



MAURITIUS

Annual Report
OF THE
Ombudsman
(JANUARY — DECEMBER)
FOR
1982

No. 8 of 1983

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1982

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Ombudsman's Office,
4th Floor, Bank of Baroda Building
Sir William Newton Street,
Port Louis,
Mauritius.
10th March, 1983

His Excellency Sir Dayendranath Burrenchobay, K.B.E., C.M.G., C.V.O.,
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, 1982.

I have the honour to be,
Your Excellency's most obedient servant,

R. SEWGOBIND
Ombudsman

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Annual Report of the Ombudsman

January—December 1982

This is the ninth annual report of the Ombudsman and it covers the period 1st January to 31st December 1982.

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.

STATISTICS

(a) Caseload

5. Cases pending at 31st December 1981	...	...	14
Case intake in 1982	...	...	158
Cases dealt with during the period under review	...	...	172
Cases declined for want of jurisdiction	...	...	78
Case declined in exercise of discretion	...	...	1
Cases explained	...	...	22
Cases in which investigation discontinued	...	...	10
Cases not justified	...	...	45
Case justified	...	...	1
Case rectified	...	...	1
Cases pending at 31st December 1982	...	...	14

6. (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, somehow 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.

7. It may be commented 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.

8. 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.

9. In this connection, 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 Ombudsman*, Stockholm 1976, published by the Ombudsman of Sweden). The Annual Report of the Northern Ireland Parliamentary Commissioner for Administration for 1981 shows that in that year the Commissioner received 177 complaints and of this number rejected 137 as being outside jurisdiction or in exercise of his discretion and discontinued investigation of 6. To continue the comparison it is also interesting to note that in 1981 the British Parliamentary Commissioner for Administration (i.e. the British Ombudsman) received 917 complaints, rejected 694 and discontinued 7 out of them. The remainder were, of course, partly reported upon or carried forward.

10. The investigation of complaints takes time involving lengthy correspondence and the study of files and documents of the Ministries and 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 29 of this Report), an enlargement of the staff would be the obvious solution.

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

12. The curt and classic bureaucratic reply "it is regretted that your request cannot be granted" really leaves the citizen most perplexed as he does not know the reasons for the rejection of his request, specially when he sees other similar requests have been granted. The public officer cannot always afford the time to sit down and explain all the circumstances to the party concerned and in some cases cannot and should not reveal to the public all the information at his disposal. It is there that the Ombudsman, having access to all the information, with some exceptions, plays the role of the public relations officer and having investigated the whole case uses his

judgment in making a suitable reply to the complainant. His main task is to satisfy himself whether there is or there is not any act of maladministration e.g. error, negligence, delay, discrimination, misapplication or misinterpretation of the law, etc. Sometimes, it is not the refusal to grant something but the lack of proper and complete explanation for such refusal that is at the root of the grievance.

13. 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 37 under the heading "Conclusion" in this Report.

(b) Visits

14. There were 51 visits to my office during 1982 by members of the public individually or in groups. Their representations were about the Ministry of Agriculture, Fisheries and Natural Resources, Bank, Central Electricity Board, Central Water Authority, Ministry of Commerce, Industry, Prices and Consumer Protection, Commission on the Prerogative of Mercy, Development Works Corporation, Ministry of Education, Ministry for Employment and of Social Security and National Solidarity, Ministry of Health, Income Tax Department, Judicial Department, Ministry of Local Government, Mauritius Broadcasting Corporation (Sales Section), National Transport Authority, Passport and Immigration Office, Police, private company, private individuals, Public Service Commission, Registrar General's Office, Security of the country, Sugar Industry Pension Fund and Telecommunications Department.

15. In eight cases the visits were followed, on my advice, by complaints in writing. In seven 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) Copies of Complaints

16. There were thirty-three (33) copies of complaints addressed to the Prime Minister, the Ministers, the Chief Justice, the Commissioner of Police, etc., which 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. In any case 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 17 cases for want of jurisdiction, action was taken in 16 cases and case files were opened in 13 of these 16 cases.

REPORT AND RECOMMENDATIONS UNDER SECTION 100 OF THE CONSTITUTION

17. During the year under review, one complaint was found *justified* on the ground of manifestly unreasonable delay in the payment of compensation for compulsory acquisition of land. This case is to be found in this Report in *Appendix A (Case Note C/94/81)* under the heading "Ministry of Housing, Lands and the Environment". A report was made to the Principal Assistant Secretary of the Ministry and a recommendation to bear in mind all the time the provisions of the Constitution that compensation must not only be *adequate* but also *promptly paid*.

Copies of the report and the recommendation were sent to the Prime Minister and the Minister of Housing, Lands and the Environment.

PREVIOUS RECOMMENDATIONS

18. My recommendation to vest in the District Courts the power to order the demolition of the offending part of structures erected at less than the statutory distance from the common boundary line is still under consideration. The same remark holds good for my recommendation to make it an offence to extort money or other reward from workers for providing work. In the latter respect the Permanent Secretary of the Ministry of Labour and Industrial Relations informed me on 29th December, 1982 that "the proposed amendment (i.e. what I had recommended) to the Labour Act is being considered along with other suggested amendments."

Also, my recommendation for amendment of the Co-operative Societies Rules 1947 has still to be implemented. Action has been taken by the Ministry of Co-operatives and Co-operative Development in incorporating in the draft rules the recommendation to allow parties to be represented at arbitration proceedings by Counsel or Attorney-at-Law. The draft rules are still under consideration at the Attorney-General's Office.

It is obvious that all these recommendations are being examined by the new Government which assumed power after the June 11, 1982 General Elections.

CASES EXPLAINED

19. There were 22 cases which were classed "Explained". They were cases which were fully investigated but which did not fit into the "Justified" or "Not Justified" straitjackets.

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

21. *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

22. 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. I hereby record my deep sense of gratitude to them. Dr Bernard Frank, Chairman, International Bar

Association Ombudsman Committee, U.S.A., has as usual been very helpful, but the Newsletter which he used to send all Ombudsmen is now prepared and circulated by the International Ombudsman Institute with the same aim to keep us in touch with all major developments in the world of Ombudsmen.

23. 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.

24. 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

25. 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.

26. It was in 1809 too that Finland separated from Sweden conserving the institution which in 1919 became known as that of the Chancellor of Justice. 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.

27. 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*), Western Australia (*Parliamentary Commissioner for Administrative Investigations*), South Australia (*Ombudsman*), Israel (*Commissioner for Complaints from the Public*), Tanzania (*Permanent Commission of Enquiry*), Nigeria, Zambia (*Investigator-General*), Alaska, Hawaii (*Ombudsman*), Guyana (*Ombudsman*), Fiji (*Ombudsman*), Papua New Guinea (*Ombudsman Commission*), Dominica (*Parliamentary Commissioner*) 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.

28. 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".

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

THE OMBUDSMAN

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

.

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

.

44. He should be authorised to investigate complaints made against all Government Departments and their officers, tender boards, the police, and prison and hospital authorities. I found that there were differences of opinion over the question whether he should be empowered to investigate the acts and decisions of Ministers themselves. In view of this conflict it might be better to exclude the personal acts and decisions of Ministers from his purview in the first instance. I also found that many people thought that he should be entitled to investigate the recommendations and decisions of the Public Service Commission, the Police Service Commission, certain public corporations and local authorities; though nobody thought that he should be allowed to encroach upon the preserves of the Judiciary or the Judicial and Legal Service Commission. There is, however, an important reason why he should not be empowered to investigate the recommendations of the Service Commissions (or their decisions, when they acquire executive powers). At present no reason is given for the appointment or promotion of A, or for the refusal to appoint or promote B, C and a hundred others, to any given post. If persons who had been passed over were entitled to complain to the Ombudsman, the Commissions would be obliged to give him reasons for their decisions in every such instance; and the burden cast upon them, which in any event would be heavy with responsibility, would, I believe, become insupportable. The question whether the Ombudsman should have power to investigate the acts and decisions of public corporations which are not direct organs of the Central Government presents difficulties which I was not able to explore adequately during my time in Mauritius. In some instances (perhaps, for example, the Central Electricity Board and the Mauritius Broadcasting Corporation) outside scrutiny might be inimical to independent initiative; in others the balance of advantage may be tilted towards outside scrutiny. This is matter which could well receive further consideration locally. There is no reason of principle why the Ombudsman should be denied jurisdiction over the acts and decisions of local authorities, but there is a possibility of his being overloaded with complaints in the early stages; and if he is a non-Mauritian it may take him some time to find his feet. I suggest that, for the first year at least, local authorities (but not Civil Commissioners) should be outside his province; the matter of his jurisdiction could then be reconsidered.

30. 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

31. The provisions relating to the appointment and the jurisdiction of the Ombudsman are set out in Chapter IX of the Constitution which provides 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 therefore, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of the steps (if any) that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

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

Discharge of
functions of
Ombudsman.

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

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

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

Supplement-
ary 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

32. 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.

33. The two words "maladministration" and "injustice" occurring in the section would appear to have sinister and rather grave connotations. Maladministration has been held to cover, *inter alia*, grave cases such as corruption, neglect, perversity, turpitude, arbitrariness as well as lesser types, e.g. unreasonableness (delay, act, omission), improper discrimination, mistake, failure to inform or explain when it was unreasonable to refuse, carelessness etc. 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.

34. 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.

35. 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 necessary to amend the Constitution to bring para-statal bodies within the jurisdiction of the Ombudsman. This could be done by an Act of Parliament within the framework of our present Constitution."

36. 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

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

"27. Finally, there is a grave misconception about the Ombudsman which must be dispelled. He should not be regarded as someone prying into the affairs of the Administration for the sole purpose of fault-finding. Although primarily appointed to secure the redress of grievances, the Ombudsman can be a friend of the public and of the administration at the same time. He may tender advice to complainants whose complaints he cannot investigate. He may even conciliate with the administration in such matters. Indeed, I have done so in certain cases to the mutual satisfaction of the administration and of the *administré*. There is also an important factor which should not be overlooked. In Mauritius and elsewhere a very high percentage of the complaints made are rejected and, in rejecting those complaints, the Ombudsman, is in effect, showing justification for the official action taken. In this connection, it would be pertinent to refer to the following observations which Professor K. W. R. Wade, Q.C., of the University of Oxford made—

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

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

38. 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.

R. SEWGOBIND
Ombudsman

Date; 10th March 1983.

CASE NOTES

AGRICULTURE, FISHERIES AND NATURAL RESOURCES

Case No. C/49/82

Not paid retiring benefits

A stockman of the Ministry of Agriculture, Fisheries and Natural Resources was made to retire on 24th February, 1982 on medical grounds. He complained to me on 23rd June, 1982 that he had been found fit by a private medical Consultant and could work and wished to be reinstated. Moreover, he had not been paid his retiring benefits.

The question of reinstatement was for the Public Service Commission and I had no jurisdiction over the latter.

I took up the matter of retiring benefits with the Permanent Secretary of the Ministry of Agriculture, Fisheries and Natural Resources on 28th June, 1982 and on 21st July, 1982 I received the reply of the Permanent Secretary of the Ministry that the complainant had been awarded a gratuity of Rs 17,760.75 and a reduced pension of Rs 4,262.56 per annum with effect from 24th February, 1982 the date of his retirement and that he had already been paid. I saw a copy of the Accountant-General's letter dated 8th June, 1982 addressed to that effect to the Permanent Secretary of the Ministry.

As payment was effected on 8th June, 1982 i.e. only four months after his retirement and as he had not made any representations about his retiring benefits to the Ministry, it would have been unfair to criticize the Ministry for any delay.

