

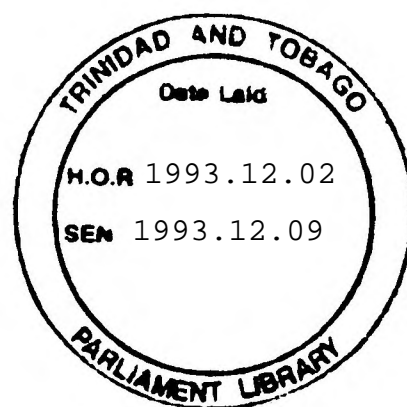


THE REPUBLIC OF TRINIDAD AND TOBAGO

THE OMBUDSMAN

FIFTEENTH

ANNUAL REPORT



JANUARY 01 1992 to DECEMBER 31, 1992



Office of the Ombudsman of Trinidad and Tobago

*St. Ann's Avenue
St. Ann's
P.O. Box 886*

8th October, 1993.

The Honourable Speaker,
Parliament,
Red House,
Port of Spain.

Dear Madam Speaker,

I have the honour to present the Fifteenth Annual Report of the Ombudsman for the period January 1, 1992 to December 31, 1992.

The report is submitted pursuant to Subsection 5 of Section 96 of the Constitution of the Republic of Trinidad and Tobago, 1976.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'G. A. Edoo'.

GEORGE A. EDOO
Ombudsman,
Trinidad and Tobago.

TABLE OF CONTENTS

PART I	GENERAL	PAGE
	Introduction	- 1
	Evaluation of Office	- 3
	Fifth International Ombudsman Conference	- 3
	International Ombudsman Institute Workshop	- 4
	Visits to Penal Institutions	- 5
PART II	AREAS OF CONCERN	
	Accounting Procedures Revisited	- 10
	Failure to Obtain Planning Permission	- 13
	Stolen Vehicles in the Custody of the Police	14
PART III	1. STATISTICAL OVERVIEW	- 18
	2. SELECTED CASE SUMMARIES	
	Judiciary	- 25
	Ministry of Agriculture, Land & Marine Resources	- 25
	Ministry of Education	- 28
	Ministry of Finance	- 30
	Ministry of Health	- 32
	Ministry of Local Government	- 34
	Ministry of National Security	- 36
	Ministry of Social Development & Family Services	- 39
	Ministry of Works & Transport	- 40
	National Housing Authority	- 42
	National Insurance Board	- 45
	Public Utility Agencies	- 47
	Tobago House of Assembly	- 51
	Other Ministries/Bodies/Agencies	- 54
PART IV	APPENDICES	
	1. The Ombudsman and His Society The Case of Trinidad and Tobago	- 55
	2. Extracts from Constitution:	
	(a) Recognition and Protection of Fundamental Human Rights and Freedoms - Chapter 1	- 63
	(b) Ombudsman - Part II	- 65
	(c) Third Schedule to Constitution	- 70
	3. Ombudsman Act, Chapter 2:52	- 71
	4. Map of Caribbean Area and South American Mainland	- 77
	5. Map of Trinidad and Tobago	- 78

PART I

GENERAL

GENERAL

INTRODUCTION

This is the fifteenth annual Report of the Ombudsman, the Office having been established under the Republican Constitution on the 26th July, 1977 with the appointment of my predecessor, Mr. Justice Evan Rees.

I recall the doubts which were expressed in some quarters at the time of its introduction into the Republican Constitution - mainly, whether such a provision was necessary in light of the fact that the Constitution contained adequate safeguards and sufficient checks and balances designed to protect the rights of citizens. Another objection was that the concept was alien to the political and administrative traditions of a Westminster-type Constitution.

The first Constitution Commission in its booklet - "Thinking Things Through" published for the purpose of informing the population of matters pertinent to a change of the then existing Constitution advanced certain reasons why it felt necessary that an Ombudsman-type institution be provided and introduced into the Constitution viz:

"No government today can limit its functions to maintaining internal stability and providing defence from external attack. It must help stimulate the economy to create employment. It must regulate the use of national resources to prevent waste and promote reasonably fair distribution. It must provide facilities for educating the society and for helping to take care of the aged when they can no longer work.

To secure these ends laws are made imposing controls - for example, controls on the use of land, price controls, compulsory deductions for national insurance and licenses for the importation of goods or the export of money. More and more public officials are employed to administer these controls, and their decisions affect more and more people.

Problems arise from the sheer size of the establishment, or the bureaucracy as it is sometimes called. Close supervision is difficult and often the consequence is

maladministration causing hardships to many. There are also problems of injustice arising from unintended or deliberate misuse of executive power".

This observation was made in 1972 and it applies as strongly today as it did then. The statistics and details of complaints published in previous Reports bear ample testimony to the number and type of complaints of administrative or executive neglect which cause hardship to the population through unintended or deliberate misuse of executive power.

In "Issues and Problems in Caribbean Public Administration" edited by Ryan and Brown (1992), the following observation is made:

"The Office of the Ombudsman is essentially a constitutional safeguard against bureaucratic excesses, insensitivity and error. The holder of the office is usually appointed by the Head of State after the normal consultations but is an officer of the Parliament and reports directly thereto.

As the modern administrative state has grown in size and complexity, and as individual demands for public services have increased significantly, the public sector's sheer dominance casts doubts over the efficacy of traditional control mechanisms. Public policy, public accounts and public administration are often simply not subject to the constant scrutiny of the legislature which is contemplated by parliamentary theory.

The vast responsibilities of the public bureaucracy leave the door wide open for insensitivity and unfairness to creep in. It is the public servants who, in the final analysis, translate public policy into individual situations and ... they can distort and thwart public policy if they so desire. Given the size and complexity of the modern state, it is not only unreasonable but wholly unrealistic to hold a minister personally responsible for the individual acts of unfairness or impropriety of all the officials who report to him/her.

It is in this context that the Office of the Ombudsman gains its justification and raison d'etre. In seeking to develop administrative practices and mechanisms to promote the fair application of public policy to individual situations and to mediate and resolve conflicts between the state and its citizens in a non-adversarial way, the Parliamentary Ombudsman is an important institution."

The Government to its credit, has appointed a Minister in the Office of the Prime Minister with responsibility for Public Administration. The Minister has undertaken many aspects of Public Service reform. The objective is to achieve a cost-conscious, efficient and client-oriented Public Service. This is being undertaken against a background of changing world, political and economic situations.

Towards this end, the Ministry has undertaken retreats for Government departments in order to make staff more aware of public service reform and the concept of strategic planning for the future. Mr. Michael Almandoz, Secretary to the Ombudsman was a participant in a performance improvement programme conducted by the Ministry targeted towards the achievement of the above-mentioned objectives.

At the present time, the Ministry is dealing with information systems which include the use of technology, management systems and attitudinal training.

EVALUATION OF THE OFFICE

Some three years after the establishment of the Ombudsman's Office, Mr. Trevor Sudama published a critical assessment of the Office titled: The Ombudsman's Office in Trinidad and Tobago: A Critical View, with a view to identifying some of the systemic constraints under which the Office functioned. Since then, no such assessment or evaluation of the Office has been undertaken by an independent source.

However, Ms. Joy Henry, an Investigator who has been with this Office for the past ten (10) years, has recently presented a paper titled: "THE OMBUDSMAN AND HIS SOCIETY: The case of Trinidad and Tobago" which forms an appendix to this Report.

FIFTH INTERNATIONAL OMBUDSMAN CONFERENCE

In October, 1992, specifically from the 11th to 16th, I attended the Fifth International Ombudsman Conference in Vienna, Austria which was hosted by the Austrian Federal Ombudsman Board.

Approximately 228 participants attended the Conference. They came from countries around the world including the newly liberated countries of the former Soviet Union. Also attending the Conference was a delegation from China which had observer status. The theme of the Conference was "Ombudsman - Idea and Reality", "The Role of the Ombudsman", and "Ombudsmen and Other Cultures". I had the honour to chair the workshop on "Jurisdiction". I attended as a voting member of the International Ombudsman Institute and discussed with participants a variety of issues which were of common concern. A postage stamp was issued by the Austrian Government to commemorate the holding of the Conference.

Attendance and participation at these conferences are of vital importance in that it demonstrates our commitment, 'inter alia,' to democracy and the rule of law and to the protection of fundamental human rights and freedoms. The circulation of the Annual Reports of Ombudsmen provides evidence of the commitment to these ideals.

Membership of the Institute has several advantages. Among them are the right to participate in educational programmes for Ombudsmen and their staff; the provision by the Institute of scholarships, fellowship grants and other types of financial support in order to encourage the development of the Ombudsman concept and the encouragement of study and research into the institution of Ombudsman.

The Institute which is based at the University of Alberta in Edmonton, Canada has an excellent relationship with the Canadian International Development Agency which funds it for various projects and purposes. It was through the instrumentality of the Institute that two of the Investigators of this Office namely, Mr. Stephen Creese and Mrs. Yvette Crichlow were able to obtain financial and other assistance in order to enable them to attend a workshop which was hosted by the Institute and held in Edmonton from August 9th to 14th, 1992, details of which appear later in this Report.

A decision was taken at the Conference held in Vienna to accept the invitation of the Government of Argentina to host the Sixth International Conference in Buenos Aires in 1996.

INTERNATIONAL OMBUDSMAN INSTITUTE WORKSHOP

The International Ombudsman Institute's Workshop on "The Ombudsman: Diversity and Development" which was held from August 09 to August 14, 1992 at the University of Alberta, Edmonton, Canada was attended by two Investigators of this office, Mr. Stephen Creese and Mrs. Yvette Crichlow. Their participation at this workshop was viewed as vital to the further enhancement of their skills since these officers handle a multiplicity of diverse and often complex complaints from a wide cross section of the community. The other participants came from jurisdictions such as Papua New Guinea, Argentina, Brazil, Costa Rica, Venezuela,

Mauritius, United Kingdom, Hawaii, Detroit-U.S.A., Puerto Rico, Alaska, South Africa and Bophuthatswana. The situation augured well for highly instructive collaboration in terms of the sharing of experiences in dealing with unique issues faced by Ombudsmen offices.

