to receive instead a lump sum and a reduced pension. This option is exercised by the officer in full freedom and in the light of what he considers to be in his own interest at the time, and the law states that the option is irrevocable. To speak of the lump sum as a sort of refundable loan is a misconception which will hardly be appreciated in cases where the pensioner dies before the end of the period of “repayment”. The restoration of the full pension after 12½ years would also be unfair to those who elect to be paid a full pension, which is taxable, whereas a lump sum is free of income tax.”

I could not but agree with the Financial Secretary and concluded that E’s grievance against the Ministry of Finance was unfounded.

HEALTH

Case No. C/185/87

Action required re. noise and other nuisances

See Case report under heading “Industry” C/190/87. The same case concerning both the Ministry of Industry and Ministry of Health.

Case No. C/78/86

Insufficient action re noise and smoke pollution

W’s complaint dated 26th May 1986 was that he had requested the intervention of the Ministry of Health several times since 1983 to stop the noise and smoke pollution caused by an electric bakery adjoining his own residence but the Ministry did not seem to take sufficiently strong action in the matter.

My investigation revealed that the Principal Sanitary Engineer and the Engineering Assistant had visited the bakery and the residence of W in company of the Acting Principal Medical Officer (Preventive) as far back as October 1986 and they had concluded after monitoring the noise that—

“(a) the noise levels registered on complainant’s

premises are well below the permissible level of 60 db for residential areas and moreover, the noise was of a buzzing nature; and

(b) as the noise level was within permissible limits, no legal action could be envisaged.”

W had in the meantime made the suggestion to the Ministry that the oven and the electrical machinery of the bakery be moved to the other side of the bakery near the bridge and this was even approved by the Principal Medical Officer, as he considered that decibel was not the only decisive factor for consideration in matters of health problems.

Accordingly, a notice was served on the bakery’s owner to effect the changes as suggested above but the owner did not comply with it and appealed against the Notice to the District Magistrate. His appeal was granted and the Notice was discharged on 22nd January 1988. My investigation stopped in face of this judicial decision. The Ministry had attended to the case of W with diligence until the judiciary’s decision.

Case No. C/7/88

**Not informed of need for laser treatment
for eye**

G's complaint was that the Eye Specialist who was treating him at the Eye Hospital never told him that he required laser treatment for his eye trouble. It was only when he consulted a specialist in Bombay that he was informed of the gravity of the situation which required laser treatment. As he could not afford the heavy expenses for such treatment in U.K. he was sure he was heading for total blindness.

I started investigation to find out whether there was an instance of maladministration and not to question purely medical or clinical judgment.

I was sent a full medical report signed by the Eye Specialist on the case of G. There is no need to dwell on the nature of his affliction and the treatment. But certain parts of the report tend to show that if there was any lack of seriousness in this case it was surely on the part of G as is evidenced by the following facts gathered from the report:—

"On 25.11.85 the specialist informed G of his real diseases in the light of the blood analysis and advised laser treatment stating that such treatment was not available in Mauritius. Thereupon G said he could not afford it. He said in his letter dated 29.4.87 to the Minister of Health that he was so informed only in August 1986. It was clear that had he seen the specialist on 26.8.85 as per appointment all this information would have been imparted to him on that very date—an early date in view of his first visit to the Eye Hospital (25.6.85). But he failed to call."

I also noted that several times he did not call on the specialist on the appointed day. He called whenever he wanted and yet the specialist was sympathetic and saw him.

The report of the Bombay specialist showed no name and qualifications, no signature, and no date and no mention of laser treatment. In my view, he could have advised G where to have the laser treatment, either in India or London if he had asked.

The evidence did not show any act of maladministration on the part of the specialist of Moka. On the contrary G himself failed to attend on appointment fixed by the specialist. Consequently, delays ensued.

Case No. C/13/88

No action re. noise nuisance

R's complaint dated 16th January 1988 was that (a) the operation of a garment factory close to his residence in Forest Side was a source of health nuisance to him and his family, especially his old mother who was suffering from a nervous depression and was dependent on tranquilizers, (b) in reply to his complaint to the Municipality concerned, he was informed that his complaint had been noted, that no development permit had been granted to the factory owner and that steps would be taken to stop the activities of the factory operating without such a permit and (c) the Ministry of Health too had not done much to cause the noise nuisances to cease.

I could not question the Municipality for want of jurisdiction. The first reply dated 22nd April 1988 of the Permanent Secretary, Ministry of Health, to me was:—

"The factory was doing knitting work only;

There were twelve knitting machines (manually operated) and six looping machines using a single electric motor of $\frac{1}{4}$ H.P.

The noise produced by the knitting machines under operation could be heard in the kitchen of complainant and was of low intensity. The looping machines, however, did not produce any noise.

Mr, the father of complainant gave his consent to the setting up of the factory on the premises occupied by Limited. They both reside in the same building adjacent to the building.

This Ministry expressed no objection to the application made by Limited for a development permit to operate as a knitting factory provided *inter alia* that the factory should operate during normal working hours only. Such permit has now been granted by the Municipality concerned."

On being informed of the above reply, R maintained that the noise was unbearable etc.

Asked to comment on R's insistence that the noise nuisance was very real, the Permanent Secretary informed me on 9th September 1988 that the factory was moving to a new site at Vacoas by the end of September 1988. In fact on 3rd February, 1989 the Permanent Secretary confirmed that the factory had moved to Vacoas since 15th October 1988.

It appeared that the Ministry of Health's Inspectors were visiting the factory on receiving the complaint of R and that eventually that led to the transfer to another site. All's well that ends well!

Case No. C/33/88

Waste land used as dumping ground near residence

N's complaint to the Ministry of Health (with copy to me) dated 15th February 1988 was that his neighbour had an unfenced plot of waste land near his (N's) residence and people were using it as a dumping ground for all their garbage and refuse. His requests to the owner to have the plot fenced were just ignored and he said that the "situation is most uncomfortable to my family". There were also "health hazards".

Replying to my query the Permanent Secretary, Ministry of Health, said:—

"An inspection was carried out by staff of my Ministry and it was found that the complaint of N was justified.

On the 11th March and 15th March 1988 Notices were served upon the owner of the waste-land in question to have it cleaned and cleared of all refuse and overgrown vegetation.

As the owner failed to comply with the above Notices, contravention was established on the 29th March 1988. The Magistrate of the District Court of Port Louis heard the case on the 16th May 1988 and found the owner guilty as charged. He was asked to comply with the Notice by the 10th June, 1988.

Following a further inspection by the Health Inspectorate, it was observed that the Notice had been complied with on 13th June, 1988."

When he received a copy of this reply from me, N thanked me but said that he was unaware of the action of the Ministry. I also note that such action was taken, as soon as his complaint was received at the Ministry which is therefore not to blame.

Case No. C/153/88

No action re health nuisance

P complained to the Ministry of Health about the unbearable noise caused by a workshop producing brushes by means of electric machines close to his residence. He complained to me of inaction on the part of the Ministry.

After my intervention the Permanent Secretary's explanation was:—

"Our officers visited the factory situated at . . . Avenue, Quatre Bornes, several times. It was observed that the Workshop was run by . . . to

manufacture brushes. It started operating in 1977 and was subsequently mechanized in 1979. A development permit was issued by the Municipality of Quatre Bornes in 1983 without consultation with this Ministry. The Workshop is however, registered with the Factory Inspectorate of the Ministry of Labour.

The Workshop is housed in a concrete building covered with corrugated ironsheets and is situated at about 20 metres from P's residence.

During the visits it was observed that there was no noise nuisance. It was further noted that more noise was produced by a saw mill situated opposite P's house than the Workshop."

Clearly, the complaint of P seemed rather a result of some bias against the brush manufacturer.

Case No. C/156/88

No action to prevent health nuisance

R sent me copy of a letter dated 24th August 1988 which he had addressed to the Permanent Secretary, Ministry of Health, complaining of the health nuisance caused by a poultry-dealer (his neighbour) by slaughtering and dressing fowls on his premises. In his covering letter dated 8th September 1988 he said that no action had been taken by the Ministry so far and he had received no reply to his letter.

I took up the matter with the Permanent Secretary on 19th September 1988 and the latter replied on 26th October 1988 as follows:—

"Mr. I who holds a licence to sell live poultry and eggs which he receives from Rodrigues is the author of the inconvenience about which Mr. R is complaining. He keeps any fowl which he has not been able to sell during the day on the ground floor of his house which is adjacent to the house of Mr. R. There is no legislation prohibiting this practice.

On 9th June 87 Mr. R complained for the first time that the poultry of Mr. I was inconveniencing him. His complaint was looked into. Mr. I was found slaughtering and dressing chicken for sale without a permit. He was prosecuted and fined Rs 100 with costs.

On 5th November 1987 and 19th April 1988 Mr. R complained again. His complaints were immediately looked into but no cause of nuisance was found. Mr. R was so informed.

On 29th September 1988 during another inspection Mr. I was caught causing a nuisance. This case has not yet been fixed for hearing. Mr R will be informed as soon as the outcome of this case is known.

Mr. I has been warned that if he is again found guilty of being the author of a nuisance

his licence to sell live poultry and eggs may not be renewed."

From the reply it was evident that the Ministry had been attending to his complaints effectively and promptly. The reply was communicated to him and he did not make any remarks. I found his complaint of the Ministry's inaction unjustified.

HOUSING, LANDS AND THE ENVIRONMENT

Case No. C/86/86

Obstruction of access to public beach : No action

J complained to me that he could not go to the public beach in the south owing to the fact that the access had been obstructed by a hedge close to a bungalow. His complaint to the Ministry of Housing, Lands and the Environment remained without a reply.

A first reply dated 1st August 1986 to me from the Permanent Secretary explained that :—

"It would appear that a six foot public access does exist on the site referred to by Mr. J in his letter dated 23 June. There is presently a four foot hedge alongside the access.

Before clearing the access, this Ministry proposes to undertake a survey of the Pas Geometriques concerned in order to fix and mark the boundary lines separating the land on lease from the access.

We will inform you of the position as soon as action as above is completed.

A copy of the reply made to Mr. J is enclosed."

Later, on 13th October 1986, the Permanent Secretary informed me that the survey in question would be completed by the end of October and that I would hear further.

In March 1987 the Permanent Secretary informed me that the owner of the bungalow close to the hedge was requested by letter to cause all the hedges standing on the strip of land **not** leased to him to be removed urgently. Until April 1987 the owner had not complied with the Ministry's request and therefore the Ministry initiated arrangement to find out if the D.W.C. could remove the obstructing hedges. But the Corporation replied to the Ministry that they were unable to do so.

Thereupon the Ministry again urged the owner to effect the removal failing which it would do so itself and claim the cost from him. The owner did not take any heed of these requests.

When reminded of the case, the Permanent Secretary finally explained on 12th October 1988 that :

"It is very much regretted that progress on the matter was not reported to you earlier.

The Development Works Corporation was approached last year to clear a 6-foot wide passage at Pointe d'Esny. However the Corporation could not undertake the work, its labour force being fully engaged on other projects. It would seem that the matter was lost sight of until May this year when the matter was re-examined on receipt of your letter. An inspection of the site has shown that the hedge still stands. As it cannot be proved that the hedge has been planted by the lessees, this Ministry has contacted the Central Housing Authority and has requested them to clear the passage in question.

You will be informed as soon as the work has been completed."

At last on 16th January 1989 came a letter from the Permanent Secretary informing me a 6 foot wide passage had now been cleared by the Central Housing Authority except for a "*cassia florida*" and four filao trees which still stood on the land but these trees did not prevent the public from having access to the sea.

I appreciate that the Ministry had to tread carefully in deciding what steps to take and so had a survey carried out, sent notices and finally found the Central Housing Authority to do the work. What mattered was that the situation was rectified. No legal action could have been taken as there was no evidence as to who had planted the hedge/s.

Nuisances caused by dyeing factory

L complained on 4th February 1987 that (a) the operation of a dyeing factory in his area was causing nuisances: discharge of effluents, unbearable noise especially at night. His whole neighbourhood was subjected to the same environmental and health problems and (b) he had alerted the Ministries of Environment and Health without any solid result except that he was assured that "action is being initiated in view of the formulation of a comprehensive and rational solution to the environmental problem". But until this ambitious and very laudable object was attained they were bound to face the various nuisances and their consequences.

This case was followed up until September last year by me and all along some improvements were made by the factory management under pressure of the Ministry and of this Office. In order not to relate the whole Iliad of woes of the complainant and his neighbourhood and the different actions of the Authorities concerned, I prefer to reproduce hereunder the first reply (dated 7th April 1987) of the Permanent Secretary, Ministry of Housing, Lands and the Environment and another (dated 9th September, 1988):—

"Following the representations made by Knitting Fabrics Ltd. of, was visited in January and the Manager was requested to take remedial action to abate the pollution problems caused by the factory. In February, the Ministry of Health was asked to look into the matter. No reply has been received to this Ministry's letter to that effect but in March the Manager forwarded a copy of his reply to the Ministry of Health in response to a notice served on the Company and wrote to say that work had already started on the construction of an "absorption pit cum treatment plant" to deal with the effluents.

Another site visit was carried out in March and a copy of the report following that visit is enclosed. It was found that the factory is in fact mislocated and that the management would not be able to redress the various problems to an extent which would stop the nuisance caused to the surrounding residential area.

It is therefore proposed to advise the District Council:—

- (a) to impose limitations on the working hours of the factory between 8.00 a.m. and 5.00 p.m. and to restrict work to normal working days only. Enforcement of this

condition is however doubtful being given that no limitations were imposed on working hours in the development permit granted to the company in 1982. A photocopy of the development permit is enclosed;

- (b) to request that all liquid wastes from dyeing processes are transported away from the factory by tanker lorries.

It is observed that the development permit of the Company expires in November 1987. Appropriate action may have to be taken on renewal if the environmental problems have not been satisfactorily dealt with by that time."

L commented on the reply as follows:—

- "(a) The said factory is operating on a 24-hour basis.
(b) The permit is for knitting but dyeing processes are being carried out.
(c) The effluents are allowed to flow into a piece of waste land behind the factory premises and stagnate there thus causing unbearably foul smell etc.
(d) A hole as an absorption pit has been dug but no treatment plant is there.
(e) The effluents also accumulate on the road and are but rarely collected by the District Council's scavenging service.
(f) I welcome your decision to advise the District Council to request the Company to dispose all wastes from dyeing processes by means of *tanker lorries*."

L also added:—

"It is hoped that in due course your Ministry, true to its appellation as protector of environment, will prevail on the District Council to impose such conditions at least when renewing the permit after expiry in November 1987 and that you will keep this Office informed."

Another reply dated 9th September 1988:—

"This office has been advised of the following:

- (i) that a second decantation pond has been constructed for the treatment of effluents from the dyeing plant of the Knitting Factory;
(ii) that the effluents are being chemically treated with flocculating agents, COLFL OC 3915 and LEVAFLOC R to remove all residual dyes;

(iii) that treated effluents are being pumped regularly onto lorry cisterns and disposed of at the Roche Bois Sewerage Pumping Station; and

(iv) that there are no more fumes and soot being emitted from the chimney of the factory as a result of improvements to the burner on the boiler for more efficient fuel combustion.

Further, the Managing Director of the Factory has informed this Ministry as a gesture of good faith and patriotic concern with national environmental problems, a new "Low-Liquor" dyeing machine has been ordered which will consume less water than the conventional machines and which will reduce the possibility of pollution to a negligible degree."

Recently I read in the press that environmental problems caused by dyeing factories were being discussed at the highest level including the World Bank and the Government and a global remedial measure is about to be introduced. The solution suggested is a special dyeing factories' zone with proper discharge facilities, thus avoiding environmental problems. Such factories are scattered in many places in the land. Hence this national approach.

In this connection I think it proper to state that in a letter dated 11th November 1988 to the Permanent Secretary, Ministry of Housing, Lands and the Environment, I wrote the following:—

"Could you please discuss these problems with your Minister who is personally concerned with environmental problems to find a solution since some other neighbours of L too are subjected to the same afflictions and let me know?"

