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MAURITIUS

Annual Report

OF THE

Ombudsman

(JANUARY — DECEMBER)

FOR

1985

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OMB. 13/04/Vol. XII

Ombudsman's Office,
4th Floor, Bank of Baroda Building,
Sir William Newton Street,
Port Louis,
Mauritius.
5th March, 1986.

His Excellency Sir Veerasamy Ringadoo, 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, 1985.

Respectfully yours,

R. SEWGOBIND
Ombudsman

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Annual Report of the Ombudsman

January — December 1985

This is the twelth annual report of the Ombudsman and it covers the period 1st January to 31st December 1985.

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 1984	13
Cases dealt with during period under review ...	146
Cases declined for want of jurisdiction	47
Case declined in exercise of discretion	1
Cases explained	24
Cases in which investigation discontinued ...	14
Cases not justified	40
Case justified	1
Case rectified	1
Cases withdrawn	2
Cases pending at 31st December 1985	16

Comments on Statistics

7. *(a)* Not all the cases are within my jurisdiction and several of them are cases concerning matters of appointment, promotion, transfer, discipline, etc., within the public service, para-statal and other statutory bodies. Such cases are outside my jurisdiction. But that does not mean that public officers or employees of para-statal or statutory bodies can never complain to the Ombudsman. They can always contact him about any problems they may have with a government department or officer so long as these problems do not concern their employment. Some day, a government activity is quite likely to affect them in one way or another and they will then be fully entitled to bring their grievance to the Ombudsman; they would thus be complaining not as public officers or employees as described above but as members of the public.

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

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

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

Some Comparative Statistics

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

(b) The Swedish Parliamentary Ombudsmen's Report for the period July 1, 1984 to June 30, 1985 shows that out of a total of 3,200 complaints received, 1,234 complaints were dismissed without investigation. 89 were referred to other agencies or state organs. In 1,482 cases no criticism was made after investigation, in 394 cases admonitions or other criticism were made and in 1 case prosecution or disciplinary proceedings (which are within the jurisdiction of the Swedish Ombudsmen) were started. In no case were proposals to Parliament or the Government made.

(c) The Annual Report of the British Parliamentary Commissioner (Ombudsman) for 1984 shows that during the session 1984-85 a total of 837 complaints were received of which 386 came from Members of Parliament. 237 cases had been carried forward from 1983 and of the combined total of 1,074 cases, 840 were disposed of, 658 were rejected, 1833 fully investigated and the results were reported to Members of Parliament after completion; 9 were discontinued and 224 were carried forward into 1985.

(d) The Annual Report of the Northern Ireland Parliamentary Commissioner for Administration for 1984 shows that out of a total of 179 complaints received, 167 were rejected as being outside jurisdiction or having no *prima facie* evidence of maladministration, 30 were investigated and reports thereon were made to Members of Parliament, 3 were discontinued after partial investigation and reports were made to Members of Parliament and 12 were under investigation at the end of the year.

(e) The Annual Report of the Ombudsman of Fiji for the period March 1984—February 1985 shows the following statistics:—

Total number of cases brought forward	..	75	
Total number of cases received	...	385	460
Total number of cases disposed of	...		350
Total number of cases pending	...		110

The 350 cases disposed of were classified as follows:—

Justified	18
Partially Justified	14
Rectified	56
Explained	71
Settled	11
Referred	3
Not Justified	8
Not Sustained	42
Discontinued	16
Withdrawn	5
Request	10
Abandoned	5
No Jurisdiction	55
Declined	36
	350

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

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

12. It may also be said that there are not many important complaints. But what appear to be small grievances to some critics are really big problems for the vast majority of people in any country. A retiring benefit not paid in time, action on a complaint to a police officer or a labour officer or any

officer or Ministry or Department being unreasonably delayed, a medical report not being available, or a patient's record not easily traceable in a hospital, (to cite only a few cases), may appear small matters to those who look for sensational news. But to the persons concerned such matters are of great importance as they effect 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 19 visits to my office during 1985 by members of the public individually or in groups. Their representations were about the Bank of Mauritius, Development Works Corporation, Employment Service, Mauritius Broadcasting Corporation, Mauritius Civil Service Mutual Aid Association, Media, Ministry of Agriculture; Animal Feed Sale Centre, Ministry of Education, Arts and Culture, neighbour, Passport Office, private individual, Private Secondary Schools Authority, Public Service Commission, Telecommunications, Valuation Office, Widows' and Children's Pension Scheme Board, wife.

(b) In one (1) case the visit was followed, on my advice, by a complaint in writing. In three 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 camplainants are called at my office for clarifications (dates and circumstances) of their complaints or for communicating to them orally lengthy and detailed explainations of Ministries. Sometimes, hearings are held at my office which are attended by the officers of the Ministries concerned, the complainants and their witnesses, if any, and official files and documents and authoritative books (in scientific e.g. medical fields) are also produced for my information and investigation.

(c) Copies of Complaints

16. Thirty-five (35) copies of complaints addressed to the Attorney-General, Chief Government Auditor, Commissioner of Police, Chief Whip, etc., were sent to me. Some of them were signed and the addresses were given. In suitable cases I enquired from the Department concerned as to what action was taken and the writers were informed of the replies received. There were other cases of anonymous copies or copies without addresses of the writers. Obviously, I could not act on such letters not only because of the anonymity etc., but because the anonymous writers did not appear to be aggrieved persons, or the letters related to private disputes or personnel matters within the public service or para-statal bodies. In cases where the original was addressed to the Minister by name, I did not take any action at all as I thought that it would be trespassing on the prerogatives of the Minister. Obviously, it was for the Minister to see what steps to take and I had no right to tell him what to do or enquire as to what action he proposed to take. To sum up, no action was taken in 19 cases for want of jurisdiction, action was taken in 16 cases and case files were opened in 8 of these 16 cases.

REPORT AND RECOMMENDATION UNDER SECTION 100 OF THE CONSTITUTION

17. During the year under review, one complaint was found justified on the grounds of *(a)* manifestly unreasonable delay and *(b)* a manifestly unreasonable act i.e. patent negligence. For details, *vide* Appendix A under heading "Trade and Shipping"—Case Note No. 47/85.

In accordance with Section 100(2) of the Constitution, a report was made by me to the Permanent Secretary, Ministry of Trade and Shipping, and copies were sent to the Minister of Trade and Shipping and the Prime Minister.

Cases Explained

18. There were 26 cases which were classed "*Explained*". They were cases which were fully investigated but which did not fit into the "*Justified*" or "*Not Justified*" straightjackets.

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 Handbook of the Ombudsman (Volume II "Country Surveys") published and edited by Professor Gerald E. Caiden of the University of Southern California, U.S.A., in 1983. This means that in Finland, both offices i.e. that of the Chancellor of Justice and that of the Ombudsman exist side by side. Any other impression that this part of my previous Annual Reports may have created is regretted. I am thankful to my friend Professor Aalto for drawing my attention to this possible interpretation. Hence, this more explicit note.

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

26. To-day, to cite at random a few more examples known to me country-wise or state-wise, in order to illustrate the world-wide prevalence of the institution, New Zealand (1962) *(Parliamentary Commissioner) (Ombudsman),* Great Britain (1967) *(Parliamentary Commissioner for Administration),* France (1973) *(Le Médiateur), U.S.S.R. (Procurator),* Canada, Japan, the Philippines, Singapore, Malaysia, India *(Lokayukta),* Sri Lanka, Pakistan *(Wafaqi Mohtasib),* Bangladesh, Western Australia *(Parliamentary Commis-*

sioner for Administrative Investigations), South Australia *(Ombudsman),* Israel *(Commissioner for Complaints from the Public),* Tanzania *(Permanent Commissioner of Enquiry),* Nigeria, Zambia *(Investigator-General),* Tanzania, Bophuthatswana, Zimbabwe, Alaska, Hawaii *(Ombudsman),* Guyana *(Ombudsman),* Fiji *(Ombudsman),* Papua New Guinea *(Ombudsman Commission),* Dominica *(Parliamentary Commissioner),* Trinidad and Tobago, Solomon Islands, Tasmania, Cook Islands and Mauritius *(Ombudsman)* have all appointed an officer or officers to look into the grievances of citizens or members of the public against government activities amounting to maladministration.

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

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

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

40. In New Zealand, as in Denmark, the main reason for establishing the new office was a widespread feeling that existing parliamentary, judicial and administrative safe-guards 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 Deparments and their officers, tender boards, the police, and prison and hospital authorities. I found that there were differences of opinion over the question whether he should be empowered to investigate the acts and decisions of Ministers themselves. In view of this conflict it might be better to exclude the personal acts and decisions of Ministers from his purview in the first instance. I also found that many people thought that he should be entitled to investigate the recommendations and decisions of the Public Service Commission, the Police Service Commission, certain public corporations and local authorities; though nobody thought that he should be allowed to encroach upon the preserves of the Judiciary or the Judicial and Legal Service Commission. There is, however, an important reason why he should not be empowered to investigate the recommendations of the Service Commissions (or their decisions, when they acquire executive powers). At present no reason is given for the appointment or promotion of A, or for the refusal to appoint or promote B, C and a hundred others, to any given post. If persons who had been passed over were entitled to complain to the Ombudsman, the Commissions would be obliged to give him reasons for their decisions in

every such instance; and the burden cast upon them, which in any event would be heavy with responsibility, would, I believe, become insupportable. The question whether the Ombudsman should have power to investigate the acts and decisions of public corporations which are not direct organs of the Central Government presents difficulties which I was not able to explore adequately during my time in Mauritius. In some instances (perhaps, for example, the Central Electricity Board and the Mauritius Broadcasting Corporation) outside scrutiny might be inimical to independent initiative; in others the balance of advantage may be tilted towards outside scrutiny. This is matter which could well receive further consideration locally. There is no reason of principle why the Ombudsman should be denied jurisdiction over the acts and decisions of local authorities, but there is a possibility of his being overloaded with complaints in the early stages; and if he is a non-Mauritian it may take him some time to find his feet. I suggest that, for the first year at least, local authorities (but not Civil Commissioners) should be outside his province; the matter of his jurisdiction could then be reconsidered.

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

The Ombudsman's Appointment and Jurisdiction in Mauritius

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

CHAPTER IX

THE OMBUDSMAN

Office of Ombudsman.

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

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

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

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

Investigations by Ombudsman.

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

(a) a complaint under this section is made;

(b) he is invited to do so by any Minister or other member of the Assembly; or

(c) he considers it desirable to do so of his own motion.

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

(a) any department of the Government;

(b) the Police Force or any member thereof;

(c) the Mauritius Prison Service or any other service maintained and controlled by the Government or any officer or authority of any such service;

(d) any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the Government or any such officer or authority;

(e) such other officers or authorities as may be prescribed by Parliament:

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

(i) the Governor-General or his personal staff;

(ii) the Chief Justice;

(iii) any Commission established by this Constitution or their staff;

(iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;

(v) any person exercising powers delegated to him by the Public Service Commission or the Police Service Commission, being powers the exercise of which is subject to review or confirmation by the Commission by which they were delegated.

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

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

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

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

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

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

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

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

Provided that—

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

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

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

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

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

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

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

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

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

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

Procedure in respect of Investigations.

98. (1) Where the Ombudsman proposes to conduct an investigation under the preceding section, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect thereof.

(2) Every such investigation shall be conducted in private but except as provided in this Constitution or as prescribed under section 102 of this Constitution the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or attorney-at-law or otherwise, in the investigation.

Disclosure of information etc.

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

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

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

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

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

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

Proceedings after investigation.

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

(a) contrary to law;

(b) based wholly or partly on a mistake of law or fact;

(c) unreasonably delayed; or

(d) otherwise unjust or manifestly unreasonable.

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

(a) that the matter should be given further consideration;

(b) that an omission should be rectified;

(c) that a decision should be cancelled, reversed or varied;

(d) that any practice on which the act, omission, decision or recommendation was based should be altered;

(e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;

(f) that reasons 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 of 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 neessary to amend the Constitution to bring para-statal bodies within the jurisdiction of the Ombudsman. This could be done by an Act of Parliament within the framework of our present Constitution."

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

and he can, for this purpose, require and have access to files and documents, although privileged in the legal sense. There are, of course, provisions where such scrutiny is ousted but, generally speaking, investigation by the Ombudsman means going to the source.

CONCLUSION

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

> "27. Finally, there is a grave misconception about the Ombudsman which must be dispelled. He shoud not be regarded as someone prying into the affairs of the Administration for the sole purpose of fault-finding. Although primarily appointed to secure the redress of grievances, the Ombudsman can be a friend of the public and of the administration at the same time. He may tender advice to complainants whose complaints he cannot investigate. He may even conciliate with the administration in such matters. Indeed, I have done so in certain cases to the mutual satisfaction of the administration and of the *administré*. There is also an important factor which should not be overlooked. In Mauritius and elsewhere a very high percentage of the complaints made are rejected and, in rejecting those complaints, the Ombudsman, is in effect, showing justification for the official action taken. In this connection, it would be pertinent to refer to the following observations which Professor K.W.R. Wade, Q.C., of the University of Oxford made—
>
> > "So for the time being the Commissioner's productivity factor, if I may so describe it, may be taken to be about 10%. One would like to think that this modest figure is due to the standard of public administration in Britain. However that may be, there are those who say it is excessively wasteful to hold a hundred investigations in order to remedy ten grievances.
> >
> > But this overlooks an important factor. In the 90 negative cases the Commissioner is by no means doing nothing. He is explaining to the *administré,* as the French call him, that in fact the official action was right, even though this was not understood and a sense of injustice resulted. This is a valuable service, since it is just as desirable to remove genuine grievances where the action is right as where it is wrong. In all his investi-

> gations, accordingly, the Commissioner is pouring oil on some point of friction between government and citizen. Government departments are, generally speaking, very good at avoiding mistakes. What they are often not good at is explaining themselves. In the Ombudsman they have, as to nine-tenths of him, a public relations officer who justifies their doings to those who are most aggrieved at them. This shows that the public service ought to look on the Ombudsman as a friend rather than an enemy. He is a lightning-conductor for *bona fide* grievances and will keep the departments out of many political storms in the long run."

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

R. SEWGOBIND
Ombudsman

5th March, 1986.

APPENDIX A

CASE REPORTS

AGRICULTURE, FISHERIES AND NATURAL RESOURCES

Case No. C/161/84

Unpaid bills

A contractor for the supply of shoes to the Government complained that—

(a) 600 pairs of shoes had been delivered to the stores officer of the Fisheries Department on 25th October, 1984. i.e. on the same day that the indent had been made;

(b) a discussion had arisen between the Manager of the contracting company and the officer because the latter exacted one pair of shoes of his own choice free;

(c) in case of non-compliance by the Manager, payment for the supply of the 600 pairs of shoes would not be made before June 1985; and

(d) the officer had adopted an arrogant attitude.

My investigation showed that the officer had called at the shoe factory accompanied by three fisheries officers to collect the issue cards and, as, owing to his rank, he was entitled to two pairs of shoes. he had requested the Manager to supply him with one pair of a better quality of the same value as the two pairs normally issued. The Manager did not accede to this request. The officer's version was corroborated in writing by the two accompanying officers.

On 22nd February, 1985, at my request, the Permanent Secretary sent me a signed statement of the stores officer and a photocopy of the indent in question. The statement of the officer was that arrangements had been made by him for the settlement of Rs 50,400 to the contracting company for the supply of the shoes to the officers of the Fisheries Division of the Ministry of Agriculture, Fisheries and Natural Resources. By mutual consent issue cards were delivered to the stores officer for distribution to the officers entitled to receive shoes. The latter then themselves collected their shoes from the company's factory on presentation of their individual cards. The stores officer also stressed that with such a procedure payment to the company could not be effected until the issue of the indented shoes had been completed.