The topics covered in the Workshop sessions were: techniques of investigations; maintaining essential elements of Ombudsman's offices in diverse political and cultural climates; specialized Ombudsman; International Human Rights law; public education on the role of the Ombudsman's Office; own-motion investigations; public investigations and systemic investigations; the Ombudsman's Office and its relationship to Courts and quasi-judicial bodies and administrative fairness.

The sessions were rich in new and broadening views of the Ombudsman concept. The moderators provided enlightening insights into their peculiar cultural and political climates and the effect of these on the development of their particular offices.

The International Ombudsman Institute is the only institution which provides training for Ombudsman investigative staff. This has been the only occasion since the establishment of this Office that members of the investigative staff have been exposed to relevant training. Thus, it is essential in the future to embrace all such opportunities for specialized training as this will only serve to strengthen the Office's ability to discharge its functions.

VISITS TO PENAL INSTITUTIONS

During the period under review, I made visits to Port of Spain State Prison, the Carrera Island Prison, and the Golden Grove Prison, Arouca. At Golden Grove I visited the Women's Detention Centre, the Remand Yard and the Youth Training Centre.

STATE PRISON, PORT OF SPAIN

At the State Prison, Port of Spain I inspected the conditions in the following areas: Death Row, Remand Division, the Air/Exercise facilities, Kitchen and Dining Room.

My attention was drawn to the chronic state of overcrowding in the Prison. The Remand Division was the worst example of such overcrowding. Some of the cells had as many as thirteen (13) inmates. Each of these cells was originally designed to accommodate two (2) prisoners. The Commissioner of Prisons admitted that in 1991 the number of inmates per cell had reached as high as fifteen. I observed that conditions in the cells were deplorable - every available space was utilized for sleeping.

They were poorly lit, poorly ventilated, hot, stuffy and smelly. I requested an explanation from the Inspector of Prisons. The Inspector of Prisons stated that his reports had gone unheeded.

I also enquired as to arrangements for the airing/exercising of prisoners. The Commissioner of Prisons admitted that on weekends and on public holidays there was very little done by way of airing because of the high rate of absenteeism of Officers during those periods.

The Commissioner of Prisons expressed the view that there was a crying need for new initiatives in staff training given the realities of the prison system in Trinidad and Tobago. He lamented the absence of any training in hostage situations and felt that there was an urgent need for his personnel to have such training as part of contingency planning.

CARRERA ISLAND PRISON

I was informed that Carrera Prison was built in 1893. Two wings have since been destroyed and two temporary dormitories were created. Although the capacity of the prison was for a total of two hundred and fifty (250) inmates, at the time of my visit it held four hundred and eight-four (484) inmates.

I took the opportunity to tour the outer yard, dining shed area, Division I, Top Security, CI-Disassociated Unit, the Prison school, workshop, a temporary dormitory and the Infirmary.

I was informed that the overcrowding problem had negatively impacted upon the rehabilitative programme. The space which was utilized for imparting these skills had to be converted into a dormitory, which was hot and stuffy. Poor ventilation was the obvious cause. Every considerable square inch was utilized and it was clear that evacuation of the building in an emergency would be problematic.

WOMEN'S DETENTION CENTRE, GOLDEN GROVE

The Women's Detention Centre was built to accommodate seventy-five (75) women, but the daily average is one hundred and thirteen (113).

I was informed that the women inmates were exposed to literacy classes. Those who wished to complete their primary and secondary education were being assisted. Also, regular classes were being held in handicraft, needlecraft and dressmaking. I was also shown a well laid out kitchen garden with chives, lettuce, sweet peppers and spinach which were grown by the inmates, and on the day of my visit spinach was on the menu of the midday meal that was being prepared. The kitchen appeared clean.

GOLDEN GROVE PRISON AND REMAND YARD, AROUCA

I was informed that like Port of Spain Prison, both the Remand Yard and Golden Grove Prison were overcrowded. Attempts to increase the accommodation had been very difficult because of a lack of funds.

Inmates do all the preparation of meals for the institution. They produce their own supply of bread, cakes and pastry. Training is also provided for those inmates who have expressed an interest in the art of baking and pastry making. I was informed that trained inmates were able to obtain jobs on being released. However, they have experienced the stigma of being former inmates.

Farming was one of the productive efforts undertaken by the inmates. I was informed that vegetables - pumpkins, sweet potatoes - are all grown by prisoners. At the time of my visit there were 78 heads of cattle and 265 pigs and various other farm animals being reared on the farm. Accordingly, the high food bill was being reduced, but more substantial reductions could be obtained if there was increased funding for equipment so that food could be produced in sufficient quantities for the entire prison population and for sale to the public.

I visited the workshops in carpentry, joinery and tailoring where I saw inmates being trained in these various skills. Again, a lack of funding for the purchase of equipment and material resulted in these efforts having limited benefits.

Overcrowding of cells at this facility continues to be a major problem and even though efforts have been made to increase the capacity, overcrowding will continue to plague the institution. It is expected that the new building will assist in alleviating the overcrowding. This new building is expected to be completed before the end of 1994.

YOUTH TRAINING CENTRE

The Youth Training Centre (YTC) caters for the young male offender between the ages of 16 -18 years. The facility accommodates approximately two hundred and twenty-five (225) young men. The environment was clean and spacious, and were it not for the bars on some of the buildings, one got the impression that it was a boys' high school.

I was informed that the Institution was essentially a training centre in which the emphasis was placed on rehabilitation. For the first six (6) months the young offender would be given psychological counselling because, as often as not he would be plagued by self-doubt and low self-esteem. Once his level of self-esteem is restored, the young offender is exposed to technical and vocational skill training such as food catering, baking, farming, bee keeping, motor vehicle repairs, welding, small appliance repairs and plumbing. Assistance for these programs are given by the service clubs, banks, social groups and departments of Government.

If the boy shows the required aptitude, he is allowed to continue his academic training. Individual programs are developed for the boys which include remedial reading, mathematics and speech training. I was advised that the boys were being prepared for release into the wider society. Job training was seen as an essential requirement.

They were also allowed to participate in social activities such as Best Village, Folk Fair, Arts and Craft exhibitions, and sports. I had an opportunity to listen to a lovely rendition of Christmas songs played by the YTC Steelband and a medley of songs sung by one of the inmates.

I was informed that what the boys require from society is acceptance. The stigma is hard to dispel that these boys were inmates of a detention centre and the reality in the external environment is likely to be one of rejection by the public. In most cases the boys were products of broken homes and absentee parents who have run afoul of the law. The boys find it comfortable to remain in the Institution as opposed to returning to their crime-ridden districts.

Prior to release, an individual program is established for each boy and on completion he has to satisfy the Discharge Release Board.

Their success rate at the School Leaving Examinations and London G.C.E. Examinations was impressive when one considers that these boys came from a background of absentee or abusive parents, drug abuse and in most cases violent environments. After six (6) months entry to YTC they are given a rich exposure to spiritual, cultural and social activity. I observed a chapel which persons of different religious persuasion could utilize.

The Officers in charge of YTC seemed to be dedicated and committed to the task of rehabilitation at this Institution. It was my opinion that the Youth Training Centre is the only bright star in a generally dismal picture of the Trinidad and Tobago Prison System.

CONCLUSION

On a whole I was greatly impressed by the expertise and dedication of the prison officers including the Commissioner himself, who conducted me on a tour of the prison system. Serious efforts are being made to alleviate the overcrowding by the prison authorities with the help of the prisoners themselves. Much remains to be done in the way of providing accommodation and amenities for prisoners and staff alike, so as to make prison life more tolerable for all concerned. This is one area in which I would recommend that priority be given.

PART II

AREAS OF CONCERN

AREAS OF CONCERN

Accounting Procedures Revisited:

In the Fourteenth Annual Report I had occasion to report on complaints made by public officers with respect to alleged overpayments made to them and the procedures adopted by Accounting Officers in recovering such payments.

Since then I have received complaints from officers who have retired from the Public Service and are experiencing difficulty in obtaining the gratuity which is due to them. It appears that certain departments have adopted a procedure of reporting to the Director of Pensions, "overpayments" made to public servants during their tenure of office, such "overpayments" extending for a number of years preceding their retirement. In one case it was alleged that an officer had been paid at incremental points higher than those at which she should have been paid, these payments having ranged over a period of ten years and more prior to her retirement. The result was that a substantial sum of money was deducted from her gratuity. It does not appear that this alleged overpayment was ever brought to the officer's attention at any time so as to give her the opportunity of contesting it.

The justification for treating these payments as "overpayments" is seemingly derived from The Exchequer and Audit Act Chapter 69:01 and the Financial Regulations made thereunder.

The relevant regulations which govern overpayments and unauthorised payments are as follows:

83. Every unauthorised payment and overpayment of salary, pension, allowance, wages or other moneys constitutes a debt which is recoverable in full from the payee.

84. (1) When an unauthorised payment or overpayment is discovered, the person overpaid shall be informed and the incorrect rate of payment shall be stopped immediately.

(2) Steps shall be taken to determine liability, if any, of the person responsible for the payment when the sum paid cannot be recovered from the payee.

(3) Where expenditure votes are

involved, these shall be adjusted immediately.

85. (1) The accounting officer shall state in his report concrete proposals for the repayment of the unauthorised payment or overpayment.

(2) The officer paid shall be informed and steps shall be taken to commence recovery of the amounts due from the officer's salary when the proposals have been examined by the Treasury and the repayment terms fixed.

(3) The accounting officer may accept repayment immediately or may, with the written consent of the officer paid, make deductions from the officer's salary pending the fixing of repayment terms by the Treasury.

(4) In fixing repayment terms, the Treasury shall take cognisance of any voluntary repayments.

As I said in the Fourteenth Annual Report, these Regulations refer to obvious cases of unauthorised payments e.g. an overpayment of salary, pension etc, or the payment of a sum of money to which the officer is fully aware that he is not entitled. The Regulations provide for the recovery of such moneys and the onus is placed on the accounting officers to ensure that such overpayment or unauthorised payment is recovered failing which the person responsible for such payment becomes liable.

What is contemplated by the Regulations is swift recovery of the money and in the process an observance of the law in its recovery. The Regulations lay down the procedure for recovery viz:-

- (1) The person overpaid shall be informed and the incorrect rate of payment shall be stopped immediately.
- (2) Steps shall be taken to commence recovery and a written consent is required from the officer to make deductions from his salary etc.