I therefore classed this case as "Explained".

EDUCATION

Case No. C/110/82

Awarded different seat

The father of a student who was still in India complained to me that although his son had competed in India for a seat for a Pharmacy degree course, he was finally awarded a seat for a MBBS Course.

As an interim reply I told him that (a) although the applications are submitted through the Mauritius High Commission in Delhi, the actual allocation of seats is done by the Ministry of External Affairs and the Ministry of Education of India and (b) I had no jurisdiction over these Ministries in India.

On enquiry from the Ministry of Education of Mauritius I learnt that the student had applied for a seat in Medicine, Dentistry and Pharmacy in order of priority. It was entirely at the discretion of the Indian Authorities to allocate one of the seats for which the student had applied. The Ministry of Education here had nothing to do with this allocation.

APPENDIX A—*continued*

ENERGY AND COMMUNICATIONS

*Case No. C/45/82***Aggregation of period of service in M. O. W. and C. W. A.**

Two casual workers who had been transferred in 1973 from the Water Works Department of the Ministry of Works to the Central Water Authority complained to me that, unlike their colleagues, they had been offered retiring benefits calculated on the basis of *separate* terms of service, viz. service at the Ministry of Works and service at the Central Water Authority and *not aggregately*.

Upon my intervention, the Permanent Secretary of the Ministry of Works explained that aggregation of both terms of service had been abandoned following legal advice since September 1981. The same argument was put forward by the Financial Secretary with reference to Pension laws.

On 24th June, 1982 the Secretary of my Office informally contacted, at my request, the General Manager of the Central Water Authority and discussed the whole matter with him in presence of the Personnel Officer stressing the iniquity and the discriminatory nature of the situation. The Secretary was informed by the Personnel Officer that, after representations made by the workers affected by the change of computation, the Staff Negotiations Committee and the trade union, he had already written on behalf of the General Manager to the Ministry of Power, Fuel and Energy making a case for the aggregation method while stressing the discriminatory nature of the new practice among the same category of workers. A photocopy of the letter dated 3rd May, 1982 was sent to this Office. On 30th June, 1982 I too wrote to the Minister of Energy and Communications (the new appellation) humbly suggesting that the whole question be taken by him at Cabinet level and that the aggregation method be re-introduced, specially in view of the fact, as pointed out by the General Manager of the Central Water Authority, only a limited number of casual workers were concerned.

Subsequently, a *Communiqué* was broadcast on the MBC/TV that Government had decided that the services referred to above would be aggregated for the computation of retiring benefits. Later, at my request, the Permanent Secretary of the Ministry of Energy and Communications confirmed the re-introduction of the aggregation method as regards the casual workers concerned.

I cannot say how far my intervention in this case, which strictly speaking was outside my jurisdiction, was successful but I felt a sense of satisfaction in having done what I thought was right.

HEALTH

*Case No. C/120/82***No aggregation of periods of service**

A field worker of the Mauritius Family Planning Association (according to her "an approved service") who had been employed there since 1965 averred that the Association had been integrated to the Maternal and Child

APPENDIX A—*continued*

Health Services of the Ministry of Health in 1972. She retired at the age of 60 in 1979. On her retirement she was paid a gratuity of Rs 8,925 for her service in the Ministry and her service with the Mauritius Family Planning Association was not taken into account for the computation of her retiring benefits.

She complained to me that despite a Government Circular published as Government Notice No. 3 of 1982, there was no aggregation of her two periods of service as stated above and she received no pension in addition to the gratuity. She added that, unlike her colleagues, she was deprived of any pension and she felt that that was an improper discrimination.

The Permanent Secretary of the Ministry of Health explained to me that the complainant had been paid a gratuity for her service with the Ministry from 22nd November, 1972 to 18th May, 1979. As regards her service with the Mauritius Family Planning Association, her case was not governed by the Pensions (Amendment) Regulations 1982, Government Notice No. 3 of 1982 referred to above and relied upon by her. The reason was that these regulations came into force on 5th January, 1982 i.e. well after the retirement of the complainant who, therefore, did not qualify for a reduced pension.

The new regulations had not been applied to any worker who retired before its coming into force on 5th January, 1982 as alleged by the complainant. What she overlooked was the effective date of the new regulations. The aggregation method was applied only to cases of retirement after 5th January, 1982 and that too under certain conditions. I concluded that the complaint was unfounded.

HOUSING, LANDS AND THE ENVIRONMENT

Case No. C/94/8

Undue delay in payment of compensation for compulsory acquisition of land

Mr A. wrote to me on 8th July, 1981 to complain that although his land was compulsorily acquired on 9th October, 1979 by the Ministry of Housing, Lands and Town and Country Planning for the construction of the Northern Entrance Road, he had not yet been paid any compensation despite his several visits to the Ministry.

The explanation of the Principal Assistant Secretary of the Ministry to me was as follows:—

“A portion of land of 0A47½ situated at was acquired compulsorily from Mr A. by virtue of a notice under Section 8 of the Land Acquisition Act 1973, and transcribed on the 9th October, 1979.

Agreement on the sum of Rs 43,000 as compensation in full and final satisfaction was reached with the former owner on 6th November, 1980 and the Solicitor-General was requested on the 13th November last to instruct the Government Notary to draw up the deed of acquittance.

The deed is being prepared by the Government Notary, Mr A. has been advised that the deed is being prepared.”

APPENDIX A—*continued*

I wrote back to the Principal Assistant Secretary saying that it was a matter for grave concern that even after nine months since the compulsory acquisition, the compensation had not yet been paid. I laid emphasis on Section 8(1)(c) of the Constitution which enjoins that in such a case the compensation should not only be adequate but *promptly* paid. I also requested the Principal Assistant Secretary to see that payment was expedited. In reply the Principal Assistant Secretary had this to say on 2nd October, 1981:—

“ I am now in a position to say that Mr A. was in fact paid the sum of Rs 43,000 on the 23rd September, when he signed the necessary documents with the Notary.

In regard to paragraphs 2 and 3 of your letter of the 28th September (referring to the unreasonable delay), I can assure you that we do our best to effect payment of compensation as soon as we can. However, you will no doubt appreciate that payment can only be effected either when agreement is reached between the two parties, or when there is an award by a Board of Assessment, on the compensation payable. It is the procedure leading to either of these two factors which take time. Another element of delay is the long time taken by the person(s) concerned to provide the appropriate documents to the Notary for the drawing up of the deed.

Anyway, we have taken quite a few steps administratively to minimise the delay in the actual payment of compensation. We are confident that we are now in a position to reduce delays to the very minimum.”

It is clear that the Principal Assistant Secretary was expounding very good principles and stating the factors that *generally* impede speedy payment of compensation. What was required, in my opinion which I conveyed to him, was an explanation of the *prima facie* manifestly unreasonable delay in the particular case of Mr A. I raised the following points and required precise explanations (with dates, etc.) from the Principal Assistant Secretary:—

- “ (a) In 1979 (Mr A. says *more* than two years before 1981) *without any notice* his land was bulldozed.
- (b) Notice was served by your Ministry after his declaration to the Police.
- (c) His land was evaluated in 1979.
- (d) He was being put off every time he called at the Ministry.
- (e) Agreement was reached only on 6th November, 1980. Why so late?
- (f) Payment of compensation was made on 23rd September, 1981 (vide your letter of the 2nd October, 1981).
It is clear that Mr A. was paid *two* years after the compulsory acquisition or occupation.”

The Principal Assistant Secretary gave, in reply, the following history of the case:—

- “ (a) The land of Mr A. was not entered into and bulldozed without any notice. He gave permission to the contractors to enter his land. A copy of a letter of the 20th April, 1979 from the Contractor to Mr A. in that regard is enclosed.

APPENDIX A—*continued*

- (b) We are not aware at the Ministry that Mr A. made a declaration to the Police. A notice under Section 8(3) of the Land Acquisition Act was served upon him on 23rd August, 1979 in compliance with the Act. He submitted his claim on 12th October, 1979.
- (c) The assessment of the compensation payable to Mr A. was sought from the Principal Government Valuer on the 18th October, 1979, and received on the 8th July, 1980. However, the case was not a straightforward one. In addition to the value of the property an element of compensation had to be assessed which reflected the loss in value due to injurious affection suffered by part of the property not acquired. In order to determine this loss a lot of basic information had to be obtained. These include the determination of the exact alignment of the proposed road; the planning restriction on the remaining property as regards use and building line and the measurements of the boundaries of the remaining property. The collection of the above information took considerable time and hence the delay by the Principal Government Valuer in the submission of his assessment.
- (d) It has not been able to verify the truth of the statement of Mr A. that he was being put off every time he called here.
- (e) Agreement was reached on 6th November, 1980 (and not 1981 as mentioned in your letter under reference) after the Minister had approved on the 28th October, 1980 the compensation recommended by the Government Valuer.
- (f) The Solicitor-General was requested to instruct a Notary for the drawing up of the deed of acquittance on 13th November, 1980. Upon the application on 8th September, 1981 of Mr Notary who had been instructed to draw up the deed, the bill was prepared and sent to the Treasury on 10th September, 1981 and subsequently Mr A. was paid on 23rd September, 1981."

From this history it appeared that from the date (13th November 1980) when the Solicitor-General was requested to instruct a Notary to draw up the deed of acquittance to the date of finalization by the Notary (i.e. 8th September, 1981), almost a year had elapsed. On 2nd April, 1982 I therefore conveyed that part of the explanations of the Principal Assistant Secretary to the Solicitor-General which concerned the latter's Office and asked for his comments.

The Solicitor-General replied to me on 13th May, 1982 saying that he had investigated the matter and he was then informed that the Notary to whom his Office had given instructions on 18th November, 1980 for the drawing up of the deed of acquittance could not finalize such deed by reason of the fact that the certificate from the Conservator of Mortgages indicating that the land acquired was free from any mortgage or charge under the Loans Charges and Privileges (Authorized Bodies) Act 1969 was only made available to the Notary on 24th August, 1981. The Solicitor-General sent me the relevant file of his Office which contained a letter from the Notary giving the same explanation.

APPENDIX A—*continued*

It was evident from a perusal of the file that the delay was caused by the late submission of the clearance certificate to the Notary by the Ministry of Housing, Lands, Town and Country Planning and not at the Office of the Solicitor-General. The practice — a sound one indeed to append such certificate when giving instructions to the Notary to draw up the deed had not been followed by the Ministry. The request for the Certificate was made by the Ministry to the Registrar-General only on 29th June, 1981 and the latter issued it on 21st August, 1981. There was therefore no delay at this end.

In the light of the above, I found that there had been generally a long delay by the Ministry but I accepted the explanations for the delays caused by the steps taken in reaching a proper assessment. But I specially found a manifestly unreasonable delay of nine months in obtaining and submitting the certificate of clearance to the Notary with the instructions to draw up the required deed.

I carefully considered the explanation that that delay was due to an oversight but my finding of manifestly unreasonable delay remained, since I could not, nor could the Ministry, overlook the provisions of Section 8(1)(c) of the Constitution which require, as I said earlier, that compensation for compulsory acquisition of land must not only be adequate but also *promptly* paid.

On 20th July, 1982 I made a report to the Principal Secretary accordingly pursuant to Section 100 of the Constitution and I sent copies thereof to the Minister and the Prime Minister. The obvious recommendation was to be always mindful of the provisions of the Constitution in cases such as the present one i.e. *prompt* and *adequate* compensation.