APPENDIX A—*continued*

In fact in that particular instance he had not adhered to the 100% issue but after 75% of the cards had been distributed to eligible officers he made arrangements for the payment of the bill to the company. The latter, he submitted, should therefore have appreciated that payment had been effected earlier than the normal date.

The indent showed all the details. The date of the issue of the indent to the company was 17th September, 1984. The quantity and price were as stated above. The supply date was 25th October, 1984. The head of the Department had certified to the Accountant General as prescribed on 27th November, 1984 after submission to him by the stores officer of the indent with the receipt section duly filled in and signed. The Accountant General's Examiner had passed for payment the bill of Rs 50,400 on 27th November, 1984 and the Company was paid that amount on 28th November, 1984.

During a visit to my office solicited by him, the Manager was shown all the corespondence and the documents and he agreed that everything was in order except for the "arrogant" attitude of the officer. When questioned whether any abusive words had been used by the officer, the Manager admitted that none were used. He made it a point to tell me that he was convinced that had he not complained to me the payment would have been delayed and added that the behaviour of the officer had changed for the better since.

After full consideration of all the facts, I concluded that the Manager, a young man, was over touchy and that his complaint was premature and therefore unjustified, the more so since he conceded that the time taken for payment was normal.

CUSTOMS

Case No. C/4/85

Overassessed Duty

In accordance with Section 97(1)*(b)* of the Constitution, a Minister (hereinafter referred to as the Minister) invited me to investigate the complaint of Mr. M who had imported four second-hand lorries in the year 1980. Three of them had arrived in one consignment per the "Ville de Nantes" on 9th May 1980 — Report No. 306 and the fourth arrived on 31st August 1980 per the "Ville de Valence" — Report No. 535.

APPENDIX A—*continued*

Mr. M felt aggrieved and had an adverse feeling that he could very likely have been made to pay excessive customs duty or at least twice thereof perhaps owing to a mistake or any other reason. Hence, the need to shed light on the whole matter.

I therefore proposed to hold a *hearing* at my Office, on *Thursday, 24th January 1985 at 11.00 a.m., and in virtue of Section 99 of the Constitution,* I required the Comptroller of Customs to depute a Senior Officer and other officer or officers of his Department who had handled this case to attend the hearing bringing with them all supporting documents. I also required the officer concerned to produce the originals of the bills of entry Nos..... and Cash Books Nos..... dated 22nd May 1980 and 8th September 1980 together with all relevant documents and to produce evidence that the sum of Rs 1,000.40 which was paid by My Mr. M as per C.B. No. ..... on 8th September 1980, had been duly credited to Government revenue.

I added that all the officers concerned should be prepared to answer relevant questions and provide full explanation of any matter dealt with by them.

The hearing accordingly took place.

Were present: The Principal Assistant Secretary of the Minister (hereinafter referred to as the Principal Assistant Secretary),
the Senior Customs and Excise Officer,
the Executive Officer/Chief Cashier,
Mr. M, the complainant
the Secretary of my office, and
the Senior Confidential Assistant of my office.

There were two points at issue, viz:

(a) complainant was not sure that the sum of Rs 1,000.40 cents paid by him was duly receipted and credited to Government revenue because the triplicate copy of the receipt given to him by the Cashier did not bear the print of the cash register machine.

(b) Was he made to pay import duty in excess or twice on the fourth lorry which arrived in a separate consignment? He contended that he had pald the freight charges on the four lorries to the ship's agents in Mauritius at the time when the first consignment of three lorries was received i.e. on 9th May, 1980.

APPENDIX A—*continued*

On 13th February, 1985 I was informed by Mr. S on behalf of the Comptroller of Customs that the originals were still untraceable at the filing section. Finally, I considered that all the figures which appeared as CIF on the originals could be obtained if the local shipping agents were asked to produce the relevant books or photocopy extracts thereof by the Ministry of Trade and Shipping. It could then be seen whether they tallied with the figures appearing on the copies held by the importer (the complainant) or not.

In fact, the Principal Assistant Secretary wrote to me that with the assistance of the Ministry of Trade and Shipping, he had obtained from the shipping agents photocopies of—

(a) the Bills of Lading in respect of the freight charges paid by Mr M in connection with the importation of the four second-hand lorries from U.K., and

(b) a letter addressed to Mr M's Attorney-at-Law on 26th September 1981, on the above subject.

I held another meeting at my office on 30th April, 1985 which was attended by the Principal Assistant Secretary, Mr M accompanied by Mr S who was a retired civil servant of some experience and the Secretary of my office.

Under my supervision, the abovementioned officers carried out a minute scrutiny of the figures contained in the copy of the Bill of Entry held by the complainant and the photocopies of *(a)* the Bills of Lading referring to the four second-hand lorries imported by Mr M in two consignments in 1980 and *(b)* a letter dated 26th September, 1981, addressed to his Attorney-at-Law. The photocopies were supplied by the local shipping agents to the Ministry of Trade and Shipping and the Principal Assistant Secretary had communicated them to me under cover of his letter (Ref. No. MLIR/430/68/17/1/T dated 19th April, 1985). It was to be noted that the shipping agents had copied their letter addressed to the Attorney-at-Law to their shippers in London and Paris. The letter was signed by Mr. ....., the Shipping Manager of the local shipping agents.

APPENDIX A—*continued*

The scrutiny revealed no flaw at all but confirmed to the very last digit the accuracy of the figures appearing in the copy of the Bill of Entry held by Mr. M. The conclusion was again irresistible that the Customs Department had made Mr. M pay all the duties, according to the regulations, on the basis of the documents emanating from the shipping agents and produced by Mr. M to the Customs for the levy of duties.

I was glad that Mr. M had come this time accompanied by Mr. S since it was most difficult to make Mr. M, who cannot read or write English or French, understand that nothing wrong could be detected anywhere in his case. But it was again impossible to convince him and even Mr. S shook his head in despair while attempting to do so. My impression was that Mr. M had been labouring under a delusion that some occult forces had conspired to defraud him but he was unable to bring any evidence whereas all the relevant evidence available proved that he had no ground for complaint. He was knocking his head, as it were, against a wall (a product of his own imagination).

It was also significant that he never brought any one of his sons (for whom he had imported three lorries) or that not one of them thought there was any room for grievance.

Mr. M was finally advised by Mr. S and myself to see his Attorney-at-Law and enquire about what legal steps, if any, could be taken on his behalf.

I made an interim report on 15th February, 1985 and a final one on 15th May, 1985 to the Minister describing my investigation and stating my conclusion as above.

The Minister thanked me for both reports, expressed his satisfaction in stating that "the complainant could not have asked for a fuller enquiry" and concurred with me in my finding.

Case No. C/52/85

Registration of Trade Mark

The Managing Director of a new soap manufacturing company complained on 6th April, 1985 that their application for the registration of their trade mark and device for their forthcoming soap manufactured from purely vegetable ingredients and mixtures had been rejected

APPENDIX A—*continued*

by the Comptroller of Customs on the ground that there had been in the name of another company a previous registration of a mark too closely resembling the complaint's one and covering the same specification.

I directed my secretary to reply on 24th April, 1985 to the Managing Director:—

(a) inviting his attention to sections 4(A) and 4 (F) of the Trade Marks Act which give a right of appeal to the Supreme Court against the decision of the Comptroller of Customs and which refer to rules made by the Supreme Court for the prosecution and early hearing of such appeals.

(b) As the investigations of the Ombudsman might take some time and result in the delays for the appeals being lapsed, it was in the Company's interests to consult immediately their legal advisers and act accordingly.

(c) In the exercise of his descretion, the Ombudsman did not propose to investigate the complaint.

I presume the complainant followed my advice as he never wrote again to me on the subject.

EDUCATION, ARTS AND CULTURE

Case No. C/120/84

Equivalence of Certificates

A Surveying Assistant of the Ministry of Housing, Lands and the Environment having obtained an M.Sc. degree in Geodesy of the Moscow University after six years of study-leave without pay, had written to the Principal Assistant Secretary of his Ministry on 2nd September and 8th November, 1983 to do the needful for the recognition of his degree and the diploma showing his qualification record awarded to him by the faculty of Geodesy of the Institute of Geodesy, Aerial Surveying and Cartography. He had also produced a letter from the President of the Royal Institution of Chartered Surveyors of London certifying that his application for enrolment as a Probationer of the Institution had been approved. In fact, he contended that his qualification was higher than the qualifications set out in the Schedule of the Land Surveyors (Diploma) Regulations 1979 of Mauritius.

APPENDIX A—*continued*

He also alleged that as he had not heard from his Ministry by March 1984, he contacted the Secretary of the Equivalence Committee of the Ministry of Education, Arts and Culture to know the state of affairs and was told that for some months the Committee had not met. From then on he was in regular contact with the Secretary and an official of the University of Mauritius to which his case had been referred.

On 27th August, 1984 the Principal Assistant Secretary of the Ministry of Housing, Lands and the Environment, wrote to me as follows:

> "A letter from Mr . . . was in fact received on the 2nd September, 1983. Mr . . . was requested to submit evidence relating to his exemption from the final examinations of the Land Surveyor's Division of the Royal Institute of Chartered Surveyors' U.K. He therefore sent in another letter on the 8th November in that connection (Copies of letters enclosed).
>
> The equivalence of the qualifications of Mr.....in relation to the Diploma issued by the University of Mauritius has to be established before action can be taken as requested by Mr..... The matter was therefore referred to the University of Mauritius on the 30th December for advice. On the 11th January the University advised us that it was not the practice at the University to establish the equivalence of a qualification awarded by a foreign institution and referred us to the National Equivalence Committee of the Ministry of Education.
>
> This Ministry wrote to the Ministry of Education on the 1st February, and has since sent four reminders but no reply has yet been received from that Ministry."

I had also invited the comments of the Permanent Secretary, Ministry of Education, Arts and Culture, on the case of the complainant and on 2nd October, 1984 the Secretary of the National Equivalence Committee of this Ministry replied that the case was under consideration. On 26th October, 1984 in virtue of Section 99(1) of the Constitution, I required the Permanent Secretary to furnish me with a full report on this case on or before 8th November, 1984.

APPENDIX A—*continued*

On 2nd November, 1984 the Secretary of the National Equivalence Committee signing for the Permanent Secretary replied as follows:—

"The case of the complainant was discussed at a meeting of the National Equivalence Committee on the 15th August, 1984. Since Mr....., the representative of the University of Mauritius, was absent and the case is of a technical nature, the Committee decided to refer the matter to the University of Mauritius for their views (copy of letter attached)."

On 3rd December, 1984 the complainant produced to me a photocopy of the Protocol (obtained from the USSR Embassy in Mauritius) on the Equivalence of Educational Documents and Academic Degrees signed in 1977 by the then Prime Minister of Mauritius and the Ambassador Extraodrinary and Plenipotentiary of the USSR. The Protocol was reviewed in 1984. Articles 3 and 5 of the Protocol fully supported the application of the complainant for equivalence of his qualifications and read as follows:—

"*Article 3.* The certificates issued in the Union of Soviet Socialist Republics upon successful completion of a 3 or 4-year course of study at secondary specialised educational establishments in the Union of Soviet Socialist Republics and the certificates issued in Mauritius upon successful completion of a 3-year diploma course at the University of Mauritius, are recognised as certificates which attest that the holders thereof have received both secondary specialised education and the secondary general education in the Union of Soviet Socialist Republics and the secondary general education and the specialised vocational education in Mauritius which qualify them for further studies in higher educational establishments of both countries which are referred to in article 2 above.

Article 5. The Diploma of Master of Science or Art issued by the higher educational establishments in the Union of Soviet Socialist Republics upon successful completion of a 5 or 6-year course and the Degree of Master of Science or Art conferred upon the citizens of Mauritius are recognised as equivalent and qualify the holders thereof for study for the Degree of Doctor of Philosophy in Mauritius and for the Degree of Candidate of Science in the Union of Soviet Socialist Republics respectively."

APPENDIX A—*continued*

I therefore wrote to the Permanent Secretary of the Ministry of Education, Arts and Culture on 4th December 1984 drawing his attention to the Protocol (I enclosed a photocopy) especially to Articles 3 and 5 and stressing the fact that *(a)* in my view, the complainant's qualifications fully satisfied the requirements of both Articles; *(b)* it followed therefore that consultations in the University of Mauritius should have become all the more easy instead of getting unduly protracted and *(c)* since the complainant had submitted all his documents to the Ministry through proper channels, matters should be expedited.

Having received no reply from the Permanent Secretary, despite a reminder dated 7th January 1985, I had to exercise again my powers under Section 99(1) of the Constitution requiring him to furnish me with a full report on this case on or before 6th February 1985. The reply was that *(a)* the matter was submitted to the University of Mauritius for their views and, in reply, the University of Mauritius had referred him to a previous letter in which it had informed him that it was not its practice to establish the equivalence of a qualification awarded by a foreign institution, and *(b)* the matter would be re-considered by the National Equivalence Committee at its next meeting in February/March 1985, in the light of my letter of 4th December, 1984 and the reply of the University of Mauritius.

Then, on 23rd April 1985, I received the following reply from the Secretary, National Equivalence Council (note the promotion in status from Committee to Council) signing for the Permanent Secretary:—

> "The University of Mauritius has now confirmed that the qualifications of Mr. ..... are academically equivalent to the Diploma in Land Surveying offered by the University but has invited our attention to the fact that a candidate holding a qualification other than the Diploma in Land Surveying from the University of Mauritius must provide the Attorney-General with evidence of his knowledge of the enactments specified in Part B of the Schedule — The Land Surveyors (Amendment) Act No. 6 of 1978 Section (5)*(d)* (ii).
>
> The above paragraph will be brought to the attention of the National Equivalence Council at its next meeting when the Council will then be able to take a final decision on this case."

APPENDIX A—*continued*

Finally, on 13th June 1985, the Secretary of the Council informed me that the National Equivalence Council at its meeting held on 7th June 1985, had, after consultation with the University of Mauritius, granted academic equivalence to the complainant as applied for, subject to the proviso regarding compliance with the Land Surveyors Act, as amended. The complainant was informed accordingly by the Council and by me and he thanked me in writing on 24th June, 1985.

After carefully considering all the circumstances, I chose to mark my decision as "Explained".

Case No. C/110/85

Son not admitted to primary school

The father of a boy complained on 30th September, 1985 that his son who would be five years old on 14th January, 1986 was refused admission to a primary school. The Head Teacher of the government primary school, to whom he was referred by the Ministry of Education, Arts and Culture for the "admission exercise", informed him that the admission could not be effected as the son would not be of five years of age on 31st December, 1985.

The father agreed that the Regulations stipulated the age of five years as at 31st December, 1985 but contended that special consideration could be given to his son as a border-line case since logically the child would be *almost* five years old when school resumed in January 1986. He also pointed out that "at the time the child was born, kids of 4½ years were admitted in Standard I of primary schools."

In answer to my query, the Permanent Secretary, Ministry of Education, Arts and Culture, stated:—

> "It is regretted that Mr. . .'s son cannot be admitted to a primary school in January 1986.
>
> The Education (Amendment) Regulations 1985, published under Government Notice No. 39 of 1985, stipulate that—
>
> > "No pupil shall be admitted to a Government or aided primary school unless he has attained the age of 5 on or before 31 December in the year preceding that in which he seeks admission."