The following reply of the Permanent Secretary dated 1st February 1989 seemed to indicate that the problems caused by dyeing factories were occupying the minds of authorities at the highest levels seriously:—

"As already communicated to you, the environmental problems afflicting the complainant and his immediate neighbours stem from the mislocation of the enterprise and its dyeing plant.

Nonetheless, this Ministry has been actively following up the issue with the various authorities concerned and several improvements have, as a result, been carried out as transmitted to you under cover of our letter dated 9th September, 1988, in the same series.

However, it would now appear from your letter dated 11th November, 1988, that these improvements have further compounded the problems instead of abating the nuisances.

This Ministry is now proposing to convene shortly a meeting of the Ministries and departments concerned to thrash out the issue and come up hopefully, with significant and lasting remedial measures.

A further communication will be addressed to you in due course."

Homer's Iliad had an end (an uneasy truce though) and it is hoped that the Iliad of woes of the complainant and of many like him will also soon come to an end.

Case No. C/49/87

Stranger claimed part of land leased to complainant's parents

L complained to me that a plot of land of 5½ perches which had been leased to his late father had been occupied by his widowed mother and his sister. The plot had been occupied by his parents since 1962. After their death, with the agreement of all the heirs he and his sister remained in occupation, he taking the rear part and his sister the front part of the plot.

In 1985 L received a letter from the Ministry ordering him to remove a fowl-run which was on the plot. He was also intrigued by the fact that a stranger called on him and said that the plot was his.

After some correspondence the Permanent Secretary of the Ministry sent me the following reply:—

"The facts of the case are as follows—

(a) L's mother was granted a building site lease over lot 42 of Crown Land of an extent of 0A09, shown edged red on the enclosed plan, for the period 1st January 1957 to 30th June 1962. The lease continued on tacite reconduction after its expiry;

(b) the mother died on the 8th August, 1974. In January 1984, the heirs applied for the transfer of the lease in the name of two of them and submitted an affidavit establishing the estate and succession of the late lessee. On the 21st November, 1984, they were informed of Government's decision to grant them the use and occupation of part of lot 42 of Crown Land of an extent of 0A05 ¼ on the conditions, among

others, that they would designate one person who would take up the lease in his name, and remove a fowl run standing on the remaining part of the land of an extent of 0A03 $\frac{1}{4}$, shown edged yellow on the plan;

- (c) in May 1986, they applied for the deed to be drawn up in the name of two of the co-heirs. Approval of this request was not sought because it is not the practice to grant a building site lease in the name of two persons;
- (d) in April 1987, the heirs applied for the drawing up of the lease in the name of L. Approval has now been obtained for the lease of part of Lot 42 of Crown Land . . . of an extent of 0A05 $\frac{3}{4}$ to L and he will be informed accordingly soon;
- (e) Lot 42, of an original extent of 0A09 was sub-divided into two lots of 0A05 $\frac{3}{4}$ and 0A03 $\frac{1}{4}$ in order to provide two building sites and C (the "stranger") has been granted a lease over the remaining part of an extent of 0A03 $\frac{1}{4}$, shown edged yellow in the plan. The lease agreement was signed in March;
- (f) possibly, C is not fully aware of the limits of the land leased to him. It is proposed to indicate to him, in the presence of L, the limits of the land leased to him."

Not hearing any further from the Permanent Secretary about the case of L and in view of the anxiety of the latter, the Permanent Secretary was pressed for an early reply.

Finally on 25th January 1988 the following reply from the Permanent Secretary reached this Office:—

"L has been granted a building site lease over part of Lot 42 of Crown Land . . . of an extent of 242.7 sq. metres from January 1988 to the 30th June 2005 at annual rental which is being assessed and which will be communicated to him later. I enclose copies of letters of the 14th January about the offer of lease and the request to the Principal Government Valuer for assessment of the rental.

Building site leases are granted at the concessionary rental of Rs 150 per annum to persons whose income does not exceed Rs 3,000 per month and whose spouse or themselves are not already landowners. As Mrs. L owns a plot of land of about 0A07 at Chemin, Terre Rouge, an economic rental is claimed from L in respect of the land leased to him.

The limits of the adjoining land leased to C were indicated to him in May, 1987.

The delay in replying is regretted."

At my request L and his wife called at my Office and I advised L to call on the Permanent Secretary as soon as possible in order to finalize the lease allocated to him. I also explained that as a matter of policy Government through the Ministry was reducing large plots by dividing them into smaller plots for allocation for building purposes to small income groups.

Case No. C/183/87

Delay in amending lease

O had applied for a loan on mortgage to the Mauritius Housing Corporation for the purpose of building a house on a plot of Crown land leased to him in 1985 for ten years. The site was within a Central Housing Authority estate and the lease was renewable at his option.

The Mauritius Housing Corporation wanted him to obtain a lease for 18 or 20 years so that he could be granted the loan applied for. On 1st December 1987, O complained that the Ministry of Housing, Lands and the Environment was taking an undue length of time in dealing with his application and he ran a real risk of not obtaining the Mauritius Housing Corporation loan.

On 23rd December 1987 the Permanent Secretary of the Ministry replied to me:—

"Legal advice was obtained in June 1985 to the effect that all building site leases should be for a minimum of 18 years. Building site leases granted by the Ministry are since being made or renewed for a period of 20 years with rent at Rs 150 p.a. up to 1995 and Rs 225 p.a. for the remaining period. The Minister is likewise considering reviewing Crown land lease rentals of CHA tenants/purchasers from the present nominal rent of Rs 1 p.a. to Rs 150 p.a. reviewable to Rs 225 p.a. and has agreed to extend the period of such leases to 20 years.

A subsequent reply will be made to you as soon as a decision is reached on the Crown land rental payable by CHA tenants/purchasers."

After some correspondence between the Ministry and this Office, the Permanent Secretary finally informed me:—

"The Central Housing Authority has been asked to take necessary action for the amendment of the lease held by the above-named so that the

remaining portion of the lease and the extended period be not less than 18 years, in order to meet the requirements of the Mauritius Housing Corporation for the grant of a loan."

Delay certainly there was but the explanation was that legal advice had to be sought and the Minister had to fix the new rents.

O was informed accordingly. He never made any further remarks.

Case No. C/34/88

Plea for regularizing situation of Crown land squatters

On 7th October 1987, Mrs K complained that (a) she and a large number of squatters on Crown land in a region of Port Louis had seen the then Minister of Housing, Lands and the Environment and pleaded to regularize their situation by granting them building site leases. The Minister, she said, called a high-grade officer and ordered him to give "top priority" to their case in preparing the leases and (b) but even after a lapse of 4 months since that meeting "nobody had come to measure the land."

Mrs K sent me photocopies of the instructions of the Minister to regularize the situation of the squatters.

Replying to my query, the Permanent Secretary of the Ministry stated on 30th March 1988:—

"I am informed that it has not been possible to trace out any application that may have been made by the three persons whose names are mentioned on the annexes to your letter. An inspection of the crown lands at.....was carried out in 1984 to identify squatters and from the reports available in this Ministry, it would appear that the persons in question were not occupying the lands that were surveyed.

Over 150 applications for the regularisation of illegal occupation of crown lands at.....were received in 1987 and the then Minister approved in principle to regularise the situation. However, you will appreciate that the final approval will depend upon a close examination of the results of a survey of the area which it has not been possible to effect yet because of the conditions prevailing in that locality. Because of the large number of squatters involved, such exercise will require a lot of time.

The matter is however being kept in view and arrangements will be made for the appropriate survey to be carried out as soon as circumstances permit. A full list of squatters involved will then be drawn up and submitted to my Minister for his formal approval."

A copy of this reply was sent by post to Mrs K and others at the address given by her but it was returned to this Office by the post with mention "unknown".

I therefore discontinued the investigation at this stage.

Case No. C/41/88

Encroachment upon leased plot and on access

P was the lessee of a plot of 0A 7½ of Crown land (Lot 7/15/3) and had built a house in concrete thereon. He complained that (a) later his land was encroached upon by the building of a government post office without amending the extent of his plot in the lease, (b) that he was paying rent for the original plot, (c) he had no access to the Royal Road and (d) in front of his house there was a bar which was a source of nuisance.

The Permanent Secretary of the Ministry of Housing, Lands and the Environment replying to me commented as follows:—

"Lot 7/15/1 of Village of an extent of 0A08 (337m²) shown edged red on attached plan was put at the disposal of the Ministry of Communications for the construction of a Post Office.

The Post Office has however been built over a plot of Crown Land, shown edged green on plan and the area has been fenced, thus encroaching on part of Lot 7/15/3 shown edged purple on an extent of 42m² shown hatched green. A portion of land of an extent of 158m² shown hatched blue has been left vacant.

The portion of land of 42m² shown hatched green forms part of Lot 7/15/3 is presently leased to Mr. P. The latter has informed this Ministry that he has no objection to the encroachment made by the Post Office and has signified his acceptance to sign an amendment to the lease (copy of letter dated 21st December, 1981 is enclosed).

In 1981, the plot of land shown hatched blue was squatted upon by Mr and in 1987 his case was regularised and he was granted a lease for residential and commercial purposes.

An access road of 3.05m wide has been provided to Mr. P but has not yet been built. He has built a septic tank on the proposed access road, and stumps of trees which have been cut are still on the land."

A copy of the plan and P's consent in writing about the encroachment and his acceptance in writing to sign an amendment to his lease were also sent to me by the Permanent Secretary.

P called at my Office and was informed of the reply and was shown the plan. He denied having ever written any letter expressing consent as alleged.

When asked for further comments, the Permanent Secretary explained :—

"As requested the matter has again been investigated but no comments can be offered on Mr. P's denial of having written a letter dated 21.12.81 authorising an encroachment on the land leased to him.

According to the records available in this Ministry, the lessee of lot 7/15/3 of . . . Village has an official access through a road, 10-foot wide marked PRXY on the attached plan. A site visit carried out on the 19th August has revealed that this access road is open only from X to Y whereas a one-metre wide road has been opened from X to Q (as shown on the plan) and is being used by other lessees of Crown land in the area."

During one of his visits to my office P was asked to write a few lines without looking at the consent letter alleged to have been written by him. In my considered opinion, the handwriting was strikingly similar, although the signature varied a little. But not all people sign always the same way. Some letters do get twisted this way or that.

After some discussion and after taking cognizance of the Permanent Secretary's explanations and the plan attached thereto, P felt satisfied mainly because of the new access provided which led from his house to the Royal Road. He did not seem keen on pursuing the question of encroachment or amendment of his lease. I marked this complaint rectified.

Case No. C/177/88

Crown land leased to complainant's family forfeited

The widow of the lessee of a plot of Crown land alleged that after her husband's death she and other co-heirs continued occupation of the plot as "lessees"

Then one S started occupying the plot leased to them and a part of her late husband's land — both being contiguous. According to her an action was entered by her and the co-heirs against S for his trespassing and the Judge in Chambers granted them a writ **Habere facias possessionem** ordering S to leave, vacate and quit "both lands" i.e. the Crown land and their private land.

The widow further complained that despite that judgment, the then Minister of Housing, Lands and the Environment informed her by letter that "Government was taking back possession of the land leased to us as from 1.7.87". She and her coheirs were also surprised to see that the same plot was leased to S "against the judgment".

The Permanent Secretary replied to me as follows :—

"It is a fact that the land in question was leased to heirs of V since 1965. The lease was verbal.

S was illegally occupying the portions of land mentioned above. He applied for the transcription of an affidavit prescription for a portion of land of the extent of 0A 12 7/10 which comprised the private property belonging to heirs of complainant's husband and the two portions of crown lands leased to them.

The heirs objected to the transcription and applied to the judge in chambers for a "writ habere facias possessionem" against S.

In February 1987, judgment was delivered against S who was ordered to vacate said land.

In the meantime S who had already started to construct a concrete house on the land, made representations to the Minister in order to regularise his case.

After judgment had been delivered, the Minister decided that Government should resume possession of the crown land in question and lease it to S as from July 1987.

The complainant was informed accordingly."

As the complainant and her co-heirs were inheritors of a plot of land left by the **de cujus**, the Ministry (indeed the Minister) was perfectly free to take back the Crown land and lease it to S. The complainant and her co-heirs had misconstrued their application for the writ in thinking that both plots were the subject-matter of the judgment whereas in fact they had objected to the transcription by S. This could only relate to private property and not to Crown land (*domaine public*) as Crown land is *imprescriptible* (Section 35 of Crown Lands Act).

Case No. C/192/88

No action re proposed industrial building by neighbour

S's complaint was that he had written both to the Ministry of Works and to the Town and Country Planning Board (the latter being an organism under the Ministry of Housing, Lands and the Environment) regarding the proposed construction and the digging of the foundation lines but so far he had not had a reply or seen any sign of any action. He said that the industrial building, if constructed and on coming into operation, would be a definite source of noise pollution to the detriment of his family.

Replying to my query the permanent Secretary, Ministry of Housing, Lands and the Environment stated :—

“The Town and Country Planning Board has requested the developer, Mr. M, to stop all site works pending obtention of a development and building permit.”

This reply was communicated by me to S who did not make any further comments.

Case No. C/193/88

Plan for building on Crown land not approved

R's complaint was that although he was the lessee of a plot of Crown land, the Ministry was not

approving his building plan although submitted. The plan, he said, was prepared by a fully qualified architect from the University of Nancy. He wanted to build a decent house for his family.

The comments of the Permanent Secretary of the Ministry on this complaint were :—

“In our letter dated 16th March, 1987, Mr. R was given a delay of six months to erect a building. However, it is only in October this year that he has submitted his plans for approval.

These plans have not been approved because the proposed building is considered to be of a very high standard and does not reflect the policy of granting building sites to persons of the low income group only.

In a letter dated 13th December, Mr. R has been requested to modify his plans. Copy of letter addressed to him is attached herewith.”

The policy of the Ministry in granting leases of plots of Crown land as building sites is not meant to cater for the sophisticated people but for those who are of the low income group who require a small but decent roof. The demand for such sites from this group is already high. R had only himself to blame for any delay. Anyway he had been requested to modify his plan as suggested.

INCOME TAX

Case No. C/194/88

Taxed twice

On 18th November 1988 X complained to the Commissioner of Income Tax that (a) he always had his income deducted from his emoluments through his employer, (b) then he found out that “during the last three or four years” he had in effect been taxed twice and was required to pay accordingly, (c) there were at the Income Tax Office two files on the same name as his and (d) despite his visits and representations to the Income Tax Office matters did not seem to be put straight.

He copied his complaint to the Minister of Finance and to me.

On 14th December 1988 I asked the Commissioner for his comments to be sent to me urgently.

On 20th December 1988 the Commissioner replied as follows :—

“I thank you for your letter of the 14 instant and am pleased to attach copy of a self-explanatory letter addressed to Mr. X on the 7 instant.

I have not received the statement called for in the last paragraph thereof. However, the file has been examined to ascertain his net tax liability as at to-day's date, which appears to be as shown hereunder. Remittances by his employer are being presently checked, but I can say that 2 deductions were effected monthly for assessment years 1986-87, 1987-1988 and 1988-89.

Year of Assessment	Tax due (Rs)	Tax paid (Rs)	Remarks
1980-81	...	1,391	NIL
1981-82	...	1,602	NIL
1982-83	...	7,603	8,031
1983-84	...	7,510	7,510
1984-85	...	14,239	14,239
1985-86	...	5,583	2,536
1986-87	...	2,346	11,230
1987-88	...	4,793	6,701

The overpayments for 1986-87 and 1987-88 amount to Rs 10,792 from which the net taxes due for 1980-81, 1981-82 and 1985-86 amounting to Rs 5,612 (i.e. $1,391 + 1,602 - 428 + 3,047$) fall to be deducted leaving a net credit of Rs 5,180.

As said above, 2 deductions are being made for the current year 1988-89. Out of his liability of Rs 10,485 it seems that Rs 5,999 have been paid up to November 1988, for which month the employer has until to-day to remit the tax money deducted. I am checking with the employer and I shall be issuing instructions to amend the monthly deductions for December 1988 to May 1989 accordingly.