Certainly, these Regulations do not apply in cases where

monies have been paid in good faith over a long period of time and accepted in good faith by an officer. If an increment was authorised when it should not have been, then it may have been due to inadvertence or negligence on the part of the authorising officer or the accounting officers. If the mistake is discovered within a short time thereafter then the Regulations would take effect and steps should be swiftly taken to recover the overpayment or unauthorised payment.

The Exchequer and Audit Act and the Regulations made thereunder have not altered the general law as to the recovery of money paid under a mistake of fact. The law is very clear on the subject of recovery of money paid under a mistake. Where money is paid voluntarily under a mistake on the payer's part as to a material fact, as a general rule, it may be recovered in an action for money had and received to the plaintiff's use. But money paid voluntarily with full knowledge of the facts and without bad faith, cannot be recovered (See Vol. 32 of Halsbury's Laws of England 4th Edition, para. 63 page 38).

The resolution of cases of the nature which I have detailed above should not be based on the law 'per se' but on the application of good industrial relations practices. Is it fair and equitable for an employee of the State who has given so many years of service to the State and who has a legitimate expectation to pension and gratuity under the Pensions Act, to be told in the twilight of her years that the State has a legitimate claim to a substantial portion of the money due to her, which over a period of time it had advanced to her voluntarily and which she had accepted in good faith? The answer must clearly be in the negative.

Moreover under Section 23 of the Pensions Act Chap. 23:52 no pension, gratuity or other allowance can be attached or sequestered except where a debt is owed to the Government. Such debt from pensions or gratuities can only be attached or sequestered by Order of the Court. What appears to be the practice is that the department simply reports the "debt" to the Director of Pensions who proceeds unilaterally to deduct the amount due from the retiree's gratuity, without giving him the opportunity of contesting it.

In my considered opinion, there is no legal or moral basis upon which the State can rely in seeking to recover such monies.

In the case I have referred to above, the fault was not that of the payee who had accepted the money in good faith and in the honest belief that an increment was due to her but rather to the inadvertence or negligence of those responsible for paying the money to her.

It is incumbent upon accounting officers and those responsible for the expending of public funds to exercise more responsibility and care in the performance of their duties rather than to look at such matters in hindsight and seek to correct them in such a manner

as obviously to bring about an injustice.

FAILURE TO OBTAIN PLANNING PERMISSION

In 1989 my predecessor laid a Special Report No. 03/89 in Parliament in accordance with Section 96(4) of the Constitution. This report concerned a Complainant who had submitted an application to the then Minister of Planning and Development, Town and Country Planning Division on August 26, 1975 to develop a parcel of land at Papourie Road, Esperance Village, San Fernando.

In that Report, my predecessor had stated that the Permanent Secretary, Ministry of Planning and Development had advised that the Complainant's application for full planning approval was denied because the site in question would have been affected by the proposed alignment and extension of the Sir Solomon Hochoy Highway.

By letter dated July 14, 1987 the Permanent Secretary, Ministry of Works, advised that there was a decision to review the alignment of the Sir Solomon Hochoy Highway and that he would have more information in six (6) weeks time. It is sufficient to say that my predecessor never received the information which was promised.

Today the situation remains the same. Many citizens whose lands are situate along the proposed extension of the Sir Solomon Hochoy Highway have not been able to obtain full planning approval to develop their lands.

The following case is an example of the frustration being faced by these citizens.

By letter dated September 15, 1983 the Town and Country Planning Division, Ministry of Finance and Planning informed Ms. C that her application for outline approval for the erection of a single family residential building on a site located off the Naparima Mayaro Road was denied because the site fell within the area earmarked for the alignment of the proposed Sir Solomon Hochoy Highway Extension.

The Complainant exercised her right of appeal and by letter dated September 07, 1988 the Permanent Secretary, Ministry of Planning and Mobilization informed her that the appeal had been heard by the Advisory Town Planning Panel and that the Panel also discussed the proposed development of the site with the Division of Highways, since it was determined that the proposed extension to the Sir Solomon Hochoy Highway would affect the site. It was agreed that no development would be permitted on the site in view of these highway proposals.

He further stated:-

"Arising out of the deliberations

of the Panel, it has become necessary to give further study to the issues involving in development which requires the acquisition of land for State Projects. On the request of the Honourable Minister of Planning and Mobilization, consideration is being given to a number of alternative means of alleviating the plight of land owners whose plots are to be acquired for future development. A further communication will be despatched to you when a clear policy has been finalised."

Obviously, to date the State has not finalized "a clear policy".

The failure of the State to resolve the matter has caused serious financial hardship to the complainant since the Bank from which she had secured a loan in order to develop the lands has foreclosed and has put her business up for sale in order to recover the loan made to her.

The State has not acquired the land nor initiated acquisition procedures in these matters. Accordingly, I have informed the Permanent Secretary, Ministry of Planning and Development that complainants are being denied the use and enjoyment of their properties and this is a contravention of their fundamental rights enshrined in the Constitution.

This Office is further investigating the matter with a view to proposing remedial measures to alleviate the problems of these complainants.

STOLEN VEHICLES IN THE CUSTODY OF THE POLICE:

I have received several complaints against the Police Service relative to the non-return or delay in returning recovered stolen vehicles to their bona fide owners.

In one case in point, the Police have been unable to account for a car which was kept in their custody for a period of twelve (12) years. I have made a recommendation for the Complainant to be compensated for the loss of his vehicle.

In other cases the delay in returning stolen vehicles is unreasonable. In some cases as much as ten (10) years have elapsed during which time they depreciate in value and the owners are deprived of their use and enjoyment. The reason given by the Police for the retention of stolen vehicles is that they are needed as court exhibits.

My predecessor had highlighted this problem in his Fifth Annual Report (December 06, 1981 to December 05, 1982) but the position has remained the same.

He reported that-

"In my discussions with the Solicitor General, the Director of Public Prosecutions and the Assistant Commissioner of Police, the Police advanced the position, supported by the Director of Public Prosecutions, that once the stolen property has been entered in court as an exhibit the Commissioner cannot return the items as they are now in the custody of the court and he has no discretion in the matter. However, it was conceded that the property could be returned to the rightful owner on condition that he enter into a bond prior to the items being entered as exhibits in court.

I wrote to the Chief Magistrate in February of 1980 on this matter and he was of the opinion that the return of recovered stolen property to its owners was a discretionary matter for the Director of Public Prosecutions and the Police to exercise, an opinion contrary to that advanced by the latter two officials in their representations to me.

In this regard in 1980, I wrote to the Chief Magistrate, the Attorney General, and the Director of Public Prosecutions and the Commissioner of Police as follows:

"I am very disturbed over the indiscriminate seizing of articles such as cars, bicycles etc., by the Police on the ground that these articles are necessary to be produced as exhibits in proving cases of larceny. As you are aware, it is not in every case of larceny that it is essential to produce stolen articles. In some prosecutions this is not even possible, as the stolen article is not found. In any case, the owner of the article alleged to have been stolen may be made to enter into a recognisance for its production on the date of the hearing.

I think that the Police should be advised by the Director of Public Prosecutions in cases where they may be of the view that certain articles such as vehicles owned by a virtual complainant should be used as an exhibit. I am attaching hereto, a copy of a letter to me and of the reply from the Commissioner of Police. The letters speak for themselves. I have received many others of a similar nature.

I shall be glad if some reasonable approach be taken to relieve unnecessary hardship to the citizen."

The Chief Magistrate replied to me in March of 1980 stating:

"I agree that in the majority of cases the owners of articles seized should be made to enter into recognisances to produce the exhibits whenever the matter is being heard.

However, this matter seems to be a discretionary one for the Director of Public Prosecutions and the Police to exercise."

"It has also come to my attention that in many cases the Police are not issuing receipts to the owners of recovered stolen property being kept in Police custody. This is a dangerous practice which can easily lead to allegations of Police misconduct."

The O'Dowd Report only made recommendations with respect to the maintenance of proper records viz:

150. A system of recording stolen vehicles be provided to enable immediate retrieval of information.

273. The stolen vehicle record system be revised.

I am of the opinion that once proof of ownership has been established, there is no reason why vehicles and other property cannot be returned to their rightful owners on an undertaking not to dispose of such property and to produce same at date of trial. It may be that legislation, with necessary safeguards, would have

to be enacted to achieve this purpose, but the problem is not insurmountable.

I intend to pursue this matter.

PART III

1. STATISTICAL OVERVIEW

2. SELECTED CASE SUMMARIES

[The format for this Part has been changed so as to comply with guidelines laid down by the International Ombudsman Institute]

STATISTICAL OVERVIEW

During this reporting period, I received 1,053 new complaints. This figure represents an increase of approximately 86 on last year's. This number represents only complaints on which files were opened and does not include the several matters with which I dealt by way of advice or referrals.

Figure 1 illustrates the number of new complaints received annually from the inception of this Office and indicates that the number each year has tended to fluctuate. However, from 1980 - 1981 to 1985 - 1986 it rose steadily to the highest number recorded - 1,538. Thereafter, it began a downward trend to 967 last year. No conclusive reasons could be given for the rise and fall in the number of new complaints each year. The least number of complaints received was in 1978 - 1979 when 966 complaints were received. The average number of complaints per year is 1,167.