APPENDIX A—*continued*

These regulations were made by the Minister under Section 38(1)*(j)* of the Education Act 1957.

It was evident, as conceded by the complainant himself, that the Regulations were emphatic on the question of the age of admission.

Even the Education (Amendment) Regulations of 1957 stipulated in exactly the same sense the required age for admission. There was no exception clause.

The father's plea that there was a time, i.e. 1981, when children of 4½ years of age were admitted can be dismissed on the ground that different governments have different policies depending upon circumstances which are not always the same. I informed the complainant that I could not question the policy of the Government and that the Ministry's officials had acted in accordance with the law as at 31st December, 1985.

EMPLOYMENT

Case No. C/97/85

Unfairly not placed in a job

A young man's complaint was that despite his qualifications and his registration for six years at the Employment Exchange, he had never "been called for an interview". The Public Service Commission too, he alleged, had never called him for an interview although he had applied for employment fifty-three times.

The Permanent Secretary of the Ministry sent me the following explanation:

> "It is a fact that the complainant got first registered with the Employment Service on the 4th December, 1979. He was re-registered on the 4th March, 1980, and the 1st December, 1980. His qualifications are as follows:—
>
> *(a) School Certificate 1980*:
>
> Credit — French, Mathematics
>
> Pass — English, English Literature, Chemistry

APPENDIX A—*continued*

(b) School Certificate 1981:

V. Good	—	P/Accounts, French
Credit	—	English, Mathematics, Chemistry
Pass	—	Human and Social Biology

(c) Higher School Certificate 1983:

Principal Level	—	Mathematics, Chemistry
Subsidiary Level	—	General Paper, Further French Studies

(d) Higher School Certificate 1984:

Principal Level	—	Mathematics, Chemistry
Subsidiary Level	—	General Paper, Biology, Further French Studies

This Ministry has referred him twice for employment to the Mahatma Gandhi Institute on the 7th May, 1985 and to the Mauritius Broadcasting Corporation on the 20th August, 1985. We have not yet been informed of the outcome of these exercises.

You will, I am sure, appreciate that this Ministry cannot answer for the Public Service Commission or other institutions to which the complainant may have submitted applications for employment."

I conveyed to him the above explanation and added that *(a)* I was sorry I could not intervene any further, as the Ministry had referred him to prospective employers; *(b)* it was for the latter to choose the candidate they considered was the most suitable; *(c)* there was no alternative but to continue his registration or start something on his own, and *(d)* the Public Service Commission, the Local Government Service Commission and the para-statal bodies are outside my jurisdiction.

Not hearing from him again, I concluded that the official explanation remained unchallenged.

Case No. C/112/85

Never referred for a job

A young man of 27 years of age complained that despite the fact that he had been registering at his local Employment Exchange since 1980 and had a Grade II Cambridge School Certificate, he had unfairly never been referred for interview with a view to employment.

APPENDIX A—*continued*

The Permanent Secretary of the Ministry sent me the following reply:—

"Records available at the Employment Service indicate that Mr. . ., born on 1st September, 1958 and residing at Shivala Road, Bramsthan, Flacq, is on the live register since his first registration on 10th June, 1980. He passed the Cambridge School Certificate in 1979 and 1980, obtaining four credits at each sitting, as detailed below:—

S.C. 1979		*S.C. 1980*	
(C) French	... 4	(C) French	... 3
Mathematics	... 4	Mathematics	... 4
Chemistry	... 6	Physics	... 6
Biology	... 6	Chemistry	... 3
(P) English Language	... 8	(P) English Language	... 7
English Literature	... 7	Biology	... 7
Physics	... 7		

Mr . . . does not therefore possess five credits at School Certificate level at one and same sitting. His chances of securing an employment in the near future with his present educational qualifications are very remote as there are quite a number of persons possessing similar qualifications but with priority of registration over him for employment. He should nevertheless be advised to continue his registration until his turn comes for consideration on notification of vacancies in line with his qualifications."

I could not find any fault with the official explanation which was duly conveyed to complainant.

ENERGY AND INTERNAL COMMUNICATIONS

Case No. C/81/85

Central Water Authority's exaggerated claim

Mr. X feeling aggrieved by what he considered as an exaggerated claim for costs of water supply installation in 1979, had complained to the Prime Minister on 23rd May, 1983 and on 13th June, 1983 he was informed by the Prime Minister's Office that the matter had been referred to the Ministry of Energy and Internal Communcations.

APPENDIX A—*continued*

On 3rd July, 1983 Mr. X called at my office with the complaint and produced photocopies of correspondence with the Prime Minister's Office and the Central Water Authority. He also alleged that one Mr. Y, living in the same locality as he, had been required to pay a lesser sum for similar works and that there was therefore improper discrimination against him.

In reply to my query, the Permanent Secretary, Ministry of Energy and Internal Communications, said:—

"From various correspondence exchanged with the CWA following representations made by Mr. X, it has come out that—

(i) Mr. X was granted water supply in 1979 on the understanding that he should pay the amount of Rs 878.00, broken down as follows:—

		Rs.
Deposit ...	...	300
Connection Fee	...	200
Laying of 60 ft @ 6.30 per ft	...	378
TOTAL	...	878

(ii) The deposit fee of Rs 300 was claimed in accordance with the rate/s then in force under GN No. 167 of 1969.

(iii) The aforementioned GN was amended in 1981 by GN No. 348 of 1981 providing, *inter alia*. for the deposit fee to be only Rs 60.00. Since Mr. Y had his water supply given in 1983, this latter rate of Rs 60 was made applicable to him.

I hope that the above explanations will help to clear up this matter as to why Mr. Y was made to pay a lower deposit, albeit at a later date."

The Permanent Secretary also sent me the relevant Government Notices.

I communicated the reply to Mr. X and added that it was clear that the Central Water Authority had acted in accordance with the Regulations at the material time and that I could not intervene any further in the matter of his complaint as I have no jurisdiction over the Central Water Authority.

APPENDIX A—*continued*

Case No. C/101/85

No electric supply

The inhabitants of a Central Housing Authority housing estate in Upper Plaines Wilhems complained on 26th August, 1985 that they were having "great difficulty . . . to dwell in the dark everynight. Since long, the absence of electricity is hard to bear, especially by those having babies. We accept to pay all necesary charges to obtain that commodity".

I referred the matter to the Permanent Secretary, Ministry of Energy and Internal Communications, who replied to me on 3rd October, 1985 that he had been informed by the Central Electricity Board that electricity would be supplied to the inhabitants in question as soon as funds were made available by the Central Housing Authority. Indeed, the Commercial Engineer of the Central Electricity Board had informed the petitioners accordingly by letter dated 13th September, 1985. I too conveyed the explanation to them saying that I have no jurisdiction over the Central Electricity Board.

HEALTH

Case No. C/53/85

No adequate action re. dust and noise pollution

A family residing in a rural area complained on 11th April, 1985 that a company was operating a bolts and nuts factory thus causing dust pollution and noise nuisance and that in spite of the Ministry's Inspectors' visits, the nuisances were still continuing to the detriment of the comfort and possibly health of the family and other neighbours.

From my investigation, it appeared that the company had been granted a Development Certificate on 15th November, 1983 by the Ministry of Industry for the manufacture of woodscrews on the basis of a project submitted by the promoters of the company. This Ministry also informed me that the company "should normally obtain the necessary clearances from relevant Ministries and local authorities before starting operation".

The Ministry of Works and the Ministry of Health were also involved and when asked for their comments, the Permanent Secretary, Ministry of Health, replied that it had been observed that the company had not complied

APPENDIX A—*continued*

with the conditions laid down in this Ministry's letter of the 31st May, 1984 addressed to the Ministry of Works. The Ministry of Works had, therefore, been requested to take immediate remedial action.

In fact, the Permanent Secretary of the Health Ministry had written to the Permanent Secretary, Ministry of Works, that noise levels had been recorded on the premises of the complainants and that it was also observed that the bolts and nuts manufacturing process was causing noise nuisances. He had added, however, that the noise nuisance could be minimised if the following measures were taken:—

"1. The top window openings on the north and west sides of the building facing the complainants premises be suppressed and replaced by concrete blocks.

2. The forge with a motor driven fan situated under a shed located at a distance of 10 feet from Mr . . . 's building, is very noisy and disturbing. The forge should be removed and installed on a site facing the main road.

3. The motors be operated during normal working hours only that is between 8.00 a.m. and 4.00 p.m.

Issue of permit is, therefore, recommended on conditon that the above requirements are complied with.

However, the attention of the applicant should be drawn to the fact that the situation will be reviewed in case the process give rise to noise nuisances in the environment following the installation of additional machines".

The Ministry of Works in reply to the company's application for a permit for the installation and operation of electric motors informed the company on 6th June, 1984 that a permit would only be issued on production of a certificate from the Ministry of Health that the above conditions had been complied with. The attention of the company was at the same time drawn to the fact that any installation of additional motors could only be done with the prior approval of the Ministry of Works.

APPENDIX A—*continued*

On 24th April, 1985 the Ministry of Health informed the Ministry of Works that the company had not as yet complied with the conditions. As the company was operating electric motors without a permit, the case was referred by the latter Ministry to the Police on 16th May, 1985 for appropriate action. Eventually, on 28th November 1985, the Commissioner of Police informed the Ministry of Works that the Manager was prosecuted before the District Court concerned, was found guilty of the offence of operating electric motors without a permit from the Ministry of Works and was sentenced to pay a fine of Rs 100 + Rs 20 costs.

It is clear from the above account that all Ministries concerned had been enforcing measures against the company. A letter of acknowledgement of receipt of the complaint in this case dated 23rd April, 1985 was returned to this office by the Post Office on 27th May, 1985 with the mention "Insufficiently addressed". But in spite of that, I did investigate the matter with the above results. But, finally, I discontinued my scrutiny as it appeared that I could not obtain the co-operation of the complainant (family) since it could not be contacted in view of its incomplete address.

Case No. C/76/85

Poultry farming nuisance

A group of inhabitants of an urban residential area in Plaines Wilhems complained on 28th June, 1985 that their representations made to the Ministry of Health, Ministry of Housing, Lands and the Environment and the Municipality of Curepipe regarding the health and environmental problems caused by a commercial poultry farm were of no avail despite visits by sanitary inspectors, municipal inspectors and Police officers.

Upon my intervention, the Permanent Secretary, Ministry of Health, gave me the following explanation dated 25th September, 1985:—

> "Our inspectorate section carried out a site visit on the 11th July, 1985 and observed that the pen was fairly clean. But as there were slight fly and smell nuisances, they requested the owner to intensify his efforts to keep the pen free from such nuisances.
>
> The poultry pen was again visited on the 5th and 13th August and on the 6th September, 1985. No fly or smell nuisances were detected. It was however, observed that the bio-gas digester had been fly-proofed."

APPENDIX A—*continued*

From their letter of complaint to me, it also appeared that the complainants had already seen an Attorney-at-Law to start legal proceedings against the owner to obtain a court injunction restraining him from causing the nuisance and upsetting the ecology of the area.

They also said in the letter that the legal costs would be Rs 6,000 as advised by the Attorney and they preferred that I should take action to get their problems solved.

I conveyed to them on 25th September, 1985 the explanation of the Permanent Secretary, Ministry of Health, and also told them that *(a)* the amount of Rs 6,000 should not deter them from seeking legal remedy as they were a fairly sizeable group and could muster their resources to go to Court to seek redress; *(b)* primarily, the power lay with the Town and Country Planning Board and the Municipality concerned to attend to questions of ecology in urban areas; *(c)* they might, therefore, direct their efforts that way too and *(d)* under the Constituton, I have no jurisdiction over these two bodies or private individuals.

Case No. C/103/85

No action re. nuisance caused by a garment factory

A shopkeeper, owner of a building of which he used the ground floor as a shop and the first floor as his residence, complained that *(a)* a textile factory had started operating on the first floor of another building close to his and *(b)* this was causing him "des ennuis", evidently noise nuisance. He had complained since 18th July, 1985 to the Secretary of Moka-Flacq District Council and to the Health Engineer of the Ministry of Health. As no action had been taken by either, he caused a "Mise en Demeure" to be served on 6th August, 1985 on the company running the factory enjoining it to stop forthwith its operation.

When queried, the Permanent Secretary of the Ministry of Health replied to me that the Ministry's officers had inspected the factory and observed that 70 hand—flat knitting machines were being operated and that no noise nuisance was being caused to the complainant. The Permanent Secretary also stated that the factory had not yet been issued with a Development Permit although an application had already been made to the Moka-Flacq District Council. In case any legal action had to be initiated against the factory, the responsibility rested with the District Council concerned, The Moka-Flacq District Council had been informed of the position.

APPENDIX A—*continued*

The Permanent Secretary, Ministry of Works, also replying to my query, explained that no electric motors were being used by the factory which was operating in a space of 2,009 sq. ft. on the 1st floor of a two-storeyed building for which a building permit No. . . . had been duly issued on 2nd October, 1979. The factory had also obtained the clearance of the Ministry of Health on 6th September, 1985 and an application for a Development permit had already been made by its Manager since 28th July, 1985 to the Moka-Flacq District Council but no such permit had yet been issued by 1st October, 1985. I saw a report of the Senior Inspector of Works of the Ministry of Works in this connection.

I conveyed all these explanations to the complainant and informed him that I had no jurisdiction over District Councils. I suggested that he should write to the Ministry of Local Government and asked him to let me know whether he had started legal proceedings as envisaged in his "Mise en Demeure". I never heard any further from him.

HOUSING, LANDS AND THE ENVIRONMENT

Case No. C/73/85

Wrong Lease Plot

A religious association complained through its secretary that they had been granted lease of Crown Land lot 27 as per the Ministry's plans in spite of their application for lot 26, for the construction of a "baitka". The secretary alleged that:

(a) the latter lot had been allocated to another religious society which had made its application much later than his association;

(b) there had thus been improper discrimination and the dictum "First come first served" had not been observed.

The Principal Assistant Secretary of the Ministry explained to me that—

(a) the facts as stated were fairly correct except for the allegation of improper discrimination;

(b) the Minister had examined both applications and, acting in virtue of powers conferred upon him under Section 4 (2)*(a)* of the Crown Lands Act, had decided to allocate lot 27 instead of lot 26 to the complainant's association; and

APPENDIX A—*continued*

(c) both plots of land were of the same extent and were located opposite each other.

The Principal Assistant Secretary enclosed a photocopy of the site plan. The secretary of the complainant had called on the Minister after his representations and the position had been explained to him and he was subsequently requested to call again on the Minister but he failed to do so.

I read the legal provisions referred to above and found that they supported the version of the Principal Assistant Secretary as regards the exercise of the powers of the Minister.

I conveyed the explanation to the complainant and expressed regret that, under the Constitution, I could not question the decision of the Minister and therefore could not intervene any further.

JUDICIAL

Case No. C/70/85

Refund of Sureties

Three men from Thailand were serving terms of imprisonment for five years with penal servitude after a judgement of the Intermediate Court finding them guilty of the offence of being in possession of counterfeit travellers' cheques.

They alleged that they had furnished sureties in cash in the sum of Rs 3,000 each for the prosecution of their appeals against the judgement. They eventually lost their appeals and then wanted to have their money back as they had learnt that they might be deported to their home country soon. They sought my intervention for the recovery of the money.

I wrote to the Master and Registrar of the Supreme Court about the matter and eventually the Master and Registrar informed me that the three prisoners had not deposited any cash in relation to their appeals but in fact two persons (names given to me) had stood as sureties for all the three prisoners. The question of refund of money to them therefore did not arise.