If, after checking the monthly credits for 1986-87 and 1987-1988, I am still not in presence of the statement referred to in the second paragraph above, I shall refund Mr. X the sum of Rs 5,180.

There remains the question of delay in handling his case. Mr. X called on an Inspector here in November 1987 and corrective action was taken forthwith, which explains the lower overpayment of Rs 1,908 compared to Rs 8,884 for the preceding year. Since before authorising any refund, the Inspector has to ensure that there are no outstanding balances for previous years, Mr. X must have been asked to furnish his returns for 1980-81 and 1981-82. The Inspector then left for Australia in February 1988 and handed over the file to another Inspector, with a note "we spoke", which may mean that the 2 returns should be furnished before authorising the refund.

As for the current year 1988-89, the computer builds up a computer programme for deduction from emoluments from its previous year's programme, which is then validated when returns are received. Since the programme had 2 file numbers for 2 persons with the same name, 2 deductions were effected. This was corrected as soon

as the office was notified early this month and steps have been taken to eliminate this double deduction for next year."

The statement required from the complainant by the Commissioner by letter dated 7th December 1988 was for reviewing his claim for refund and for taking an early decision. The statement was to be made by his employer showing the amount of monthly deductions made by him (the employer) from X's emoluments "as from the month the alleged deduction started." X was told that such a statement would be of assistance for the above purpose and that he should send it to the Commissioner as early as possible.

In his letter to X, the Commissioner had also stated the following:—

"I have not yet gone into an in-depth review of your claim that this Department has been deducting the amount of tax due by you twice for 3 or 4 years, but what surprises me is that throughout these 3 or 4 years, no complaint was made by you and it was only a year ago that you contacted this office. The least that I would have expected is, if not a request for corrective action, an enquiry from you in the month following the first "double" deduction.

May I say that this office does not carry 2 files for you. You have only one file, . . . , since your job-contractor days. There is another person having the same name and it seems that, when you became an employee, your employer did not insert your address in his return of employees and the file number of that other person was inserted with your address c/o the same employer."

On the whole I found the Commissioner's explanation reasonable and urged X to expedite the statement required by the Commissioner for speedy remedial action.

INDUSTRY

Case No. C/190/87

Noise nuisance by operation of livestock Feed Factory

The inhabitants of Morcellement Raffray, Les Guibies, Pailles, complained to the President, Moka-Flacq District Council, on 18th November 1987 of "noise pollution at night, cracking of walls and glasspanes and air pollution" caused by a livestock feed factory in their area. The complaint was copied to me, the Minister of Health and the Minister of Industry *inter alia*.

I took up the question with the Permanent Secretary, Ministry of Industry, on 9th December 1987 and on the 7th August 1988 the Permanent Secretary reported as follows:—

"This factory was set up in October 1977 and its total investment to-date is understood to be around R 23 million. It employs some 75 persons and operates, according to its Managing Director, from 7.00 a.m. to 7.00 p.m. Sometimes, when there is a breakdown during daytime, the factory operates beyond 7.00 p.m. for a few hours. Maize is carried to the factory on about three nights per month. However, it is understood that in view of increasing demand, the factory envisages to operate a second shift.

The development permit to operate the factory at Les Guibies was granted by the District Council of Moka. It must be pointed out that at that time, the area was not a residential area. It was sugar cane land. The people who bought land to put up their houses in that area knew that the animal feed factory existed. The house that is most affected by the noise is the one owned by Mr. B. To minimise the inconvenience, the Livestock Feed Factory Ltd may be requested to erect a wall at the back of its factory. It is suggested therefore that the Ministry of Health be requested to look into the complaint and require the company to take necessary remedial action.

I am sorry for the delay in replying to your letter."

I communicated the above report to the representative of the inhabitants and informed him that I had also asked for the comments of the Permanent Secretary, Ministry of Health, and that I would write to him on receipt of a reply from the Permanent Secretary. The reply of the latter dated 7th April 1988 was duly communicated to him and read as follows:—

"As already referred to in letter (IND/8T) of the 7th January from the Ministry of Industry, a development permit to operate the factory at Les Guibies was granted by the District Council of Moka and the factory started operating since 1977. The people who later moved in to reside in the surrounding area were therefore aware of the operations of the factory, and of its consequential pollution risks. Moreover, the factory is located in an area which has been declared industrial zone.

The operation of a livestock feed mill is definitely a source of dust and noise nuisance. The mill is already equipped with a dust collection system. The noise is emitted by the machinery and conveyor belts situated at the top of the silo which is about 50 feet high. The erection of a wall, as suggested by the Ministry of Industry, would not in this Ministry's view abate the noise. As regards vibrations, it would not be possible to divert the factory's lorries from the main road.

In the circumstances the Ministry is of opinion that no practical action can be taken at this stage to improve the situation."

I also added that in the light of these two replies, I regretted nothing much seemed possible by way of remedy. I suggested to the representative of the inhabitants that he and his co-signatories might seek legal advice and act accordingly if they wished.

LABOUR AND INDUSTRIAL RELATIONS

Case No. C/178/87

Do the Geneva Conventions re. Workmen's Compensation for Accidents apply to Mauritius and another African Country?

The complainant was recruited as a fitter in Mauritius by a private individual on account of a foreign country's Sugar Corporation for an initial period of two years (1978-80). The complainant was given the contract sent by the Corporation and he signed it. The private individual was no party to the contract. After the completion of the first two years he entered into another agreement with the Corporation but before he completed this second term he was injured at work thus losing his right arm and was treated at a leading hospital of that country. The Labour Inspectorate *there* agreed in the light of the medical certificates that he had suffered 60% incapacity. He was also covered by an insurance policy through his employer—the Corporation.

He stated to me that he was paid 49,237.78 kwachas—in the currency of his place of work—"both for compensation and insurance." He contended that this amount was wrongly calculated by the Corporation and was inadequate. He had also not been supplied with an artificial arm as promised by the employer. He therefore requested my intervention by way of investigation.

It is to be noted that although the accident occurred in September 1980 and although he had returned to Mauritius ever since 1986 as evidenced by a complaint on the same lines as above registered with the Goodlands Labour Office, his complaint to me was made on 24th November 1987.

As the complainant was referring very convincingly during his visits to my Office to certain Geneva Conventions signed by several countries under the aegis of the International Labour Organisation, I was querying our Labour Ministry to look into these aspects too and let me have copies, if possible, of these conventions. Naturally, the Permanent Secretary asked for time to study the case and secure the documents.

It was eventually found out both by the Ministry and me that what was simply a case governed by the complainant's contract with the Corporation got complicated by his obsession with the Geneva Conventions and his contention that both the African country and Mauritius were signatories to them.

The subject of the main Convention on which he relied was entitled, "Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents."

The Labour Ministry did not leave any stone unturned to clarify questions relating to the Conventions through the assistance of our Ministry of External Affairs and Emigration. It emerged finally that no bilateral agreement on Labour Relations as such exists or existed *between the African country and Mauritius*.

We thus had to fall back on the complainant's second contract (duration 1980-82). Clause 12 of this contract entitled Personal Accident Policy stipulated that:—

"The Corporation shall insure and keep insured the Employee under a Group Personal Accident Twenty-four Hour Policy of Insurance to cover the Employee in the event of injury or death."

Compensation according to law was naturally left to be decided according to the law of the African country, although there was no specific mention of this in the contract.

Consequently, his permanent incapacity having been assessed at 60% he was paid as *compensation* and *insurance* a total amount of 49,237.78 kwachas made up as follows:—

- (a) Workmen's Compensation payment awarded on 60% disability: $60\% \times 48 \text{ months} \times 710.27 \text{ kw (Yearly Earnings)} = \text{kw } 20,455.78$
- (b) Group Personal Accident Policy = kw 28,782."

Replying to our Ministry of External Affairs the African Ministry of External Affairs stated that the "assertion of the Complainant (Mr . . .) that his compensation was miscalculated is incorrect and stated the enactment that governed the case. Accordingly the *compensation* amounted to 20,455 kw calculated as follows:—

$$60\% \text{ (permanent incapacity)} \times 4 \text{ years or } 48 \text{ months} \times 710.27 \text{ kw (yearly earnings)} = \text{Kw } 20,455.$$

It was also emphasized that the above compensation had been computed on the basis of legislation in force in the African country and that the payment had been effected to the complainant by and under the aegis of its Government as the Corporation was state-owned.

A last point raised by the complainant, after all this investigation, was that some officers of our Labour Ministry's office told him that according to a schedule received from ILO, Geneva, the computation of his workmen's compensation should have been based on eight years and not four years. The Permanent Secretary of our Labour Ministry amplified the point, at my request, as follows:—

"The Workmen's Compensation Convention No. 17, which has been ratified by the Government of Mauritius, and under which cases relating to compensation to be paid to workmen involved in accidents are dealt with, is not supplemented by any schedule as can be seen from the enclosed copy. As can be also observed thereon, no mention is made of the quantum to be paid as compensation but it is only stipulated that this compensation shall be paid in the form of periodical payments: provided that it may be wholly or partially paid in a lump sum, if the Competent Authority is satisfied that it will be properly utilised (Article 5).

Futhermore, Convention No. 17 which was subsequently revised by Convention No. 120 (Employment Injury Benefits) and which has not been ratified by the African country concerned makes no mention of the quantum of eight years in any of its provisions.

The quantum of compensation to be paid to an injured worker is left entirely at the discretion of the member state to be determined. Our own Workmen's Compensation Act, which initially provided for a quantum of 3 years, was increased to 4 years in 1952 (Act 78/52) and later on topped up to 8 years (Act 69/61).

Two officers of the Workers' Education Unit explained to the complainant the mode of computation as laid down in the Workmen's Compensation Act.

When he informed the two officers that he had sustained permanent incapacity whilst at work in the African country, he was cautioned that though Mauritius and the African country had ratified similar convention on Workmen's Compensation, yet the *mode of computation* differed from country to country in accordance with the relevant provisions of their Labour Laws."

In spite of all our explanations supported by relevant documents, the complainant came again to the charge always harping on the Geneva Conventions. Finally, as the issue had been thoroughly canvassed by me through the Ministry of Labour from every angle and the result explained to him I

had to tell him that I could not pursue the matter any further.

On the question of the promise of the supply of an artificial right arm the Ministry of External Affairs of the African country could not find any evidence of such promise made by the Corporation. It pointed out that any action in Courts now in that country by him would be statute-barred under their Limitation Act. Our Ministry of Labour had also approached our Ministry of Social Security for the provision of such a limb to the complainant only to be told that it was not within their domain to cover such cases.

It was quite obvious that the insufficiency of the compensation as alleged by the complainant and the provision of an artificial R arm should have been raised by him while he was offered the compensation which he accepted without protest and he should have acted there and then after seeking legal advice in the African country. It could be reasonably assumed that it was in everybody's mind that the compensation and the insurance amounts could easily allow him to provide himself with the artificial arm.

Case No. C/44/88

No firm action in case of short payment of wages

A Hindu priest who had worked as such at a small Hindu temple in a small village from 1984 to 1987 complained to his regional Labour office that:—

October 1984 to December 1984	...	No pay
January 1985 to December 1985	...	No pay
January 1986 to December 1986	...	No pay
January 1987 to May 1987	...	Received Rs 1,000 (representing Rs 200 monthly)
June 1987 to October 1987	...	Received Rs 1,000 (representing Rs 200 monthly which he refused)

That complaint was made by letter on 27th November, 1987. Subsequently a meeting was held at the Labour Office and the matter was settled in the sum of Rs 2,070 for underpayment of wage and compensation for dismissal. The Permanent Secretary, Ministry of Labour, explained further:—

"Payment was to be effected on the 22nd January but Mr S did not turn up and sent a letter to say that he was referring his case to the Ombudsman's office and wished 'the matter to become subjudice'. Copy of a statement Mr. S made to the Labour office approving the settlement and copy of a letter he sent to the Labour office requesting the matter to be held subjudice, are enclosed herewith.

On receipt of your letter, Mr. S was convened again at the Labour office on several occasions but he has failed to attend so far.

In the circumstances, it is regretted that this Ministry cannot offer any further help to Mr S on this issue."

In fact the priest had complained to this Office on 7th March, 1988 about the lack of interest of the Labour Inspector dealing with his complaint. On receipt of the explanation of the Permanent Secretary as above, the priest was called at the Office by the Secretary. At this meeting held on 8th July 1988, on taking cognizance of the official explanation he said that he would accept the sum of Rs 2,070 previously offered to him. The Secre-

tary then phoned to the Labour Office and requested the Labour Officer concerned to make the necessary arrangements for the payment of the sum agreed upon.

In the opinion of the Ministry this case was of a delicate matter, being of a religious nature, and it deemed it proper to discuss it with the Prime Minister's Office before starting its inquiry.

It is clear that the priest himself was responsible for the delay in payment of the sum which he had accepted in writing as a full settlement. I saw this document produced by the Ministry to me.

In the circumstances the Labour Inspector could hardly be blamed.

POLICE

Case No. C/80/87

Illegal games: No action

An anonymous letter dated 5th June 1987 from "a civil servant" X complained to me with copies to the Prime Minister, Commissioner of Police and the then leader of the Opposition in the following terms:—

"the havoc that the illegal 'Jeux de piquets' is causing upon the students of Curepipe. This club is situated in between the and the Bus station. It is guarded by Police Officers. And any Policemen or Police Inspector passing near or going to check it obtains bribe just to keep their mouth shut. What is more agonising is that it is a den of drug addicts, pick-pocketers and broken homes. It also encourages youngsters to go and steal neighbours, the public and even their parents.

If we are to build a healthy society it is our duty to eradicate such activities before they start affecting our own children."

On 16th June 1987 I started investigation of my own motion under Section 97 of the Constitution and asked for the comments of the Commissioner of Police. The Commissioner of Police sent me a complete report of the Superintendent of Police of the District in question under cover of his letter dated 29th June, 1987. The report read as follows:—

"I refer to the anonymous letter dated 5.6.87, on the above subject, sent to Ombudsman and

copied to the Prime Minister, the Leader of the Opposition and to you, complaining about an illegal game of skill held near in a place commonly called, which is a source of danger affecting the youths, their families and the society as a whole. It is also alleged in the letter that the Police tolerates that state of affairs against reward.

The facts and circumstances are that in 1984, X was issued with an occasional licence as Proprietor of a game of skill to trade at in connection with a Trade Fair.

In 1985, the licence of X was not renewed and in October 1985, he caused a "Mise en Demeure" to be served upon the Accountant-General requiring that his said licence be renewed.

On 30.12.85, the A.D.S.U. raided the place where several persons were found actually playing darts (Jeux piquets). One Y who was supervising the game was arrested.

After investigations, the case was referred to the D.P.P. who advised prosecution against X and Y for operating a gaming house without licence, to wit: Proprietor of a game of skill for the Public entertainment. Judgment will be delivered on 30.6.87; (b) Z for permitting premises to be used as a gaming house without licence. This case is coming proforma on 30.6.87.

In February 1986, X applied to the Supreme Court for a writ of *Certoarari* against the Government of Mauritius. Ultimately, in a letter dated 17th April 1986, the Accountant-General informed the Police that the licence of X as Proprietor of a game of skill was extended to allow him to operate at . . . up to 31.12.86.

In January 1987, the licence of X was not renewed and constant Police checks were carried out at . . . so that no game of skill could be carried out overthere.

Consequent to Police action, X caused a "*Mise en Demeure*" to be served upon the Accountant-General requiring that his licence, which has been renewed and restricted to "Fancy Fairs and race days only" be renewed in its original form to include the usual place.

Since then the Police vigilance overthere became more embarrassing to X that he ceased operating but caused a "*Mise en Demeure*" to be served upon me arguing that the Police is harrasing him so much that he had given up trading.

Mr. P, Crown Law Officer, was approached for advice in relation to the "*Mise en Demeure*" and he advised that Police should take action as the "*Mise en Demeure*" was not a bar.