On 5th October, 1982 I received a letter from the Ministry informing me that Mr. A. (the complainant) had been paid on 26th August, 1982 an *ex-gratia* compensation equivalent to the interest which would have been payable to him from 6th November, 1980 to 23rd September, 1981 (i.e. the period of undue delay as found by me). That was a highly commendable act of the Ministry.

INCOME TAX

Case No. C/34/82

No fair hearing and arbitrarily taxed

Mr. B., a citizen of Mauritius, who had settled down in Reunion Island since February 1981 in virtue of a work and residence permit complained that on 16th February, 1982 he had received from the Income Tax Commissioner's Office a second letter informing him of the inscription of a "privilege" on his house. He took three day's leave and came to Mauritius. At the Income Tax Office, he alleged, his passport was seized so as to compel him to settle his tax ("à tout régler"). Unfortunately, he said, he had left behind in Reunion "les imprimés" (documents) which could prove his real situation and it was a moral "torture" for him for three days. Finally he requested me to re-open his case, grant him a delay of one year so that he could "régulariser sa situation".

APPENDIX A—*continued*

The Income Tax Commissioner reported to me that Mr. B. was sent assessments of Income Tax based on income derived in Mauritius for year/period ending 30.6.74, 30.6.75, 30.6.76, 30.6.77, 30.6.78, 30.6.79, 30.6.80 and 12.2.81. All this was the result of investigation of his affairs after information received about alleged fraud detected at the Customs and Excise Department involving the B family.

A first letter was issued to Mr. B. on 11th December, 1981 requesting him to call on 28th December, 1982 at the Income Tax Office with some documents including his bank accounts. On 28th December, 1982 Mr. B.'s brother informed the Office that Mr. B. had settled in Reunion with his family and that he had sold his immovable property. For want of Mr. B.'s address in Reunion, the Income Tax Office made the above assessments and issued them care of his brother who was in touch with the Office. Contrary to what was said by Mr. B.'s two brothers, it was ascertained from the land registry that Mr. B.'s immovable property had not been sold but was still registered in his name. As a matter of urgency, an inscription of privilege was taken in the name of the Government on the property on 16th February, 1982. Mr. B. was kept informed by his brother of all these events by transmission of all the official documents.

The report of the Commissioner went on as follows:—

‘ Mr. B. called at this Office on 23 February 1982 and from the interview he had with Miss , the following information were gathered. Prior to 1973 he was working with his father in a family concern. He had a dispute with his father in 1973 and started his own business at Street, Port Louis. He was dealing in ready made children's garments bought locally or manufactured by himself.

In 1981 he wound up his business which was not faring well and decided to go to Reunion. His wife whom he married in October 1971 was born in Reunion Island. However he retained his trade licence and trade premises. He paid a monthly rent of Rs 150 for the premises. He has given the use of the trade premises free of charge to his brother R. who was formerly working as hawker of goods. R. is presently trading on the premises and the rent is paid by him. His line of trade is the same as B.'s. There has been no written agreement between the brothers regarding the takeover.

The assets owned by Mr B. were as follows:—

- (i) Landed property. The ground floor is let for a monthly rent of Rs 650 and the first floor is unoccupied.
- (ii) A motor car bought in 1973 and sold in 1979.
- (iii) A bank account with MCB which was closed in 1980.

He also furnished for examination his birth certificate together with his and his wife's passports. Mr. B. was informed on that day that the assessments would be reviewed and revised if necessary in the light of information he would be prepared to furnish. His residential building at was inspected on the same day for that purpose. He was also told that if he decided to leave Mauritius he must either, before his departure, pay the tax or furnish security for its payment. He was warned that if he attempted to

APPENDIX A—*continued*

leave the country without fulfilling the conditions mentioned above he might be prevented by the Immigration Officer from taking the plane as, a letter to the Immigration Officer would be issued to that effect on the same day (Photocopy enclosed per annexure I). The above was confirmed in a letter addressed to the taxpayer on the same day (photocopy enclosed per annexure II). He was finally requested to fill in two forms and return them to this Office. Mr. B. agreed to call again on the next day.

Taxpayer called on 24 February 1982 and submitted the two forms handed to him for completion on the previous day. The basis of assessment was then discussed in the light of information furnished by him and his tax liability was computed and initially assessed at Rs 45,000. Mr. B. found this sum excessive and said he was prepared to pay a maximum of Rs 2,000. He added that if the tax exceeded that amount he would abandon his house to Government in satisfaction of the debt as his main concern was to join his family in Reunion without delay. He pleaded for a further reduction. By that time it was already noon and taxpayer agreed to call again at 1 p.m.

Mr. B. called again at 1 p.m. and, after taking into consideration explanations given by him, he was informed that the estimated cost of his building had been, as a concession reduced slightly and that his tax liability would not be below Rs 40,000. Taxpayer did not seem to be interested in the basis of our assessment. He only wanted the tax to be reduced to Rs 2,000 or so. He was then told that he could see an Accountant, if he so wished, to advise him on his tax affairs and that he could even appeal to the Supreme Court if he was dissatisfied with the assessments. He replied that he could not afford it. He then showed his employment card (photocopy enclosed per Annexure III) and said that if he did not return to Reunion that day he would be thrown out of work. He was explained in clear terms that if he really wanted to go back in the evening he had to either (i) pay the whole tax immediately or (ii) have the tax guaranteed by a person (e.g. his brother who was occupying his trade premises). He replied that he did not have a single cent and that therefore payment of the tax was out of question. As for guarantee, he said he had nobody in Mauritius to guarantee the tax. He added that he was not in good terms with his parents and he did not trust even his brother referred to above. He was then told that in these circumstances he would be prevented by the Immigration Office to leave Mauritius in accordance with the Income Tax Law. As a last effort to settle the case it was suggested to Mr. B. that if he agreed on the amount of his tax liability, the tax might be recovered by attachment of the rental income derived by him from his immoveable property at He did not seem to be satisfied with the proposed arrangement. He finally said he needed some time to think over the matter and left this Office at 2.15 p.m.

He called again at 3.50 p.m. and informed the Investigating Officer that he had not yet made up his mind and added that he would phone up his wife in the evening in order to arrange an extension of his period of stay in Mauritius. He said he would come again the next morning.

APPENDIX A—*continued*

The next morning taxpayer called accompanied by his brother R. He started by saying that he had arranged an extension of his stay in Mauritius, by 3 days. He then said that his brother R. would guarantee his tax liability. He once more asked for a further reduction of his tax. He was explained that on the basis of the computation worked out, the tax and penalty amounted to Rs 36,000 and that on the assumption that the total amount would be paid over a period of four years, interest thereon at the statutory rate of 7% per annum would amount to Rs 5,144. Total tax plus interest would therefore amount to Rs 41,144, (rounded off to Rs 40,800 to be divisible by 48). In view of his financial situation and the fact that his only income in Mauritius was rent, I agreed to forgo a down payment which is demanded in all cases and allowed him to make the payment by 48 equal monthly instalments (maximum delay granted) of Rs 850. Taxpayer again expressed the view that the amount was excessive and pleaded for a further reduction to such an amount as when divided by 48 instalments would yield Rs 650.— equivalent to his gross rental income. His proposal was rejected and he was asked to remit an equivalent of Rs 200.— to Mauritius monthly to make up for the shortage. On being questioned by one of my officers why he did not let the first floor of his house which was unoccupied, Mr. B. replied that his in-laws come to Mauritius from time to time and they occupy the house during their stay here. He finally agreed on the amount stated above i.e. Rs 40,800 and on the terms of payment. He and his brother then signed the necessary documents (photocopies of taxpayer's offer and my acceptance enclosed per annexures IV and V). As some of the documents had to be signed at the Collection Office at Chaussée he was expected back to collect his passport and other documents. But he did not turn up although two of my officers waited for him after office hours until 4.15 p.m. The documents were collected on the next day by his brother R.

Comments: To conclude I wish to make the following comments on this case.

- (i) Mr. B. who was in business since 1973 had never furnished any return of income and he had not even cared to come to this Office to settle his tax liability before his departure for Reunion in February 1981. He has failed to keep proper books of accounts which is in contravention of Section 132 of the Income Tax Act 1974. His trade must have been flourishing particularly during the boom years as otherwise he would not have owned a residential building of about 2000 sq. ft. and a car (AF series) which he used for seven years (1973–1979).
- (ii) Several incorrect statements and contradictions were noted in the course of the enquiry carried out by this Office. For example, the taxpayer's two brothers P and R had affirmed that the taxpayer had sold his property at whereas that was not the case and the taxpayer never spoke of the sale of his property afterwards. In my opinion the brothers were trying to shield taxpayer from any action which this department might take against him. Secondly R had during the taxpayer's absence categorically denied that he was his brother's representative.

APPENDIX A—*continued*

But the letter headings of taxpayer show clearly that R is the representative of B. Thirdly while B. has said that he did not trust his brother R the latter has guaranteed the tax due.

- (iii) Mr. B. has alleged that this Office through Miss had seized his passport in order to force him to settle his case. This is incorrect as passports are called for in the normal course of this Office business in order to check the movements of taxpayers. The truth is that Mr. B. refused to take back his passport saying that he would not do so as long as the direction issued by me to the Immigration Officer to prevent him from leaving the country was not withdrawn. It is clear that he was aware that his passport would not be useful because steps had been taken to prevent him from leaving the country. The question of seizure of passport therefore does not arise.
- (iv) The basis of our assessments made on the strength of figures available to us has been very fair and reasonable. Details are given in Annexure VI. The construction of Taxpayer's residential building which has stretched over the years 1977 to 1980 has been estimated at a conservative figure of Rs 65 per sq ft. It is a well-known fact that prices of land are often understated in order to evade Registration dues. This has most probably been done in this case as the Registrar General has revalued the property bought by Mr. B and additional Registration dues have been paid by the latter. We have for the purpose of our computation of capital and other expenditure ignored the possibility of understatement of the price and have worked on the price stated in the purchase deed. As you may notice the living expenses shown in our computation are rather on the low side. In the absence of proper evidence we have ignored furniture and fittings etc. which taxpayer may possess in Mauritius.
- (v) Mr. B. is not as hard up as he pretends to be as he can afford to leave the first floor of his house available for use by his relatives whenever they come to Mauritius. That floor if let could easily command an additional rent of Rs 650 per month which is the income yielded by the ground floor."

After this report, on 5th April 1982 I sent Mr. B. the following reply at his address in Reunion (as stated in his complaint to me):—

"I have received a full report of the Commissioner of Income Tax on your case and have also discussed your case with the Officer-in-Charge of the Investigation Branch of the Income Tax Department. I have also seen your official case file and the Bond which you and Mr. R. have signed as Principal and Surety, respectively, for the payment of Rs 40,800 as Income Tax by monthly instalments of Rs 850.—with effect from 3rd May, 1982. There is also your written and signed acceptance of your liability for the payment of the above amount.

APPENDIX A—*continued*

I am satisfied that you were given a fair hearing and a fair deal and I do not find any act of maladministration on the part of the Department of Income Tax or any officer thereof. I regret I cannot intervene in order to re-open your case or investigate it any further.

When you came to Mauritius you knew fully well that you were coming to discuss your Income Tax affairs as you had learnt of the inscription of the privilege on the building you own at Coromandel. You should therefore have brought all the relevant documents which, you admit, you had and which you had left behind in Reunion. You have only yourself to blame for that.

In any case, if ever you come to Mauritius, you may call at this Office and have a look at the report of the Income Tax Commissioner and my case file. My Office is open Monday — Friday and the convenient time would be 11.30 a.m."