APPENDIX A—*continued*

I informed them accordingly and never heard again from them. I wish to place on record my appreciation of the cooperation of the Master and Registrar in this matter, although, strictly speaking, the Judicial Department is outside my jurisdiction. Indeed, this was not an investigation but an intervention for obtaining correct information in order to help the prisoners from a foreign land.

LABOUR AND INDUSTRIAL RELATIONS

Case No. C/129/84

Severance allowance offered inadequate; undue delay by Labour Inspector

A woman field labourer's complaint was in substance as per the above heading. She was employed on a daily basis by a small planter in 1974 and after a break of two years, she was re-employed on 3rd February, 1976. On 21st August, 1984 her employment was terminated on grounds of "financial difficulties" of the employer after notice in writing given on 20th May, 1984. The complainant reported the matter to the regional Labour Office on 20th August, 1984. Both the complainant and the employer were present at the Labour Office on 24th August, 1984 as requested by the officer and the employer offered severance allowance at the normal rate i.e. Rs 2,201.94 computed as follows in accordance with Section 36 of the Labour Act (No. 50 of 1975):—

"March 76 — June 78: $15 \text{ days} \times 26.11 \times \frac{28 \text{ yr}}{12}$ Rs 913.85

July 78 — Aug. 84: $8 \text{ days} \times 26.11 \times \frac{74 \text{ yr}}{12}$ Rs 1288.09

Rs 2201.94"

The complainant was not satisfied with the offer and expressed the wish to see her trade union. The meeting was therefore adjourned to 10th September, 1984 with the consent of the complainant but she failed to call at the Labour Office on that date. The employer was present and repeated his offer of normal severance allowance as above. A request note was sent to the complainant asking her to call at the Labour Office on 21st September,

APPENDIX A—*continued*

1984. Finally, in face of her refusal to accept the offer, the Labour Enforcement Branch made a claim of Rs 19,974.15 in her favour before the Industrial Court Magistrate against the employer, this sum being severance allowance computed at the punitive rate.

After hearing the particulars of the case in Chambers, the learned Magistrate told the complainant that it would be advisable for her to accept the offer at normal rate. She turned down the offer and the Enforcement Branch filed a proper plaint before the Court for a severance allowance of Rs 19,974.15. The case was called *pro forma* on 11th April, 1985 and following an agreement between the complainant and the employer, a sum of Rs 3,000 was paid to her in full satisfaction of her claim on 23rd July, 1985.

I found no evidence of unreasonable delay by the Labour Inspector in handling the complainant's case and the original advice of the Magistrate and her eventual acceptance of Rs 3,000 completely demolished her allegation of bad computation or inadequacy of her severance allowance.

Case No. C/147/84

No adequate action re. severance allowance of late husband

The widow of a "director" of a cinema complained that the Labour Office of her area was not dealing properly with the case of her late husband before the Industrial Court claiming severance allowance for wrongful dismissal by the owner of the cinema.

My investigation revealed that following a complaint made at the Labour Office by the late husband on 21st February, 1983 about his summary dismissal on 20th February, 1983 the owner (the employer) and the employee were called at the Office and as no settlement was reached, the case was referred to the Magistrate in Chambers. The employer's counsel rejected any idea of settlement.

A formal plaint was therefore lodged by the Enforcement Branch of the Ministry on behalf of the employee claiming the sum of Rs 10,402.66

APPENDIX A—*continued*

made up as follows:—

		Rs cs
1.	Arrears of wages	6,436.60
2.	Wages in lieu of of outstanding annual leave	328.55
3.	Outstanding wages	633.63
4.	Wages as indemnity in lieu of notice ...	211.21
		657.10
5.	Severance allowance (at 6 times the normal rate)	2,135.57
		10,402.66

On the day of trial on 13th March, 1984 the widow informed the Court that her husband, the plaintiff, had just passed away. The plaint was therefore struck out without costs and a fresh plaint was ultimately lodged on behalf of the heirs and successors of the deceased.

After one or two postponements, the case came for trial on 8th August, 1984 and 5th September, 1984. On the latter date, the widow and the employer came to an agreement, in presence of the late plaintiff's counsel, whereby she agreed in full and final settlement of her late husband's claim the sum of Rs 2,500 which was to be paid in two instalments: Rs 1,000 at the end of Spetember and Rs 1,500 at the end of October 1984. The agreement was made the judgement of the Court.

A Senior Labour Officer called at my office with the copy of the Court record which supported the above official version and also revealed that the widow was duly assisted by counsel although she had concealed this fact from me at my office. Even when she was confronted with the Court record, the widow's answers were evasive. It was clear that in the teeth of the Court record, she was deluding herself that she should get much more.

I finally advised her to accept the sum agreed upon before the Court and on 29th April, 1985 she collected the sum from the Chambers of the Counsel of her late husband's employer. I found her complaint against the Labour Officer unjustified.

APPENDIX A—*continued*

Case No. C/22/85

Retiring Benefits Inadequate

A woman field labourer of a large sugar estate with a factory retired on 4th November, 1984 at the age of 60 and complained that she had been offered a lump sum of Rs 3,055 by the estate although she had worked there for more than nine years. She also started receiving Rs 184 per month from the Social Security Ministry. She found both sums inadequate and contended that *(a)* she should have received at least Rs 15,000 from the estate and *(b)* a higher social security benefit if her employer — the estate — had contributed to the Sugar Industry Pension Fund on her behalf and on its own, and *(c)* her complaints about these benefits were not being attended to with diligence by the officers of both the Ministry of Labour and Industrial Relations and the Ministry of Social Security.

My investigation showed that the complainant had worked on the estate from 10th October, 1975 to 3rd November, 1984 (and not to 8th November, 1984). She therefore reckoned service for 8 years 11 months and 23 days, which period was less than 10 years, and she was therefore not entitled to a gratuity on retirement and to three months' leave prior to retirement.

The amount of Rs 3,055 offered to her by the estate was correct according to Section 36 of the Labour Act and was computed as follows :—

$$\frac{9 \text{ years} \times \text{Rs } 6{,}875.75}{2}$$

On the Social Security side, the position was that contributions were not payable to the Sugar Industry Pension Fund in respect of a *daily* paid worker since under the SIPF Act " Employee " is defined as a *monthly* paid worker. From 1976 to 1978, the complainant had worked on the estate in the vegetable section as a *daily* paid worker. Consequently, no contributions had been or had to be paid either by her or by her employer to the SIPF. This Fund was required by Section 48 of the National Pensions Act of 1976 to pay the value of all contributions in 1978 paid to it to the National Pensions Fund. Under the circumstances, at the time of her complaint she was having her basic retirement pension under the Social Security Act and was not entitled to any higher payment.

Although two Ministries were involved, as will be seen from the above account, I preferred to make only one case-note.

APPENDIX A—*continued*

Case No. C/69/85

Unreasonable delay in dealing with case of retiring benefits

A field worker of a family of small sugar cane planters complained that legal action on the question of retiring benefits was being unduly delayed by the Enforcement Branch of the Ministry.

He was originally employed by the head of the family from 1964 to 1981 and after his death by his sons. He was made to retire at the age of 60 on 11th January, 1985. His employers, who originally had agreed to pay retiring benefits to the worker for his whole term of service (i.e. both with the father and the sons) subsequently said that they would pay severance allowance only for the period 1978 to 1985, contending that there had been a break of two or three months in the worker's service in 1977 and 1978.

The worker conceded that he had indeed gone on overseas leave, without pay, for 45 days in 1977 but that it was with the approval of the departed head of the family, his first employer.

On his retirement, the worker was paid Rs 750 as gratuity in three instalments of Rs 250 each. He was drawing a weekly salary of Rs 227.67 after deduction of Rs 15 as contribution to the National Pension Fund.

According to the regional Labour Inspector's computation, the worker should have been paid Rs 13,750. After the failure of his attempts at conciliation and in view of the blunt refusal of the employer (the sons) to pay a single cent more than what the worker had already been paid, the Inspector referred the matter to the Enforcement Branch in February 1985, which made further inquiry into the case which was thereafter settled amicably between the parties. The worker was paid Rs 6,500 on 4th September, 1985 at the Labour Office in full satisfaction of his claim. This was confirmed by the worker in person when he called at my office at my request.

I found no case of unreasonable delay on the part of the Enforcement Branch including the Inspector.

APPENDIX A—*continued*

POLICE

Case No. C/171/84

No sign of action

Mr S's complaint dated 18th December, 1984 was that after the death of his son in a lorry accident on 14th April, 1984 he had not heard anything about Police action or a preliminary inquiry by a Court.

The son was travelling in the lorry when it capsized and plunged into a ravine about 200 feet deep and this resulted in his death.

The Police inquiry into the case was forwarded to the Director of Public Prosecutions who on 17th October, 1984 advised prosecution of the driver of the lorry before the Intermediate Court for the following offences:

(a) Involuntary homicide by imprudence

(b) Using a motor vehicle without a certificate of fitness.

The Police therefore took the case to Court accusing the driver of the above offences. The Intermediate Court gave judgement on 15th November, 1985 dismissing charge *(a)* and finding the driver guilty of *(b)* for which he was fined Rs 500+Rs150 costs.

It is clear from the above that at the time of the complaint of Mr S, i.e. 18th December 1984, the case had not yet been disposed of and that the Police had taken all the steps in the light of the advice of the Director of Public Prosecutions. There was therefore no failure to act on the part of the Police.

Case No. C/8/85

Protracted Prosecutions

A prisoner's complaint dated 16th January, 1985 was that the Police was deliberately spreading the prosecutions against him over a few years instead of prosecuting him for all the offences during a shorter period or at one and the same time.

The actual situation was that during the night of 9th May, 1982 to 18th May, 1982 a colour television set was stolen from . . . . at Pamplemoueses.

APPENDIX A—*continued*

In the course of the investigation the prisoner was arrested on 7th July, 1982. In his defence he denied his participation in the theft, but confessed having facilitated the sale of the television set. He was subsequently prosecuted before the District Court of Pamplemousses and on 12th May, 1985 he was sentenced to four months' imprisonment with hard labour and to pay Rs 40.—as costs.

In the month of September 1983, while he was serving his sentence at the Phoenix Prison, the prisoner wrote a letter requesting the personnel of Pamplemousses/Rivière du Rempart C.I.D. to call on him, as he had a statement to make in connection with a case of larceny by breaknig which had occurred at the place of . . . . at Mount in the month of January 1982. On 29th September, 1983 at the Phoenix Prison a statement under warning was taken from the prisoner in which he confessed being the author of the theft.

Following his confession, the prisoner was prosecuted before the District Court of Pamplemousses and was, on 12th July 1984, sentenced to undergo two years' imprisonment with hard labour and to pay Rs 15. as costs and to be under police supervision for five years.

There was no other case pending before Pamplemousses Court against the prisoner.

I informed the prisoner accordingly and he did not make any comment. I closed the case as not justified.

Case No. C/13/85

Discrimination in prosecution

The complaint of a breadhawker, with copy to the Prime Minister, the Commissioner of Police and the local Member of the Legislative Assembly, was that *(a)* while he was inside a shop *cum* bar in the course of settling his account with the shop owner, two policemen entered the bar and booked him and two other persons for being found on licensed premises outside opening hours; and *(b)* three other persons who were also there at that time were not so booked.

APPENDIX A—*continued*

In fact, on the date in question which was an election day, contraventions were established by the Police against all the five as above and also against the shopkeeper for selling rum on an election day. All of them were subsequently prosecuted. Found guilty, the four including the complainant were each sentenced by the Court to pay a fine of Rs 150+Rs 20 costs whereas the shopkeeper was fined Rs 1,000+Rs 20 costs.

The complaint was clearly not justified.

Case No. C/27/85

Insufficient action in case of homicide

The grandmother of a boy who was allegedly killed in July 1984 complained to me on 13th February, 1985 that after reading an article in a daily about him, she and the child's father were convinced that the Police had not taken sufficient action to collect all the facts.

She sent me a cutting of the article which in fact said that the suspected killer would be tried by the Assize Court. The part of the article which had upset the father, etc., was to the effect that the son had not returned home on the material date whereas the father and the grandmother contended that the son had been taken away by force from the grandmother's home at night while he was in bed.

The father called at my office on 15th March, 1985 at my request and in place of the grandmother who was ill. He said that he himself was unaware of the case as he was living away from his children who were living with their grandmother. His wife had eloped with another man.

I told him that the press cutting which he had sent me showed that the case had been referred to the Assizes and that meant that the Police had been active with their inquiry and that there had been a preliminary inquiry by a Magistrate who recomended to the Director of Public Prosecutions that the case should be taken to the Assizes.

When faced with this explanation the father said that in fact the case was coming before the Assize Court in March and he simply wanted to know how and why the crime had been committed. I then told him that he had to attend the hearing in Court and he would then know all the facts of the case. The complaint of insufficient action of the Police was of course not justified.

APPENDIX A—*continued*

Case No. C/50/85

Inaction re. brothel

A group of inhabitants of an urban residential area complained to the Director of Public Prosecutions with copy to me that the Police was taking no action against the operation of a brothel within the knowledge of policemen and C.I.D. officers living in the vicinity. They also sent a copy of their complaint to the Commissioner of Police and the Prime Minister and two other Members of the Legislative Assembly.

The version of the Commissioner of Police was that the house in question was checked on 13th April, 1985, searched by members of the local C.I.D. and the regular police and no offence was detected. A statement was taken from the man who was responsible for the house in which he stated that he had applied for a licence to run a boarding house. The application had not been processed yet. In the meantime, the man was preparing the house to be ready by August 1985 for occupation on rent by athletes from abroad who were coming to Mauritius to participate in the then forthcoming " Jeux des Iles " sports competition. The man denied the allegations levelled against him by the writers of the letter of complaint.

The Police found no evidence that the house was used as a brothel. The allegation was therefore unfounded. Besides, there were no names of the group of inhabitants and the signatures appearing on the letter were illegible.

Case No. C/55/85

Wife importuned privately

A prisoner complained that his wife had told him during one of her visits to him that she was being importuned by a Police Constable during the day and at night too by calling at her place under the pretext of a debt owed to him by the husband-prisoner.

In fact there had been a deal about a car sale between the husband and the Police Constable but the husband denied being indebted. The husband thought that the Constable was abusing his position and trying to seduce his wife.

APPENDIX A—*continued*

It was obvious that the Constable's visits to the wife had nothing to do with the discharge of his official or administrative functions. It all amounted to private overtures and I advised the complainant to ask his wife to make a declaration at the nearest Police Station.

Case No. C/56/85
No. C/82/85

Inaction re. declaration

Mrs X and her son-in-law Y complained to me that the Police had taken no action on a declaration by Y about a case of damaging property on what they called their land. An application by Y made on 15th October, 1984 to the Police for a firearm licence had also remained unanswered.

In truth, Y had made a declaration of assault on 29th January, 1984 at a Police Station in the South. In his statement relative thereto, he added that his assailants had pulled down a store which he and some of his workers were in the process of erecting on a plot of land which was the subject of a dispute of ownership between the complainants and the assailants. The latter were members of the same family residing in the locality and were actually occupying the said land.

Mr. Y had on 3rd July, 1985 stated to the Police that he was contemplating civil action against the family through his attorney regarding the occupation of the land by that family.

The Commissioner of Police rightly informed me that Police action would depend on the judgement in the said civil suit.