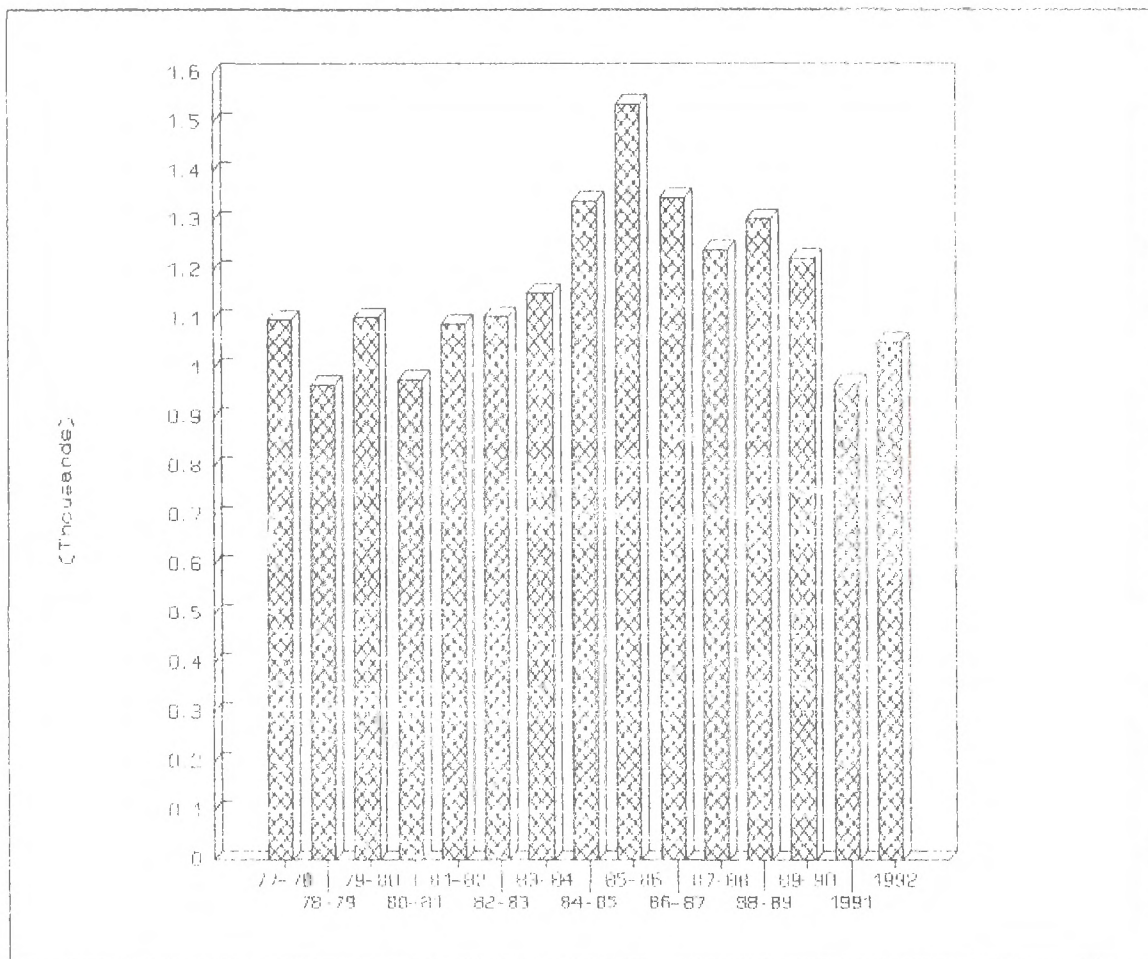


Figure 1

The majority of complaints are made through personal visits to the Office by complainants rather than by written correspondence. As I stated in my last Annual Report, the country is now served by the main office in Port of Spain, which is open on each working day from 8.00 a.m. to 4.00 p.m., and office is held once per month in San Fernando, Arima and Scarborough, Tobago. As is to be expected, most complaints are received in the Port of Spain Office. In this year 144 complaints were made in the San Fernando Office, 44 in Arima and 96 in Scarborough, Tobago. I have however encouraged complainants to use the sub-offices for follow-up purposes since I have found this practice useful in reducing the expenditure which complainants would incur if they were forced to maintain contact with the main office.

Of the new complaints, 147 were against private institutions. In such cases I advise complainants or refer their complaints to the relevant Authorities. All of the aforementioned complaints were dealt with in this manner.

At the end of the year I had concluded investigation on 436 or 48.12% of the new complaints. TABLE I shows the manner in which these complaints were disposed.

TABLE I

STATISTICS ON NEW COMPLAINTS RECEIVED DURING THE PERIOD
1st JANUARY 1992 - 31st DECEMBER 1992

Total number of complaints received...	...	1,053	
Total number of complaints against Private Institutions ...	...	147	13.96%
Total number of complaints proceeded with ..	...	906	86.04%
Total number of complaints concluded ...	...	436	48.12%
Sustained/Rectified ...	...	97	22.30%
Not Sustained ...	...	56	12.80%
Withdrawn/Discontinued ...	...	24	5.50%
Advised/Referred ...	...	259	59.40%
Total number under investigation ...	...	470	51.88

Figure 2 depicts the relative percentage difference between the categories within which complaints were concluded.

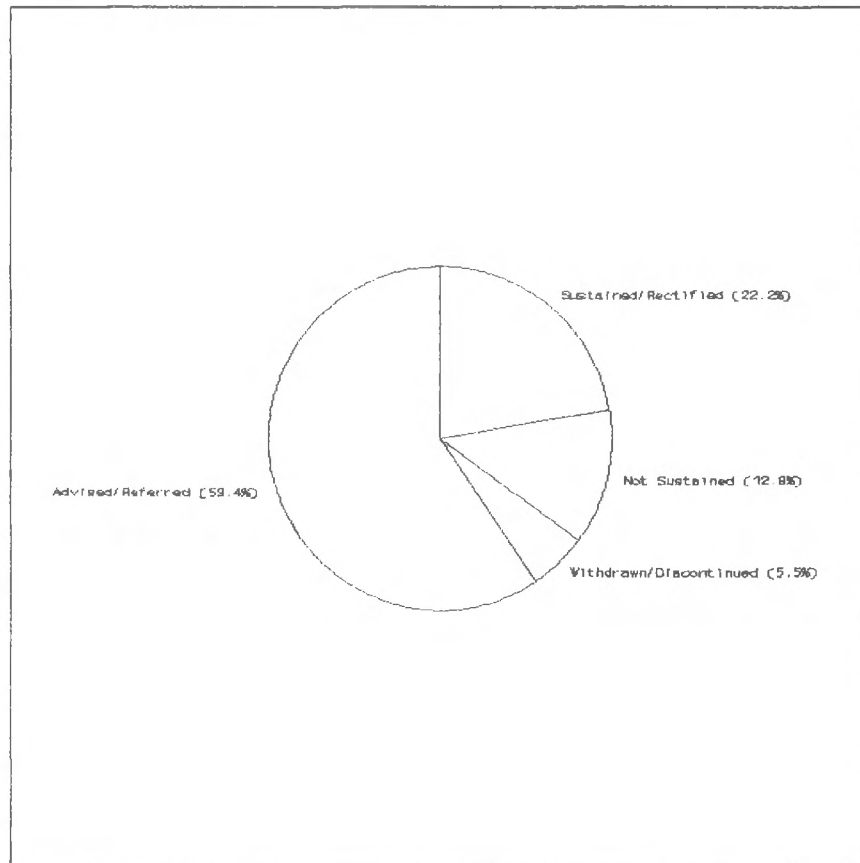


Figure 2

The majority of complaints concluded were disposed as Advised/Referred. The Ministries of Legal Affairs and National Security show the highest number of complaints so disposed and this is related to the nature of the complaints received. Most complaints against these Ministries were from prisoners. The Ministry of Social Development and Family Services recorded the third highest number of complaints disposed of as Advised/Referred. There were two main reasons for this, firstly, complainants had not exhausted their rights of appeal and secondly they had not followed the proper procedure in making claims and lodging appeals.

The category Sustained/Rectified was the second largest. In such matters complaints have been found to be justified and government departments have accepted my recommendations and have remedied the injustices caused by the errors in their administration. The number of complaints that were Not Sustained, that is, found to be without merit, was relatively low at "12.8%"; those Withdrawn/Discontinued were minimal at 5.5%

TABLE II shows the details of the disposal of new complaints by Ministry/Authority/Agency.

TABLE II

Disposal of Complaints

Ministry /Authority/ Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
1. Airport Authority	6	0	0	1	2	3
2. B.W.I.A.	1	0	0	0	0	1
3. Caroni (1975) Limited	4	1	0	0	0	3
4. Central Bank	1	0	0	0	1	0
5. Chief Personnel Officer	2	0	0	0	0	2
6. Elections & Boundaries Commission	1	0	1	0	0	0
7. Ministry of Agriculture, Lands & Marine Resources	23	3	1	1	1	17
8. Ministry of Social Development and Family Services	72	3	6	0	51	12
9. Ministry of Education	28	3	4	2	2	17
10. Ministry of Energy	2	0	0	0	0	2
11. Ministry of Finance	19	3	1	0	3	12
12. Ministry of Health	37	3	0	2	4	28
13. Ministry of Housing and Settlements	45	10	2	0	13	20
14. Ministry of Labour and Cooperatives	13	3	0	0	3	7
15. Ministry of Legal Affairs	152	10	3	4	70	65
16. Ministry of Local Government	80	6	9	1	8	56
17. Ministry of National Security	195	24	18	8	57	88
18. Office of the Prime Minister	1	0	0	0	0	1
19. Ministry of Planning and Development	18	0	0	0	1	17
20. Ministry of Public Utilities	47	8	2	1	5	31
21. Ministry of Youth, Sports, Culture & Creative Arts	2	0	0	0	0	2
22. Ministry of Industry, Enterprise and Tourism	1	1	0	0	0	0
23. Ministry of Works, Infrastructure and Decentralisation	46	1	7	2	8	28
24. National Insurance Board	1	1	0	0	0	0
25. National Petroleum	1	1	0	0	0	0
26. Port Authority of Trinidad & Tobago	8	0	0	0	1	7
27. Service Commissions Department	25	0	0	1	16	8
28. Tobago House of Assembly	46	5	1	0	8	32
29. Telecommunication Services of T & T	7	2	0	1	1	3
Total	906	97	56	24	259	470

As at last year, the majority of complaints received in this reporting period were against the Ministry of National Security, more specifically the Police and Prison Services - 66 complaints were against the Police and 107 against the Prisons. This gives a total of 173 or 88.7% of all complaints received against the Ministry of National Security.

The Ministry of Legal Affairs recorded the second highest number of complaints, that is 152. The majority of these complaints against the Ministry of Legal Affairs were also from Prisoners and related to delays in obtaining trial dates at all levels of the court system, in particular the High Court, and delays in obtaining notes of evidence and Judge's summation. This is an indication of the strong dependence of prisoners on my Office.

Complaints against other departments were mainly about delays on the part of public officials in arriving at decisions and secondly in allegations of faulty decisions.