On 30.4.87, the Central C.I.D. raided the place and brought to book one C for "Operating a gaming house without licence". The case is still pending investigations.

On 5.5.87, consequent to the above raid, Y caused a "*Mise en Demeure*" to be served upon the Commissioner of Police arguing that the Police had on that occasion seized a dart board and a certain sum of money on the ground that an illegal game of skill was being held.

On 12.6.87, Chief Inspector J and others of . . . C.I.D. raided the place. Nobody was found playing but a dartboard found on spot was secured. X who was present was taken to . . . C.I.D. for his explanations. The case is still under investigations and will be forwarded to the D.P.P. in due course for advice. No game of skill is being held neither.

No case of Larceny at that place has even been reported and no case under dangerous drugs has been detected overthere.

It is worth mentioning that the place in question is in a Commercial area and is well frequented. However, there is no indication that any person has taken abode overthere please."

As can be seen from this detailed report the Police had been actively and closely watching the activities of X since 1985 and referring their inquiries to the Director of Public Prosecutions for advice on which they acted whenever required by way of prosecution etc. No blame could therefore be laid at the door of the Police. The charge of bribery does not seem to stand. If it was true, the Police would not have been so active in the case and this even before the anonymous complaint of "a civil servant" and before my intervention. It is a pity that because of the anonymity the "civil servant" could not be contacted for his further remarks, if any. At that stage I discontinued my investigation.

Case No. C/129/87

Biased decision of "No further action" and of mere assault in case of serious injuries etc.

B complained that Police had not acted on an affidavit affirmed by him and sent to the Governor-General who had referred it to the Commissioner of Police. In the affidavit he had also complained that his injuries of two broken teeth and of injuries at the back of his head were considered as mere assaults of a trifling nature by the local Superintendent of Police as the Superintendent had filed the latter case. But on the intervention of his lawyer, who wrote to the Superintendent of Police, the latter decided to prosecute the aggressors for assault.

B's injuries at the back of his head were in fact three (3) lacerated injuries in the occipital region above one inch in length as found by the Medical Officer who had examined him at a State Hospital and had filled in the PF 58.

As shown above this case which had been filed in the first instance was sent to Court as an assault case.

What puzzled B was the use of the word assault whereas he expected the old expression "wounds and blows". He was unaware that the present Criminal Code uses a generic term "assault"—severe cases have the aggravating circumstances appended to "assault", just as larceny had always been treated in the former Penal Code and is so treated even now.

In reply to my query the Commissioner of Police sent me the report of the Superintendent of the District concerned showing a list of many cases reported by and against B.

B called at my Office and perused the report and the annexes and he agreed that I should clarify further *only two* of the cases listed by the Superintendent.

In fact as regards the first case Police had prosecuted Mrs D and K for assault on B (while B said there were more). I saw the Information lodged in Court. Why only these two persons were prosecuted nobody could clarify since Superintendent M who had taken the decision had subsequently died. The second case was before Court. The prosecution was started as advised by the Director of Public Prosecutions.

The Assistant Commissioner of Police (CID) who sent me the above explanations also stated:—

"It is worth mentioning the number of cases reported by B between 1985 and 1987 in PRR District only. Out of a total of 32 cases, 18 cases have been reported by him against his in-laws and Police Officers and 14 reported against him."

In the end it was clear to me that B was out to challenge the Police on the slightest pretext and would brandish his denunciations in a quixotic fashion, thereby associating the Police with his own family troubles. B's brother-in-law, B's wife's sister's husband, happened to be a policeman towards whom B always bore a grudge believing that his wife (B's) had separated from him and gone to live with her parents on the policeman's instigation. He also associated the hostility of his parents-in-law towards him with the policeman. B is a perpetual complainer against the Police as this Office receives regularly all kinds of letters against the Police from him.

Serial No.	Date	Court	Offence	Sentence
1	26.4.88	Port Louis North	Larceny with violence	H.L. 2 years/10 days costs. Cause No. 471/88 Police supervision 2 years.
2a	16.6.88	I.C.C.	Escaping from legal custody (Section 170 of Criminal Code Act) Count IV	H.L. one year on Ct. IV. To run consecutively to sentence at 1 above plus 20 days' costs.
b			Possession of stolen property (Crime) Ct. VI	H.L. 18 months on Ct. VI. To run concurrently Cause No. 686/87.

Case No. C/200/87

Driving school in narrow street opposite complainant's house

B had made a declaration to the Police against the operation of a driving school almost opposite his house in an urban area in a narrow street, thereby causing much inconvenience to him and his family as a result of the coming and going of people and cars. B alleged that police did not seem to take any action.

After some correspondence the Commissioner of Police sent me the following report from the Acting Assistant Commissioner of Police (Traffic) who dealt with the case:

"The Police Sergeant i/c PWBR TFD has been instructed to enquire into the matter. He reported that he has recently checked the Garage of Mr T and he did not find any traffic sign there. Mr T is nowadays using the driving school premises of Mr R of Quatre Bornes. The Sergeant has further reported having very often patrolled complainant's street and that no obstruction was found along that road due to the operation of a driving school by Mr T."

I asked for the remarks of B on this report but received none. I concluded his complaint had been rectified.

Case No. C/15/88

Sentence of husband not clear: no action re assault on him

The wife of a prisoner complained that she saw no Police action on his report of being beaten by CID Officers and of Police dog bites while under arrest. Also, the several sentences her husband prisoner had served or was serving were not clear to her.

The Police inquiry into the case of assault was submitted to the Director of Public Prosecutions for advice and was still at his Office. As regards dog bites the medical report (PF 58) did not show any evidence of them. The various sentences of imprisonment of the husband were communicated to me by the Commissioner of Prisons, viz:—

He will be released on or about 16th April, 1990 if his costs are paid. Otherwise he will be released on or about 16th May, 1990."

The wife took cognizance of the above information at my Office. What intrigued her was the consecutive sentence. The provisions of Section 170

of the Criminal Code Act were explained to her. They provide that the offence of escaping from legal custody shall be visited with a sentence of imprisonment with hard labour to be served after the expiry of any sentence the prisoner was already serving. She understood.

POSTS AND TELEGRAPHS

Case No. C/71/88

No delivery of parcels from abroad

N, the President of an organization wrote to the Postmaster-General, with copy to me, complaining that, after receiving a card from the General Post Office informing him of the arrival of a parcel by surface mail, he had sent his representative to collect it. But the complainant alleged that his representative's requests were not taken any heed of by the officers and he was told that the parcel had to be looked for and opened for the payment of duties, if any, and therefore the representative had to wait indefinitely. The representative returned two days later to the General Post Office for the parcel. The same scenario was put up.

The parcel contained three books from Paris, added the complainant.

When I queried him, the Postmaster General sent me the following explanation:—

"In fact, in a letter dated 15th March, 1988, received at this Office on the 21st March, 1988, Mr N complained about the non delivery of small packet No. B 209 addressed to M. le President de, to Mr S. his agent, when he called at the Parcel Post Office on 11th March and 15th March, 1988.

A letter of acknowledgement was sent to Mr N on 23 March, 1988, informing him that the matter was receiving attention.

Subsequently, in another letter dated 29 March, Mr N advised this Office that he had received a Final Notification Card PT 94, regarding the packet and requested our prompt attention.

In the meantime, an enquiry was instituted and following the explanations of the Officer-in-Charge, Parcel Post Office a reply was made to Mr N on 7 April, 1988, informing him of the outcome of the enquiry. According to our records, the packet was delivered to Mr S against acknowledgement on the same day.

A further letter dated 8 April, 1988, was received from Mr N expressing the hope that remedial action had been taken to avoid recurrence of cases of similar nature in future.

However, I should like to state that for the sake of expediency and to facilitate control at the Parcel Post Office, the incoming parcels and dutiable packets are classified in four different cages in the order of the countries of origin and in numerical order assigned to these items. Further, a Postman Higher Grade is posted at the Parcel Post Office to direct members of the public to the specific delivery points to take delivery of their parcels. The Notification Cards presented at the specified point are recorded in a register in the order of priority and transferred to the Customs Officer concerned together with the relative parcels/packets for verification of contents and assessment of duty payable, if any.

In the case under reference, as there is no trace of any entry in the register in respect of the packet on the 11th and 15th March, it is not possible to ascertain whether Mr S called at the Parcel Post Office on these dates to collect the parcel."

I received no comments from Mr N after sending a copy of the above explanation to him. I had no hesitation in deciding that the complaint was unfounded.

PRISONS

Case No. C/145/87

Various complaints against fellow prisoners who made false allegations against him

The details of H's long complaint are listed as follows:—

The evil practice of his fellow prisoners in order to obtain their transfer from one association yard to another or from one job to another. They have levelled allegations against him with the Prisons Authority as follows:—

- (a) that he would be committing homicide
- (b) that he would be committing murder by using arms
- (c) that he has been hiding sharp-edged spoon in order to perpetuate crimes in the prison.

He further complains against:—

- (a) prisoner X working in the uniform section for having interchanged the numbers appearing on the garbs of prisoners before making the distribution (Prisoner X was eventually transferred from this job);
- (b) homosexuality of X;
- (c) false and malicious denunciation of murder made by X who succeeded in obtaining his transfer to work in the Tailoring Section;
- (d) the reposting in the drug store of the prison hospital of prisoner X who, on previous occasion while working as cleaner in the drug store, was involved in drug trafficking and was transferred.

He requested the Ombudsman:—

- (a) to intervene as the charges levelled against him have made him sick, rude and vindictive;
- (b) authorization to enlist the help of a legal adviser as he proposes to lodge a plaint in Court.

The Commissioner of Prisons' version was as follows:—

"Prisoner H was admitted in Prison on 22nd May, 1981 with a sentence of eight years Penal Servitude for several cases of larceny with aggravating circumstances. He is due for release on or about 13th May, 1988.

On 7th September, 1987, Prisoner X in fact complained to the authorities that abovenamed had threatened him at the Clothing Exchange

Store. As a result of this complaint prisoner X was transferred to the Tailor's Shop.

No prisoner ever complained that Prisoner H were to commit murder by using arms.

The prison authorities never received any information to the effect that he was hiding sharpened-edged spoon in order to perpetuate crimes in prison. However, during routine search by officers of Association Yard No. 3 where this prisoner was formerly in association, sharpened pieces of tin hidden in toilets have been found on two occasions.

Prisoner X complained to the authorities on 18th September, 1987 that he was fearing for his security at the Tailor's Shop. After careful consideration, he was subsequently transferred to the Hospital Ward as cleaner. There is no evidence on record to say that this prisoner is a drug trafficker. He is presently an in-patient at the Prison Hospital ward, but he has never been reported to be homosexual.

Prisoner H while undergoing this current sentence committed three cases of gross personal violence upon fellow inmates. The prison authorities consider him a high security risk prisoner due to his past behaviour. Officers are always having special supervision over his movements. He is still of a violent disposition.

In case he has exhausted all available channels to voice his complaints, he may apply to the Prisons Board for such complaints which the Board may investigate into and report to the Commissioner of Prisons."

I conveyed this report to H and stated that I had also seen the detailed report on him which explained why his request for work to earn extra remission had been turned down, the main reason being his extremely violent disposition towards fellow prisoners. I also advised him to apply to be heard by the Prisons Board in order to ventilate freely his grievances.

Case No. C/198/87

Prison Imam not efficient: Not allowed to do his prayers at the Prison Mosque

Hereunder are the main points of prisoner K's complaint:—

1. The Imam who conducts the (namaz) does not wear a (saya) as required according to Muslim tradition. He also makes errors of interpretation.

2. Female Section of Prison is not provided with a place for prayer.

3. During the month of Ramadan he would like to do his evening prayer in the prison mosque instead of his cell. He would like to smoke a cigarette after the prayer and then go to the kitchen to take his evening meal. As it is now he has to smuggle a cigarette to smoke in his cell.

4. There are days on which bananas are not issued to him. He is asking for the value of the bananas to be credited to his earnings.

5. He was admitted to the Prison Hospital. He was not provided with a pillow and a chamber pot.

6. In prison drugs are provided to prisoners who feel sick in the morning and evening in the yard. On a Friday evening he asked for a sedative. The nurse told him that he will have to consult the doctor. On Saturday and Sunday the Doctor does not work. When he insisted, the nurse gave him half of a panadol or a potion of Aspirin. On Monday morning when he reported sick, it was the nurse himself who prescribed the drugs. His query is that why the nurse did not give him the drug on Friday evening?

The explanations of the Commissioner of Prisons and of the Prison Medical Officer are:—

(a) *Commissioner of Prisons*:—

"The prisoner was admitted to Prison on 17th December, 1986 sentenced by the Intermediate Court to undergo five years Penal Servitude for "Possession of Heroin". He is a persistent offender who is due for release on or about 17th April, 1990.

Prayers for prisoners of Islamic faith are held every Friday afternoon at the Mosque of Beau Bassin Prison. The Muslim Priest who is a Hajee reckoning more than 15 years experience in this field was appointed as Imam at Beau Bassin Prison Mosque upon the approval of the Parent Ministry. This is the first time that such complaints are being levelled against him. Unfortunately we cannot offer any comments on the rituals adopted by the Priest.

Prisoners of Islamic faith are allowed to observe fasting during the Ramadan period. They are also allowed to smoke cigarettes in association yards. For security reasons they are not allowed to do so in their cells.

On a few occasions the Contractor has failed to supply bananas, as this fruit was not available on the local market. It is neither practical nor desirable that bananas be refunded to prisoners on other days, when they are already being issued with their normal ration. In case bananas are not available for a long period provisions are made for the issue of vitamin pills in lieu.

The Prison Medical Officer is responsible for the health of all prisoners. Please see at annexure (A) his observations in respect of the prisoner's complaints.

The day the letter was written by the said prisoner, it was not possible to have it sealed as the seal was not available. He was advised to keep his confidential letter in his possession. He was called by Officer II . . . the next day to have his letter sealed, but he declined with the pretext that he had something more to add to it. The following day the letter was sealed in his presence. (Please see at annexure (B) statement from Officer II . . . who dealt with the letter)."

(b) *Prison Medical Officer*:—

"The allegations of prisoner K are unfounded.

I am satisfied that the Prison Hospital is sufficiently equipped to meet the basic needs of every patient under my care.

I am offering a 24-hour coverage of the Prison Hospital and the whole medical team which includes qualified nurses spare no effort to give adequate care and treatment to sick inmates.

It happens that senior nurses initiate treatment on my advice."

As complaints about the unsuitability of the Imam had come from a few more Muslim prisoners, I took up the matter with the Permanent Secretary, Ministry of Reform Institutions, who replied:—

"I have detailed my Principal Assistant Secretary, (a fervent Muslim), to enquire into the matter and he personally attended Friday prayers at the Prison Mosque on the 11th March. He has reported that, on the whole, the Imam's services are satisfactory and he is a fit and proper person to perform the functions of Imam.

However, he has noted certain shortcomings which it is proposed to bring to the attention of the Imam and which should improve his future performance.

You may wish to know that Imams for the penal institutions are invariably recruited through the Jummah Mosque."

I also asked the Jummah Mosque for confirmation of their recommendation of the Imam for appointment by the Ministry and the reply of the President was that "We are unable to trace from our records the fact mentioned in your letter."

In another case, the Commissioner of Prisons expatiated on the question of the Imam's suitability and the relative freedom of prisoners in the practice of their religion in the following terms:—

"The present Imam is a former Prison Officer who retired from the prisons service on 24th November, 1982. He had been attending Petit Verger Prison as a Muslim Priest since 1983 on a voluntary basis and he was appointed Muslim Priest for the prisons by the parent Ministry on the recommendation of the Jummah Mosque on 1st March, 1986. Being a former Prison Officer he has the added advantage of knowing full well the prison rules and regulations and will thereby not tolerate any nonsense. From a conversation I have had with a Chief officer of the Prison belonging to the Muslim Faith who had been attending prayers at the Prison Mosque he informed me that the Imam is very strict and he carries the prayers according to the requirements of the Islamic Religion. In his address to the prisoners he always points to obedience to authorities and the necessity to live a good moral life according to the teachings of the Prophet."