I do not know whether Mr. B. ever came back to Mauritius but what is certain is that he never called at my Office as invited to do in the above letter nor did he ever offer any further remarks.

Needless to say that I found his complaint unjustified.

INFORMATION AND COOPERATIVES

Case No. C/11/82

Credit Union Not Registered

On 21st January, 1982 the Secretary of a union of Primary School Teachers complained to me that their application for the registration of their Credit Union had been rejected by the Registrar of Co-operatives. The Secretary invoked the provisions about freedom of association enshrined in the Constitution.

Upon my intervention, the Permanent Secretary of the Ministry of Fisheries and Co-operatives and Co-operative Development replied to me on 20th April, 1982 that there was already a Credit Union catering for the Teachers of the primary schools known by the name of "Primary School Teachers Co-operative Credit Union". It was therefore not the intention of the Registrar to register a parallel organization which "would tend to weaken the existing society".

On 26th April, 1982 I wrote back to the Permanent Secretary laying emphasis on Section 13 of the Constitution which protects the freedom of assembly and association except on grounds of defence, public safety, public order, etc. None of these reasons could, in my opinion, be invoked by the Registrar for refusing to register the Credit Union proposed. In view of this Constitutional provision, I urged the Registrar to seek the views of the Solicitor-General and see if he could reconsider his decision.

Although the Co-operative Societies Act gave a discretion to the Registrar in the matter of Registration, that discretion was not an absolute or unfettered one, concluded the Senior Crown Counsel who advised the Registrar after a

APPENDIX A—*continued*

very interesting and learned dissertation on the constitutional protection of the freedom of association. A copy of this legal advice was sent to me by the Registrar with the intimation that he had registered the new Credit Union on 24th August, 1982.

The complainant in this case had emphasized that the parallel organization referred to by the Registrar consisted of Government Primary School Teachers and the new Credit Union was meant for teachers under the control of a confessional education authority.

I did not consider that the Registrar of Co-operatives had erred so flagrantly in the exercise of his discretion in the first instance when he had rejected the application. His rejection of the application could not be said to have been a manifestly unreasonable act amounting to maladministration.

LABOUR AND INDUSTRIAL RELATIONS

Case No. C/24/82

Unjustly handed a Notice to appear in Court

Mr. Y. complained to the Industrial Court with a copy of his complaint to me and a covering letter. The complaint read thus:—

“ This afternoon somebody came to my office, conversed with me for some time in a friendly way and delivered a folded paper to me for which I acknowledged receipt as I always do for letters received by despatch.

After his departure, when I read the paper I saw that it was a notice to appear before the Industrial Court addressed to the Manager,..... Industries Ltd. that was served on me ”.

When asked for his comments, the Permanent Secretary of the Ministry of Labour and Industrial Relations sent me a report of the Principal Labour Officer which outlined the explanations of the Labour Inspector who had left the “ Notice in lieu of Summons ” with the complainant who was the workshop Supervisor of.....Industries Ltd. The Labour Inspector was accompanied by a Labour Officer on that occasion and they both explained the purpose of their visit before leaving the Notice with Mr. Y. Mr Y. informed them that in the absence of Mr. Z, the Manager of the enterprise, he himself looked after the business, agreed to take the Notice and promised to hand it over to Mr. Z. He actually read it before acknowledging receipt thereof on the duplicate.

An analysis of the whole case showed that a worker of the enterprise had sued the Manager claiming balance of end-of-year bonus, indemnity and severance allowance before the Industrial Court. The case was settled before the learned Magistrate of the Court for a sum of Rs 1,743., Mr. Z. representing the management. The Notice referred to above was issued as the worker had not received a balance of Rs 1,243. of the sum agreed. The Labour Inspector decided to “ prosecute ” the employer for failing to comply with an order of the Court. The Notice had at first been sent by post but it was returned by the Post Office with the statement that the addressee was unknown. Hence the decision to serve it personally.

APPENDIX A—*continued*

On the date fixed Mr. Y., the complainant, called at the Industrial Court and handed it to a Labour Officer who was present in Court stating that he had taken it through mistake. He did not say it was forced upon him. It was clear that it was the management that had all the time tried to hamper the normal course of justice.

Another revealing factor in the investigation of this complaint to me was that the acknowledgement letter of my Office and a letter calling him at my Office sent to him at the address given by him in his complaint were both returned to my Office by the Post Office with the statement "Unknown".

It is evident that this complaint was frivolous.

POLICE

Case No. C/130/81

Detained overnight during week-end in Police cell regarding a charge of wounds and blows not bailed out that evening

The complaint was as per the above heading. My investigation revealed that the declaration to the Police against the complainant was of serious wounds and blows inflicted on 15th May, 1981. The medical findings as recorded on the Police Form 58 read as follows :—

"Skin deep laceration about three inches long on palmer aspect of right hand just below base of right little finger; skin deep V — shaped laceration about two inches long on palmer aspect of proximal phalynx of right index finger; linear abrasion about two inches long on throat; skin deep laceration about one inch long on palmer aspect of middle phalynx of left middle finger; superficial laceration about $\frac{1}{2}$ inch on lateral aspect of base of left index finger; superficial laceration about $\frac{1}{2}$ an inch on distal phalynx of left index finger; skin deep laceration about $\frac{1}{2}$ an inch long on palmer aspect of distal phalynx of left little ring finger and his PF 58 A shows the following injuries: Laceration palm right hand II, III, IV and V finger; superficial laceration left little and middle ring finger."

The P. F. 58 also showed that the victim had been sick for more than 20 days. In fact he was sick for 36 days and followed medical treatment as an out-patient until 25th June, 1981.

In order to ensure the presence of the accused in Court on Monday, 14th September, 1981, (an Information had by then been laid in Court) a memo was received from the Police Prosecutor on Friday, 11th September 1981, by the Police of the locality to arrest and bail out the accused. The accused being a busy man working in various sugar-cane fields of his father was not easily accessible after the receipt of the memo. On Sunday, 13th September 1981, while on patrol two Police Constables saw the accused on the road, arrested him and took him to the Police Station where he was detained. Counsel for the accused tried to have his client bailed out on the evening of that Sunday by getting in touch with the Superintendent of Police on the phone but finally understood that it would not be practical to do the needful that night and he agreed that it was inevitable that the accused should be kept in custody until the next day when he would be (and was in fact) bailed out.

APPENDIX A—continued

During the investigation I saw the Police Diary in the presence of the said Counsel at my Office. Both Counsel and myself were satisfied with the entries made therein.

The Commissioner of Police reported to me further that he had discussed the case with the Director of Public Prosecutions and his attention was drawn to Section 4 of Ordinance 39 of 1961 which repealed a previous piece of legislation concerning bailing out of persons in Police custody. Section 4 of the District Courts (Criminal Jurisdiction) (Amendment) Ordinance 1961 reads as follows :—

“The District Courts (Criminal Jurisdiction) (Amendment) Ordinance, 1961

(2).....

4. Section 113 of the principal Ordinance is repealed and replaced by the following :—

Clerk and Superintendent or Assistant Superintendent of Police may take bail.

113—(1) In case of any offence within the summary jurisdiction of the District Court or the Intermediate Criminal Court, it shall be lawful for the Clerk of the Court or for the Superintendent or Assistant Superintendent of Police, in the absence from Court of the Magistrate, to receive and take recognizances from parties arrested and from their sureties for such amount as may be deemed reasonable and conditioned for the appearance of such parties before the proper Court at the next sitting of such Court and at any other sitting to which the case may be postponed or adjourned: Provided that it shall be lawful for the Magistrate to cancel the recognizances if he considers that the accused ought not to have been admitted to bail; or to claim further security if he finds the security already furnished inadequate.

(2) Such recognizances authenticated by such clerk or Superintendent or Assistant Superintendent of Police shall be as valid and effectual to all intents and purposes as if the said recognizances had been taken and received by the Magistrate and shall be transmitted to the proper Court.

(3) For the purpose of taking bail the Clerk and the Superintendent or Assistant Superintendent of Police shall have power to receive affidavits. ”

The Commissioner of Police also stated that “ the DPP’s interpretation is that, as the law is couched, bail may be taken by a Superintendent/Assistant Superintendent of Police only *in the absence of the Magistrate* from Court and this implies during normal working hours, In other words, it would not be in order for a Superintendent/Assistant Superintendent of Police to take bail outside normal working hours of a Magistrate and this includes Sundays and Public Holidays and probably Saturdays also. Strange as this may seem, I have to agree with the DPP’s interpretation. However, I hasten to say that my Officers have so far never refused to take bail on these days. But you will appreciate that, as the law is couched, they cannot be compelled to do so.”

APPENDIX A—*continued*

I too agreed with the construction placed by the Director of Public Prosecutions on the legal provision quoted above. The conclusion is therefore that the Superintendent of Police was right but for the wrong reasons. There was clearly no act of maladministration and I explained the whole matter to the complainant's counsel who too found no cause for disagreement.

POLICE

*Case No. C/133/81***No action against taxis operating outside base**

A group of taxi operators complained to me on 1st February 1982 that although they had informed the Police in writing of unfair competition by taxis operating outside their base, no action had been taken by the Police.

My investigation showed that after receipt of their letter dated 6th July, 1981, the Deputy Commissioner of Police had given instructions to the local Police to carry out checks as a result of which three taxi drivers (outsiders) had been "booked" for "waiting for the purpose of plying for hire outside base of operation". No other complaints had since been received by the Police from the group of taxi drivers concerned and the situation was being watched. It is clear that the Police had not ignored the complaint of the group.

I informed the latter of my finding and I did not hear from them thereafter.

*Case No. C/149/81***No immediate checking of a contravention established
by a Policeman close to a Police Station**

The points which Mr. X wanted to make to me in his complaint were that—

- (a) as he considered the contravention established against him by a Police Constable, viz. carrying more passengers than authorized, was unjust and as his car had been stopped with the passengers still in it close to a Police Station, a Sergeant of the Police Station who was on duty could have come, at his request, and seen for himself that the Police Constable who had stopped his car was acting unfairly, and
- (b) he was shuttled between one Police Station and another without being heard and without any action being taken.

When asked to comment, the Commissioner of Police stated that the Sergeant on duty had in fact examined the car of Mr. X and that the latter had not been shuttled as alleged. He stated that the Police inquiry (which I saw) had been submitted to the Director of Public Prosecutions and the latter instructed the Police not to take any further action against Mr. X. I called Mr. X and explained to him the above decision and he went away satisfied. There was no evidence of maladministration.

APPENDIX A—*continued**Case No. C/23/82***Counsel misinformed of the Court where client was to appear for remand etc.**

On 11th February, 1982 a Barrister-at-Law complained to me on the advice of the Director of Public Prosecutions to whom he had complained in the first instance. His complaint was that he was informed by a high officer of the Central Investigation Division of the Police that his client who was detained at the Pamplemousses Police Station would be taken the next day i.e. on a Tuesday to Curepipe District Court for remand purposes.

On Tuesday, Counsel went to the Curepipe Court as his client had intimated to him that he would be making a statement to the learned Magistrate. Once at Curepipe Court he learned later through the Police prosecutor that his client was not there but at Rose Hill Court and he went to the latter Court straight away and met his client.

As arranged with the Police he went at the request of his client to the Line Barracks where an identification parade was to be held. There, according to him, he learnt a highly disturbing fact i.e. his client was supposed to have told the inquiring officers that he had been advised to deny his statement made to the Police and that it was not voluntary. There was a confrontation in presence of inquiring officers, Counsel and his client to establish the veracity of the client's revelation. The client denied having said anything of the sort to the officers.