Complaints against the Ministry of Local Government were significantly higher this year than in previous years. Of the 80 such complaints, 56 were still outstanding at the end of the year. Many of these complaints related to alleged discrimination in employment practices while others were about delays by Local Government bodies in undertaking construction work for which they were responsible. Most of the latter complaints were justified.

Other Ministries or Agencies against which complaints were significant were from the Ministry of Consumer Affairs and Social Services, the Ministry of Public Utilities, the National Housing Authority and the National Insurance Board. These all provide customer services and it is to be expected that complaints against them would be high. Complaints against the Ministry of Consumer Affairs and Social Services and the National Insurance Board were disposed of relatively quickly.

In addition to the new complaints received this year, 885 were brought forward from the preceding years. The total workload of the Office this year was therefore 1,791 complaints. At the end of the year, 403 of the brought forward complaints were disposed of. The total number of complaints disposed of this year was therefore 839 or 50.2%.

Figure 3 illustrates the workload of the Office and its performance.

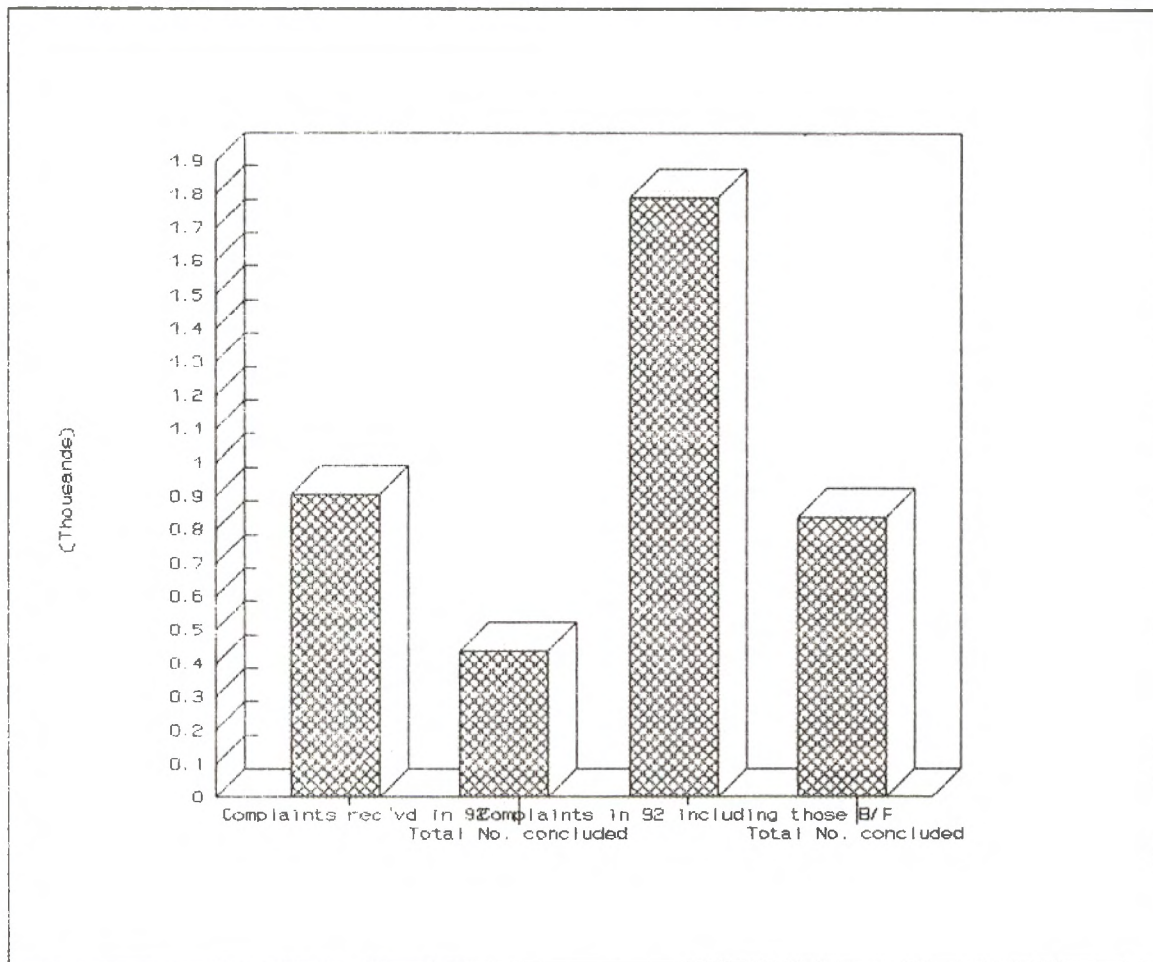


Figure 3

TABLE III shows the manner in which complaints brought forward were disposed.

TABLE III

Files brought forward from preceeding years	885	
Files closed	403	45.54%
Resolved	140	
Withdrawn	50	
Advised/Referred	161	
Not Sustained	52	
Under investigation	482	54.46%

JUDICIARY

The second highest number of complaints received were recorded against the Judiciary. These complaints related mainly to matters of administration.

I am precluded from investigating complaints pertaining to the commencement or conduct of civil or criminal proceedings before any court in Trinidad and Tobago or before any international court or tribunal pursuant to paragraph 5 of the Third Schedule of the Constitution. I am also precluded under section 94 of the Constitution from investigating matters in which a complainant has or had a remedy by way of proceedings in a court or where he has a right of appeal, reference or review.

Most of these complaints came from prisoners and were related to the delay in the hearing of court matters, the delivering of judgments or difficulty in obtaining notes of evidence. Forty (40) of these complaints were disposed of either by way of referral or advice.

Forty-three (43) cases were still under investigation at the close of the year. In such matters I request the competent authorities to keep me informed of the status of court cases.

In general, complaints against the Judiciary are disposed of in a relatively short time. The response from the court administration is usually prompt.

MINISTRY OF AGRICULTURE, LAND AND MARINE RESOURCES

Twenty-three (23) complaints were made against the Ministry of Agriculture, Lands and Marine Resources. The majority of these complaints concerned delays or difficulty in obtaining leases or renewal of leases for parcels of State land which the complainants occupy as well as allegations of discrimination or victimization in employment practices.

At the close of the year, investigations were concluded with respect to only six (6) complaints. Responses from the Ministry of Agriculture are very slow and although I have been taking steps to avoid the bureaucratic red tape which characterises my dealings with this Ministry, I have not been able to achieve any appreciable satisfaction in the solution of complaints. This, no doubt, stems from the fact that some delay is caused by the Ministry's own investigative procedures when complaints are referred to them.

CASE NO. 1

On 16th May, 1992 a complaint was made to me by a farmer of River Estate about the delay he was experiencing in obtaining a lease for the 9 acre parcel of State land he occupies. He informed me that he had taken occupation of the land in 1968 with the

permission of the Ministry of Agriculture pending the finalisation of his application for a lease of the said lands which he intended to use for mixed farming. From the year 1968 to the present time, he had been using the land for this purpose. He further stated that he was aware of several persons who had applied for agricultural leases after him and had been successful.

I requested a report on the matter from the Ministry of Agriculture and was informed that in 1971 Cabinet had agreed to grant agricultural leases to 19 persons in the River Estate area but the complainant was not one of these persons. I was also informed by the Ministry of Agriculture that the lands at River Estate were now under the control of the National Housing Authority. In subsequent correspondence, the Ministry further stated that the complainant did not qualify for tenancy of the land and as a result his application was not recommended to Cabinet.

I decided to investigate the matter further and examined the relevant files at the Ministry of Agriculture. I discovered that the Ministry had in fact approached Cabinet on the matter requesting that the complainant be granted an agricultural lease.

The matter was deferred by Cabinet and the Ministry had intended to approach Cabinet again and steps had been taken to this end. In the interim, the administration of River Estate had been changed from that of the Ministry of Agriculture to that of the National Housing Authority, but the relevant files on the complainant's matter had not been forwarded to the National Housing Authority. No further action had been taken on it.

It was evident from the files that the Ministry of Agriculture had intended to grant the complainant a lease, but the matter had not been pursued. The matter is now being pursued by this Office.

CASE NO. 2

This case is indicative of the problems and inordinate delays citizens have been experiencing with respect to compensation for lands compulsorily acquired for use in various Government projects.

The Complainant, V.N., who resides in Trinidad acts on behalf of her deceased parent, the owner of lands in Tobago.

In 1970 the Ministry of Tobago Affairs acquired land at Hermitage Crown Trace, Charlotteville for the construction of an access road. She cited a memorandum from the Ministry for Tobago Affairs and a publication in the Trinidad and Tobago Gazette Extraordinaire as relevant.

On October 31, 1973 the Complainant wrote the Ministry for Tobago Affairs seeking compensation for the land as well as for crops which had been destroyed. Despite this and several other letters, the Complainant received no compensation and as a result, brought the matter to my predecessor's attention on September 10,

1982. He referred the matter to the Sub-Intendant of State Lands on October 21, 1982. Despite several reminders, a reply was not forthcoming, until, on July 7, 1983 formal discussions were held with the Land Acquisition Section and he was assured that a survey had been requested on January 18, 1979. The lack of surveyors, a perennial problem within that department, was responsible for the delay.

On June 22, 1984 the Director of Surveys conceded that the complaint was justified and advised that the survey which is an essential pre-requisite to land acquisition had still not been undertaken. He further advised that compensation for damage to crops should have been handled by the department which had actually constructed the access road, in this case, the Department of Works in the Ministry for Tobago Affairs.

In 1985 the Director of Surveys advised that the survey order issued in 1984 was cancelled again due to the unavailability of a surveyor in Tobago. However a new order was issued on February 27, 1985 and a new surveyor was assigned to Tobago. My predecessor anticipated that this matter would now be completed shortly. Unfortunately this was not the case, as the surveyor assigned to do the survey was recalled to Trinidad, and this necessitated the issue of yet another new survey order in 1988.

In October 1988 the Acting Director of Surveys advised that the surveyor to whom the new survey order had been given had attempted to carry out the survey but was unable to locate the parcel of land which had been acquired. He was contacted by the Complainant who promised to point out the land to him when she was again in Tobago. A year elapsed; the Director of Surveys complained of being unable to reach the Complainant and she in turn complained of being unable to reach the surveyor in Tobago. Eventually I was able to orchestrate contact between the parties involved in December 1989. Several reminders and one and a half years later, the Ministry of Food Production and Marine Exploitation advised that the Director of Surveys was conducting an investigation into the title of the lands in question.