It would be bad for discipline if the Imam is just replaced because he is not liked by some ring leaders. There are some 125 prisoners attending the Mosque every Friday. It would only be fair to have the observations of the Imam on the allegations made against him.

For security reasons this privilege of breaking his fast in the Prison Mosque cannot be extended to one religious group. The prison population presently consists of: Christians, Hindus, Muslims, Tamils and Buddhists.

The present rule is that places of worships for all religious denominations will be opened up to 5 p.m. on special occasions. The locking up of prisoners starts around 5.30 p.m. so that it may be completed before dark. Past experience has shown that leaving a large number of prisoners outside after lock up has started, is a great security hazard.

The radio is switched on for the benefit of all prisoners according to a schedule as shown on annexed which is incidentally posted in the yards for the information of all prisoners. For your information there are presently more than one thousand prisoners at Beau Bassin Prison. If he is referring to radio in the neighbourhood we have no control in this.

Prisoners are allowed to receive religious or educational books from their relatives. There would be no objection if his relatives were to bring in such books for him. If he is referring to the holding of classes to teach arab and islamic culture then the matter will have to be discussed with the Ministry for a general policy for all ethnic groups.

The practice of religion inside a prison is subject to the constraints and exigencies of its setting. It is agreed that the conditions prevailing are not ideal and may not meet the requirements of prisoners of all religious denominations. The rules governing the running of an institution apply to all the prisoners equally and it is for them to adapt themselves to live within the limits of these rules in all matters. As you know as far as possible and subject to the exigencies of safe custody certain facilities are provided to prisoners to alleviate the rigours of prison life and for possible eventual readaptation in society but all these are within the limits of these rules. You will appreciate that prisons are by their very nature a very restricted place where the liberty of the individual has been curtailed.

There is presently an overcrowding situation at Beau Bassin Prison and the accommodation of more than one prisoner in a cell is by necessity. A chamber pot with a cover is put in the cell for emergency use at night. This may appear an inhuman, primitive and barbarous system. The opening of the cell of a prisoner at night to allow him to go to the W.C. to answer a call of nature is against all norms of security and is therefore out of the question. The other alternative is to provide individual toilet in each cell. The cost is so prohibitive that even in the new prison we are building at Grand River North West it has not been possible to provide such a facility. There does not appear to be any other alternative to the practice in force."

Case No. C/12/88

Not allowed to wear sunglasses although advised by Prison Medical Officer

This complaint may be summarised as follows:—

- (a) The Head of Administration of Richelieu Open Prison does not grant him permission to wear spectacles/sun glasses. The Administration also informed him that the Reception Officer of Beau-Bassin Prison had not included his spectacles in the list of his belongings.
- (b) The Prison Medical Officer of Richelieu Open Prison has informed him that he "cannot wear spectacles in jail". These spectacles are now in the custody of the Reception Officer.

As this prisoner has worn glasses since six years, he is most upset as the sun affects his eyes and head too.

His grounds of objection to the above prohibition are as follows:—

- (i) The permission to wear spectacles was accorded to him by another Prison Medical Officer during his early days of admission to Beau-Bassin Prison.
- (ii) During his previous term of imprisonment in 1981—1984, he was allowed to wear spectacles.
- (iii) He contends that fellow-prisoners are allowed to wear spectacles in prison.

In the light of the explanation of the Commissioner of Prisons I wrote to the complainant as follows:—

"My investigation has shown that soon after your admission to prison, the P.M.O. without seeing you approved your wearing such glasses. You were therefore issued with your sunglasses by the Reception Officer but the entry in this respect was by error made in the medical report sheet of another prisoner bearing the same surname as you.

Consequently, on your transfer to the Richelieu Open Prison, the authorities took back your sunglasses in the absence of any entry in your medical sheet. They then had you examined by the P.M.O. who found there was no medical reason for your wearing such glasses.

The Commissioner of Prisons explains further:—

"On 18.12.87 prisoner applied to write to the Ombudsman. His application was acceded to.

On 15.1.88, one month later, he wrote to the Ombudsman to complain:

- (a) that he had been refused permission to wear sunglasses at Richelieu Open Prison when he was being permitted to wear them at Beau-Bassin Prison and that the Reception Officer at Beau Bassin Prison failed to include his spectacles in the list of his belongings.
- (b) that he was allowed to write to the Ombudsman but one month after he had received the permission to do so.

Following his complaint to the Ombudsman he has been examined by the Eye Specialist at Moka Eye Hospital when he was prescribed treatment but was not allowed to wear his sun glasses."

"The attention of both, the officer who made the entry in the wrong prisoner's record and the officer who gave the wrong information to the Assistant Commissioner of Prisons will be drawn in writing."

I found the explanation reasonable and I appreciated the ready admission of error and the disciplinary action against the two officers concerned.

Case No. C/19/88

Could he write to Amnesty International or the Privy Council etc.?

N asked for my intervention (a) so that he could write to the Amnesty International and the Judicial Committee of the Privy Council about his case, as he said, he was then in possession of evidence "to prove his innocence" and (b) an estate doctor who had treated him before his imprisonment after his conviction was not passing on information about his disease to the Prison Medical Officer.

The comments of the Commissioner of Prisons and of the Prison Medical Officer were as follows:—

"Prisoner N was admitted to Beau Bassin Prison on 23rd November, 1984 to undergo 15 years Penal Servitude on a charge of Complicity in a case of Wounds and Blows causing death without intention to kill but with premeditation. An appeal made against the sentence in 1985 was dismissed by the Supreme Court. He is due for release on or about 22nd November, 1994.

The prison legislation does not give the right to a prisoner to write to Amnesty International or the Privy Council.

As regards his reference to Dr....., please find enclosed correspondence and the observations of the Prisons Medical Officer....." (Commissioner of Prisons).

The Prison Medical Officer's comments were:—

'As the prisoner was under treatment at Dr. Jeetoo Hospital for Diabetes Mellitus I was satisfied that he was suffering from the abovementioned disease and he is being treated as such and with good results.

In view of the above, no further correspondence to Dr..... (the private doctor) was needed.'

The comments were communicated to him. I found them reasonable.

Case No. C/31/88

No facilities for tooth filling

A prisoner under death sentence complained on 9th February 1988 that as he was suffering from toothache he saw the Prison dentist who extracted one of his teeth and said that the others needed filling. The dentist advised him to apply for such treatment to the Commissioner of Prisons, which he did through an Assistant Superintendent. But he received the reply that no filling facilities, equipment etc. were available at the Prison.

The Commissioner of Prisons' reply to my query was:—

"The prisoner was admitted to Prison on 28th March, 1987. He was sentenced to death for murder by the Assizes Court.

He was seen by the Prison Dental Surgeon presently attending the Prisons and his report is enclosed. The Prison Dental Clinic is now completely equipped to carry out filling and the Prison Dental Surgeon will attend to this case as a priority. It took sometime to purchase all the necessary appliances that were required.

As this case deals with the question of dental treatment I should like to point out that in spite of the letter of the 28th October, 1987 from the Permanent Secretary, Establishment Division to the Permanent Secretary, Ministry of Health (copy enclosed) and our repeated requests no dental surgeon has yet been posted on a full time basis. The present one is on a part time basis and his attendance to the Prisons is very irregular and sporadic."

Indeed the part-time dental surgeon who attended to the prisoner made an entry on 11th March 1988 in the prisoner's complaining sick book to the effect that his teeth needed filling but no facilities were available.

I also saw photocopies of the Commissioner's representations for a full-time dental surgeon for the prisons made as far back as 29th September 1987 to the Establishment Secretary and the latter's letter to the Ministry of Health urging such an appointment.

We can see that the Commissioner of Prisons was not inactive in trying to secure the services of a full-time dental surgeon but in vain.

Case No. C/66/88

Punished twice unduly

Prisoner M's complaint was that he was punished twice for the same offence: first by the Prisons Board and secondly by the Court.

The Commissioner of Prisons sent me the following explanation:—

"He is a habitual criminal and will be released from Prison on or about 11th September, 1996.

On 11.8.86, at about 03.10 hours, at the Beau Bassin Prison aided by Prisoners C and B, M effected his escape from his cell by sawing off the iron bar of his cell window, using his blanket to climb down and scaling the perimeter wall by means of planks which he had removed from benches in association yards. The case was referred to Police for enquiry and prosecution.

On 26.3.87, he was brought before the Prisons Board to answer the charge of Escaping from legal custody, breach of section 43(1)(a)(ii) of the Prisons Act, Vol 4 Revised Laws of Mauritius, 1981. He was found guilty as charged and awarded the loss of 300 remission days, plus 15 days cell confinement without forfeiture of $\frac{1}{2}$ ration.

After Police enquiry he was prosecuted before the Rose Hill District Court for Conspiracy in relation with the case of Escaping from legal custody determined by the Prisons Board. He was on 22.12.87 sentenced by Rose Hill District Court to undergo 2 years imprisonment with hard labour plus 10 days in respect of costs for Conspiracy. Cause No..... refers. Sentence is running concurrently with other sentences which he was already serving.

This last sentence is ineffective as it does not alter the date of release of the prisoner.

Under section 57 of the Prisons Act, a prisoner who has been punished for an offence against Prison discipline under section 40 to 43 and 46 cannot plead or set up such punishment as a defence *or bar* to prosecution before a court."

It was clear that there was no double punishment for the same offence. The Board passed sentence for escaping from legal custody i.e. for a breach of prison rules and discipline and the Court passed sentence for a criminal offence—conspiracy. I explained the above to prisoner M and found that his complaint was not justified. It was more the result of a failure on M's part to make the distinction between administrative matters and criminal offences.

Case No. C/111/88

Not referred to Orthopaedic Centre

Prisoner M complained that he was not referred by the Prisons Medical Officer to the Orthopaedic Centre for weakness of his legs.

The Prisons Medical Officer's explanation through the Commissioner of Prisons was:—

"M has always shown signs of mental illness shortly after any conviction.

This time he was remanded to Prison on 17.2.88 after a case of murder. He attended the lunacy board on 19.10.87 and was given successive appointments until 21.1.88, when he was discharged.

Meanwhile he had a lung abscess for which he was treated by Dr., Physician at Dr. Jeetoo Hospital. He is also receiving medication regularly for bronchial asthma.

This prisoner has always found it hard to adapt himself to prison life and has always tried to escape punishment from any Court decisions.

It is worth noting that soon after his discharge from Brown Sequard Hospital he started complaining of weakness of his lower limbs with difficulty to move about.

He has been placed in our observation yard and I am satisfied that there is no underlying cause but most probably he will need re-education later for the weakness of his muscles due to prolonged Hospitalisation

I fear that the prisoner's complaints are groundless and I am not surprised to note his disrespectful and manipulative nature.

The Prison Medical and Nursing Staff spare no effort to relieve the sufferings of genuine patients but are not prepared to suffer such allegations.

I have referred the prisoner to an Orthopaedic surgeon at Dr. Jeetoo Hospital on 30.8.88. He was seen by Dr. H on 8.9.88 and again on 15.9.88 and 22.9.88. No treatment was prescribed. He will be seen again on 29.9.88 by his treating Doctor."

In the absence of any comments from M on this explanation, I found it reasonable. Although in his opinion no reference to an orthopaedic surgeon would have served any useful purpose, yet for M's peace of mind and presumably owing to my intervention, the Prisons Medical Officer did refer him to such a surgeon who, it should be noted, did not prescribe any treatment. I considered this case as rectified.

Case No. C/135/88

Problems about stationery etc.

Prisoner S's complaint was that (a) he was not provided with proper writing pads to write letters in prison and (b) he was asked by the Officers to write to the Ombudsman first, and not to the Ombudsman and the Minister of Justice at the same time.

The explanation of the Commissioner of Prisons was:—

"Prisoner S, a habitual criminal, is since 29th September, 1984 serving a term of 18 years penal servitude at the Central Prison, Beau Bassin, for the offence of manslaughter.

Under the remission system, he is due for release on or about 28th September, 1996.

For proper control all letters from prisoners to their friends and relatives in Mauritius are written in the official letter book which is provided with duplicate folio. It is only when they are writing to friends or relatives overseas that they are permitted to use air letters at their own expense. On no account writing pads are provided for inland letters.

The prisoner has been clearly explained about this by the Officer in Charge on 24.8.88.

He has never applied to the Prison Authorities to see the Superintendent of Prisons or the Officer in Charge.

Prisoner asked for permission to write to Ombudsman and to the Minister of Justice regarding the use of writing pads by prisoners. He was authorised to write to the Ombudsman first and told that his application to write to the Minister of Justice would be considered after the reply of the Ombudsman would have been received."

It is understandable that the issue of writing pads was not a policy at the prisons but instead the prisoners were provided with foolscap paper for writing letters. S failed to realise that prisoners ought not to be too choosy and that they should abide by the rules and regulations in force in a penitentiary institution. I receive letters from many complainants in private life written in sheets taken out from their children's ordinary copybooks. S

should have considered himself lucky that he had foolscap sheets.

I was satisfied with the explanation of the Commissioner of Prisons.

Case No. C/147/88

Unjust disciplinary action

Prisoner B's complaint was that he was forfeiting remissions, confined in cell on restricted diet etc on unjust charges of breach of prison discipline levelled by officers. In short he felt it was persecution by them.

The Commissioner of Prisons sent me the following reply:—

"Prisoner B is presently serving sentence at Petit Verger Prison. Hereunder are particulars of his convictions:—

Serial No.	Date	Court	Offence	Sentence
1	26.11.86	... P.L.N.	... Failing to make monthly report (3 counts)	H.L. 3 months/under each count concurrently+8 days costs.
2	26.11.86	... P.L.N.	... Failing to stop on being so required by a Police Officer. Driving without licence.	Fine 60 days Count 1 Fine 60 days Count 2 Concurrently+10 days.
3	27.11.86	... P.L.N.	... Failing to make monthly report.	H.L. 3 months/8 days concurrently.
4	2.12.86	... Pamplémousses	... Attempt at larceny	H. L. 18 months/8 days concurrently.
5	3. 3.87	... Pamplémousses	... Larceny whilst being 2 in number and P.S.P. Count III dismissed.	H.L. 3 months/8 days concurrently.
6	23. 4.87	... Curepipe	... Larceny 2 in number	H.L. 9 months/8 days costs. Concurrently
7	28.10.87	... Pamplémousses	... Larceny Count 1. Possession of stolen property Count 2. (Count 2 dismissed).	H.L. 12 months/10 days costs concurrently.
8	10. 2.88	... I.C.C.	... Larceny with scaling counts 1,2,4,5,6,7. Larceny Count 3. Larceny armed with an instrument Counts 8,9,10,11,12,13, 14. Driving without licence. Ct. 15.	P.S. 5 years under each Counts 1,2,4,5,6, 7,8,9,10,11,12,13,14. H.L. 3 years count 3 concurrently. Fine 85 days on Count 15. Consecutive to above Sentence+20 days costs.

Prisoner B will now be released from jail on or about 29th July, 1991. For the purposes of computation all the sentences listed above including the five-year sentence are treated as one term starting 26th November, 1986.

He is habitual criminal with 20 previous convictions.

At about 14.35 hours on 5th October, 1987, abovenamed was searched at the Reception Office on arrival from Court. 20 flint stones and 30 pills were found hidden in his shoes. These articles being prohibited by the Prison Act, he was put under report for being found in possession of 20 flint stones, and the case of the 30 pills suspected to be psychotropic ones was referred to Police for enquiry.

The Officer in charge Beau Bassin Prison heard the case in respect of the 20 flint stones on 6th October, 1987. The prisoner who pleaded guilty as charged was awarded forfeiture of five days remission and five days cell confinement on nor-

mal diet. At the same time the adjudicating officer informed the accused that the case of 30 pills had been referred to Police for enquiry.

On 20th April, 1988, a letter was received from the Commissioner of Police who upon the advice of the Director of Public Prosecutions requested the Prison Authorities to deal departmentally with the case in connection with the 30 pills. It was heard on 26th April, 1988 and the prisoner again pleaded guilty as charged. The award was forfeiture of two days remission.