The version of the high officer was that he himself had been misinformed by a subordinate officer about the whereabouts of the person in custody and he apologized for having in all honesty conveyed to Counsel a wrong information in that respect.

As regards the revelation of the client to the Police about his counsel's advice, that, of course, hinged entirely on the degree of honesty of the client. The latter was one of several prisoners who were detained in connection with several cases of larceny with violence which had occurred in Curepipe, Rose Hill and Black River and those cases were being investigated by the Central C.I.D. of the Police.

On the question of access by Counsel to their clients in Police custody, the Commissioner of Police had this to say:—

“ The general practice which obtains in cases of investigation of criminal cases is that the prisoners involved are not always detained in a particular Police Station, the more so when such prisoners are involved in several cases committed in various districts of the island. This being so it is not always possible for Counsel representing the interests of these detained persons to interview them easily or at a given time. In the course of such investigation the prisoners are taken out either to appear before a Magistrate or to proceed to scenes of crime etc. etc. ”

I do not think that there could be any doubt as to the soundness of these remarks. The Barrister-at-Law concerned was invited to attend my Office and was shown the record of my investigation and he agreed that my investigation be discontinued and that was done.

APPENDIX A—continued

Case No. C/38/82

No action regarding obstruction in front of a Cinema

The complaint to me was as follows :—

“ Some two years ago a correspondence was made to the Superintendent of.....concerning the obstruction created by sellers of cakes, ice-creams, etc. in front of.....Cinema at..... Up to now, no consideration has been given to our petition. During intermission of a film show at.....Street, the position facing Cinema.....is being completely obstructed by spectators, sellers of cakes, ice-creams and by the parkers of cars on both sides (though there is a parking accommodation on the side of the Cinema.....).

This obstruction makes it impossible for the residents of the vicinity to make use of the road and if one is making use of a car, he has to wait for even half an hour before he can make way to move. This causes much difficulty as there is a maternity centre and very often nurses are being conveyed in a hurry to attend sick patient.”

I took up the matter with the Commissioner of Police who replied as follows :—

- “ (a) during December 1981 fourteen sellers of ice cream and cake were contravened for Obstruction in.....Street,, in front of.....Cinema and have been successfully prosecuted before Court.
- (b) Regular Police patrols are performed so that there is no obstruction on the Street.
- (c) In order to ensure that stationary vehicles do not cause obstruction in.....Street, which is twelve feet wide, steps have been taken for the erection of “ No Waiting ” signs on one side of the street and for a “ No Parking ” area in front of the Cinema.”

I communicated the reply to the complainant and as I did not hear again from him I concluded that he was satisfied with the explanation and the steps taken by the Police.

Case No. C/92/82

Unjustly remanded to jail on a charge of attempt at larceny

The complainant wrote to me to say that he was unjustly arrested by the Police and was remanded to jail on motion made by the Police before Court. His grievance was against the action of the Police and he protested he had nothing to do with the larceny in which he was considered to be involved.

My investigation revealed that it was not a simple case of attempt at larceny but a case of larceny committed while being more than two in number. The complainant was arrested on 23rd February 1982 and was brought before Rose Hill Court on the next day i.e. 24th February 1982 and, on motion made by the Police, the Court remanded him to Police cell pending completion of the

APPENDIX A—continued

inquiry. The Court was the sole judge to decide the validity of the motion and I could not question the Court order. The complainant was later remanded to jail from 3rd March 1982 to 10th August 1982 by the Court. On the 10th August 1982 he was released from jail on motion of the Police as advised by the Director of Public Prosecutions.

I could not find any fault with the action of the Police.

Case No. C/97/82

Police Constable in company of another public officer entered complainant's house pushing him aside and uttering abusive words

The complaint was substantially as the above heading except that, in addition, it was alleged that the Constable was in civilian clothes and told him that he had a warrant but did not show it to the complainant.

My investigation showed that the Constable visited the house of the complainant accompanied by the public officer as a relative and in his private capacity. He denied having pushed the complainant or uttered abusive words. The public officer too went there in his private capacity and, in any case, I had no jurisdiction to question his acts. Both officers had gone there to talk to complainant's wife about a girl (again the daughter of a relative) who had left her paternal roof as she was in love with a young man and this was frowned upon by her mother who allegedly ill-treated her.

The girl had made a declaration at the local Police Station that she had voluntarily left her parent's house to go and live at the place of her grandfather who was no other than the father of the complainant who lived in the same house.

The Constable talked to complainant's wife only as neither the complainant nor his father was at home. About the absence from home of the complainant, the Constable's version was corroborated by the sister and the brother-in-law of the complainant whose father too stated to the Police that he (the father) was not at home during the alleged irruption into his house.

During the Police inquiry, the complainant requested the Police not to take a statement from his wife as she was expecting a baby. In fact the wife declined to give a statement to the Police.

There was therefore the Constable's version corroborated by complainant's sister and her husband about the absence of the complainant at the material time whereas the latter's version stood uncorroborated.

Under the circumstances, I could find no fault with the decision of the Commissioner of Police not to pursue the matter any further or with the behaviour of the Constable which was normal.

Case No. C/103/82

Did not compel complainant's wife to use her married name on passport

The complainant's grievance was that the girl whom he had married without the consent of her parents and with whom he had never cohabited had left Mauritius twice using a passport with her maiden name and not with her

APPENDIX A—continued

married name. The man wanted the Passport Office to call the girl and compel her to use a joint passport with her husband. He also thought that the Passport Office was not taking his case seriously.

The Passport Office explained to him the legal provisions applying to such a case and which do not allow the Passport Office to use any means of compulsion as suggested by the complainant.

The legal provisions are to be found in Articles 36 and 37 of the Code Napoleon (Amendment No. 3) Act (No. 25 of 1981) which reads as follows :—

“ Article 36: La femme acquiert, par le mariage, le droit à l’usage personnel du nom patronymique de son mari. L’exercice de ce droit d’usage est facultatif.

Article 37: La femme mariée ne perd pas le nom patronymique qu’elle possédait avant le mariage. Elle conserve le faculté d’en user à sa convenance.”

In this light of the above, it is evident that the Passport Office explained the position correctly and that the complaint was not justified.

Case No. C/125/82

No further action on declaration

Mr. X complained to me that he made a declaration at the Harbour Police Station against somebody to the effect that the latter had injured him wilfully with a dagger and generally against some other persons who continually pestered him with threats of all sorts and thus tried to deter him from going on board ships to collect fish which he was duly authorized to import in virtue of a permit granted by the Ministry of Commerce, Industry, Prices and Consumer Protection. He further alleged that the Police was showing an indifferent attitude and he did not see any favourable development by way of Police action.

My investigation revealed that Police had not been inactive and had started prosecutions before Court in the light of its inquiry. I did not think the Police was to blame in any way.

Case No. C/142/82

Police Constable did not pay for work performed for him etc.

Mr. S. complained to me that during the second fortnight of December 1982, he had dug an absorption pit 8 feet by 14 feet for a Police Constable at the latter's request. He had also used his own “ Broomwade ” drilling machine and the Constable had agreed to pay Rs 300. both for the work and the use of the driller and to supply the diesel oil.

Mr. S. alleged that when he completed the work, the Constable never paid him a cent, always putting him off for one reason or another.

Mr. S. complained to the Commissioner of Police and the Superintendent of Police of his locality told him after enquiry that Mr. S. should have recourse to civil proceedings. I declined to investigate as it was evident that the decision of the Police was the right one. The Police Constable in entering into the agreement and getting the above work done without payment was not doing so in the discharge of his administrative functions as a Police Constable but was acting in a purely private capacity. The complaint was therefore unjustified.

APPENDIX A—*continued**Case No. C/150/82***No action regarding non-compliance by a private party
with a Court order in a civil case**

The complainant wrote to me to say that the Police had not taken any action to evict another person who was occupying a plot of land which he considered his. In fact he had obtained a judgment in which the Court ordered the defendant to quit, leave and vacate the land in question and also to pay damages and to demolish the hut which he had built.

He called several times at the local Police Station and he was advised that that was not a matter for the Police but a civil matter and therefore he should see his lawyers who appeared for him in Court to take legal steps to secure compliance with the Court order. The complainant had indeed made and signed a statement at the Police Station that he was advised as above and in which he said "mo pou poursuive li" (I shall sue the squatter).

It is clear that the Police could not do anything further and that the complaint of inaction by the Police was most unreasonable.

POSTS AND TELEGRAPHS*Case No. C/50/82***Tampering with letter**

The complainant alleged that he had posted at X Post Office an ordinary letter addressed to a young lady living at Y and that he was greatly surprised when he saw the same letter in another envelope bearing the seal of Y Post Office. There was also a difference in time of posting according to the seal. He had written to the Postmaster-General about the matter and had implicitly expressed doubts about a postman.

The Postmaster-General replied to me that he had caused an enquiry to be made in the matter of the complaint but it had not been possible to establish conclusively whether the complainant posted the letter at X Post Office addressed to the young lady referred to above as no record of ordinary letters is kept at the Post Office. However, the Postmaster-General went on to say, the delivery postman had stated that he had delivered several letters to the young lady during Christmas and New Year period but he could not remember the office of posting nor the colour of the envelopes containing the various letters.

On the other hand, an officer of the General Post Office contacted the addressee (the young lady) for the purpose of the enquiry which had been started. She declined to give any statement but assured the officer that she had no complaint against the delivery postman.

At a hearing held in my Office attended by the Assistant Postmaster-General, the Senior Inspector of Postmen, the complainant, the young lady and the Secretary of my Office, the report of the post office enquiry was produced. The young lady corroborated the explanation of the Postmaster-General and

APPENDIX A—*continued*

said she had no complaint to make. The envelope involved in this case bore the postmark of Y Post Office which meant that the letter had been posted at Y Post Office and not at X Post Office as alleged by the complainant. It would have been difficult to prove that the envelope in fact contained the letter which the complainant alleged to have sent to the young lady.

When asked whether he had any question to put or anything to say, the complainant said that he was satisfied with the hearing and he would like the case to be closed. I found the complaint unjustified if not frivolous.

Case No. C/55/82

Not allowed to use telephone

An old man of 62 years of age who said he was an out-patient of the Cardiac Unit of the Victoria Hospital complained to me that he called at the postal agency of his village on a Saturday at 11.15 a.m. in order to telephone.

The postal agent allegedly did not allow him to do so although he stressed the *urgency* of his call. The complainant also alleged that, after the persistent refusal of the postal agent, he had to "travel 5 miles to Rose Belle to be able to phone."

Upon my intervention, the Postmaster General enclosed with his own explanatory letter the comments of the postal agent.

According to their explanations it appeared that the main purpose of having a telephone installed at the postal agency was for the transmission and reception of telegrams. Yet the public was allowed to use it during office hours on payment of the appropriate call charges. However, this facility was not available between 3.15 p.m. and 4.00 p.m. (closing time) on week-days and 11.15 a.m. and 11.45 a.m. (closing time) on Saturdays, as business was then restricted to sale of stamps only in order to enable the staff at Post Offices to make a survey of their stocks of cash and intrinsic value, to prepare the daily returns of transactions and to close their accounts.

Nevertheless, the Postmaster-General had caused an enquiry to be made into the complaint. According to the explanations of the Postal Agent (an extract of which was enclosed for reference) the complainant called at the Office at about 11.25 a.m. on that particular Saturday, although he was aware of the restricted service available at that time as his attention had been drawn to this fact on previous occasions.