On March 5, 1993 after several more reminders had been issued, the Director of Surveys wrote the Technical Officer, Works Division, Tobago House of Assembly, Tobago requesting advice 'inter alia':

- "(1) Whether any work commenced in respect of the Access Road;
- (2) If not, whether there were any plans to construct the Access Road, and;
- (3) Whether this Division is to continue with Acquisition proceedings."

A reply from the Works Division, Tobago House of Assembly, is still

outstanding; and some twenty-three (23) years having elapsed since the first notice of acquisition was issued, a frustrated, disgruntled citizen is yet to be compensated.

MINISTRY OF EDUCATION

Complaints against the Ministry of Education were mainly about delays by the Ministry in expediting personnel matters such as payment of superannuation benefits, salaries, acting allowances or re-employment. Significantly also there were complaints of victimization and discrimination.

The majority of these complaints remained unresolved at the end of the year. In fact only nine (9) of them were settled.

The matters pertinent to allegations of discrimination and victimization are more easily resolved than those concerning delays. In the latter matters, in spite of my intervention the bureaucratic wheel continues to turn slowly as the resolution of such matters requires the input of other government departments such as the Director of Personnel Administration, the Ministry of Finance and sometimes the Chief Personnel Officer.

The relationship between my staff and officials at the Ministry of Education is generally good and the Ministry has accepted my recommendations on the resolution of complaints, although as with other government departments, implementation tends to be slow.

CASE NO. 1

The complainant claimed that he had been discriminated against by the Ministry of Education, in that he was granted sick leave with half pay while persons in similar positions had been granted sick leave with full pay.

He did not give the names of the persons who he claimed, had been treated more favourably and refused to do so when asked.

Notwithstanding this, I decided to enquire into this matter to ensure that the Ministry had acted properly in the exercise of its functions in this respect.

My enquiries disclosed that the complainant, a teacher, had been absent from duty on extended sick leave for 303 days. With the exception of one period his entire absence was covered by applications for sick leave and supporting medical certificates from a District Medical Officer of Health. He was diagnosed as suffering from depression. In each of these instances the Ministry had granted him leave with half pay.

According to Regulation 47 of the Education Teaching Service Regulations, Chapter 39:01, the Minister of Education has a discretion to grant extended sick leave to employees with or without pay or half pay. In keeping with this policy, the Ministry has adopted certain stated guidelines in determining the conditions under which extended sick leave should be granted. According to these guidelines, all cases of depression for which sick leave is approved is considered as leave with half pay.

After the complainant was on continuous sick leave for six (6) months, the Minister of Education according to the existing policy governing the grant of extended sick leave beyond a six month period, recommended to the Teaching Service Commission that he be placed before a Medical Board to determine his fitness for further service and that he be granted extended sick leave with half pay until the matter was determined. On September 4, 1991, the complainant was found unfit for further service.

His applications for extended sick leave were treated in all instances by the Ministry in accordance with the existing policy. I found no evidence of discrimination. He insisted, however, that he was being subjected to discrimination but was unable to furnish the names of persons who were treated more favourably than himself.

CASE NO. 2

The complainant was permanently employed with the Ministry of Education as a Cleaner. After her retirement she was informed by her employer that a part of her retirement benefit was being withheld due to the fact that she had received salary for several short periods of absence from duty without authorised leave during the six years prior to her retirement. The complainant sought my assistance claiming that she was being victimized by the Principal of the school in which she had been employed and who had since retired and the Ministry of Education.

I investigated this matter thoroughly, including the examination of the relevant files and attendance registers. In my view the attendance registers did not provide a reliable record of the complainant's attendance.

There was, however, sufficient evidence to suggest that the complainant had been errant and disciplinary action ought to have been taken against her under the Public Service Regulations at the time of her unauthorised absences. I discussed my findings and views with senior members of the Ministry, the Comptroller of Accounts, and the retired Principal.

I came to the conclusion that the Ministry could not now, at the close of her career in the Public Service, seek to recover payments made to her which she had accepted in good faith. In effect, the Ministry had condoned the offences. I recommended, therefore, that because of her recalcitrant behaviour, of which

there was evidence, that it would have been more equitable that deductions be made only in respect of the last two years of her service.

This was accepted by the Ministry. The matter is being pursued in order that the complainant may receive her retirement benefits as soon as possible.

MINISTRY OF FINANCE

Nineteen (19) complaints were recorded against the Ministry of Finance. The Ministry of Finance comprises several divisions:-

1. Comptroller of Accounts
2. Customs and Excise Division
3. District Revenue Services/Warden Offices
4. Inland Revenue
5. Supervisor of Insurance
6. Central Statistical Office
7. Value Added Tax Administration Centre
8. National Lotteries Control Board.

In general, the responses from this Ministry to my enquiries have been poor and as a result, at the end of the year only seven (7) of the complaints recorded against this Ministry were settled.

CASE NO. 1

The common-law wife of a deceased fireman sought the assistance of the Ombudsman with respect to the failure of the Comptroller of Accounts to recognise the eligibility of the officer's illegitimate daughter for benefits due under the Widow and Orphans Pension Scheme.

Investigations revealed that the fire officer died on 4th October, 1983 and in his will decreed that his common-law wife and his only child were to be the sole beneficiaries of the proceeds of his estate. Accordingly, the complainant received payment of his death gratuity and all other unpaid emoluments due to his estate. However, when she filed a claim for the payment of orphans' benefits under the Widow and Orphan Pension Scheme for her daughter, the fire officer's only offspring, she was informed by the Comptroller of Accounts that the only children eligible for such benefits were those born of the fireman's legal wife from whom he had been separated for a period of eighteen (18) years before his death.

Since there had been no dissolution of the marriage, the officer's estranged spouse was recognised as the widow. She receives payment of the entire pension under the Scheme as she is childless. The fireman's only offspring is denied payment, however, because of her birth out of wedlock.

By letter dated 13th June, 1989, I wrote to the Comptroller of Accounts requesting that the Widow and Orphan Pension Committee consider the claim of the fireman's offspring having regard to the provision of Chapter 23:54 Section 40(2) which reads:

"When any sum becomes payable by the Committee to any person not 'sui juris' in law, the Committee may in their discretion pay or apply such sum or any part thereof for the benefit or towards the maintenance or education of such person, in such manner and at such times as the Committee think fit, and the amount may be paid either direct to such person or to any other person or persons as the Committee think fit."

It was my opinion that the complainant's daughter was identifiable as a person not 'sui juris' in law and her claim fell legitimately within the jurisdiction of the Committee.

When there was no decision forthcoming from the Committee on the matter, I wrote to the Comptroller of Accounts again on 4th June, 1991 advising that the Committee take cognizance of the provisions of the Status of Children Act No. 11 of 1981 Section 19(1) which prescribes as follows:

"The existing laws shall, as from the date of commencement of this Act, be construed with such adaptations as may be necessary to bring them into conformity with this Act."

The effect of the Status of Children Act was to bring all "illegitimate" children within the purview of the Act. From the date of its commencement, these children were to be considered as legitimate.

I conveyed my findings to the Solicitor General, a member of the aforesaid Committee and she responded by letter dated 6th January, 1992 that her advice on the matter had been forwarded to the Director of Pensions on 2nd April, 1991 and that the Director was requested to expedite the matter. She had advised the Director that if the complainant was the legal guardian of the child she was entitled to collect benefits which are payable for the use of the child.

To date, the Director of Pensions has not effected payment to the complainant for the use and benefit of the fireman's daughter. Since the date of death of the officer in 1983, his lawful widow who had not been dependent upon him for over 18 years prior to his death has been receiving a widow and orphan's pension of \$496.01

per month while his orphan child for whose benefit, 'inter alia', the Act has been passed continues to receive nothing for her maintenance and education. The matter is still being pursued by this Office.

MINISTRY OF HEALTH

During the year under review thirty-seven (37) complaints were received against the Ministry of Health.

These complaints included allegations of negligence and claims for compensation, delays in expediting matters of a personnel nature and most significantly complaints of health nuisances and health hazards. The two former types of complaints fall directly under the administration of the hospitals and the Ministry of Health, while the latter under the County Medical Officers of Health.

In those cases in which compensation was claimed for alleged negligence, I advised Complainants to seek redress in the Courts, and those which fell outside the limitation period, I pursued only if the Ministry had admitted liability.

Of the 37 complaints against the Ministry of Health 15 were against the County Medical Officers of Health. Such complaints are more quickly disposed of than those relating to personnel matters and compensation for damage because of the very nature of the complaint.

The Public Health Departments, particularly in some counties, are very prompt in visiting sites and taking relevant action under the Public Health Ordinance and in replying to me.

Generally, my office received good cooperation from the Ministry of Health and those matters which are relatively easy to settle are done so within a reasonable time. My recommendations to the Ministry are also accepted, although there is a delay in the payment of compensation. This is not, however, the fault of the Ministry.

At the close of the year, only 9 of the 37 complaints made against the Ministry of Health were concluded.

CASE NO. 1

The complainant's dwelling house neighboured a poultry depot. She complained that her health was being adversely affected by feathers and foul odours.

The County Medical Officer of Health visited the site and served the relevant notices to the offenders in accordance with the Public Health Ordinance. He informed me subsequently that the poultry depot was no longer posing a health nuisance, that his officers had spoken to the complainant and she and her family were now comfortable.

The complainant subsequently informed me that the nuisance had been abated but she wished to have the poultry depot closed down completely.

I decided that if the Public Health Department was satisfied that proper public health standards as defined in the Ordinance were observed, the poultry depot should be allowed to continue its operation. I so informed the complainant.

I did not pursue the matter further.

CASE NO. 2

The complainant, a medical officer, sought my assistance after having experienced difficulty in settling two long outstanding claims with the Ministry of Health.

The doctor's complaint stemmed from the Ministry's refusal to pay him institutional allowances for the period January 1, 1983 to February, 1988 and to waive repayment of indebtedness incurred through the payment of an inducement allowance over the period December 6, 1984 to November 15, 1986.