On 5th October, 1987, when the offence was committed, the prisoner was serving a sentence of 18 months with hard labour plus 8 days in respect of costs. But on 20th April, 1988 when the reply from the Commissioner of Police was received, the sentence also included the five-year sentence which was dealt to him by the Intermediate Court on 10th February, 1988.

The prisoner never applied to write to his Counsel or to his Attorney."

I found the complaint unfounded.

Case No. C/169/88

Gun-shot wound : no sufficient treatment

Prisoner F's complaint was as per the above heading. He also asked for my intervention for the social aid to his wife to be increased.

Serial No.	Date	Court	Offence	Sentence
1	9.12.87	... I.C.C.	... (a) Attempt at larceny breaking ct I	... P.S. 3 years on each of counts I and III
			(b) Possession of fire-arm without licence ct II	H.L. 3 months on count II
			(c) Possession of fire-arm with intent to endanger life ct III	(Sentence on each count to run concurrently)+10 days imprisonment in lieu of costs

Under the remission system he is due for release on or about 8th December, 1989.

He is a persistent offender with a heavy record of criminal offences.

Respecting his complaints on Medical care, please find enclosed the report of the Prison Medical Officer, Dr

A statement requesting an increase in Social Assistance was recorded from prisoner and forwarded to the Controller Social Security for consideration on 24.10.88 and a reply is awaited."

The Prison Medical Officer had this to say :—

"Prisoner F has since his admission to Prison been following treatment at Dr. Jeetoo Hospital

The comments of the Commissioner of Prisons were :—

"Hereunder are the particulars of his current convictions :

Orthopaedic Unit under the care of Dr. H. He had a gun shot wound in his left foot.

He was discharged from treatment on 4.8.87 and has since been placed in our observation yard.

His allegations against a Prison Hospital Officer are groundless as no prisoners are denied treatment whenever they report sick.

He never complained of pain in his left leg since, but I called for him on 31.10.88 and he stated that he still has pain in his leg. I am referring him back to Orthopaedic Unit Dr. Jeetoo Hospital for advice."

I found both explanations reasonable.

REFORM INSTITUTIONS

Case No. C/116/86

Unjust withholding of salary

An acting Senior Superintendent of Prisons was interdicted on a charge of conspiracy in the destruction of some concrete blocks belonging to the Prisons Department. During interdiction he was paid only half of his salary. This withholding of 50% of his salary lasted from 2nd June 1983 (date of interdiction) to 26th February 1985 (date of retirement). He complained that he found the reduced payment unfair.

I raised the question of 50% salary with the Permanent Secretary, Ministry of Social Security, National Solidarity and Reform Institutions, and asked him to state the regulations in virtue of which such withholding was effected and by whom. After seeking legal advice he replied :—

"I have to inform you that the Officer was interdicted on the 2nd June, 1983 by the Com-

missioner of Prisons as Responsible Officer in accordance with Regulation 31 of P.S.C. Regulations, 1967. On the 3rd June, 1983, the Commissioner informed the P.S.C. of the matter and sought its covering approval, which was given on the 23rd June, 1983.

In accordance with P.S.C. Circular No. 1 of 1980, the Officer's salary was reduced by 50% pending the conclusion of the proceedings against him."

I commented as follows on this reply :—

"While it is agreed that your references to Public Service Commission's Regulation 31 and the G.O.E. are correct, still it remains questionable whether the reduction can continue after his retirement from the service when he ceases to be a public officer and his interdiction also ceases *ipso facto*.

In all fairness and as a matter of logic, the withholding of 50% of his salary during his interdiction should also cease as from the day he ceased to be a public officer. The whole thrust of the penal idea of *withholding of salary is directed against a public officer* as long as he remains in office as such. After that it is for the Court to decide what punishment or penalties are to be inflicted upon him on his being found guilty.

This thrust spends itself with the cessation of the interdiction. The operative words in paragraph 3 of the Public Service Commission Circular No. 1 of 1980 are clearly "the salary of an officer who is under interdiction from the exercise of the powers and functions of his office be reduced by 50% pending the conclusion of the proceedings..." These words cannot, in my opinion, be read in isolation but together.

Now, it is trite law that a penal text should be construed *strictly*. Therefore, the reduction is valid only during interdiction and presupposes a case of interdiction which lasts until the conclusion of judicial proceedings which is not the case of Mr. (the prisons officer) whose interdiction ceased with his retirement i.e. *before* the conclusion of the judicial proceedings owing to no fault of his. My reasoning finds support in Public Service Commission Regulation 3(35) where reinstatement is mentioned. But how reinstatement can be effected in the case of a retired officer?

The question is: is it just for him to be made to continue to bear the cross of an *administrative penal* sanction even after his retirement when the Public Service Commission, much less the Responsible Officer, has no longer any hold over him whatsoever?"

The Permanent Secretary again sought legal advice and replied referring to the questions of pension and gratuity but completely ignoring the question

of 50% salary which was the only issue—the questions of pension and gratuity having been settled earlier (see my Annual Report 1986, p. 36 Case No. C/102/85). The Permanent Secretary also stated in his reply that the Solicitor-General had advised that "an interdiction continues to have effect, after the retirement of an officer, as far as the payment of gratuity and pension are (*sic*) concerned."

I immediately saw that the Permanent Secretary had confused the question of 50% salary with that of retiring benefits and this was confirmed by the Financial Secretary. The latter then requested the Permanent Secretary to consult the Public Service Commission about the release of the salary withheld.

Finally, the Permanent Secretary informed me as follows:—

"The Public Service Commission has informed the Commissioner of Prisons that the Solicitor-General has advised that the request of the Ombudsman that payment of the balance of late Mr.'s salary be made to his heirs may be favourably entertained as the Officer died without being convicted.

The Commissioner has now sought advice from the Ministry for Civil Service Affairs and Employment as to whether the increment withheld during the period of interdiction should also be refunded to the heirs of the Officer."

The question of increment was disposed of by the argument that as the Officer had not worked during interdiction his increment could not be released. I could not dispute this and was satisfied that the balance of 50% salary was in all probability going to be paid to the Officer's succession. (The Officer passed away while this investigation was going on.) In view of the complex nature of the issues and the authorities involved (Public Service Commission, etc.) and in view of what strongly appeared to be a confusion I did not deem it proper, so to say, to apply the *ferule*.

TELECOMMUNICATIONS

The Telecommunication (Transfer) Act No. 11 of 1988 converted the then Telecommunications Department into the Mauritius Telecommunication Services Ltd. The Act was passed on 24th May 1988 and came into force on the same day. As a result all the assets and liabilities of the Department vested in the new company. Investigations by me which were on in several complaints (over-billing, non provision of telephone, discrimination etc i.e. the same old pattern of complaints) had to be stopped as I have no jurisdiction over Companies. I have therefore only one case to report which was completed before the coming into force of the Act :

Case File No. C/26/88

Improper Discrimination

X complained to me on 5th February 1988 enclosing a copy of his complaint dated 28th July 1987 to the Telecommunications Department about the allocation of a Telephone to D thus bypassing him. According to X, D would soon emigrate to Australia.

The explanation dated 7th March 1988 of the Officer in Charge of the Department to me was as follows:—

“From our records, we give below the circumstances which led to D being given a telephone service prior to 31 January 1988.

She made a residential application on 23 August 1973.

On 7th October 1986, the application of D was transferred to business tariff.

X applied for a business service on 23 July 1984.

It is known that D has been paying regularly the telephone bills of Number.....for a number of years, and since 21 December 1983 such telephone was in the house she has been occupying at Royal Road, Rose Hill.

The situation was regularised to have the service of (Tel. No.) transferred in the name of D in July 1987, when A (in whose name the telephone was recorded) applied for a service transfer to Vacoas from Royal Road, Rose Hill.

We are not aware that D has emigrated to Australia since 31 January 1988. We have written to the Police Department, (Immigration) to request confirmation that D has left the country.

Should the reply from the Police Authorities be affirmative, we shall then recover the telephone service of D and re-allocate the line to X.”

Later, on 1st April, 1988 the Director informed me that:—

“After confirmation received from the Commissioner of Police to the effect that D has migrated to Australia, the service (Tel No.) has been disconnected and recovered.

X has already paid the Installation fee. Service will be installed at his premises before the 15th of April, 1988.”

When asked to confirm the above, X did not reply. I concluded therefore that the official explanation was correct.

WORKS

Case No. C/177/87

No satisfactory action re operation of a workshop Close to a dwelling house

R's complaint was that (a) the Ministry of Health had not taken satisfactory action on his complaint to it of smoke and noise nuisance caused by his neighbour's kitchen and his cabinet workshop operating close to R's dwelling-house and (b) the Ministry of Works' action too was not strong enough to stop the neighbour from using an electric motor of 1 H.P. at his workshop.

It appeared that the Ministry of Works had on 23rd January 1987 *not* approved the neighbour's application for the installation and operation of the above electric motor but subsequently on 8th September 1987 it had approved it.

The explanation of the Permanent Secretary, Ministry of Works, to me was:—

“Mr. B's application to operate an electric motor of 1.5 H.P. was rejected in January, 1987, as the Permanent Secretary, Ministry of Health

did not recommend the issue of the permit, in view of the objection raised by R. That Ministry also recommended that the workshop be transferred to another site.

In June, 1987 the workshop was transferred to a site farther away from R's residence. The clearance from the Ministry of Health was obtained in respect of the new site.

A permit was granted to B in August 1987."

R's comments on the above explanation were:—

"(a) The building in the new site where the electric motors are to be installed does not exist at all.

(b) The workshop has never been transferred to the new site in spite of the objection raised.

(c) The electric motors are still operating in the same workshop on the same site as before.

(d) His house is 5 feet from the boundary but his neighbour's workshop is only 3 feet therefrom.

(e) No legal Notice has been served upon him to enable him to raise his objection for the purpose whereas the Legal Notice has been served upon contiguous neighbours.

(f) The Sanitary Engineer never entered the house of complainant in order to register the level of noise by means of his decibels."

Further he complained that:

"the smokes emanating from B's kitchen annoy us a lot. Yesterday when I returned home, great amount of thick smokes were flowing towards my dwelling due to the type of wood used. According to B, this kitchen is used only during interruption of electricity, in spite of the fact that, there are no electrical ovens, as far as I know As far as the application permit on the newspaper is concerned, I have consulted many regular readers. However, so far, nobody have come across this particular application of B."

The reply of the Permanent Secretary enclosing a report from the Senior Chief Inspector (Building) was:—

"An inspection carried out by the Senior/Chief Inspector of Works for Moka/Flacq has revealed that B has not transferred his workshop to the proposed new site as recommended by the Ministry of Health. B has been given a time limit of two months to effect the transfer.

This office cannot comment on the allegations made against the Sanitary Engineer and on the

alleged air pollution resulting from the use of wood by B. You may wish to refer these issues to the Ministry of Health.

As regards the fact that no stamped paper was served upon R, I should like to say that service is effected by the Usher, at the request of the applicant.

A copy of the report of the Senior/Chief Inspector Building East dated the 14th March, and a copy of the letter dated 28th March addressed to B are herewith annexed."

The report in question read as follows:—

"I am pleased to submit a report together with copies of a site plan and location plan concerning the premises on which the existing workshop *actually* stands.

1. (a, b, c, d) I am not aware of the situation of the new site where the electric motors are to be installed. In fact there exists a workshop on the premises of B and I have found a saw mill of 1.5 H.P. in the workshop at the time of my visits on the 3rd and 8th March 1988.
2. I have gathered from B's brother that B has stopped operation since November 1987.
3. The house of R is at a distance of 6m 40 from the existing workshop.

Finally as B had not complied with the request of the Ministry of Works in the light of the report of the Ministry of Health to transfer his workshop to the new site, his permit to operate the electric motor was withdrawn by the Ministry of Works on 15th September, 1988. I considered this case rectified.

Case No.C/180/87

No action for demolishing offending part of building

B's complaint was that his neighbour S had been prosecuted by the Ministry of Works for building at less than the statutory distance of three feet from the common boundary line. S was found guilty by the Court as charged and fined Rs 500+Rs 50 as costs.

B then pursued the matter with the Ministry with a view to having the offending part of the neighbour's building demolished by the Ministry but he did not see any sign of any action in this respect.

I wrote to the Permanent Secretary of the Ministry asking him when the Ministry would take steps to apply Section 78 of the amended Building Act.

The Permanent Secretary sought the advice of the Solicitor General's Office, which advice as communicated to me by him read as follows:—

"This Office would wish to advise that no action can be taken re service of notice etc. by this Office as the issue is one between private parties. It is accordingly opened to B to retain the services of law practitioners in private practice to obtain redress."

I informed B accordingly.

Case No. C/28/88

No action re operation of more electric motors

A group of inhabitants of X village complained to me that in spite of their objections one S had been allowed to operate electric motors in his cabinet workshop close to their residences.

The explanation of the Permanent Secretary, Ministry of Health, when questioned by me was:—

"S started operating a cabinet making workshop in 1979 and a permit was issued to him by the Ministry of Works to run two electric motors, viz one planer of 1 H.P. and one circular saw of 1 H.P. M has applied for a permit to install and work three additional electric motors, viz, one band saw of 1 H.P., one spindle moulder of 1 H.P. and one carving machine of 2H.P. on the same premises.

As it is considered that the operation of the three electric motors by M would constitute a source of noise nuisance to the immediate neighbours, this Ministry has on the 29th February, 1988, recommended to the Ministry of Works that a permit be *NOT* issued to operate the said electric motors."

I had also asked for the comments of the Permanent Secretary, Ministry of Works and they were:—

"S is the holder of a permit to operate at . . . , the following electric motors:—

- (i) 1 circular saw of 1 h.p.
- (ii) 1 planer of 1 h.p.

S has applied to this Ministry for a permit to operate the following additional electric motors:—

- (i) 1 spindle moulder of 1 h.p.
- (ii) 1 carving machine of $4 \times \frac{1}{2}$ h.p.
- (iii) 1 belt sander of 240 volt
- (iv) 1 band saw of 1 h.p.

The Ministry is waiting for the advice of the Ministry of Health and the Ministry of Labour &

I.R. on the application for additional electric motors before taking a decision on the application.

With regard to the letter dated the 29 March from the Permanent Secretary, Ministry of Health concerning the application of M, the latter has not been granted a permit to operate electric motors at"

Further a Ministry of Works Inspector's report dated 17th October 1988 stated a visit to S's workshop showed S was operating:—

- (i) one circular saw of 1 H.P.
- (ii) one planer of 1 H.P.

for both of which he held a permit from the Ministry of Works. There were no other motors. The complainants were so informed by me and I did not hear again from them.

Case No. C/39/88

No access road built

X's complaint to me dated 23rd February 1988 was that when part of his land was compulsorily acquired along the frontage by Government in 1979 he was told by the Ministry of Housing, Lands and the Environment that arrangements would be made to enable vehicular access to his remaining land. But no such access was ever built and X was having a lot of difficulties.

When he took up the matter with the above Ministry he was told that his case was referred to the Ministry of Works. In fact the Permanent Secretary, Ministry of Works, wrote to him on 5th February 1988 to say that "an access of about three metres wide would be provided."

The reply dated 18th April 1988 of the Permanent Secretary, Ministry of Works, to my query was:—

"There is no building on the plot of land belonging to X, situated at Consequently no hardship could have been caused to X as he is residing at Beau Bassin. It was only in July 1987 apparently on X's representations to the Ministry of Housing, Lands and the Environment that that Ministry informed this office that a portion of land belonging to X did not have vehicular access to a public road. This office decided that three metres wide access road would be constructed subject to the availability of funds."

I conveyed the reply to X and advised him to wait for further developments from the Ministry of Works. I did not hear anymore from him.