As regards his application for a fireman licence, Mr. Y was on 30th May, 1985 requested in writing by the Superintendent of Police of the region to notify the Police as soon as he had found a suitable gun.

He had not done so up to 17th July, 1985.

I found the complaint not justified.

APPENDIX A—*continued*

Case No. C/68/85

Stolen articles

On 29th May 1985, Mr. X complained to me that on the night of 31st December 1984, the following articles had been stolen form his place:—

"one colour TV set
one Lady watch
two waterless cooking pans
four calculators
one steel knife
one knife sharpener
one purse
one raincoat".

A declaration to the local Police Station was made by his 'wife'. On 21st January 1985, he and his 'wife' were called to the Police Station and they immediately identified a TV set as being their property which had been stolen. To his surprise no Police officer could account for its presence at the Police Station. The two local detective officers could not explain either. The set was then removed to the C.I.D., Line Barracks, Port Louis, on the instructions of a C.I.D. Superintendent who had stepped in after one of the Constables at the Police Station was intrigued by the strange behaviour of one of the local detective officers—a Sergeant.

Mr. X suspected one of his relatives of the larceny and complained that all the stolen articles were not recovered by the Police except the TV set.

The suspected relative when arrested confessed his guilt and named a co-author of the larceny who was also arrested. Both suspects were prosecuted and found guilty of larceny being two in number.

On 20th January, 1985 the detective Sergeant was at his place enjoying his drinks when he received an anonymous telephone call informing him that there was a TV set lying on the road near the Police Station. He immediately went out and at the place indicated by the caller he found a TV set. He brought it to the Station and locked it up in the Exhibits Room. He did not inform his superior of this occurrence nor did he make any entry in the relevant register at the Station. A Constable who was at the Station had seen him calling in with the set.

APPENDIX A—*continued*

The other stolen articles were not found although a search was made on the premises of a trader to whom the suspected relative of Mr X had allegedly sold them.

The Sergeant's behaviour cast a veil of suspicion over the whole inquiry and disciplinary action was taken on 28th February, 1985 by the Commissioner of Police for neglect of duty (two counts) and falsehood (one count). As a result, the Sergeant incurred a foreiture of half a month's pay. He and his fellow officer (an Inspector) were transferred from the Criminal Investigation Section. As the Commissioner of Police had taken appropriate action and the Police had taken adequate action even before Mr X's complaint to me and my intervention, I classed the case as Explained.

Case No. C/115/85

Hawkers v Licensed Traders

The President of the Shop Owners' Association complained to me on 21st October, 1985 that their protests to the Police against the fact that hawkers were selling all kinds of goods on the pavement of a main street without licence remained unheeded. These hawkers had no overhead expenses. It was a most unfair competition and was causing the duly licensed shopkeepers great financial loss. The Association had complained to the Municipality concerned as well but without any success.

The version of the Commissioner of Police was:—

"*(a)* in the year 1983 complaints were received from shop owners in Port Louis to the effect that hawkers of fancy goods trading in the streets and in front of stores along . . . Street, were acting in unfair competition with them;

(b) the Police took action to remove all these hawkers trading along . . . Street, following which they moved to lateral roads where they reported they were authorised to trade;

(c) on 25th May, 1983 the Superintendent of Police of . . . wrote to the Town Clerk for confirmation thereof;

(d) the Town Clerk, per letter dated 6th July 1983, photostat copy attached, advised the Superintendent that those concerned have been permitted to trade along lateral streets instead of . . . Street;

APPENDIX A—*continued*

(e) ever since, they are no more trading along . . . Street. However, during the month of December every year, hawkers do sell their goods on the slab or in improvised shelters close to footpath along that Street.

The situation is being constantly watched and the Superintendent reports that hawkers are at present trading along lateral roads in the area under reference".

I conveyed the above explanation to the complainant and asked for his comments. He did not make any and I found that the complaint of inaction by the Police was not justified. As for the Municipality, I had no jurisdiction over it.

PRISONS

Case No. C/10/85

No adequate treatment for eye trouble

A prisoner's complaint to me was as per heading above.

During my investigation I saw the report of the Prisons Medical Officer, the complaints sheet and the observations of the Officer-in-Charge of Beau Bassin Prison regarding his application to see a Superintendent of the Prison.

The Prisons Medical Officer's report showed the following record of treatment:—

"25. 9.83 at 17.10 hrs	...	complaining of burning eyes — Admit Hospital Ward
26. 9.83 at 07.30 hrs	...	bilateral . . . . . — Treatment
28. 9.83	...	better — Discharged from Hospital Ward
19.10.83	...	bilateral conjunctivitis — Treatment
25.10.83	...	bilateral . . . . . — refer to Moka Eye Hospital
26.10.83	...	attended Moka Eye Hospital — Treatment given — no further appointment

APPENDIX A—*continued*

31. 1.84	...	Burning eyes — treatment
8. 2.84	...	still complaining of burning eyes — treatment
15. 2.84	...	same complaint — treatment
1. 3.84	...	burning eyes — to work away from dust
18.12.84	...	right . . . . — treatment."

He was referred to the Moka Eye Hospital where he was given the necessary treatment. What better place was there than this hospital for eye trouble?

I found his complaint not justified.

Case No. C/19/85

Not paid earnings

A prisoner who had entered Beau Bassin prison on 19th June, 1978 was released on 10th December, 1984. He complained that, with the exception of Rs 50+Rs 6 for transport, the Prison Authorities did not pay him a single cent of his earnings.

In fact his date of admission was not 19th June, 1978 but 17th August, 1978. The explanation of the Commissioner of Prisons was that on his release from prison, the prisoner refused to cash the balance of his earnings alleging that it was not correct.

On receipt of a letter dated 21st December, 1984 from him alleging again that the balance was incorrect, his earnings and expenditure account in prison were examined by the Internal Controller who found that his final credit balance was Rs 3.75 instead of Rs 1.35 as originally intimated to him. The examination revealed that a sum of Rs 2.40 had been erroneously posted as withdrawal in his deposit card and consequently his final credit balance was adjusted to Rs 3.75. The prisoner was so informed by letter on 12th February, 1985 by the Prison Authorities.

APPENDIX A—*continued*

The Commissioner of Prisons sent me a report of his earnings which read as follows:—

Year		*Yearly earning*	*Deduction sweet & cigarettes*	*Gross Balance*	*Withdrawal amount*	*Balance*
1978	...	54.25	11.00	43.25		
1979	...	165.75	22.25	143.50	7.30	
1980	...	221.00	48.75	172.25	208.00	
1981	...	296.50	54.75	241.75	85.50	
1982	...	344.50	262.65	81.85	101.45	
1983	...	338.00	302.25	35.75	84.25	
1984	...	293.00	285.30	7.70	238.20	
		1,713.00	986.95	726.05	724.70	: 1.35

This return was duly supported by a detailed statement — month by month — of earnings and expenditure during his stay at the prison. As the authorities had acted on receipt of the prisoner's letter and evidently had rectified the slight error before my intervention (12th February, 1985), I considered the complaint as flimsy and also not justified since the complaint was that he was not paid a single cent on his discharge.

Case No. C/42/85

No transfer to another association yard

A prisoner's camplaint was that he was kept in the same association yard as another prisoner with whom he was not getting on well and who tended to persecute him. His request for transfer to another yard had not been granted.

In fact, the relations between the two prisoners had been strained for some time but by the time the Commissioner of Prisons replied to me they were on friendly terms.

A prisoner is made to associate in the yard where he is placed for security reasons. This prisoner was a difficult prisoner and was always falling foul of his fellow-prisoners.

APPENDIX A—*continued*

Case No. C/72/85

Not put on a job fetching extra remission

On the above complaint, the Commissioner of Prisons sent me the following report:—

"Normally prisoners are allocated labour by the Reception Board which takes into account the following and any other available information which may guide it to make the best use of a prisoner's ability and skill during his sentence:—

(a) age, character, nature of offence;
(b) length of sentence;
(c) degree of criminality and security hazard;
(d) aptitude and skill;
(e) previous convictions;
(f) medical fitness.

Prisoners who work in the kitchen, bakery and gardens on Sundays and Public Holidays or who perform extra hours on normal working days are granted extra remission. This privilege is also extended to prisoners who are posted elsewhere and who apply for it provided they have proved to be industrious and of good conduct. They are made to perform gardening duties inside the prison after their normal working hours.

The abovenamed was admitted to prison on 16th September, 1983. In view of his aptitude and skill he has since been posted to the metal workshop.

On 11th April, 1985 he applied to the officer-in-charge Beau Bassin Prison to work in order to benefit from extra remission. According to the nature of the offences for which he is undergoing imprisonment viz:—

(i) possession of gandia;
(ii) possession of prepared opium;
(iii) possession of raw opium;
(iv) possession of pipe used in connection with the smoking of opium;
(v) possession of utensils used in connection with the preparation of opium;

he is unsuitable to work at the bakery or the kitchen. The only job attracting extra remission he may be put on is gardening after his normal hours of labour.

Being given that:

(a) the last prison offence he committed at the time of his application was as recent as 25th March, 1985;

(b) his date of release is 30th July, 1986:

(c) the number of prisoners employed on such work is limited, his application has been noted for consideration in January, 1986."

I communicated the above report to the prisoner and asked if he had any remarks to make. Again he wrote to say that in all fairness he should be allocated jobs which carried extra remission. I replied that I could not intervene any further as I found the report of the Commissioner of Prisons reasonable and his case could be given further consideration in January 1986.

Case No. C/78/85

Forfeiture of earned remission

A prisoner's complaint was that while he was serving a sentence of five years' imprisonment he had performed labour on Sundays and on other public holidays which entitled him to extra remission, but subsequently this extra remission was unjustly forfeited.

My investigation showed that this prisoner was on 11th September, 1980 sentenced to undergo five years' penal servitude and eight days' imprisonment in respect of costs by the Intermediate Court for larceny while being armed with an offensive weapon. On 6th October, 1981 he was sentenced by the Rose Hill District Court to undergo one year's imprisonment with hard labour and five days' imprisonment in respect of costs. The second sentence to follow after expiry of the first sentence consecutively.

In accordance with Regulation 113 of the Prisons Regulations as amended by Government Notice No. 41 of 1954, he was released on licence on 25th August, 1983 which licence was to expire on 11th August, 1985.

APPENDIX A—*continued*

On 1st October, 1984 he was again convicted of larceny and sentenced to undergo five months' imprisonment with hard labour and eight days' imprisonment in respect of costs. As a result of this new offence and conviction and in virtue of Section 213 of the Criminal Procedure Act his licence was forfeited. The consequence of such forfeiture is enacted in Section 218 of the said Act. Accordingly, the prisoner was made to serve 717 days, i.e. the period of the forfeited licence representing the unexpired portion of his sentence. This period was therefore added to the last sentence of 5 months.

The 133 days of earned extra remission also fell under the axe of Sections 213 and 218 of the Criminal Procedure Act and his only recourse was to petition to the Commission on the Prerogative of Mercy for an early release. He was sent a full explanation and having seen the detailed computation of sentence by the Prison Authorities under Regulation AB 859, I was satisfied that the law had been correctly applied to his case.

Case No. C/124/85

Error of Court Clerk?

A prisoner felt that his sentences were being unduly prolonged and he was under the impression that perhaps this was due to an error of the Court Clerk.

At my request the Secretary of my office read the original Court records of the Prisoner's cases and found that his sentences of imprisonment and a Police supervision of three years were exactly as he had stated in his letter of complaint.

I informed him accordingly and added that the judgements in all cases, civil or criminal, are always written and signed by the Magistrates themselves and not by the Court Clerks. There could therefore be no question of any error on the part of the Clerk in his cases.

APPENDIX A—*continued*

SOCIAL SECURITY

Case No. C/3/85

Social aid stopped

An orphan girl who was looked after by her grand-parents, who were themselves recipients of old age pension and who had no other income, complained that her social aid of Rs 121 from the Ministry had been stopped since October 1984. She added that she was still following a needle-craft course at a Social Welfare Centre run by the District Council.

Following the enactment of the Social Aid Act 1983 on 1st December, 1983 social aid to existing cases had to be revised to ensure compliance with the Act. Accordingly the orphan girl was found not qualified for any social aid any further.

However, it was considered too drastic to stop payment immediately wherever required and it was decided that any payment to those beneficiaries who were no more entitled to social aid should be stopped as and when the award was renewed. Consequently, payment of social aid to Miss . . . was stopped as from the month of October, 1984.

The complainant (born on the 16th November 1968) was over 15 years of age and did not qualify for social aid under the Social Aid Act.

It had also been ascertained by the Ministry that the complainant was following the sewing class on a part-time basis i.e. only on Mondays and Wednesdays. Here again, she fell outside clause 3 of the First Schedule of the Social Aid Act of 1983, which allowed an aid of Rs 50 to children between the ages of 15 and 20 who were receiving *full-time* education. I explained the position to her grand-father who called at my office and added that the official action was in accordance with the law.

Case No. C/90/85

Basic invalidity pension abruptly cut off

In accordance with Section 97(1) of the Constitution, a Member of the Legislative Assembly who is also a Barrister-at-Law invited me on 1st August, 1985 to investigate the case of a disabled person of his constituency whose basic invalidity pension had been stopped since 10th May, 1985

APPENDIX A—*continued*

although he was still disabled and had to use crutches all the time. The Member of the Legislative Assembly thought this was a case where the nature of the disability had not been taken into due consideration by the National Pensions Officer.

Upon my intervention, the Permanent Secretary, Ministry for Employment and Social Security and National Solidarity, sent me the following reply dated 16th August, 1985:—

"The claimant first applied for the basic invalidity pension on the 11th December, 1980, and he was awarded the pension for one year up to November, 1981. He was re-examined by the Medical Board in March 1982 and the pension was awarded for three years from December 1981 to March, 1985. He was again examined by the Medical Board on the 3rd March, 1985, when the Board found that the disability was substantial but not permanent as it was likely to last for 6 months only. According to Section 8(1) of the National Pensions Act, a claimant is entitled to receive basic invalidity pension if he is disabled to the extent of 60% for at least 12 months. Payment of the pension was therefore discontinued from April 1985.

The functions of the Natonal Pensions Officer in relation to determination of claims to benefits are laid down in Section 34 of the Act. Subject to a right of appeal, the National Pensions Officer is the sole authority for the determination of claims. Section 34(2) of the Act provides that where a medical question arises the National Pensions Officer must refer that question to a Medical Officer or a Medical Board. In this particular case, the National Pensions Officer has followed the prescribed procedure and has disallowed the claim for basic invalidity pension on the basis of medical advice received from the Board.

The Medical Board has mentioned in its report that the claimant must be examined in October 1985 and he has been informed accordingly."

I perused the various sections of the law referred to by the Permanent Secretary and his statement is borne out by those legal provisions. What the Permanent Secretary called the basic invalidity pension was in fact the Invalid's Basic Pension payable under Section 8 of the National Pensions Act.

APPENDIX A—*continued*

I communicated the Permanent Secretary's explanation with my above observation to the MLA and added that *(a)* if the disabled person was not satisfied with the decision of the Medical *Board* after the examination in October 1985, he might in virtue of Section 36 of the Act, appeal to the Medical *Tribunal* which is constituted under Section 36 (3) of the Act; *(b)* the Medical Board is appointed by the Minister (Section 34 (2)); and *(c)* in virtue of Section 99(1) of the Constitution, I had required the Permanent Secretary to send a responsible officer to my office on 28th August, 1985 with the case file of the disabled person showing the composition of the Medical Board on every occasion the person had been examined as averred in the official explanation, their findings and their recommendations.