My investigations revealed that the complainant was employed on contract from December 23, 1974 to November 22, 1977; May 5, 1978 to May 4, 1981 and September 11, 1981 to September 10, 1984. These three contracts provided for the payment of inducement allowances.

Following post contract leave from September 11 to December 5, 1984 he resumed duties in the same post on December 6, 1984. The contract agreement for this new term of employment was however only forwarded by the Director of Personnel Administration to the Ministry on July 24, 1986. The agreement was made effective on October 15, 1986.

This contract unlike the previous contracts did not include the provision for the payment of an inducement allowance. Cabinet by its decision dated November 1983 had stipulated that future contracts for personnel employed from abroad should no longer include the payment of an inducement allowance.

Thus, the Ministry was at fault in not implementing Cabinet's directive and continued to pay the complainant the inducement allowance on resumption of his new term of employment. He received payment in good faith and only became aware of the new terms and

conditions of his contract in 1986.

During the same period, another doctor became similarly indebted to government. The Ministry sought and obtained the approval of Cabinet to waive this officer's indebtedness but in this case, chose to recover the complainant's alleged indebtedness from emoluments which were due to him.

The claim was rejected by the Ministry's Internal Auditor for two reasons:

- (i) The Hospital Medical Director, Port of Spain General Hospital's comments with respect to officers rostered for 'on-call' duty in the relevant department - "while there is a possibility that the officer may be called out to his patients at night the probability is minimal."
- (ii) Rosters submitted by the complainant in support of his claim were signed by his supervisor within his (the supervisor's) vacation leave period.

In response to these queries the supervisor stated that it was necessary for doctors of the department to remain on call to handle emergencies. It was his view that an officer "on call" had to make himself available for the period for which he was on call. The number of patients that he actually saw during that time could not be the basis for the payment of his allowance.

On April 7, 1992 I wrote the Permanent Secretary, Ministry of Health and conveyed my findings. I informed him that the Ministry's failure to have the complainant's indebtedness waived may be deemed inequitable and discriminatory in the light of the consideration granted to his colleague and was in breach of the complainant's fundamental rights to equality of treatment under the Constitution.

As regards the claim for institutional allowance I stated that the Ministry was obliged to pay the complainant for the period he was instructed by his supervisor to remain "on call". The validity of this claim is without question.

The complainant has not been remunerated to date. The matter is being pursued.

MINISTRY OF LOCAL GOVERNMENT

Complaints against the Ministry of Local Government invariably related to personnel matters and in most cases to either discrimination in selection for employment, disputes over seniority and request for assistance in obtaining regular employment. Other complaints such as compensation for damage to crops were minimal. Undoubtedly, the significant increase in complaints against this

Ministry is directly related to the contraction in the economy and the failure of Local Government Authorities to provide employment for members of their communities.

In cases where complaints have alleged discriminatory practices on the part of the employer in selection for employment or where they have contested the seniority of other employees for promotion, I have made enquiries and requested reports on such matters. Unfortunately, the majority of these remained outstanding at the end of the year.

In those matters where complainants have sought my assistance in obtaining appointments or more regular employment I have advised them that my Office is unable to assist and to continue to follow the labour recruitment procedure.

In other matters, responses from Local Government have not been forthcoming so that only 24 of the 80 complaints received during the year were concluded.

PORT OF SPAIN CITY CORPORATION

CASE NO. 1

This case serves to illustrate the degree of distress and frustration endured by citizens when faced with unreasonable bureaucratic delays in Government services.

The complainant contacted my office when the Port of Spain City Corporation failed to settle her claim for damages within a reasonable period of time.

On 26th July, 1991 while in a stationary mode observing a red light traffic signal at one of the City's major intersection, the complainant's vehicle was struck by one of the Corporation's vehicles. Her vehicle was badly damaged necessitating the replacement of both front and rear doors.

She immediately submitted a claim to the Corporation for the cost of repairs and waited for a timely response. After a period of six weeks, not having heard from the Corporation, she was forced to meet the cost of the repair from her private funds. Thereafter, she met on several occasions with senior City officials but was unsuccessful in obtaining the refund of her expenses.

After many frustrating months, she eventually sought the assistance of my Office. Investigations revealed that the matter had not been placed before the City Council for the necessary approval for payment. The claim, after many months, was still at the first level of processing.

A few weeks after my intervention, the complainant reported:

"I wish to inform you that my matter with the Port of Spain City Corporation has been satisfactorily resolved.

I feel confident that this matter would not have been speedily addressed without the assistance of your kind office."

CASE NO. 2

The complainant is a resident of a small agricultural village which is being increasingly used for residential purposes. She complained to me that the volume of run off water from surrounding properties was backing up into her property and thereby causing a public health nuisance.

I referred this matter to the relevant public health authority and was informed that the remedy to the problem lay with the Regional Corporation which is responsible for providing adequate public drains.

Accordingly, the County Medical Officer served a departmental notice on the Regional Corporation to execute the necessary work.

The Regional Corporation admitted that the complaint was justified but that no remedial work could be undertaken because of the extent of the work involved and the absence of funding.

A representative from my Office visited the site in company with officers of the Regional Corporation and it was acknowledged that this case was one of serious concern and urgency, not only because of the health hazard that existed on the premises of the complainant, but also because of the severe antagonism that was growing among the residents as a result of the problem.

In spite of these circumstance, the matter has now remained unresolved for two (2) years and is still being pursued by my Office.

MINISTRY OF NATIONAL SECURITY

PRISONS

The majority of complaints I received came from prisoners awaiting trial in the High Court. In most of the cases the complaints were against the Office of the Director of Public Prosecutions. In some instances no dates had been fixed for trial. The issue of trial dates falls directly under the jurisdiction of

the Director of Public Prosecutions and the Courts.

In instances where there is an inordinate delay in the hearing of matters, these are brought to the attention of the Director of Public Prosecutions. In cases where the prisoners are on remand for short periods, and are seeking trial dates, they are usually advised to speak with their attorneys or the representative of the Legal Aid and Advisory Authority.

Another prevalent complaint from prisoners relates to their requests for Notes of Evidence and the Judge's Summation in order to expedite appeals from the High Court. Similarly such complainants are advised to have their attorneys obtain the relevant documents.

Other complaints received pertain to the non-receipt of recommended diets, the denial of medical attention, the inability due to prison conditions to follow certain precepts of their religious persuasions, the deplorable conditions in the prisons, the non-posting of prison rules and regulations and charges of brutality against prison personnel.

I have instituted the practice of sending Investigators to visit the Prisons on a regular basis to determine the veracity of the complaints, and to speak with Prison officials with a view to having these numerous complaints redressed as early as possible.

[A comprehensive report on prison conditions has been included in this Report]

POLICE

I have received a significant number of complaints against the Police relative to the non-receipt of retirement benefits by Special Reserve Policemen; the failure of the Police to serve summonses and execute warrants; the delay in returning stolen vehicles to their rightful owner and the non-payment of benefits by the Second Division Police Association.

SPECIAL RESERVE POLICE

Since taking office a number of retired Special Reserve Police officers who had worked on a "temporary whole time basis" have complained to me that they had not received retirement benefits. In some cases they have claimed that they had been informed by the Authorities that they were not entitled to such benefits.

My predecessor, to whom several complaints of this nature had been made, took cognizance of the fact that there were no regulations governing the terms and conditions of employment of Special Reserve Policemen and had cause to initiate investigations in accordance with Section 93(2)(c) of the Constitution.

In pursuance of his investigation he had written to the then Minister of National Security in 1988 recommending the grant of ex-gratia awards or compassionate gratuities to those officers who had reached retirement age. He had also requested that consideration be given to the formulation of regulations pertaining to the terms and conditions of employment of those officers.

Arising out of the recommendations made, I have been informed that Cabinet has agreed to pay compassionate gratuities to former Special Reserve Police officers and to the dependents of those who have died in office. This is being computed on the basis of twelve (12) days pay for each year of service.

Also, the Chief Personnel Officer is now pursuing the matter pertaining to conditions of service with specific reference to the payment of superannuation benefits.

I have continued to disseminate this information to Complainants and in order to assist them I liaise with the Police Department from time to time to ensure that their names are included in the list of names that are being forwarded to Cabinet for approval of payment of ex-gratia awards.

I have been informed that it is the intention of the Commissioner of Police to regularize the position of the Special Reserve Police officers as soon as possible.

It is hoped that this exercise will be completed soon.

WARRANTS AND SUMMONSES

A number of complainants have been seeking my assistance in having the Police serve summonses and execute warrants on witnesses and parties in order that pending court matters could be dealt with expeditiously.

Most complaints received are with respect to the service of maintenance summonses and the execution of warrants on failure to comply with court orders.

The promulgation of Act No. 14 of 1988 on December 01, 1991, an Act relating to the attachment of earnings as a means of enforcing the discharge of maintenance obligations, has benefited the dependants of monthly paid workers and those who are in regular employ. There are, however, a number of complaints against persons who are self-employed or whose income cannot be determined. The Act makes no provision for these cases.

In some of these cases it has been discovered that police officers to whom summonses and warrants have been entrusted have been deliberately lax in their duties. Nevertheless, this Office has been able to be of some assistance in expediting the service of summonses and enforcement of maintenance orders.

FIRE SERVICES

I have received six (6) complaints against the Fire Services, three (3) of which were from Auxiliary Firemen who claimed that they have been discriminated against in that certain Auxiliary Firemen with less seniority are being paid on a month-to-month basis while they continue to receive salaries on a quarterly basis.

I have written to the Chief Fire Officer on this matter and have been informed that selection of personnel from the Auxiliary Unit for temporary appointment is done on the candidate's suitability for operational activity. Length of service is only one of the considerations for "employment in the regular service". These appointments are based entirely on the recommendation of the officer in charge of the Auxiliary Fire Service.

It would seem to me that some better method of selection is required for recruitment into the Auxiliary Fire Service, so as to remove any suspicion of discrimination. This matter would be taken up with the Chief Fire Officer.

MINISTRY OF SOCIAL DEVELOPMENT AND FAMILY SERVICES

The majority of complaints against this Ministry were in respect of the Social Welfare Division and were about delays by the local boards in processing claims for Old Age Pension and Public Assistance. I have also received queries from persons whose claims had been disallowed on the grounds that they were in receipt of income in excess of the maximum statutory amount of five thousand (\$5,000.00) dollars.