APPENDIX B

STATISTICAL SUMMARY OF COMPLAINTS

<i>Ministries/Departments</i>			<i>Not justified</i>	<i>Explained</i>	<i>Declined</i>	<i>Declined in exercise of discretion</i>	<i>Discontinued</i>	<i>Discontinued in exercise of discretion</i>	<i>Rectified</i>	<i>Being investigated</i>	<i>Total number of complaints</i>
Accountant-General	...	...	1	—	—	—	—	—	—	—	1
Agriculture, Fisheries and Natural Resources	...	...	1	2	1	—	—	—	—	—	4
Customs	...	...	2	—	—	—	—	—	—	—	2
Education, Arts and Culture	...	...	—	2	1	—	—	—	—	—	3
Employment	...	...	3	—	—	—	—	—	—	—	3
Finance	...	...	1	—	—	—	—	—	—	—	1
Health	...	...	7	7	4	—	1	—	4	1	24
Housing	...	...	8	4	—	—	2	1	2	2	19
Income Tax	...	...	—	1	—	—	—	—	—	—	1
Industry	...	...	—	2	—	—	1	—	—	—	3
Labour and Industrial Relations	...	...	1	1	—	—	2	—	—	2	6
Local Government	...	...	—	—	—	—	—	—	—	1	1
Police	...	...	8	14	5	1	15	1	1	14	59
Post-Office	...	...	1	—	—	—	—	—	—	—	1
Prisons	...	...	26	10	—	—	2	—	1	3	42
Reform Institutions	...	...	—	2	—	—	—	—	1	—	3
Registrar of Associations	...	...	—	—	—	—	—	—	—	1	1
Rodrigues	...	...	—	—	1	—	1	—	—	—	2
Social Security	...	...	1	1	—	—	—	—	—	2	4
Telecommunications	...	...	1	2	2	—	2	1	—	—	8
Works	...	...	4	6	1	—	2	—	2	3	18
Officers and Authorities outside the jurisdiction of the Ombudsman	...	...	—	5	33	—	4	—	—	2	44
TOTAL	...	...	65	59	48	1	32	3	11	31	250

SCHEDULE OF COMPLAINTS FOR PERIOD 1st JANUARY 1988 — 31st DECEMBER 1988

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. ...	Not justified
Agriculture, Fisheries and Natural Resources (Fisheries Division)		
C/116/87	Unjustly suspended as member of the Young Farmers' Club. (Independent body). ...	Explained
C/161/87	No renewal of fishing gill net licence. ...	Not justified
C/201/87	No statement of record of service with the Planters and Millers Arbitration Board supplied to complainant for submission to the Post & Telegraphs Department where he is now employed. ...	Explained
C/ 51/88	Not promoted or appointed Feed Distributor in the Livestock Division. ...	Declined for want of jurisdiction
Customs		
C/ 17/88	Persecution by unnecessary search every time he or his family comes back from travel abroad. ...	Not justified
C/133/88	Non-delivery of a consignment of shrimps by the Customs to complainant. Unfair.	Not justified
Education, Arts & Culture		
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. ...	Explained
C/154/88	Unjustly posted as a government primary school teacher in a R.C.A. school and made to travel 64 kms daily.	Declined for want of jurisdiction
C/166/88	Plea to have daughter under 5 years admitted to a primary school. (Against the law).	Explained
Employment		
C/ 1/88	Not placed in a job despite long-standing registration. (His name submitted to Ministry of Education for job as invigilator but was not selected. Educational qualifications very poor). ...	Not justified
C/ 25/88	Never referred for a job although registered at Employment Exchange as unemployed graduate. (Qualifications too poor; was having aid, no occasion to refer him arose). ...	Not justified
C/116/88	Not placed in a job despite long-standing application. ...	Not justified
Finance		
C/130/88	Non-restoration of full pension 12½ years after retirement and after having drawn gratuity + reduced pension. ...	Not justified
Health		
C/ 63/86	No sufficient action re operation of industrial machines generating great noise close to complainant's residence. (Company prosecuted and fined. Police watching noise problem.) ...	Explained
C/ 67/86	No sufficient action re operation of industrial machines generating great noise close to complainant's residence. (Company prosecuted and fined. Complaint not genuine. Writer wanted jobs for his relatives.) ...	Explained
C/ 78/86	No sufficient action re running of an electric bakery emitting smoke and unbearable noise. ...	Not justified
C/ 14/87	No satisfactory solution to nuisance problem created by discharge of effluents from factory. ...	Explained
C/ 23/87	No satisfactory solution to nuisance problem created by discharge from factory ...	Explained
C/158/87	Inadequate action re building for operation of a factory close to residence (permit withdrawn by M.O.W. after report that the factory not moved to a farther site.) ...	Rectified
C/185/87	No action on complaint of operation of a livestock feed factory in residential area: nuisance. (Woodland when factory started. Complainants came to live later. Area declared industrial zone.) ...	Explained

APPENDIX C—continued

HEALTH—continued

<i>No.</i>	<i>Subject of complaint</i>	<i>Result</i>
C/187/87	No action re operation of a stone-crusher causing dust and noise pollution ...	Rectified
C/191/87	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). ...	Discontinued
C/ 7/88	Negligence of an eye-specialist in not informing complainant of the need for laser treatment — not available then in Mauritius — and generally. ...	Not justified
C/ 13/88	No action re noise nuisance caused by garment factory close to complainant's residence ...	Rectified
C/ 16/88	No action against operation of a garment factory causing unbearable noise (complainant's son also operating a factory close to neighbour. Complainant did not comment.) ...	Not justified
C/ 33/88	Dumping by neighbour on waste land close to complainant's residence; nuisance. (Complainant wrote to M.O.H. with copy to me on same date). ...	Rectified
C/ 42/88	No action on complaint about a poultry farm operating close to his residence. (Municipality concerned authority. Contacted by M.O.H. for intervention) ...	Not justified
C/ 54/88	Acting field worker in M.O.H. penalised by a Senior Health Inspector out of spite	Declined for want of jurisdiction
C/ 64/88	No full medical report made available on the disease, treatment of her late paramour who, she asserted, was not married. (Medical Report received from M.O.H. handed over to complainant. She had never asked the M.O.H. for it) ...	Explained
C/ 97/88	Not considered for promotion in the Family Planning Section of the Ministry despite long and satisfactory service.	Declined for want of jurisdiction
C/ 99/88	Strained relations resulting in persecution of complainant by superior in the service. Both being consultants.	Declined for want of jurisdiction
C/105/88	Reply given to complainant to his protest against the opening of a stone-crusher near his residence not correct. ...	Being investigated
C/153/88	No action re complaint of noise nuisance caused by operation of a brush factory by neighbour. ...	Not justified
C/156/88	No action re complaint to Ministry of Health about nuisance caused by a fowl dealer who slaughters and dresses the fowls he sells on the spot near residence of complainant. ...	Not justified
C/161/88	By-passed for appointment or promotion as Health Inspector.	Declined for want of jurisdiction
C/164/88	Wrong computation of pension, lump sum on retirement; No allowance for uniforms ...	Explained
C/175/88	No action re noise nuisance caused by operation of a garment factory near residence.	Not justified

Housing, Lands & the Environment

C/ 86/86	No adequate action re complaint about obstruction of public access to public beach. (No evidence as to whether the nearby lessee had planted the hedge). ...	Being investigated
C/ 16/87	No effective action re discharge from factory; Nuisance. (Action for improvement of situation being taken now and then until a global decision in name of environment is taken). ...	Explained
C/ 49/87	Ordered to demolish structures on a Crown Land plot leased to his late father and plot subdivided. ...	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.) ...	Explained
C/168/87	No lease granted of a plot of Crown land. Discrimination. (Reply of Ministry sent by this Office returned undelivered with mention "gone away"). ...	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 M.H.C. ...	Explained

APPENDIX C—continued

HOUSING, LANDS & THE ENVIRONMENT—continued

<i>No.</i>	<i>Subject of complaint</i>	<i>Result</i>
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). ...	Discontinued
C/196/87	No action re operation of a stone-crusher causing dust and noise pollution. (Dust pollution almost stopped. No more complaint from inhabitants. Purgated writer of this complaint denied ever having signed a complaint). ...	Rectified
C/ 5/88	No reply to request for lease of a plot of Crown land for building purposes. (Complainant being a squatter no lease could be granted.) ...	Not justified
C/ 6/88	No reply to request for a lease of a building site on Crown land. (Complainant being a squatter — no lease could be granted.) ...	Not justified
C/ 24/88	No lease for a building site granted through mischievous behaviour of the Ministry's surveyor. (Latter denied allegation and asked Ministry to refer the allegation to the Police.) ...	Not justified
C/ 27/88	Unfairly considered squatter and threatened of eviction. ...	Not justified
C/ 34/88	Plea for regularising the situation of squatters on Crown land at Vallée Pitot. (Letters to complainant returned marked unknown). ...	Discontinued
C/ 41/88	No access road provided to main road from complainant's plot of Crown land of which he is a lessee. ...	Rectified
C/ 46/88	Insufficient action against the dyeing factory causing several nuisances. (Under pressure from the Ministry prompted by this Office improvements made to minimize nuisances, but only solution lies in shifting factory elsewhere.) ...	Explained
C/176/88	Noise pollution caused by garment factory. No action. (Replies of Ministry: complainant applied for an injunction to a judge in Chambers.) ...	Being investigated
C/177/88	Crown land leased to complainant's family forfeited by the Minister and leased to a squatter	Discontinued in exercise of discretion
C/192/88	No action re digging of "foundation lines of an industrial building" by neighbour close to complainant's residence. ...	Not justified
C/193/88	Plan for building on Crown land leased by complainant not approved. ...	Not justified
Income Tax		
C/194/88	Double deductions from emoluments as Income Tax and existence of two files on complainant's name ...	Explained
Industry		
C/190/87	Allowing livestock feed factory to operate in residential area. (Les Guibies; industrial zone). ...	Explained
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). ...	Discontinued
C/126/88	Arrange for issue of a permit to operate a handicraft shop after discharge from prison. ...	Explained
Labour & Industrial Relations		
C/162/87	No action re declaration of unjust termination of employment. (Later complainant started legal action against his employer.) ...	Discontinued
C/178/87	Complainant wanted to know whether Geneva Conventions apply to Mauritius and Malawi where he was injured at work. ...	Explained
C/ 44/88	Delaying tactics in dealing with complaint of non-payment of wages for work done as a Hindu Priest. ...	Not justified
C/ 73/88	Insufficient action by the Officer in case of wife's dismissal by her employer. (Wife did not call at this Office when called) ...	Discontinued
C/187/88	Undue delay in taking action on complaint of wrongful dismissal from job ...	Being investigated
C/198/88	No action by regional labour Office on declaration of wrongful termination of employment by doctor-employer ...	Being investigated

APPENDIX C—continued

Local Government

<i>No.</i>	<i>Subject of complaint</i>	<i>Result</i>
C/ 77/88	Obstruction built on access road by neighbour. Complainant petitioned to Governor-General who referred petition to Local Government for action ...	Being investigated
Police		
C/ 8/87	No further action re report of bribery against an Inspector of Police by complainant. (Inquiry with DPP) ...	Being investigated
C/ 36/87	No further action on declaration of "abus de confiance" committed by a notary. (DPP advised Police no further action) ...	Discontinued for want of jurisdiction
C/ 60/87	Authors of "murder" not traced yet ...	Being investigated
C/ 80/87	No action on report of illegal game of skill enticing youths including students (Case referred to DPP) ...	Discontinued
C/ 97/87	No action on various declarations ...	Discontinued in exercise of discretion
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. (DPP advised Police no further action) ...	Discontinued
C/129/87	Biased decision of "no further action" and of simple assault in case of wounds in occipital region and two broken teeth ...	Not justified
C/131/87	No action re declaration against the action of a Police Officer ...	Being investigated
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 DPP for advice.) (DPP advised no further action) ...	Discontinued
C/160/87	No action on declarations re trading without licence, connivance of local Police, etc against complainant's tenant ...	Being investigated
C/188/87	No action on declaration of encroachment by neighbour who built on complainant's land. (Later complainant filed an action in Court on advice of Ombudsman). (Case sub-judice). ...	Discontinued
C/200/87	No action re declaration of nuisance caused by the operation of driving school in front of complainant's house. ...	Rectified
C/203/87	Perfunctory manner of inquiring into a cause of homicide by a Policeman while driving a vehicle (Commissioner of Police informed Ombudsman after various questions and answers through Ombudsman by the complainant and the Superintendent concerned that the inquiry is being sent to the DPP for advice.) ...	Discontinued
C/ 15/88	No information about assault on husband, now in prison, by Police. (She was shown the Commissioner of Police's letter with DPP's instructions re this assault.)	Not justified
C/ 30/88	Made to sign statements by use of violence. Complainant informed Magistrate. (Advised to brief his counsel when trial comes.) ...	Explained
C/ 38/88	Criminal cases struck out on motion of Police prosecutor. (DPP advised no prosecution.) ...	Explained
C/ 43/88	Living in a state of fear after receiving phone calls saying that two superior Police officers would frame him in a drug case. (Enquiry by Police fruitless as no names were supplied by complainant — calls were anonymous — calls ceased.) ...	Explained
C/ 45/88	No action re street motor accident. (Complaint vague. Letter asking for details returned by post office marked "unknown".) ...	Discontinued
C/ 48/88	Anonymous complaint. Inaction against hooligans committing acts of immorality and pickpocketing users of and stripping women in public lavatories in Port Louis. (Authors unknown. Those found were prosecuted. No reports of stripping of women.) ...	Discontinued
C/ 53/88	Being prosecuted for manslaughter and is on remand on a provisional charge; Innocent; has denounced the real culprit. No action. (Case sub-judice. Advised to relate all to his counsel.) ...	Declined for want of jurisdiction

APPENDIX C—continued

POLICE—continued

No.	Subject of complaint	Result
C/ 56/88	Members of complainant's family arrested by Police — innocent — bias of Police. (Arrested persons released on bail. Advised to relate all facts to their Counsel. Provisional Information. <i>Sub-judice</i>).	Explained
C/ 60/88	Statements as accused taken under coercion admitting guilt and involving other co-accused. (Advised to relate all facts to his counsel or to the Court re coercion etc).	Being investigated
C/ 61/88	Faulty investigation, corruption etc of officers inquiring into case of plundering in which complainant's father was witness. (Magistrate postponed trial at his request but disposed of the case on the date postponed.)	Discontinued
C/ 67/88	Charged with fictitious offences. No action against aggressors on his person. (Police prosecuting the aggressors. Advised to seek legal advice for his defence). ...	Not justified
C/ 69/88	Police made him sign several statements whose contents he ignores as he is illiterate. (Case <i>sub-judice</i>).	Discontinued
C/ 70/88	Outstanding cases unduly being postponed at request of Police. (DPP's advice sought but not obtained yet).	Being investigated
C/ 78/88	Unjustly Police took his son — a student — to Line Barracks on a charge of selling onions at a price higher than that fixed. (Case submitted to DPP)	Not justified
C/ 80/88	Allegedly Rs 100 was secured by Police during inquiry but finally only Rs 36 was being returned. Complainant refused. (DPP advised no action in complaint of complainant).	Discontinued
C/ 85/88	Articles secured in a case of murder not referred by Police. (Court ordered forfeiture).	Declined for want of jurisdiction
C/ 86/88	Husband unjustly prosecuted for larceny; counsel failed to appear in Court; would like to know about other cases pending.	Explained
C/ 88/88	Articles secured in a case of murder not returned to complainant after conviction and sentence. (Court ordered forfeiture).	Declined for want of jurisdiction
C/ 91/88	No action on declaration of noise nuisance caused by the operation of metal cabinet making workshop.	Being investigated
C/ 92/88	Declaration of complainant does not contain exact versions.	Declined in exercise of discretion
C/ 98/88	No action against wife for " kidnapping " complainant's two young children in order to make them live with her and her lover. (Warrant to bring back minor — the two children living now happily with parents — their mother).	Explained
C/104/88	Police took statements in absence of complainant's counsel. Inquiry submitted to DPP.	Explained
C/107/88	Officers " planted " drugs in his house; statement from fiancée not taken. (<i>Sub-judice</i> on provisional charges. Inquiry with DPP. Advised to relate all facts to Court during trial).	Declined for want of jurisdiction
C/121/88	No further action after initial inquiry into a case of larceny of complainant's bicycle. (Prosecution ordered against author.)	Not justified
C/123/88	Police investigation not properly done. Case against complainant before Intermediate Court. Defended by Counsel. (<i>Sub-judice</i>).	Declined for want of jurisdiction
C/124/88	Criticisms of several officers concerned in the inquiry into a case of " damaging property " i.e. a hurricane lamp, accused being a close relative of complainant and himself being witness for the defence. (case <i>sub-judice</i>).	Discontinued
C/127/88	Kept on remand in jail since long; has appeared in Court several times (Inquiry submitted to DPP).	Explained
C/128/88	Statements which Police made him sign were not correct. Trial over. Convicted and sentenced. (Advised to petition Commission on Prerogative of Mercy). ...	Explained
C/149/88	No action re declarations of forgery.	Being investigated
C/160/88	No action on declaration made against some CID Officers at a Police Station. (Advice awaited from DPP).	Explained