I also invited the MLA to call at my office on the date and at the time stated if he was free.

In fact, a meeting took place at my office as required by me and the MLA, a Principal Social Security Officer, the Secretary and the Executive Officer of my office were present. The Officer produced to me the case file. It came to light that the disabled person had been examined four times by different Medical Boards constituted under the direction of the Medical Director of the National Pensions Office of the Ministry. The dates, the composition of the Boards on each occasion, their findings and their recommendations were all there and the Officer had kindly prepared typed copies of these particulars which he produced to me. The MLA too was given a copy at my request. After a few minor remarks, he pointed out that his intervention was not directed against the administration but against the findings of the Medical Board and against the absence of any notification to the disabled person of his right of appeal to the Medical Tribunal and the time within which to do so.

While agreeing with the MLA's observations, I requested the Officer to ask on my behalf the Permanent Secretary to communicate to me (1) the full qualifications of the doctors who had examined the disabled person and (2) the reasons why, as it appeared, the four Medical Boards were not composed of fully qualified orthopaedic surgeons with experience (at least one). I also remarked that *(a)* it was not a purely medical case where the findings of ordinary physicians would do. It was an orthopaedic case (after a street accident); *(b)* if the last Board was not assisted by an orthopaedic surgeon, it was a stronger reason why the case should be examined before

APPENDIX A—*continued*

the expiry of the six months (October 1985) by a panel of fully qualified and experienced orthopaedic surgeons. The Officer took note of my requests and remarks and later reported the proceedings to the Permanent Secretary.

Not receiving the required information early, I required the Permanent Secretary by letter dated 10th September, 1985 in virtue of Section 99(1) of the Constitution to supply me on or before 18th September, 1985 all the information asked for and to say what steps had been taken to implement my recommendations.

Consequently, on 9th September, 1985 the Permanent Secretary wrote to me stating all the information (names of doctors, qualifications, whether government or private medical practitioners, etc.). He also stated that—

"*(a)* Specialist doctors do not form part of the Medical Boards. It is only the Medical Tribunal which is constituted by Specialist doctors.

(b) The Ministry did not refuse the claimant the right of appeal. The disabled person was not notified of such a right because he would be re-examined by the Medical Board in October 1985. In this connection, please find enclosed a copy of ruling of the Medical Tribunal in a similar case."

On 17th September, 1985 another Senior Officer signing for the Permanent Secretary, wrote to me as follows:—

"As pointed out in my letter of the 16th August, the determination of a claim, which includes a request for a review, is the sole responsibility of the National Pensions Officer who is an independent statutory authority. In view of the fact that the claim of the disabled person for an invalidity pension was disallowed by the National Pensions Officer and the decision has already been communicated to him, it is not now possible for the National Pensions Officer to re-open the case unless a fresh claim is made.

Under regulation 3(6) of the National Pensions (claims and payment) Regulations 1977, a fresh claim cannot be entertained by the National Pensions Officer if it is made within a period of six months unless there is good ground to do so. You may, perhaps, wish to request the person to take advantage of this regulation and to make a fresh claim. However, it is worth pointing out that in any case he will be re-examined by a Medical Board in October. I should like, however, to point out that

APPENDIX A—*continued*

it is not the policy in this Ministry to have a specialist doctor on any medical board because of the large number of cases which have to be considered every year. In my previous letter I have already informed you that if a claimant feels aggrieved by the decision of a medical board he can appeal to the Tribunal."

After my investigation, I wrote to the MLA conveying the information and the comments of the Permanent Secretary adding that—

(a) what mattered for the purpose of this investigation was the composition of the Medical Board of 3rd April, 1985 which examined the disabled person and found only 60% incapacity for six months as compared with the higher percentages for longer periods as found by the three previous Medical Boards.

(b) The last Board was composed of an MBBS (Nagpur) and an LRCP, LRCS, LM and MD (Dublin). All the doctors of all four Medical Boards were private medical practitioners.

(c) I could not question for want of jurisdiction the composition of the Medical Boards as the latter were appointed by the Minister (Section 34(2) of the National Pensions Act).

(d) It was reasonable to credit an LRCP, LRCS, MD (Dublin) with a certain degree of speciality in orthopaedic cases.

(e) It would be advisable to wait for the October review.

Finally, the Principal Social Security Officer concerned called at my office on 8th November, 1985 and produced to me the case file of the disabled person which showed that the latter's case had been reviewed by the Medical Board on 31st October, 1985 who found a 60% *permanent* disability as from April 1985. A cheque for the sum of Rs 1,557 was to be sent to the person on that very day i.e. the 8th November.

The sum was arrived at as follows:—

April — June 1985:	Rs 184 p.m.	
	Rs 184×3 = Rs	552.00
July — Nov. 1985:	Rs 201 p.m.	
	Rs 201×5 = Rs	1,005.00
TOTAL ...	Rs	1,557.00

I informed the Member of the Legislative Assembly accordingly and not hearing from him any more, I marked my file as "Explained".

APPENDIX A—*continued*

TELECOMMUNICATIONS

Case No. C/122/85

Discrimination in provision of a telephone

Mr. A who had moved from Beau Bassin to a coastal area in the North applied for a telephone on 22nd September, 1982. He was replied that his name had been placed on the waiting list according to normal procedure. He wanted a telephone on the ground that he was the Managing Director of a commercial company which ran five shops in Mauritius and had 27 employees.

After contacting several times the Director and the Deputy-Director of the Telecommunications Department, he was informed that there was no line available near his new residence. Then he suggested in writing that a telephone be supplied to him on a carrier system connected to the line of his brother-in-law who was living at the back of his residence and who had no objection, he said, to such an arrangement.

The official reply to this suggestion was that a survey had been carried out which showed that there was already a carrier service on the telephone line of Mr. A's brother-in-law and that it was still not possible to provide him with a telephone service. Mr A reacted very strongly to this reply by stressing that the carrier service had been granted to a non-resident whereas he was a resident of the area.

The explanation of the Director to me when queried further regarding the case of Mr. A and the carrier placed on the line of the latter's brother-in-law was that there was no line plant available in the area and that Mr. A had been so informed. The carrier in question had been provided for Mr. X who was the Manager of Operations at the Overseas Telecommunications Services (OTS). The Director had personally checked this fact with the Management of OTS and had been informed that Mr. X was in the coastal area very often though he had another residence elsewhere and that it was essential for the internal service to be able to contact him easily and quickly in case of any problem.

As regards service by carrier, the Director said that such a service is given only to persons for whom a telephone service is essential and that this service is approved personally by him or in his absence by the Deputy-Director.

APPENDIX A—*continued*

Mr. A was 37th on the waiting list in the area. Of the 36 demands waiting for service some were for business premises and it had not been possible to provide them with the service so far.

I informed Mr. A of the result of my investigation as above and told him that he had to be patient until lines were available.

TRADE AND SHIPPING

Case No. C/47/85

Undue delay re. Prohibited trade practice

1. *The Complaint*

Mr. A, a small hawker who lives from hand to mouth, of Port Louis, purchased on 23rd October, 1980 a Colour TV set with a slightly damaged body for the price of Rs 12,262, with a certain discount, from an important commercial company in the capital (which was named and which we all know). He had on that very date sold to the Company an old TV set he had for Rs 6,000 and he was thus able to buy the new one.

He complained on 1st February, 1983 to the Corderie Street Section (Enforcement) of the Ministry of Trade and Shipping that the TV set did not have a VHF system for video screening and requested that the Ministry's officers should make an enquiry about the missing item and about what he considered to be second-hand electronic parts in the TV Set. This led him to believe that there had been tampering before the sale to him. In his letter of complaint to me dated 28th March, 1985 against the dilly-dallying tactics used by the Enforcement Section, he stated that some time after the purchase he connected a video-cassette to the TV set but the latter would not play. Then his son, an Engineer, who had come from U.K. and who was at his place had a look at the interior of the TV set and discovered that there was no VHF system.

He requested me in his letter to investigate his complaint of unreasonable delay as it was a matter of principle to him that the Enforcement Officers of the Ministry who dealt with his case should be more serious in their duty which consisted in ensuring consumer protection and fair trade practice through the enforcement of the provisions of the Fair Trading Act.

APPENDIX A—*continued*

He therefore went to the Company's technician who, he alleged, told him that everyday he removed VHF systems but in his case he would replace it if he (Mr. A) brought his TV set to the workshop of the Company. Mr. A did not take the set as requested to the workshop since, having a precarious livelihood, he had no means to hire transport in order to comply with the request. It also dawned on him that there was at Corderie Street, Port Louis, a "bureau" (office) for the protection of consumers. Hence, he proceeded to that office to make his complaint on 1st February, 1983 as stated above. This office was, clearly, the Enforcement Section of the then Ministry for Prices and Consumer Protection.

2. *The Investigation*

On 2nd April, 1985 I drew the attention of the Permanent Secretary to the fact that Mr. A had complained as above to the relevant section since 1st February, 1983 and that he was being driven from pillar to post i.e. for two years without any enforcement action being taken by the Ministry. I invited his comments in virtue of Section 98 of the Constitution.

He sent me his comments in a letter No. C/26 dated 17th April, 1985 stating that:—

(a) his Ministry had initiated negotiations with the Company which verbally agreed to replace the item which was missing and had been removed from the apparatus. Mr. A subsequently declined the offer from the Company and insisted to have a new TV.

(b) An enquiry was carried out and it became known that the Company had already wound up and been taken over by another company. That change of ownership resulted in greater time to establish the responsibility for the replacement of the apparatus.

(c) The Registrar of Companies informed the Ministry after two months of the name of the person responsible for the first Company.

(d) The Chief Engineer of the Company was abroad and it was after several months that a statement could be obtained from him.

APPENDIX A—*continued*

(e) The case file with all the information was referred to the Solicitor-General's Office on the 20th February, 1984 for advice as to whether the Company was right in removing a VHS tuner from the TV set when this had been purposely incorporated in the TV for video cassette by the manufacturer and of the right of the purchaser to be adequately informed in such a consumer trade transaction—Section 4 of the Fair Trading Act, 1979 refers.

On 3rd May, 1985 I wrote to the Permanent Secretary again saying *inter alia* that

(i) the complainant had called at my office on 25th April, 1985 and, after taking cognizance of the contents of his letter, contended that, although he had reported the case to the Enforcement Branch of the Ministry ever since 1st February 1983, the case file was submitted to the Solicitor-General only on 20th February, 1984.

(ii) Mr A attributed this undue delay to the negligence of two officers of that Branch, namely, Mr X and Mr Y. He contended that but for the negligence, action could have been taken against the Company before its winding-up. During one of his numerous visits to the Branch, Mr X informed him that *(a)* his case file had been put in the wrong tray and was consequently put away, *(b)* Mr X was under the impression that the file had been sent to the Solicitor-General's Office, and *(c)* Mr X referred the complainant to Mr S of that Office.

(iii) When told by Mr S that no such file had ever been sent to that Office, Mr X made a search and found the file in his filing cabinet and thus took it personally to the Solicitor-General's Office.

(iv) The complainant further alleged that *(a)* recently he met Mr. R, a Crown Law Officer, who informed him that he was still studying the file, *(b)* Mr. B of the vendor Company had offered to replace the missing item in the TV set but he did not accept it since he wanted the Ministry to bring to book the Company's employees responsible for the removal so that consumers might be better protected.

(v) In my view, the Permanent Secretary's letter would have been more convincing if paragraphs *(a)* to *(e)* quoted above had mentioned dates.

APPENDIX A—*continued*

During this visit Mr. A told me it was not true to say that he had insisted on having a new TV set as averred in the letter of 17th April, 1985.

I required the Permanent Secretary's further comments as well as those of the two Enforcement Officers of his Ministry named by the complainant.

After a reminder dated 31st May, 1985 sent by the Secretary of my Office, the Permanent Secretary replied to me on 11th June, 1985 and enclosed the explanations of Mr. C and Mr. D, Enforcement Officers, and of Mr. X, Senior Enforcement Officer, and of Mr. Y, Principal Enforcement Officer.

He pointed out in that reply that :—

(1) Mr. B was not directly involved with the enquiry until Mr. A called upon him to inquire about the delay regarding the prosecution of this case. By then, the file was being referred to the Director of Public Prosecutions. Mr. Y could not be said to have acted negligently.

(2) Mr. Y. agreed in his statement with almost all the averments of Mr. A and had explained the circumstances under which the file was delayed. It did not appear there was any deliberate intention on his part to cause delay.

(3) It was also observed, in regard to the contention of Mr. A that without negligence of the officers concerned action could have been taken against the Company before its winding up, that Mr. A made his complaint after the first Company (the vendor) had been taken over by another company.

Of course, the Permanent Secretary was right in his remark about Mr. Y in the light of the explanations of the three officers mentioned above, especially those of Mr. X.

I then wrote to the Registrar of Companies on 18th June, 1985 to know the date of the winding up or taking over of the vendor Company by another company as averred by the Permanent Secretary.

APPENDIX A—*continued*

The Registrar of Companies replied to me on 19th June, 1985 saying that—

(a) the (vendor) Company which had been incorporated under the Companies Act on 23rd May, 1973 as a private company was formed by three shareholders (names mentioned);

(b) the (vendor) Company had turned itself into a public company on 29th June, 1979 (names of shareholding companies mentioned); and

(c) according to a return made up as at the 8th May, 1985 and lodged in this Department on the 20th May, 1985 there had been no change in the membership of the (vendor) Company and the companies referred to in the preceding paragraph were still the only shareholders of the Company under reference.

It is to be noted that the name of the Company remained the same even after conversion.

After carefully perusing all the explanations and the letter of the Registrar of Companies, I wrote to the Permanent Secretary on 4th July, 1985 as follows (I quote keeping the vendor Company and the staff concerned anonymous):—

"The averments in paragraph 5 of your letter are open to question. The (vendor) Company had never been taken over by another company. I have it from the Registrar of Companies that the (vendor) Company was incorporated under the Companies Act on 23rd March, 1973 as a Private Company and on 29th June, 1979 it converted into a Public Company under the same name.

Now, Section 28(4) of the Companies Act (No. 57 of 1984), which section came into force on 1st March, 1985 by Proclamation No. 3 of 1985, reads as follows:—

"The conversion of a company under this section shall—

(a) .....

(b) not affect the identity of the company or any right or obligation of the company or render defective any proceedings by or against the company."

APPENDIX A—*continued*

If you read the whole Section 28, you will see that there in no need for winding-up but a mere special resolution is sufficient for the conversion from public to private company and vice versa. Indeed, the Registrar, in his letter to me (photocopy attached), does not mention any winding-up.

Sections 12 and 110 of the now repealed Companies Act of 1913 also never barred any proceedings even after a change of name or type of the company.

Paragraph 2 of Mr. X's report and paragraph 1 of the report of Mr. C and Mr. D clearly show that the Company accepted that the VHF had been removed and was prepared to put a new one in the TV set. Had Mr. A been warned that the VHF had been removed from the TV set that was being sold to him, it stands to reason that the Company would never have accepted to put a new one just to gratify the purchaser.