The postal agent explained that very often he had to go out of his way at night to help people make telephone calls and that if he refused the complainant the permission to use the telephone on the Saturday morning in question, it was entirely due to the exigencies of his duties and to the necessity to conform to the main purpose of the telephone.

I communicated the comments of both the Postmaster-General and the postal agent to the complainant and invited his remarks. I did not hear again from him and I concluded that the official version was the correct one.

APPENDIX A—*continued*

PRISONS

Explanatory Note:

Apart from the cases reported herein, there have been some cases where the prisoners complained to me generally of unsatisfactory conditions prevailing at the Prisons. As a one-man Fact-Finding Committee headed by Mr. Magistrate Basset had been appointed (which is still sitting) to investigate the conditions in the prisons. I suggested to the complainants to ask through the Commissioner of Prisons for a hearing by the Committee and I requested the Commissioner of Prisons to help them to write to the Committee to obtain a hearing.

*Case No. C/89/82***Hospital Officer not easily available: Toilet requisites; no work etc.**

This prisoner's complaint was that the Hospital Officer was not easily available and that his relatives were not allowed to bring him toilet requisites at the Phœnix Prison.

I found that the Hospital Officer was easily accessible in view of the small number of prisoners (15) at the Phœnix Prison and in view of the fact that the prison dispensary was at a short distance. When the Hospital Officer was off duty, another Hospital Officer from Beau Bassin Prison visited the prisoners in the course of the day. The number of Prison Hospital Officers available did not allow the possibility for one of them to perform night duty at Phœnix Prison, and it was felt by the Commissioner of Prisons, and rightly so, that there was no necessity for it. However, whenever there was a case of sickness, a Hospital Officer was called for urgently from Beau Bassin Prison Hospital or the sick prisoner was rushed to hospital.

It is a fact that prisoners at the Phœnix Prison are not allowed to receive toilet requisites from their relatives as these are provided to them at Government expense. The Phœnix Prison is one of high-security regime. The prisoners sent there are those who continuously commit major prison offences and are considered to be "incorrigible" by the Prison Authorities.

In this prisoner's case there was also evidence that he suffered from heart disease and he was following treatment for that as prescribed by the Cardiac Unit of the Victoria Hospital. This treatment was regularly reviewed by the treating physician. He needed maximum rest and this was accorded to him at the Phoenix Prison where, generally, no work is allocated to the inmates for security reasons but one hour exercise is allowed daily. The prisoner wanted me to arrange for him to be examined by a Medical Board but the Prison Regulations do not provide for such an examination.

Sick prisoners are treated by the Prisons Medical Officer. When specialized treatment is warranted, they are referred to the appropriate specialist who attends to them either as in-patients or out-patients at the appropriate *public* hospital.

The complaint was therefore unfounded.

APPENDIX A—*continued*

Case No. C/96/82

No good tea and showers with insufficient water etc.

A prisoner's complaint to me was that he was transferred from the "Bastille" i.e. the Phœnix Prison to Beau Bassin Prison where he found the morning tea not to his taste and not enough showers and the few that there were did not have enough water. He also stated that (a) he was unnecessarily provoked by certain prison officers, (b) he was not allowed to see the higher officers and (c) he was served dhol instead of lentils.

My investigation, partly conducted personally by the Secretary of my Office at the Beau Bassin Prison, showed the following facts:—

1. On 29th June, 1982 he was brought back to Beau Bassin Prison.
2. On 13th July, 1982 he applied to see the Senior Superintendent of Prisons and he was seen by the latter on the same day. He never applied to see the Assistant Commissioner of Prisons.
3. On 20th July, 1982 he intimated his wish to write to me. He was given the facilities and he addressed a letter to me on 27th July, 1982.
4. On 29th July, 1982 following a statement from an Officer about him and some prisoners refusing to take morning tea, the Assistant Commissioner of Prisons saw him in his office.
5. The latest prison offence by him was on 10th May, 1982 when he was at Phoenix Prison. He had not been reported for misconduct since his transfer to Beau Bassin and this was an indication that he could not have been submitted to any provocation by officers at Beau Bassin Prison.
6. My Secretary checked and found that the issue of tea was in accordance with the official ration recommended. The same tea was consumed by a daily average of 575 prisoners. No complaint had been received from any of them. The tea was actually prepared in the presence of Prison Officers and tasted by Senior Officers before issue.
7. Black and red lentils, split-peas and broad-beans were served to prisoners on alternate days as evidenced by two copies of Weekly Prison Menu which I saw.
8. In yard No. 2 at the Central Prison, Beau Bassin, where the complaint was in association there were *five showers* for an average of *50 prisoners*. The prisoners remained in their association yard from 15.30 hours to 17.30 hours daily. True it was that the pressure of water was not enough but that was generally so in that area. The Central Water Authority had been contacted by the Prison Authorities to improve the situation.
9. Regarding the medical complaint, I saw a report from the Prison Medical Officer dated 5th August, 1982 which showed that he had been seen by the Prison Medical Officer on 15th July, 1982 and 26th July, 1982 and that his main complaint was about change of or extra diet. No provision is made by Standing Orders or Regulations for any extra helping as the same privilege would have to be accorded to other prisoners. Charges of discrimination and resulting financial implications would be unavoidable.

My investigation did not reveal any act of maladministration.

APPENDIX A—*continued*

Case No. C/112/82

Special Remission wrongly applied

The prisoner complained to me that the remission granted on the occasion of the 80th Birth Anniversary of the then Prime Minister on 18th September, 1980 and on the occasion of the 13th Independence Anniversary of Mauritius on 12th March, 1981 were wrongly applied to his case and that consequently he was being made to remain in jail for a longer period than warranted.

The following facts emerged from my investigation :—

1. The prisoner was on 24th July 1980 admitted to Central Prison, Beau Bassin, after being sentenced by the Intermediate Court to undergo two years' imprisonment with hard labour on each of four counts for possession of articles obtained by means of a crime, plus five days for costs. The sentences to run *concurrently*.

2. On 17th September, 1980 he was again sentenced to undergo 15 days imprisonment and 2 days for costs for the non payment of fine and costs imposed upon him for traffic contraventions. The sentence to run *consecutively* to the sentence he was already undergoing.

3. On the occasion of the 80th Birth Anniversary of the then Prime Minister of Mauritius on 18th September, 1980 he was granted 49 days special remission being 1/15th of his above sentences of imprisonment.

4. He was again convicted before.....Court on 13th October, 1980 and sentenced to undergo 25 days imprisonment and two days for costs for non payment of fine and costs for traffic contraventions. This sentence too to run *consecutively* to the previous sentences.

5. On 2nd February, 1981 he was convicted before the Intermediate Court and sentenced to undergo penal servitude for three years on two counts of (a) forgery in a public and authenticated writing and (b) aiding and abetting in the forgery of an authenticated and public writing, plus eight days for costs. The sentences to run *concurrently*. He started serving this latter sentence on 2nd February, 1981 which became concurrent with the other sentences referred to in paragraphs 1, 2 and 4 above. The earliest possible date of release on the sentence of three years being well after that of the previous sentences. the sentence of three years became the effective sentence for the purpose of computation of the date of release.

6. Since the sentences of three years penal servitude started on 2nd February, 1981 he was therefore not serving them on 18th September, 1980 and the special remission granted on that date could not be made to apply to these sentences.

7. On his above sentence of three years penal servitude he was granted 91 days representing 1/12th of his sentence as special remission on the occasion of the 13th Independence Anniversary of Mauritius on 12th March, 1981.

8. He was due for release on or about 5th November, 1982.

I found that the remissions were properly applied by the Prison Authorities.

APPENDIX A—*continued**Case No. C/113/82***Wife raped and payment of money to her by an officer**

The main grounds of complaint of a prisoner were that his wife had been raped by an officer of the prison and that she was offered money by another officer to withdraw her statement to the Police.

My investigation showed that the prisoner had a medical history of hypertension and of mental illness and had been an in-patient at the Brown Sequard Hospital. He had since his discharge from the hospital been following treatment as an out-patient at that hospital. All his allegations were found to be mere figments of his sick mind. The officers implicated naturally denied all the allegations with disgust and pity. I called the wife of the prisoner at my Office to find the truth. She came accompanied by a lady-relative and categorically denied the charge of rape and offer of money, withdrawal of statements, etc. She added that her husband told her the same things whenever she went to visit him at the prison.

I found the complaint most unjustified.

*Case No. C/128/82***Unnecessarily made to complete unexpired period of sentence of imprisonment**

A prisoner complained to me, in substance, as per the above heading. My investigation revealed the following facts:—

1. The prisoner was on 22nd April, 1977 sentenced by the Intermediate Court to undergo 8 years penal servitude on Count I, 6 years penal servitude on Count IV and 3 years penal servitude on Count VIII, plus 3 days for costs, for larceny more than 2 in number for aiding and abetting in the commission of a crime. The sentence on each count to run *concurrently*.

2. On 30th January, 1978 he was convicted again by Court to undergo 9 months imprisonment with hard labour plus 2 days for costs for damaging property. This sentence was to run *consecutively* to the sentence of 8 years by order of the Court.

3. In accordance with Section 113 of the Prison Regulations Cap 313 Vol. III as amended by Section 3 of G.N. 41 of 1954 and Section 212(1) of the Criminal Procedure Act Revised Laws 1981 Vol. 2 he was released on licence on 1st August, 1981. The licence was due to expire on 10th September, 1983. The licence was handed over to him. I saw a true copy of the licence.

4. On 21st December, 1981 he was sentenced by Court to undergo imprisonment with hard labour for two years plus 8 days for costs for larceny by means of breaking during the day.

5. In accordance with Section 90 of the Prison Regulations Cap 313 and Section 218 of the Criminal Procedure Act Revised Laws 1981 Vol. 2 he should be made to serve the unexpired portion of his previous sentence in addition to his present sentence.

6. The medical report from the Prisons Medical Officer read thus: "Re. Prisoner — The prisoner suffered from pulmonary tuberculosis in 1978 for which he was treated and is now cured."

APPENDIX A—*continued*

7. He was due for release under the remission system on 24th September, 1984. Invariably prisoners who are released on licence are made to serve the unexpired portion of their previous sentence on conviction, provided the offence for which they are convicted is listed in the Third Schedule of the Criminal Procedure Act Revised Laws of Mauritius 1981 Vol. 2 and larceny is listed in that Schedule.

I explained the position to the complainant and I found that he was made to serve the unexpired portion of his term of imprisonment in accordance with the law.

*Case No. C/130/82***Request by prisoner to buy some food items turned down**

A prisoner with a long record of previous convictions complained to me that his request to buy from his monetary rewards (for work done at the prison) such food items as fruit juice, chocolate, cheese, oranges, apples, etc., had been turned down by the Officer-in-Charge of Beau Bassin prison.

The Principal Assistant Secretary of the Ministry of Reform Institutions, when asked for his comments by me, replied that the prisoner's requests to the Officer-in-Charge, Beau Bassin Prison, for leave to buy butter, cheese, chocolate and fruit juice, had been turned down on the grounds that such requests were unreasonable and unmanageable. The Prison Medical Officer reported on the 8th September, 1982 that "the prisoner is in good health and has the *same* weight as on admission." The prisoner's fears for his health now or on discharge are therefore considered imaginary."

He also added that under existing Prison Standing Orders, prisoners are allowed to buy from their earnings the following:

- Air letter
- Comb
- Hair Brush
- Handkerchief
- Sponge sandals
- Tooth paste
- Tooth brush
- Toilet soap
- Cigarettes
- Sweets
- Cakes
- Biscuits
- Groundnuts
- Pictorials and Magazines

or to spend occasionally on articles not provided for in the above canteen list of goods, but approved by the Officer-in-Charge. I did not find the practice manifestly unreasonable.