APPENDIX C—continued

POLICE—continued

No.	Subject of complaint	Result
C/162/88	Vague allegations of apprehensions re declarations. (Requested to furnish dates at Police Station but failed).	Discontinued
C/163/88	Apprehensions of ill-treatment by the Police if arrested for non-appearance in Court. (Commissioner of Police's explanation sent to complainant by this Office returned by Post Office marked "unknown").	Discontinued
C/165/88	No action on declaration against husband — a Police Constable — of wounds and blows on complainant's person. (DPP advised no further action but a warning).	Explained
C/168/88	Delay in prosecution. No trace of complainant's children. (Prosecution fixed pro-forma — children living happily at complainant's-in-law).	Explained
C/171/88	Unfair contravention of son for driving offence. Assault by the Police. (Serious allegations made by complainant against Police. Commissioner of Police decided to send enquiry to DPP for advice).	Being investigated
C/172/88	Intervention of Police sought to stop terrorising by drug users in the vicinity of complainant's house. (Police has acted).	Explained
C/178/88	Police did not act to find the doctor's prescription for psychotropes for use by the complainant after his arrest and explanation. (Police recuperated it from the pharmacy which had executed the prescription).	Explained
C/180/88	Recorded statement of defence of accused (complainant) not produced in Court. (Police stated accused refused to give a statement corroborated. Court believed version of prosecution and found accused guilty.)	Not justified
C/181/88	Articles stolen from complainant's house while he was in prison not restituted to his relative who made declaration to Police of the larceny. (Police requested relative several times to collect the articles at the CID but she did not do so.)	Not justified
C/182/88	Opening and operation of liquor shops and bars after closing time unchecked by Police — deleterious effect on neighbourhood especially the young.	Being investigated
C/183/88	Noise created near residence in a street of Beau Bassin by panel beating of motor vehicles by a mechanic cum electrician. (Rectified after Police intervention. Discontinued at complainant's request).	Discontinued
C/185/88	No action on several declarations mainly against Police Officers	Being investigated
C/188/88	No action re declaration of threats, insults and harassment by neighbours. (Police always attended cells for assistance.)	Being investigated
C/190/88	No action re "dishonoured" cheque issued to complainant. (Drawer had sufficient funds during period the cheque was drawn). (Civil action).	Not justified
C/199/88	No sign of action by Police on declaration re illegal sale of lottery tickets by a club. (DPP advised no action).	Being investigated
C/201/88	Complainant's statement not correctly taken re missing PF 58. Wanted a copy of his statement. (Copy sent by Police).	Being investigated
Post Office (Posts and Telegraphs)		
C/ 71/88	Parcels from abroad not delivered without reason to representative of complainant.	Not justified
Prisons		
C/145/87	Various allegations against fellow-prisoners' acts hostile to him.	Not justified
C/182/87	Unjustified forfeiture of earnings, deprived on canteen facilities. No amenities at Phoenix prison. (At Phoenix prison no work. Therefore no earnings.)	Not justified
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.	Not justified
C/ 2/88	Vague complaints. (Advised to give details). (Never gave them).	Discontinued
C/ 10/88	A senior officer saw him only for a few minutes on application and he could not explain his problems; various other complaints like persecution etc.	Not justified
C/ 12/88	Not allowed to wear sunglasses although the Prison Medical Officer advised to do so	Not justified

APPENDIX C—continued

PRISONS—continued

<i>No.</i>	<i>Subject of complaint</i>	<i>Result</i>
C/ 19/88	Refused right to write to Amnesty International and the Judicial Committee of the Privy Council; No proper treatment by the Prison Medical Officer. ...	Not justified
C/ 20/88	Although seen by Prison Medical Officer who prescribed the required treatment for a skin disease, it was prison hospital nurse who looked after him. Unjust. (Nurses allowed to do so by the Prison Medical Officer and latter kept informed. Cases reviewed). ...	Not justified
C/ 29/88	Not informed about procedure for letters and visits; wanted whether Parole Board instituted. (Commissioner of Prisons requested by me to inform complainant)	Explained
C/ 31/88	No facilities for tooth-filling. (Authorities waiting for financial provision in order to equip the prison dental clinic with such facilities. Now available and complainant's case will have priority). ...	Explained
C/ 32/88	Has not received the visit of his father, 72 years old, nearly blind and bed-ridden since 6 years. Wants Prison Authorities to help. (Should apply and Commissioner of Prisons will arrange.) ...	Explained
C/ 36/88	The present Imam visiting prisons not suitable as his teachings not up to the mark.	Not justified
C/ 37/88	Imam of prison not competent to preach to Muslim prisoners. (Jumma Mosque had been consulted by the Ministry of Reform Institutions for his appointment).	Not justified
C/ 62/88	Unjustly not transferred to Richelieu Open Prison. (Hardened criminal. Transfer not safe.) ...	Not justified
C/ 66/88	Punished twice unduly — (i) for conspiracy to effect escape from prison (Board); (ii) escape from prison (Court).	Not justified
C/ 68/88	Several queries re visits, letters; complaint about lack of facilities for filling teeth at prison. (Facilities available now). ...	Explained
C/ 74/88	Queries re writing to Chief Justice, free legal aid. ...	Explained
C/ 75/88	Not issued with a new towel and a night dress, ordered rest in cell etc. No sufficient medical care. (X-Ray negative for stomach trouble.) ...	Not justified
C/ 84/88	Assaulted by a prisons officer. Consequence: dental set broken. ...	Being investigated
C/ 87/88	Prison officers impassive while complainant was sodomised in prison. (Case <i>sub judice</i>). ...	Discontinued
C/ 95/88	Forfeiture of 2 days' remission and removal from earnings' scheme for 2 weeks; food not satisfactory ...	Not justified
C/100/88	Miscalculation of terms of imprisonment after remission and offences committed during licence. ...	Not justified
C/103/88	Can a prisoner write to the Minister of Justice? (Yes, subject to Commissioner of Prisons' approval.) His medical problems not attended to. ...	Explained
C/109/88	Letter addressed to Pope not sent by Prisons Authorities. (Sent. Reply from Mgr. Margeot). ...	Not justified
C/110/88	Unhygienic condition of the prison hospital and unsatisfactory medical treatment. Sometimes Prison Hospital's Nurses attend to patients under supervision of medical officer). ...	Not justified
C/111/88	Not referred by the Prisons Medical Officer to the Orthopaedic Centre regarding weakness of his legs. ...	Rectified
C/113/88	Problems re visits of wife and mother who are not in good terms. ...	Explained
C/115/88	Letter addressed to Pope not sent by Prisons Authorities. (Not true. Sent. Reply by Mgr. Margeot) ...	Not justified
C/119/88	Various complaints re no weighing of food before issue etc. ...	Not justified
C/132/88	Not allowed to appear before the Prisons Central Board or the Deputy Commissioner of Prison. (Never applied). ...	Explained
C/135/88	Problems about writing letters, stationery etc. ...	Not justified

APPENDIX C—continued

PRISONS—continued

No.	Subject of complaint	Result
C/139/88	Complaint about the prison Imam, books on Islam etc. ...	Not justified
C/141/88	No help to obtain legal aid to start divorce and custody of proceedings. (At my request Commissioner of Prisons helped prisoner to apply for legal aid, which was later granted.) ...	Being investigated
C/142/88	Worried about welfare of his young child as the mother was living with a lover, the husband (complainant) being in prison. (Complaint recorded and transmitted by Prison Authorities to Supreme Court). ...	Explained
C/146/88	Problems about cigarette ration and canteen. (Prices increased by suppliers — complainant's earnings not sufficient to satisfy his requests). ...	Not justified
C/147/88	Persecution by prison officers. ...	Not justified
C/157/88	His statement meant for his Counsel not sent to the latter and problems about unhygienic conditions of kitchen and the quality of the food. ...	Not justified
C/159/88	Doubt whether his letter addressed to his MLA despatched in fact as he did not receive any reply. (Letter despatched by Post.) ...	Not justified
C/169/88	Medical treatment not sufficient especially in view of his gun-shot wound in one of his feet. ...	Not justified
C/170/88	Cigarettes etc confiscated by the prison authorities without reason. ...	Not justified
C/179/88	Sought Ombudsman's intervention for remission of his long sentence of imprisonment as he regretted his acts and was worried about his family. (Advised to petition the Commission on Prerogative of Mercy.) ...	Explained
C/196/88	Not informed of decision of the Prisons Board to whom prisoner complained of assault by Officers etc. (Complaint of assault made a year after the alleged occurrence; Officers denied allegations). ...	Being investigated
Reform Institutions		
C/116/86	Unjust deduction of 50% of salary. ...	Rectified
C/112/88	Requested me to intercede so as to let him have a house on his discharge from prison. (Ministry replied there was no scheme as such. Complainant should apply to C.H.A.) ...	Explained
C/145/88	Request for a house to be provided to complainant on discharge from prison as he is homeless. (Advised to apply to C.H.A. since there are no housing arrangements for discharged prisoners.) ...	Explained
Registrar of Associations		
C/184/88	No action re refusal of double affiliation of complainant's association by a federation. ...	Being investigated
Rodrigues		
C/ 49/88	" Unacceptable transfers " within the public service in Rodrigues. ...	Declined for want of jurisdiction
C/117/88	Complainant told that the plot of Crown land " leased " to him and from which he ekes out a living by cultivation would be taken back from him by Government. (In fact, he had no lease. Just a squatter). ...	Discontinued
Social Security		
C/ 40/88	Social aid insufficient. Would wish to be assisted to get a house. (Social aid paid as laid down by law. Advised to apply direct to C.H.A. for a house). ...	Explained
C/137/88	Application for basic invalidity pension unfairly rejected. ...	Being investigated
C/140/88	Social aid to child stopped unjustly. (Wife and child live and are maintained with wife's lover. Social aid restored when lover deserted them.) ...	Not justified
C/143/88	Application for basic invalidity pension unfairly rejected. (Discontinued at request of complainant.) ...	Being investigated
Telecommunications		
C/ 26/88	Telephone not supplied for business purposes; discrimination. ...	Explained
C/ 47/88	Telephone not supplied; discrimination. (Explanation of Telecommunications Director returned to this Office by post office undelivered marked " unknown ".)	Discontinued

APPENDIX C—continued

TELECOMMUNICATIONS—continued

No.	Subject of complaint	Result
C/ 72/88	Overmetering, exaggerated bills. (When shown the explanation of the Director, complainant made further comments on 25.2.88 — Telecommunications Department became a Company on 24.5.88).	Discontinued
C/ 82/88	Delay in providing a telephone for business premises. (Now provided). ...	Explained
C/ 90/88	His telephone not transferred from Beau Bassin to St Paul. (No spare available.)	Not justified
C/114/88	Not supplied with a telephone despite application as a doctor. (The Department taken over by a public company since May 1988 under Act of Legislative Assembly).	Declined for want of jurisdiction
C/120/88	Not promoted to post of foreman despite efficient service.	Declined for want of jurisdiction
C/138/88	Improper discrimination in providing telephone by the former Telecommunications Department which has been taken over by the company since May 1988.	Discontinued in exercise of discretion
Works		
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).	Discontinued
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).	Explained
C/177/87	No satisfactory action on complaint of operation of a factory close to his house.	Rectified
C/180/87	No action for demolishing offending part of a building of complainant's neighbour. (Solicitor General advised Ministry of Works that issue between parties is a private one and civil action should be started by the aggrieved for pulling down). ...	Explained
C/194/87	No action re operation of a stone crusher causing dust and noise pollution. (Anonymous. M.O.W. referred matter to M.O.H. which reported that remedial steps taken by management of stone crusher).	Rectified
C/ 23/88	No action re operation of electric motors without permit. (Solicitor-General's advice sought and not obtained yet by Ministry of Works). (Later Ministry was advised to request aggrieved parties to report their complaints to the Police for prosecution).	Being investigated
C/ 28/88	No action re operation of more electric machines than authorized by a cabinet factory owner.	Not justified
C/ 39/88	No access road built yet in spite of promise.	Explained
C/ 79/88	Mileage credits not yet paid.	Being investigated
C/ 96/88	No action re neighbour building without permit and without leaving statutory distance from boundary. (Prosecution starting soon).	Explained
C/101/88	No action re building at less than statutory distance from the common boundary. (Complainant agreed to only 1½ ft distance).	Not justified
C/102/88	Sewerage pipe cleaner (complainant) still in service paid insufficient "passage credits"; his complaints to the authorities not heeded. (Complainant silent after communication of Accountant General's explanation).	Discontinued
C/106/88	Mileage credits not computed and payment in lieu thereof not effected despite repeated requests. (Complainant still in service. Payment effected afterwards). ...	Explained
C/152/88	Not paid mileage credits in cash. (Did not call at Head Office when requested. Arrangements made for payment).	Not justified
C/173/88	Inaction rebuilding without leaving statutory distance from boundary line and without permit.	Being investigated
C/174/88	No action re encroachment upon and damage to sewerage line on complainant's land by neighbour. (Civil Matter. Advised to seek legal advice).	Explained
C/186/88	Junior officer selected to follow a course in the water unit of the C.W.A. to his detriment as a senior. ...	Declined for want of jurisdiction
C/189/88	No action on complaint of excavation and proposed commercial building by neighbour at less than statutory distance from the residence of complainant. (Ministry of Works served notice to stop works in October 1988 whereas complaint to Ombudsman on 25th November 1988. Ministry of Works active).	Not justified

CASES OUTSIDE JURISDICTION

<i>Complaints Registered Against</i>				<i>Declined</i>	<i>Discontinued</i>	<i>Explained</i>	<i>Being investigated</i>	<i>No. of complaints</i>
1.	Barrister-at-Law	...	...	5	—	—	—	5
2.	Cargo Handling Corporation	...	...	—	1	—	—	1
3.	Central Housing Authority	...	...	—	—	—	1	1
4.	Central Water Authority	...	...	1	1	—	—	2
5.	Council of Registered Professional Engineers	...	...	1	—	—	—	1
6.	Director of Public Prosecutions	...	...	1	—	—	—	1
7.	District Council (North)	...	...	—	1	—	—	1
8.	Heirs of deceased Notaries	...	...	1	—	—	—	1
9.	Judicial Department	...	...	12	—	3	—	15
10.	Land Surveyor	...	...	1	—	—	—	1
11.	Magistrate	...	...	1	—	—	—	1
12.	Mauritius Council for Social Service	...	...	—	1	—	—	1
13.	Mauritius Examinations Syndicate	...	...	1	—	—	—	1
14.	Municipality	...	...	3	—	—	—	3
15.	National Federation of Young Farmers	...	...	1	—	—	—	1
16.	Private Individual	...	...	2	—	—	1	3
17.	Private Secondary Schools Authority	...	...	—	—	1	—	1
18.	Public Service Commission	...	...	2	—	—	—	2
19.	Son-in-law	...	...	1	—	—	—	1
20.	Widows' & Children's Pension Scheme Board	...	...	—	—	1	—	1
TOTAL				33	4	5	2	44
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								60

1974/9/89—600