It is also not understood why in the first statement from Mr. . . . . (the Technician of the Company) all the information was not recorded by the officers concerned who must have had by then some experience of what material facts are required in cases like the one they were dealing with. The need if at all for contacting the elusive Mr. . . . . would otherwise not have arisen. It would appear from the official reports sent to me that this inaccessible gentleman was carrying the sale transaction in his breast, which is an untenable proposition for a large Company's sale practice. If the removal of the VHF had been done with the consent of Mr. A, surely the sale documents of the Company would have shown this fact. (Vide Sections 2*(a)* and *(d)* and 11 of the Fair Trading Act regarding consumer trade practice and the inspection and seizure of documents). You will no doubt agree that the sale of a TV set which is exposed with an in-built VHF tuner but after removal of the VHF (a highly important part) cannot but be a conditional sale, if agreed by both parties, and as such should appear in the sale documents. But, if done without the consent or knowledge of the purchaser, the removal would amount to prohibited consumer trade practice (Section 4 of the Fair Trading Act).

APPENDIX A—*continued*

Therefore, it is evident that had the Ministry's Enforcement Officers been diligent enough, there was nothing to prevent them from starting legal proceedings against the public company after duly consulting the Solicitor-General if necessary in the year 1983 itself i.e. the year of the complaint.

On the other hand, Mr. X, while admitting the correctness of the allegations of the complainant as stated in paragraph 2*(a), (b), (c)* of my letter of 3rd May, 1985 specially *(a),* says he cannot explain how the case file was not sent to the Solicitor-General with the batch. This proves negligence in not checking what files were being sent to the Solicitor-General and that the whole inquiry and processing of the case were done in an inefficient and perfunctory manner.

I therefore find a *prima facie* case of unreasonable delay and unreasonable act i.e. negligence on the part of all the three officers concerned and referred to in this letter.

Do you or the officers have any further comments?"

3. *Findng and Recommendation*

On 9th September, 1985 I finally wrote to the Permanent Secretary conveying my finding and recommcndation as follows:—

"Having heard from you only on 4th September, 1985 after several telephone calls by my Secretary, i.e. after a lapse of exactly two months, I convey to you my finding that this is a case of unreasonable delay and a manifestly unreasonable act, i.e. patent negligence on the part of the three officers concerned. Along with this report I also intended to recommend that some adequate disciplinary action be taken by your Ministry against these officers which would, I hope, be a salutary reminder that efficiency, diligence and care should be their motto in the discharge of their duties, especially when dealing with consumers' complaints. For, we should not forget that the object of the Fair Trading Act as stated by the then Minister for Prices and Consumer Protection in the Explanatory Memorandum of the Bill (No. XXX of 1979) dated 23rd November, 1979 is "*(a)* to regulate consumer trade practices and make *better provision for consumer protection.* (The underlining is

APPENDIX A—*continued*

mine)." I note now that you have issued "appropriate instructions" to the Principal Enforcement Officer "to make necessary arrangements for preventing recurrence of such a situation" and you have drawn the attention of the officer to the fact that this case "highlights unreasonable delay and unreasonable act in the form of negligence" thus agreeing to my findings.

I am afraid that this does not go far enough. Some departmental action should be taken against the Senior Enforcement Officer and the two Enforcement Officers individually too.

I have also gone through the Ministry's two case files you have sent me at my request. A careful perusal makes the explanations of the Senior Enforcement Officer and of the two Enforcement Officers concerned more mystifying. Some eloquent examples of this are:—

(a) While the Secretary, the Sales Manager of the TV/Radio Department and the Technician of the vendor Company had already made signed statements on 1st April, 1983, 2nd March, 1983, and 10th March, 1983, respectively, saying why the VHF tuner had been removed and that it was a normal practice adopted *unilaterally* by the Company, the two Enforcement Officers were still chasing the Technician to find out the very fact which had already been admitted by him and by the other two employees of the Company. Also, the statement of the person who "could be sued in the name of the Company" which was taken by the two Enforcement Offifficers was not in the case file sent to me. (Vide the explanations of these two officers dated 10th June, 1985 which you sent to me with your letter C/26 of 11th June, 1985).

(b) The Senior Enforcement Officer explains that "after their vain attempts (those of the two Enforcement Officers) to meet Mr. . . . . (The Technician) the case file was returned to me in the month of August and I decided to forward it to the Crown Law Office". The minutes of the Senior Enforcement Officer, the Principal Enforcement Officer and of the Principal Assistant Secretary on the back cover of the brown case file OB 126/83 show that this decision of the Senior Enforcement Officer was taken in August 1983 and that the file was returned to him by the two officers in August 1983 (vide also the Senior Enforce-

ment Officer's explanation dated 7th June, 1985 sent to me by you with the above letter). What an example of a ludicrous "shadow-hunt" for five months (March to August 1983). Vain indeed!

(c) The Senior Enforcement Officer says in his explanation dated 7th June, 1985 "in the *same month* I prepared a résumé . . ." That can only mean August 1983 in the context. Yet, curiously enough, his résumé, obviously prepared for briefing the Director of Public Prosecutions, is *not* dated. But we have it from the white file you sent me that this file was addressed to the Director of Public Prosecutions for advice by the Principal Assistant Secretary on 23rd February, 1984. There is no indication whether the case file OB 126/83 (brown file), containing the statements, was also referred to the Director of Public Prosecutions along with the résumé (white file). I have only to presume that it was.

(d) I could find no trace in either file of any report of the winding up and handing over or change of ownership of the vendor Company as alleged by you in paragraph (iii) of your letter No. C/26 dated 17th April, 1985. Indeed all the *signed* statements of the staff concerned of the Company taken between 2nd March, 1983 and 1st April, 1983 clearly show admission of removal without warning that the Company was prepared to replace the removed component. Your averment in the same paragraph therefore that the "change of ownership resulted in greater time to establish" the responsibility in this respect does not hold water. The same criticism applies to your paragraph (v) saying that "the Chief Engineer" of the Company was abroad and it was after several months that a statement could be obtained from him". In the light of the statements in the brown file it is evident that you were referring to the Technician but this gentleman had already given his signed statement on 10th March, 1983 and then, according to the Enforcement Officers, had become elusive and inaccessible to them. The complaint having been made on 1st February, 1983 and the Technician's statement obtained on 10th March, 1983 it is baffling to hear of averments like "*several months*". In any event, the files did not contain the statement of the Chief Engineer as averred.

APPENDIX A—*continued*

(e) The white file contained *loose* sheets on which were found the opinion and advice *inter alia,* of the Acting Crown Counsel. A file should be a file and its contents should be properly secured by tags and numbered.

The gravamen of this complaint is not so much why legal action was not taken as early as possible (it is understandable that in this particular case legal advice was found desirable by your Ministry) as the unduly protracted and negligent processing and despatch of the case file to the Solicitor-General for advice. Even early legal action could have started if early advice had been sought and if it recommended prosecution. The injustice that resulted to the complainant from the act of maladministration as described above was that he had to call so many times at the Enforcement Division for the better part of a whole year only to be fed with wrong information and unwarranted excuses.

I am sending a copy of this report and recommendation to your Minister and the Prime Minister in accordance with Section 100 of the Constitution.

May I know when the Ministry has taken action as advised by the Director of Public Prosecutions and also the departmental action taken as recommended by me?"

Later, I was informed by the Permanent Secretary that "a case had been lodged" against the vendor-company before the Profiteering Court and that the trial had been fixed for 16th January, 1986. Later, still, I was informed that the Director of Public Prosecutions had entered a *Nolle Prosequi* before the Court and the case was withdrawn. As for me, what mattered was not so much the legal proceedings as the administrative laches of the Ministry's Officers.

N.B. The terms VHF and VHS have been used invariably by the Ministry and in the statements made by the Company's Staff. But for the purpose of this investigation, I did not consider it important to clarify which was which.

APPENDIX A—*continued*

Case No. C/59/85

No action re. unfair trading

A consumer from a rural area who was, to use his own words, " not so well in reading and writing " made a declaration on 6th January, 1984 to the Enforcement Division of the Ministry against his shopkeeper for charging him higher prices for the goods he had been purchasing during the years 1981, 1982 and 1983.

On the 30th January two Enforcement Officers called at his place and took statements and, he alleged, they took 3 " carnets de boutique " from him. But he said that later he found that the inquiry was marking time and that the officers maintained having received only one *carnet* and not 3 as alleged. He was not informed of any steps taken to prosecute the shopkeeper.

The consumer complained to me on 24th April, 1985 about the inaction of the Ministry's officers.

After my intervention on 3rd May, 1985 it transpired that after inquiry the Ministry had established a list of contraventions against the shopkeeper for selling at higher prices and that the file had been referred to the Director of Public Prosecutions on 30th October, 1984.

But the consumer who was in touch with the Enforcement Division was not satisfied with the way the inquiry had been conducted and, according to the Permanent Secretary, he levelled serious charges against the Inquiring Officers in an undated letter received at the Ministry on 13th September, 1984 and addressed to the Permanent Secretary. On 10th October, 1984 he gave a lenghthy statement at the Ministry when required to substantiate his several charges against the Inquiring Officers. The Permanent Secretary sent me photocopies of both the undated letter and the statement.

I called the consumer at my office on 2nd July, 1985 where he denied having written the impugned undated letter.

APPENDIX A—*continued*

In view of his allegations against the Inquiring Officers, an identification parade was held at the Ministry. Although his main contention was that he had handed over to the officers *three* note books (carnets) and two sheets showing his purchases on credit and the prices, in his statement given on 31st January, 1984 to the Inquiring Officer, he had stated : " Tout ça banne prix la fine écrire dans ene carnet et deux feuilles volants. Mo produire carnet la et feuille volant la pour l'enquete ". (All these prices are written down in a notebook and two flying sheets. I produce the notebook and the flying sheets for inquiry.)

In face of his denial of his being the author of the impugned letter and the signature affixed to it and in view of the fact that his wife too was involved, I proposed to call a meeting of the officers concerned, himself and his wife with all relevant files and documents. When told that it might be necessary to refer the impugned letter to the Police handwriting expert and with the meeting looming large, he became hesitant and prevaricating saying that he would be free only by the end of the crop season, that he would not like his wife to get mixed up with all this affair and that he preferred to drop the matter.

It also became apparent to me that the consumer was deliberately trying to conceal to me the fact that in or about February 1985 he had been sued by his shopkeeper for indebtedness and that the Court gave judgement against him and ordered him to pay to the shopkeeper the sum of Rs 3,500.

In view of the peculiar circumstances of this case and the demeanour of the consumer, I concluded that it would be unsafe to rely on his word and I rejected his allegation of inaction on the part of the Enforcement Division of the Ministry. In fact there was evidence that this Division had been making inquiry after his declaration but things got complicated by his incriminatory undated letter and the statement related thereto. However, on 18th July, 1985 on the advice of the Director of Public Presecutions the shopkeeper was prosecuted on two counts for selling sardines at a higher price than that fixed by law, was found guilty and was sentenced to pay a fine of Rs 250 on each count plus costs.

APPENDIX A—*continued*

Case No. C/127/85

Improper discrimination

On 31st October, 1985 Mr. S. complained to me that his application since 1976 to the Ministry of Commerce and Industry as it then was for a licence to operate a bakery had been turned down whereas such a licence had been issued to another person who had applied "a long time" after him for operation in the same region. He sent me copies of correspondence on this subject with the Ministry of Commerce and Industry in 1981, 1982, 1983 and 1984 and with the Prime Minister's Offiee in 1985. Indeed, the Ministry concerned had turned down his repeated applications even as late as 1983 whereas the Prime Minister's Office had referred the matter to the Ministry.

My investigation revealed that Mr. S had indeed applied to the Ministry concerned for a licence to operate a bakery at Petite Rivière in 1976. The Permanent Secretary of the Ministry explained further that this application had not been given "favourable consideration" and the Ministry considered that the demand for bread in that area did not warrant the setting up of a bakery.

Mr. S. renewed his application on 24th August 1981 but this time he wanted to set up the bakery in the G.R.N.W. area but on 29th May 1981, one Mr. X had already made a simlar application for this area. In July 1983, the Ministry approved Mr X's application for the G.R.N.W. area. It was clear that as far as this region was concerned, Mr. X's application had priority over that of Mr. S, the complainant. There had therefore been no improper discrimination in granting the licence. I informed him accordingly and did not hear any further from him.

WORKS

Case No. C/46/85

No sufficient action

Mr. M complained to me on 26th March, 1985 that, although the local Inspector of Works had been informed by him that his neighbour was building at less than the statutory distance from the boundary line, nevertheless the neighbour was continuing the construction in defiance of the Building Regulations.

APPENDIX A—*continued*

The Inspector of Works visited the site one week after receiving Mr. M's letter dated 17th October, 1984 (the last of a series of four starting from 1st October, 1984) stating his complaint against his neighbour. He noticed that the construction had been completed and the neighbour had started occupying it. On the same day the Inspector wrote to Mr. M requesting him to forward to him a memorandum of survey to enable him to take legal action against the neighbour. On 25th January, 1985, the memorandum was produced to him by Mr. M after a reminder dated 22nd January 1985. The neighbour was prosecuted for *(a)* building without a permit from the Ministry of Works and *(b)* building at less than the statutory distance of five feet from the boundary line.

On 5th March, 1985 the neighbour was found guilty on both counts by the District Court and was sentenced to pay a fine of Rs. 250+Rs. 16.67 building fees on count *(a)* and to pay a fine of Rs. 400.+Rs. 25 costs on count *(b)*. Mr. M was informed accordingly in writing by the Inspector on 12th April, 1985.

After my query dated 27th May, 1985 to the Permanent Secretary, Ministry of Works, as to when further action under Section 78(3)*(a)* (demolition of the offending part) of the Building Act would be taken, the final reply (after an interim reply) dated 26th November, 1985 was that the Principal Crown Attorney had been requested to start the legal procedure by way of a *mise en demeure* to be served on the neighbour. At the time of writing this report no further development had been notified to me.

I found that the Ministry's Inspector had acted within a reasonable time and according to established departmental rules of enforcement of the Building Regulations (recently streamlined in the light of my remarks in another case). (Vide Case No. C/4/84, especially page 62 of my Annual Report 1984).