APPENDIX A—*continued*

The Principal Assistant Secretary also suggested that as there was a one-man Fact-Finding Committee headed by a Magistrate then “considering the conditions of detention of prisoners, the complainant might, if he wished, submit his grievances to that Committee.”

I informed the complainant accordingly and requested the Commissioner of Prisons to assist him so that he might be heard by the Committee.

SOCIAL SECURITY

Case No. C/64/82

Delay in payment of lump sum and widow's pension after death of husband

On the 24th May, 1982 Mrs E. complained to me that after the death of her husband who was a labourer on a sugar estate, she had contacted the Labour (she meant the Social Security) Office of her locality for the various pensions and the lump sum but in vain.

Upon my intervention, the Permanent Secretary of the Ministry of Social Security replied as follows on 15th June, 1982 :—

“On the 11th December, 1981, Mrs E. applied for basic and contributory widow's pension at Le Ravin Social Security Office. On the 5th February, 1982, the claim forms were received at Benefits Branch, Port Louis, for processing. On the 29th March, Mrs. E. was awarded the basic widow's pension as well as child allowance in respect of a child aged under 10, with retrospective effect.

On the 28th May, the Government approved the promulgation of the National Pensions (Pension Points) (Amendment) Regulations, which enable the uprating of the cost and value of the pension point and consequently the pre-award inflation proofing of all pensions. Mrs E.'s claim for contributory widow's pension points was awarded in the light of the revised cost and value of the pension points earned by contributions made to the National Pensions Fund in respect of her late husband. A cheque of Rs 701.50 representing her contributory widow's pension for the period December 1981 to June 1982 and her basic widow's pension for June was sent to her on the 4th June.

As Mrs E. has not yet applied for the lump sum due to her in accordance with section 48(4) of the National Pensions Act, she has been requested to register a claim at her Social Security Office.

Her husband's Sugar Industry Pension Fund Number as well as the date of his first employment by Mon Loisir Sugar Estate, 15th July 1974, have been obtained from the estate. The Data Processing Division of the Ministry of Finance has been requested to inform this Ministry about the amount of the lump sum due to Mrs E. so that the pension value of this lump sum may be worked out. This information will be communicated to Mrs E. and to the estate for the computation of the gratuity to her under the paragraph 17A of the Sugar Industry (Agricultural Workers) Remuneration Order.”

Mrs E. was informed by the Ministry accordingly.

APPENDIX A—*continued*

I queried further the Permanent Secretary as to why Mrs E. herself had to obtain and produce the Sugar Industry Pension Fund Number and why she was not assisted by the local Office in this respect. The answer was: "As a rule we insist that the responsibility for obtaining the Sugar Industry Pension Fund Number should devolve upon the claimant. This is because we have noted that several employees of the Sugar Industry have the same name and the risk of confusion when dealing with their application is rather high."

Finally she received her share after payment of the share of a first surviving widow (in accordance with Section 48(4) (a) of the National Pensions Act 1976). "Widow" is defined in Section 2 of the Act as including the female surviving partner of a religious marriage.

TELECOMMUNICATIONS

Case No. C/108/82

Discrimination in providing a telephone

An inhabitant of Roches Brunes complained to me on 26th August, 1982 that in spite of his application since 1978 for a telephone his "demand had not been satisfied". He also implied improper discrimination.

Asked to comment, the Director of the Telecommunications Department had this to say :—

"As a result of a relief scheme, in Roches Brunes area, only priority waiters (transfers and Senior Government officials) were given service.

There are still about 229 waiters awaiting service in that region. Development has been programmed for the financial year 1983-84."

I found the explanation reasonable. Roches Brunes is a comparatively recent "morcellement" at Beau Bassin.

Case No. C/116/82

Improper discrimination in providing a telephone service

Mr. X of Highlands complained that, although he was a wellknown businessman and had applied for a telephone since some years, he had not been provided with one. On the other hand, he alleged that his neighbours had been provided with a telephone service and that he was discriminated against.

The Director of Telecommunications, upon my intervention, explained that it was a fact that Mr. X had applied for a telephone at Highlands since 24th January 1975. As regards improper discrimination he said that service had been provided with the help of carrier equipment 1+1 to two medical practitioners on a "priority" basis in the region. He went on to explain: "However, it is not possible to provide Mr. X with a telephone service for the time being due to shortage of line plant. Development works in this area is programmed for the financial year 1983-1984."

I could not find any fault with the action of the Telecommunications Department.

APPENDIX A—*continued*

WORKS

Case No. C/20/82

No action regarding defective sewer pipes — Sanitary Nuisance

In 1979 Mr A. and other inhabitants of an area in Port Louis sent a petition to the Sewerage Office regarding a nuisance caused by the defective sewerage system in the area. 'The situation had become worse with the passage of cyclone "Gervaise" when the pipe in the man-hole was broken, thus causing water-closets to get blocked soon after they had been cleaned.'

When required to comment, the Permanent Secretary, Ministry of Works, had this to say:—

- " 1. In 1963/64, a new housing estate, Cité was built in the region concerned. The estate was provided with a sewerage system and and connected to the existing system by way of a 4" diameter pitch fibre pipe over a length of 1,000 feet.
2. Since about 15 years, there have been complaints about the new line that was laid by those responsible for the estate.
3. During maintenance works a wide variety of objects like saucepans, clothing materials, etc. have been removed — an indication of indiscipline on the part of the tenants of 'Cité'. Further due to irregular water supply the system does not work as expected.
4. In 1980, 32 family units built under the Low Cost Housing Scheme were sewerer in to the same sewer line. As this was not designed to carry any extra volume of sewage, more frequent blockages thus occurred. The situation became worse during heavy floods and cyclones. After cyclone 'Gabrielle' all the rubbish that came out of 'Cité' was dumped into the manholes thus clogging the sewer almost completely.
5. Lately a complete investigation of the main sewer with our latest maintenance equipment was carried out and it was concluded that the main sewer is beyond any further maintenance and has to be replaced over a length of 1,000 feet.
6. Steps are being taken for the work to be put in hand as early as possible. "

On 9th November, 1982 the Permanent Secretary further informed me that the works started on 7th May, 1982 and were completed on 3rd November, 1982. Mr A. was called at my Office and was informed accordingly. He said that he and the inhabitants were satisfied and thanked me for my intervention. As can be seen from the explanations of the Permanent Secretary above, the Ministry had been active with maintenance works and the inhabitants of the area had their share of responsibility for the bad state of things. No blame could be laid at the door of the Ministry of Works.

APPENDIX B

Statistical Summary of Complaints

<i>Ministries/Departments</i>	<i>Investigated and considered Justified</i>	<i>Investigated and considered Not Justified</i>	<i>Discontinued</i>	<i>Explained</i>	<i>Declined for want of Jurisdiction</i>	<i>Rectified</i>	<i>Declined in exercise of Discretion</i>	<i>Being Investigated</i>	<i>Total Number of Complaints</i>
Accountant-General's Division	—	—	—	—	—	—	—	1	1
Agriculture, Fisheries and Natural Resources ...	—	—	—	1	1	—	—	1	3
Attorney-General's Office	—	—	—	—	1	—	—	—	1
Education ...	—	1	—	—	2	—	—	—	3
Employment and of Social Security and National Solidarity	—	3	1	3	—	—	—	1	8
Energy and Internal Communications	—	—	—	2	—	—	—	1	3
External Affairs, Tourism and Emigration ...	—	—	—	—	—	—	—	—	—
Health ...	—	3	—	—	1	—	—	—	1
Housing, Lands and the Environment	1	—	2	3	4	—	—	2	14
Income Tax ...	—	1	1	2	1	—	—	2	7
Information and Co-operatives	—	—	—	—	—	—	—	—	1
Labour and Industrial Relations	—	1	1	2	4	—	—	—	7
Police ...	—	18	4	5	13	—	—	3	4
Posts and Telegraphs	—	2	—	—	—	1	—	2	43
Prisons ...	—	13	—	1	2	—	—	—	2
Telecommunications	—	3	1	—	—	—	1	—	17
Works ...	—	—	—	3	1	—	—	1	4
Officers and Authorities outside the jurisdiction of the Ombudsman ...	—	—	—	—	48	—	—	—	5
TOTAL	1	45	10	22	78	1	1	14	172

APPENDIX C

Schedule of Complaints for Period 1st January 1982—31st December 1982

ACCOUNTANT-GENERAL

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/126/82	No retiring benefits paid to father for service in the Railways	Being investigated

AGRICULTURE, FISHERIES AND NATURAL RESOURCES

C/ 28/82	Part of service not taken into account for computation of retiring benefits	Being investigated
C/ 49/82	Compulsorily retired on medical grounds and wants to be reinstated; retiring benefits not yet paid	Explained
C/115/82	Sampler (complainant) facing disciplinary measures ...	Declined

ATTORNEY-GENERAL'S OFFICE

C/ 54/82	Application for marriage of complainant's daughter under 18 years not recommended to Judge in Chambers	Declined
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EDUCATION

C/ 27/82	Not selected for a scholarship (India) by the Selection Board	Declined
C/110/82	Awarded by Government of India a seat for M.B.B.S. while complainant had applied for a seat in the faculty of Pharmacy	Not justified
C/151/82	Unjustly transferred to a very distant school ...	Declined

EMPLOYMENT AND SOCIAL SECURITY AND NATIONAL SOLIDARITY

C/161/81	Insufficient social aid and no refund of bus fares for treatment at Hospital	Explained
C/ 30/82	Not provided with a job after liquidation of Flacq Long Mountain Bus Service	Discontinued
C/ 60/82	Not referred for any vacancy	Not justified
C/ 61/82	Drastic deduction of supposed overpayment of social aid	Being investigated
C/ 64/82	Delay in payment of lump sum and widow's pension after death of husband employed on sugar estate.	Explained
C/ 78/82	Social aid to wife with a child 2½ years old stopped while husband in prison	Explained
C/ 91/82	Not referred for interview with a view to employment as a result of discrimination. Not submitted as a "hardship case".	Not justified
C/135/82	Inadequate social aid to wife while complainant in prison	Not justified

ENERGY AND COMMUNICATIONS

C/ 45/82	Service at Ministry of Works and at Central Water Authority not aggregated for retiring benefits purposes	Explained
C/ 65/82	Service at Ministry of Works and at Central Water Authority not aggregated for retiring benefits purposes	Explained
C/148/82	Inadequacy of retirement benefits paid by the Central Electricity Board	Being investigated

EXTERNAL AFFAIRS, TOURISM AND EMIGRATION

C/ 53/82	Personnel matters at a Mauritius High Commission ...	Declined
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APPENDIX C—continued