APPENDIX B

Statistical Summary of Complaints

Ministries/Departments	*Justified*	*Not Justified*	*Discontinued*	*Explained*	*Declined for want of Jurisdiction*	*Declined in exercise of discretion*	*Rectified*	*Withdrawn*	*Being Investigated*	*Total No. of Complaints*
Agriculture, Fisheries and Natural Resources	—	1	—	—	1	—	—	—	—	2
Customs	—	1	—	—	—	1	—	—	—	2
Economic Planning and Development ...	—	—	—	—	1	—	—	—	—	1
Education, Arts and Culture ...	—	1	—	2	1	—	—	—	—	4
Employment	—	2	—	—	—	—	—	—	—	2
Energy and Internal Communications ...	—	—	—	3	1	—	—	—	—	4
Forest Department	—	—	—	—	2	—	—	—	—	2
Health	—	1	3	3	1	—	1	1	1	11
Housing, Lands and the Environment ...	—	—	—	1	—	—	—	—	1	2
Industry	—	—	1	—	—	—	—	—	—	1
Judicial Department	—	1	—	—	—	—	—	—	—	1
Labour and Industrial Relations ...	—	3	3	1	—	—	—	—	3	10
Local Government	—	—	—	—	1	—	—	—	1	2
Police	—	11	3	6	4	—	—	1	4	29
Prisons	—	8	1	4	2	—	—	—	—	15
Reform Institutions	—	—	—	—	—	—	—	—	1	1
Registry of Associations	—	1	1	—	—	—	—	—	—	2
Registrar of Co-operatives ...	—	—	—	—	—	—	—	—	2	2
Social Security	—	3	—	1	2	—	—	—	—	6
Telecommunications	—	3	1	1	—	—	—	—	—	5
Trade and Shipping	1	2	—	—	—	—	—	—	—	3
Works	—	2	1	—	3	—	—	—	3	9
Officers and Authorities outside the jurisdiction of the Ombudsman ...	—	—	—	2	28	—	—	—	—	30
TOTAL	1	40	14	24	47	1	1	2	16	146

APPENDIX C

Schedule of Complaints for Period 1st January 1985—31st December 1985

AGRICULTURE, FISHERIES AND NATURAL RESOURCES

No.	*Subject of Complaint*	*Result*
C/161/84	Bills not yet paid for delivery of shoes	Not Justified
C/ 37/85	Tyrannical behaviour of a supervisor against cane samplers...	Declined

CUSTOMS

C/ 4/85	Over-assessed duty on importation of four second-hand lorries from United Kingdom in 1980; resulting over-payment should be refunded	Not Justified
C/ 52/85	Rejection of application for registration of trade mark ...	Declined in exercise of discretion

ECONOMIC PLANNING AND DEVELOPMENT

C/117/85	An officer granted " reversion leave " to work for a private organisation while complainant and others like him were jobless ...	Declined

EDUCATION, ARTS AND CULTURE

C/120/84	Unreasonable delay in deciding equivalence of his qualifications as land surveyor	Explained
C/ 1/85	Daughter not admitted to a State Secondary School ...	Explained
C/ 2/85	Transfer as teacher from one Government Primary School to another—unfair	Declined
C/110/85	Son aged just under 5 years at 31st December, 1985, not considered for admission to Primary School for 1986	Not Justified

EMPLOYMENT

C/ 97/85	Not placed in any job despite long registration ...	Not Justified
C/112/85	Unfairly not referred for a job despite long standing registration	Not Justified

ENERGY AND INTERNAL COMMUNICATIONS

C/ 45/85	Water problems at Palmyr. (Tanker service already provided; supply would improve after completion of pipe line works by August 85)	Explained
C/ 64/85	Damaged road (in course of self help project) not re-instated (District Council's responsibility). Matter referred to Ministry of Local Government	Declined
C/ 81/85	Exaggerated claim for installation of water pipes and connection	Explained
C/101/85	No electricity supply at Central Housing Authority housing estate. (Referred letter to Ministry of Energy etc.)	Explained

FOREST DEPARTMENT

C/ 85/85	Permit to remove forest produce not renewed; discrimination. (legal proceedings started)	Declined
C/120/85	Underpayment of bus fares to and from residence and place of work to P.P.E labourers of the Department	Declined

APPENDIX C—*continued*

HEALTH

No.	*Subject of Complaint*	*Result*
C/ 90/84	Undue delay in implementing Remuneration Order re. Dispensing Assistants. (Complainant got satisfaction later and did not want further action from me)	Discontinued
C/ 97/84	Nurses in Rodrigues and on call who worked at night not paid their allowance. (Establishment Secretary's Authority sought by Ministry of Health)	Being Investigated
C/ 39/85	Not selected as nursing student	Withdrawn
C/ 43/85	Delay in taking action re. air pollution by stench emanating from a pigsty close to a Home of Compassion run by Mother Theresa's Organisation. (Sanitary office contacted on phone by this office)	Rectified
C/ 51/85	Negligence of two doctors and a nurse at a State Hospital resulting in lack of proper treatment of wife. (preliminary investigation showed the doctors were using their clinical judgements; no administrative act). Legal action envisaged by complainant	Discontinued
C/ 53/85	Woodscrew Manufacturing Company operating in a residential area creating dust polution and noise. (complainant unknown)	Discontinued
C/ 60/85	Not promoted as Hospital Servant from grade of labourer ...	Declined
C/ 63/85	Non-erection of a wall to combat piggery stench nuisance. (see Case Note C/55/84 in Annual Report 1984 — Complainants informed of action)	Not Justified
C/ 67/85	Nuisance caused by poultry farm not abated despite declaration to local Sanitary Office. (Action taken by Inspectorate)	Explained
C/ 76/85	No action on declaration of nuisance caused by poultry farming	Explained
C/103/85	No action on complaint of operation of a garment factory in a residential area	Explained

HOUSING, LANDS AND THE ENVIRONMENT

C/157/84	No action regarding complaint about removal of sand and construction of " jetée " on public beach	Being Investigated
C/ 73/85	Allotted another plot of crown land on lease; discrimination. (Minister exercised his discretion)	Explained

INDUSTRY

C/ 48/85	Woodscrew Manufacturing Company operating in a residential area creating dust pollution and noise. (complainant unknown))	Discontinued

JUDICIAL DEPARTMENT

C/ 70/85	Plea for refund of sureties of Rs 9000 for complainant and his two co-accused deposited in cash for prosecution of appeals	Not justified

APPENDIX C—*continued*

LABOUR AND INDUSTRIAL RELATIONS

No.	*Subject of Complaint*	*Result*
C/129/84	Computation of retiring benefits by Labour Inspector of Complainant's region not fair. (matter settled before the Industrial Court)	Discontinued
C/147/84	No adequate action on complaint of non payment of severance allowance to late husband	Not justified
C/ 22/85	No action re. non-payment by employer of contributions to the Sugar Industry Pension Fund. (complainant not a monthly paid employee for part of period of service)	Explained
C/ 24/85	No action re. declaration: leaf checker asked to work as factory worker by the Tea Development Authority. (Medical Certificate covering absence on ground of illness not handed to Tea Development Authority by complainant's friend)	Discontinued
C/ 49/85	Undue delay in dealing with cases of severance allowance payable by employer	Being investigated
C/ 58/85	No adequate action re. unjustified dismissal from employment as labourers	Not justified
C/ 69/85	Undue delay in dealing with case of retiring benefits of a labourer by the Ministry. (case settled amicably)	Not justified
C/123/85	Improper factory inspections	Discontinued
C/126/85	Factory where complainants employed operating without registration with Ministry of Labour	Being investigated
C/129/85	No sufficient action on declaration to a Labour Inspector relating to non-payment of wages by employer	Being investigated

LOCAL GOVERNMENT

C/ 47/84	Improper discrimination in ordering removal of shop from public beach	Being investigated
C/ 65/85	Damaged road (in course of self-help project work) not reinstated (District Council's responsibility. Matter referred to Ministry of Local Government)	Declined

POLICE

C/ 54/84	No adequate action re. declaration about the sale of a car. (Case referred to Director of Public Prosecutions for advice). (Complainant did not call at the request of the Ombudsman)	Discontinued
C/142/84	No satisfactory action on declaration re. disturbances at a place of prayer	Not justified
C/171/84	No sign of any action re. death of son in a lorry accident ...	Explained
C/ 7/85	Statement given to police not produced at Assises during trial. Unfairly convicted of manslaughter (duly defended by Counsel)	Declined
C/ 8/85	Protracted prosecutions when all cases against complainant could have been taken more or less during the same period	Not justified
C/ 13/85	All five persons found on an election day in a liquor shop after closing time not prosecuted except complainant, the licence holder	Not justified
C/ 27/85	No sufficient action in the case of disappearance and killing of his son	Not justified
C/ 29/85	Need for a Police Post on a tea estate in view of cases of violence and night work shifts	Explained
C/ 50/85	No action re. complaint of operation of a brothel openly in a respectable family area	Not justified

APPENDIX C—*continued*

POLICE—*continued*

No.	*Subject of Complaint*	*Result*
C/ 55/85	Wife importuned privately by a policeman under pretext of a private deal about a car between him and the husband	Explained
C/ 56/85	No action on declaration of damaging property ...	Not justified
C/ 68/85	All stolen articles not recovered by the police	Explained
C/ 75/85	No further action on declaration of making use of a forged document. (as advised by the Director of Public Prosecutions)	Declined
C/ 79/85	No sign of any action on declaration at a Police Station. (Complainant never wrote again to me as promised requesting investigation)	Discontinued
C/ 80/85	No prosecution of bus driver after street accident in which father killed. (Director of Public Prosecutions later advised Police prosecution for involuntary homicide — action taken)	Explained
C/ 82/85	No action on declaration re. damaging property and ownership of land	Not justified
C/ 89/85	Arrested and released on suspicion of larceny. (In fact complainant had a previous conviction for larceny and was seen near the place of the offence of which he was suspected). Wanted me to take preventive action	Declined
C/ 94/85	(i) Notice to appear in court sent by ordinary post not received resulting in non-appearance (ii) Unknown person personated complainant, pleaded guilty and fined (iii) Complainant arrested and taken handcuffed together with bad characters in police truck to Court for non-payment of fine	Being investigated
C/ 95/85	No action re. declaration for recovery of utensils called " degs " of a Muslim society. (Police inquired: Civil Case: No criminal case	Not justified
C/100/85	" Abuse of authority in seizing goods, documents belonging " to complainant's company. (Case pending before Director of Public Prosecutions for advice)	Being investigated
C/105/85	Renewal of driving licence wrongly dated. (Rectified). Complainant did not co-operate with Ombudsman	Discontinued
C/106/85	Not attending to complaints of harassment caused by neighbour	Not justified
C/107/85	No action re. declaration about cutting and removal by relative of trees from land in dispute between complainant and the relative	Explained
C/109/85	No action on declaration of larceny. (Case pending before DPP for advice)	Being investigated
C/111/85	Taking statement after notice of appeal *in forma pauperis*. Not satisfied. (Court Practice)	Declined
C/115/85	No action against hawkers trading on main street pavement in front of duly licensed shops thus causing unfair competition	Not justified
C/119/85	Suspicious behaviour of inquiring officer in a case of larceny by a public carrier to the prejudice of complainant	Withdrawn
C/121/85	(i) Unfairly not prosecuted person who had said the word "couillonade " in relation to complainant's car (ii) The driver of the car which damaged his car in 1983. (DPP's advice to police: no prosecution in (ii)).	Not justified
C/133/85	No further action on declaration of wounds and blows, injection of noxious drugs etc., by a private medical practitioner on complainant's brother	Being investigated

APPENDIX C—*continued*

PRISONS

No.	*Subject of Complaint*	*Result*
C/ 9/85	Various allegations against two prison officers. (Discharged from prison and therefore no statement could be taken from him)	Discontinued
C/ 10/85	No adequate treatment for eye trouble	Not justified
C/ 16/85	Prisoner asking me to cancel his consecutive terms of imprisonment inflicted by the Court. (Advised to petition to Commission on Prerogative of Mercy)	Declined
C/ 19/85	Earnings not correctly computed	Not justified
C/ 25/85	Queing up for morning tea etc., Frivolous complaints ...	Not justified
C/ 31/85	Whether he could appeal to the Privy Council even without appeal to Supreme Court after conviction at Assizes	Explained
C/ 35/85	Not allowed to write to Chief Justice	Explained
C/ 41/85	Not allowed to write to Chief Justice for revision of his case tried by the Intermediate Court or reduction of sentence	Not justified
C/ 42/85	Unreasonable refusal to transfer to another association yard	Not justified
C/ 72/85	Not put on job fetching extra remission	Not justified
C/ 74/85	Prison officers not promoted inspite of long and meritorious service	Declined
C/ 77/84	Plea for reduction of sentence on imprisonment. (Advised to petition the Commission on the Prerogative of Mercy)	Explained
C/ 78/85	Unjust forfeiture of earned remission	Not justified
C/108/85	General complaints about threats and intimidation by fellow prisoners. (Commissioner of Prisons investigated and reassured complainant)	Explained
C/124/85	Made to serve unduly long terms of imprisonment ...	Not justified

REFORM INSTITUTIONS

C/102/85	Ministry unjustly withheld pension and part of gratuity after retirement of complainant — a Prisons Officer (Solicitor General's intervention)	Being investigated

REGISTRY OF ASSOCIATIONS

C/ 28/85	No action re. complaint about President of a trade union by some members regarding non circulation of the list of candidates before election. (Registrar could not intervene in organisation of elections)	Not justified
C/ 40/85	Failure to act re. complaint about the affairs of an association. (No further information furnished to Ombudsman as requested)	Discontinued

REGISTRAR OF CO-OPERATIVES

C/113/85	No reply to letter to Registrar re. arbitration award in favour of minor son. (Case referred to Solicitor General for advice).	Being investigated
C/114/85	Unreasonable delay in approving application for registration of a Credit Union	Being investigated

APPENDIX A—*continued*

SOCIAL SECURITY

No.	*Subject of Complaint*	*Result*
C/ 3/85	No social aid although following a sewing class at District Council	Not justified
C/ 11/85	Inadequate social aid	Not justified
C/ 30/85	Was not paid any pension by the Sugar Industry Pension Fund. (Complainant was a daily paid labourer till 1978)	Not justified
C/ 32/85	Misconduct: leading complainant by misrepresentations to a room in a building after travelling together by bus. (Disciplinary matter: no administrative act)	Declined
C/ 90/85	A disabled person's basic disability pension unjustly discontinued	Explained
C/ 92/85	Public Officer in the Ministry not granted leave without pay for Haj Pilgrimage	Declined

TELECOMMUNICATIONS

C/172/84	Improper discrimination in granting a telephone ...	Not justified
C/ 6/85	Exaggerated bills for calls	Discontinued
C/ 86/85	Exaggerated telephone bills	Not justified
C/122/85	Non-provision of telephone; improper discrimination ...	Explained
C/128/85	Improper discrimination in providing telephone service ...	Not justified

TRADE AND SHIPPING

C/ 47/85	Unreasonable delay and patent negligence in processing inquiry into complaint about prohibited trade practice against a commercial company	Justified
C/ 59/85	No action on declaration of unfair trading (charging higher prices)	Not justified
C/127/85	Improper discrimination in providing licence to open a bakery	Not justified

WORKS

C/178/83	No sufficient action re. complaint about building by neighbour at less than statutory distance from boundary (Matter regarding pulling down of offending part referred to Solicitor-General. Pending)	Being investigated
C/ 5/85	Morcellement approved without first making sure that roads and water would be supplied	Being investigated
C/ 12/85	Employee not paid two days' wages by the Ministry although officially referred to hospital for treatment	Declined
C/ 17/85	A taxi never available at base of operation as it operates elsewhere by another person. No official action. (National Transport Authority involved)	Discontinued
C/ 46/85	No sufficient action on declaration of building in defiance of building regulations	Not justified
C/ 62/85	Damaged road (in course of self-help project work) not reinstated. (District Council's responsibility. Matter referred to Ministry of Local Government)	Declined
C/ 96/85	Senior inspector of Works in the Ministry not paid acting allowance although performed work of Chief Inspector of Works	Declined
C/118/85	No action on declaration of building by neighbour at less than the statutory distance. (Statutory distance observed)	Not justified
C/131/85	No action on declaration of building in defiance of building regulations by neighbour	Being investigated

APPENDIX D

CASES DECLINED FOR WANT OF JURISDICTION AND IN EXERCISE OF DISCRETION

Complaints registered against :	*No. of Complaints*
Barrister-at-Law	1
Central Housing Authority	2
Central Water Authority	2
Chief Justice	2
Commission on Prerogative of Mercy	1*
Development Works Corporation	1
Governor-General	1
Intermediate Court	1
Judicial Department	3
Local Government Service Commission	1
Magistrate	1
Mauritius Examinations Syndicate	1
Municipality	5
National Transport Corporation	1
Neighbours	1
Private Company	1
Private Secondary Schools Authority	3
Tobacco Board...	1
Wife	1—(30)
Cases falling under proviso of SS 97(2), 97(8), 101(2) of the Constitution, cases outside S 97(1) of the Constitution	20
TOTAL ...	50

Explained	**Explained after referral*	*Declined*
1	1	28

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