HEALTH

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/158/81	No action against owner of premises who blocked water-tap thus causing nuisance in water closet at a shirt factory	Discontinued
C/167/81	No reply from Establishment Officer of the Ministry regarding practical training as a pharmacist in the Ministry	Explained
C/ 13/82	Promotion to post of Welfare Attendant at hospital not ante-dated as promised by Superintendent	Declined
C/ 46/82	Allowance does not include extra remuneration, etc. ...	Declined
C/ 67/82	Pigbreeder's improved pits receiving waste from pigsties were full, etc. Sanitary nuisance	Explained
C/ 71/82	No action on complaint regarding industrial smoke nuisance caused by neighbour	Not justified
C/ 77/82	Not given early report on performance during pre-registration internship as a doctor	Explained
C/ 84/82	No action regarding sanitary nuisance (refuse, etc.) caused by neighbouring trader	Not justified
C/ 98/82	Medical Officer showed haughty attitude while complainant, a field worker of the Ministry, called at the Ministry as Chairman of a trade union of Government Employees	Declined
C/101/82	Nuisance caused by stagnant water ...	Discontinued
C/120/82	Service in Mauritius Family Planning Association not aggregated with service in the Family Planning Section of the Ministry of Health for retiring benefits	Not justified
C/137/82	Not promoted gangman although qualified ...	Declined
C/141/82	No action on complaints regarding dust pollution caused by stone-crushing plant near residence	Being investigated
C/154/82	No action by Sanitary Authority on declaration of health nuisance caused by pig-breeding at less than 100 feet from residence.	Being investigated

HOUSING, LANDS AND THE ENVIRONMENT

C/ 81/80	Undue delay in payment of compensation for encroachment on complainant's land in Rodrigues ...	Being investigated
C/ 94/81	Undue delay in payment of compensation for compulsory acquisition of land ...	Justified
C/ 31/82	Designation of sand landing places near residence by Minister ...	Explained
C/ 35/82	Land used for boat sheltering by fishermen built upon by a private individual, depriving the fishermen of the use of the land ...	Being investigated
C/ 42/82	Delay in allocation of a C.H.A. house ...	Explained
C/ 43/82	Not allocated a C.H.A. house despite down payment ...	Discontinued
C/ 80/82	Unduly long period of service in Rodrigues as Senior Surveyor ...	Declined

INCOME TAX

C/ 34/82	No fair hearing and arbitrarily taxed ...	Not justified
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INFORMATION AND CO-OPERATIVES

C/ 93/81	Delay in payment of death gratuity after husband's death	Explained
C/ 11/82	Rejected application for registration of a Credit Union...	Explained
C/ 17/82	Various personnel matters within the service raised by PPE workers ...	Declined
C/ 19/82	Not appointed gangmen although acting as such for a long time ...	Declined

APPENDIX C—continued

INFORMATION AND CO-OPERATIVES—continued

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/ 59/82	Too many absences, neglect of duty, etc. Matters of discipline	Declined
C/102/82	Not paid money due for consignment of sugar from 1975-78	Discontinued
C/138/82	Not re-appointed as Office Helper in the Ministry after three years' absence owing to prolonged illness ...	Declined

LABOUR AND INDUSTRIAL RELATIONS

C/154/81	No action on declaration of termination of employment	Being investigated
C/ 24/82	Unjustly handed a Notice to appear in Court which was meant for his employer	Not justified
C/133/82	Irregular payment of retirement pension; no lump sum paid by employer	Being investigated
C/146/82	No action regarding declaration of non-payment of wages as driver for overtime	Being investigated

POLICE

C/100/81	Delay in sending report on inquiry to Court regarding alleged irregularities concerning a claim by complaint ...	Explained
C/130/81	Detained during week-end in Police cell for simple wounds and blows after giving statement. Not bailed out by Police on Sunday evening	Not justified
C/133/81	Unfair competition by taxis operating outside base of operation	Not justified
C/145/81	No action on declaration of wounds and blows ...	Discontinued
C/149/81	No immediate checking of unfair contravention by a policeman	Explained
C/156/81	No further action on declaration of alleged forgery ...	Declined
C/160/81	No action on declaration of wounds and blows on his person and kidnapping of his wife. (Police followed D.P.P.'s advice).	Not justified
C/ 1/82	No action on declarations	Not justified
C/ 10/82	Not made aware in advance of places suitable for public meetings	Explained
C/ 12/82	(a) Identification parade not properly constituted ...	Rectified
	(b) Beaten by Police with blunt instrument on sole of L foot; fracture of the bone of the sole*	Declined
C/ 14/82	Inaction regarding unreasonable noise created by an electric saw-machine near complaint's residence ...	Not justified
C/ 22/82	Was taken handcuffed on a provisional charge of larceny to and from Court	Discontinued
C/ 23/82	Counsel misinformed of the Court where client was appearing for remand, etc.	Discontinued
C/ 25/82	No action in case of unreasonable noise created by a workshop operating since 1970	Explained
C/ 29/82	Inquiry not thorough after declaration of complainant regarding his stolen car	Not justified
C/ 37/82	A Policeman trading in gandia. Complaint anonymous	Declined
C/ 38/82	No action by Police regarding obstruction of street in front of a cinema	Explained
C/ 40/82	Condition as Special Police Constable not changed ...	Declined

*No further action advised by D.P.P. as medical opinion concludes injury consistent with a fall

APPENDIX C—continued

POLICE—continued		
<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
C/ 41/82	No further action on declaration regarding wounds and blows	Not justified
C/ 44/82	Police Constable interdicted for an unduly long time ...	Declined
C/ 51/82	Complainant's daughter aged 15 years harboured at the Constable's place and prevented from meeting complainant. Legal proceedings pending	Declined
C/ 58/82	No further action on declaration. (D.P.P. advised no further action).	Discontinued
C/ 85/82	No action on declaration against the purchaser for non-payment of balance and for removing a lorry "bascule". Civil action pending	Declined
C/ 86/82	Beaten by Police after arrest. (Court cases pending for criminal offences)	Declined
C/ 87/82	Special Police Constables not granted any leave or holidays; pay cut for absences on holidays	Declined
C/ 90/82	No action on declaration of firing of a gun in the direction of complainant and his son. (D.P.P. advised no further action)	Declined
C/ 92/82	Arrested and remanded to jail without justification ...	Not justified
C/ 93/82	Police moved Court to remand to jail pending appeal. Complainant serving term of civil imprisonment for non-payment of debt	Not justified
C/ 94/82	Police objection to release on bail pending trial unfair ...	Not justified
C/ 95/82	Police objection to release on bail pending trial unfair ...	Not justified
C/ 97/82	Police Constable entered complainant's house saying he had a warrant, pushing him aside and uttering abusive words	Not justified
C/103/82	Did not compel complainant's wife to use her married name on her passport	Not justified
C/106/82	Name, age and address wrongly written in Information. Found guilty by Court for the offence for which he was prosecuted	Declined
C/107/82	Unjustly reduced provisional charge of sequestration of daughter to a charge of assault	Not justified
C/122/82	No prosecution of driver regarding a street accident in which complainant's son was severely injured and died subsequently. (D.P.P. advised no further action)	Declined
C/124/82	Persecution in establishing trifling contraventions. (Police following D.P.P.'s advice)	Declined
C/125/82	No action on declaration of wounds and blows and threats by rivals on the quayside in the performance of work	Not justified
C/132/82	Refusal to authorize the organization of a raffle for the benefit of a secondary school	Not justified
C/136/82	No action regarding street accident which concerned complainant	Not justified
C/140/82	No action on declarations of damaging property, etc. (Civil disputes about land).	Being investigated
C/142/82	Police Constable did not pay for hire and work done for digging an absorption pit with a "broomwade" by complainant	Declined
C/150/82	No action regarding non-execution by a private party of a Court judgement in a civil case	Not justified
C/153/82	Police Officer inquiring into case of "murder" did not take statement from complainant and other witnesses although requested	Being investigated

APPENDIX C—continued

<i>No.</i>	<i>Subject of Complaint</i>	<i>Result</i>
POSTS AND TELEGRAPHS		
C/ 50/82	Envelope changed and address written in a different hand-writing in respect of a letter sent by complainant	Not justified
C/ 55/82	Not allowed to use telephone ...	Not justified
PRISONS		
C/ 3/82	All articles found on prisoner not returned ...	Not justified
C/ 7/82	Not allowed to work and does not feel secure in face of other prisoners at the Phoenix Prison ...	Not justified
C/ 9/82	Not allowed to work with tools at Phoenix Prison ...	Not justified
C/ 21/82	(a) No step taken to prevent suicide of, blows, etc., upon prisoners ...	Not justified
	(b) No clean food ...	
	(c) First offenders are kept for a week or two at Central Prison before being sent to Richelieu Open Prison ...	
C/ 48/82	Assault by a Chief Officer and not transferred to another prison as desired ...	Not justified
C/ 56/82	Not allowed to see the Commissioner of Prisons ...	Not justified
C/ 57/82	Not allowed to see the Commissioner of Prisons ...	Not justified
C/ 66/82	Asking Ombudsman to grant remission in respect of period of remand of 13 months ...	Declined
C/ 73/82	Request to Ombudsman to intervene so that consecutive sentences may operate concurrently ...	Declined
C/ 89/82	Hospital Officer not easily available; relatives not allowed to bring prisoner at Phoenix prison toilet requisites ...	Not justified
C/ 96/82	No good tea and showers with insufficient water ...	Explained
C/112/82	Special remission wrongly applied ...	Not justified
C/113/82	Wife raped; payment of money to wife, etc. ...	Not justified
C/118/82	Request to have a predicant of the "Mission, Salut et Guérison" to visit complainant (prisoner) not acceded to ...	Not justified
C/128/82	Unnecessarily made to complete unexpired period of imprisonment during which prisoner (complainant) was released on licence ...	Not justified
C/130/82	Request by prisoner (complainant) to buy butter, cheese, chocolate, fruit juice, etc., turned down ...	Not justified
C/145/82	General request to the Ombudsman to visit the Central Prison while a one-man Fact-Finding Committee was investigating conditions prevailing in the prisons ...	Declined in exercise of discretion
TELECOMMUNICATIONS		
C/ 33/82	Unduly exaggerated telephone bills ...	Discontinued
C/ 72/82	Improper discrimination in provision of telephone service ...	Not justified
C/108/82	Discrimination in providing telephone ...	Not justified
C/116/82	Improper discrimination in the provision of a telephone to two neighbours; telephone refused unjustly to complainant ...	Not justified
WORKS		
C/ 18/82	Ice-cream factory allowed to operate despite objection of Ministry of Health. (In fact Ministry of Health did not object ...)	Explained
C/ 20/82	Defective sewer pipes causing health nuisance ...	Explained
C/ 32/82	Non-appointment to grade of Chief Tradesman/Foreman in the Ministry ...	Declined
C/ 36/82	Case of building in breach of Building Regulations struck out owing to mishandling by the M.O.W. Inspector, who subsequently died ...	Explained
C/158/82	No action on declaration of overflow of septic tank causing health nuisance ...	Being investigated

APPENDIX D

**CASES DECLINED FOR WANT OF JURISDICTION AND
IN EXERCISE OF DISCRETION**

<i>Complaints registered against:</i>						<i>No. of Complaints</i>
Barrister-at-Law	...	...	...	...	...	1
Commission on the Prerogative of Mercy	...	...	...	...	...	3
Development Works Corporation	...	...	...	...	...	2
District Council Grand Port/Savanne	...	...	...	...	...	1
Electoral Commissioner's Office	...	...	...	...	...	1
Governor-General	...	...	...	...	...	1
Husband	...	...	...	...	...	1
Industrial Court	...	...	...	...	...	1
Irrigation Authority	...	...	...	...	...	1
Judicial Department	...	...	...	...	...	20
Magistrate	...	...	...	...	...	3
Master and Registrar	...	...	...	...	...	1
Mauritius Broadcasting Corporation	...	...	...	...	...	1
Municipality of Port Louis	...	...	...	...	...	1
National Transport Authority	...	...	...	...	...	1
National Transport Corporation	...	...	...	...	...	1
Private Individuals	...	...	...	...	...	2
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