Most of these cases were concluded expeditiously. The relationship between my staff and this department is amicable.

CASE NO. 1

The complainant was a contributor to a compulsory contributory pension fund. After his retirement he made a claim for Old Age Pension, but was advised that he did not qualify for a grant as his annual income was in excess of the maximum statutory amount of \$5,000.00 per year. He contended that this decision by the Social Welfare Division was unfair since he was in receipt of monies which had been taken from his income during the preceding years and thus should not be considered as income in the later years.

My enquiries at the Social Welfare Division revealed that the Solicitor General in considering such matters had interpreted "income" to include monies received from the contributory pension scheme.

I was therefore unable to assist the complainant further in this matter.

MINISTRY OF WORKS & TRANSPORT

During the period under review, forty-six (46) complaints were received against the Ministry of Works and Transport.

The majority of complaints involved allegations of mismanagement on the part of the Administration. There were many charges of improper practices with respect to employment. It was alleged in most of the cases that persons who did not qualify were given full-time employment ahead of persons who qualified; and still others were faced with innumerable problems in obtaining payment for services rendered.

Another area of major concern involved the delays experienced by complainants in having repairs effected to their private property which had been damaged as a result of construction work carried out by this Ministry. Unfortunately the Ministry of Works and Transport has failed in most cases to even favour my Office with the courtesy of a reply and as a consequence only one complaint has been resolved during the year under review.

CASE NO. 1

Mr. H of San Juan, Captain of a Parang Group (hereinafter referred to as St. X), complained that in 1991 St. X was contracted with the Labour Intensive Development Programme, (LIDP), Ministry of Works, Infrastructure and Decentralisation to perform at the Charlotte Street Mall. Mr. H. contended that St. X performed on November 21, 1991; December 13, 1991; December 14, 1991; December 20, 1991; December 21, 1991; and December 23, 1991 for the sum of Eighteen Hundred dollars (\$1,800.00) in accordance with the terms of a contract which provided inter alia that the above mentioned sum be paid to St. X on completion of their performances on December 23, 1991.

Mr. H claims that in spite of his many enquiries at the LID Office, Edward Street, Port of Spain the St. X has not been paid. He contended that the non-payment for services carried out in accordance with the contract since December 23, 1991 was unjust.

I wrote the Permanent Secretary, Ministry of Works Infrastructure and Decentralisation requesting a report on the matter, and in spite of several reminders and telephone enquiries I have not been favoured with an acknowledgement.

CASE NO. 2

UNFAIR EMPLOYMENT PRACTICES

By letter dated January 31, 1992 the Complainant reported that she had been Maintenance Storehand in Cunupia Sub-District as No. 2 on the seniority list having been employed since June 29, 1978. She claimed that she had not been given regular employment but was employed on a rotational system based on the said seniority list.

She contended that storehands junior to her were transferred to other sub-districts in the Caroni area. These officers were able to accrue more service and thereby qualify for other benefits in the system.

She reported the matter to the Ministry who informed her that seniority could not be obtained from outside an officer's area. The Complainant reported that it would appear that some officers were allowed to accumulate seniority outside their designated Sub-District and gave as an example the situation wherein Mr. X had come from another district and was now considered first on the seniority list in Cunupia. In particular, the complainant reported that she was unfairly treated by the Ministry. She was informed by the Ministry that from 1991 Mr. X would work for ten (10) fortnights and she would be entitled to eight (8) fortnights. However, she was prevented from working after completing the eight (8) fortnights while Mr. X was given continuous employment beyond the ten (10) fortnights. She claimed that if seniority was the criterion used for employment, all storehands should be fairly considered for employment based on that criterion and some should not be given more favorable treatment.

By letter dated October 02, 1991 the Permanent Secretary, Ministry of Works, Infrastructure and Decentralization (Works) advised the complainant as follow:-

"In this connection, I should like to inform you that reduced funding made available to all Districts in the Ministry within recent years has had the effect of lessening employment opportunities.

Earlier this year, it was agreed with the National Union of Government and Federated Workers that workers who appear on a lower rung of the seniority ladder would share employment opportunities - such sharing being done in accordance with the seniority of workers thus allowing senior workers a few fortnights work more than their juniors.

In the Cunupia Sub-District of the Caroni District where you are employed there is one other storehand. He is (Mr. X) and, applying the previously explained principle of distributing employment, being the senior worker, he has been given ten (10) fortnights work as against your eight (8)."

The complainant contended that if in fact there were additional fortnights in the contract year 1991, i.e. more than eight (8) to ten (10) fortnights, then quite logically those extra fortnights should have been shared between Mr. X and herself in the same ratio of 8:10. The Complainant indicated that in fact Mr. X had worked twenty-six (26) fortnights to her five (5) in 1991 and twenty-six (26) fortnights to her eight (8) in 1992.

The complainant argued that to keep Mr. X employed continuously and deny her employment beyond the eight fortnights period was unfair, unconscionable and not in keeping with good industrial relation practices.

My investigations are continuing.

NATIONAL HOUSING AUTHORITY

Several types of complaints have been made against the National Housing Authority.

These ranged from failure to obtain an up to date statement of accounts; delay in obtaining housing accommodation; delay in effecting repairs to tenanted houses and delay in obtaining deeds of lease.

Investigations revealed that the delay in issuing statements of accounts was due to tardiness in computerizing the information. At the end of 1992, information had been recorded only up to November 1991. The Authority hoped that by the end of the following year, the problem would be resolved.

The inability of the Authority to provide housing accommodation is directly related to over demand and under supply. Nevertheless, there have been deserving cases in which the Authority had stated its intention to provide accommodation more speedily, but has not done so for several years.

Another cause for complaint relates to the Authority's responsibility for effecting repairs to rented accommodation. There is considerable delay in effecting repairs to damaged or malfunctioning units and it is claimed that this is mainly due to a lack of funds. Consequently smaller jobs are undertaken more quickly than larger jobs which will be more expensive and as a result, deserving cases are sometimes overlooked.

The delay in obtaining deeds of lease was due to the fact that the land in question had not yet been vested in the Authority. Apart from the delay, the cumbersome procedure in obtaining leases has resulted in greater cost to the customer.

In general, complainants have informed me of their frustration in dealing with the Authority and in particular the continued

denial by senior officers to have an audience with them, as well as the failure or inability of junior staff to assist them properly. My investigators have also indicated to me that they experience difficulty in getting appointments to interview with senior officers of the Authority.

CASE NO. 1

A complaint was made to the office on 6th September, 1981 by a tenant of the National Housing Authority about delay by the Authority in providing her with suitable accommodation.

She stated that in 1963, she had applied to the Authority for rental accommodation. In 1970 along with two other families she was given temporary accommodation by the Authority in a dilapidated building earmarked for demolition under the Slum Clearance Programme.

Between 1970 and 1981, she reminded the Authority, she had been temporarily housed and was due for permanent housing accommodation by the Authority. The two other families who had received temporary housing accommodation at the same time as she had, had by now received permanent accommodation.

In 1979 the procedure for obtaining housing accommodation was changed and the complainant was required to comply with the new procedure. When she did, she was treated as a new applicant and housing accommodation was never made available to her. Subsequently, further changes were made in the procedure with which the complainant complied.

In 1992 she again sought my assistance as she had not yet been considered for permanent housing accommodation. I referred the matter to the Executive Director of the National Housing Authority expressing my concern as to the length of time the complainant had been attempting to receive state assisted housing. On my request she was granted an interview by the Authority. The response was a letter stating that she would be housed when a suitable unit becomes available. I am still pursuing the matter.

CASE NO. 2

Ms. B., an employee with the then St. David/St. Andrew County Council was granted a 'soft loan' in 1981 by the National Housing Authority for the construction of a dwelling house. The loan was financed by the Workers' Bank to be repaid by salary deductions.

However, the Accounts Unit at the St. David/St. Andrew County Council paid the money for the period June, 1981 to March, 1982 in error to the National Housing Authority. Ms. B, unable to get the matter rectified complained to the Ombudsman.

On October 31, 1984 my predecessor requested a report from the

National Housing Authority and by letter dated November 08, 1984, the Accountant IV, Revenue, National Housing Authority advised that the matter was receiving attention.

On December 16, 1985 one of my Investigators visited the National Housing Authority's former office at ANSA Building, Henry Street, Port of Spain and located the original voucher. The information thereon revealed that the cheque was undelivered. The National Housing Authority prepared a new cheque. The new cheque drawn upon the Bank dated November 29, 1985 in the sum of One thousand Seven hundred and Seven dollars and Forty-Eight cents (\$1,707.48) was submitted to Ms. B.

On April 24, 1986 Ms. B expressed thanks for our efforts but advised that one month's instalment in the sum of One hundred and Eighty-Nine dollars and Seventy-Two cents (\$189.72) for the month of February 1982 remained outstanding.

Investigations revealed that cheque No. P8-889389 dated February 25, 1982 in the sum of Eleven thousand Nine hundred and Forty dollars and Seventy cents (\$11,940.70) was made to the National Housing Authority by the then Ministry of Local Government. Included in that amount was the sum of One thousand Eight hundred and Four dollars and Forty-Two cents (\$1,804.42) representing payment to the National Housing Authority from the then St. David/St. Andrew County Council. The sum of One hundred and Eighty-Nine dollars and Seventy-Two cents (\$189.72) was included in the amount of One thousand Eight hundred and Four dollars and Forty-Two cents (\$1,804.42) which represented Ms. B's payment which was submitted to the National Housing Authority in error for the month of February 1982.

My predecessor continued to pursue the matter but to no avail. By letter dated March 13, 1990 he wrote the Executive Director, National Housing Authority on the matter and the letter was acknowledged. By letter dated November 09, 1990 a further communication was received from the Executive Director of the National Housing Authority which advised that the records of the Complainant had not yet been found and my predecessor would receive a reply in December 1990. No reply was received and I continued the investigation, but my efforts have been limited because of the failure of the Senior Officers of the National Housing Authority to communicate with my Office on the matter in spite of my Investigator's numerous correspondence and telephone calls to the Authority.

The inaccessibility of officers to the members of the public is one of the debilitating factors that continues to plague the bureaucracy today.

NATIONAL INSURANCE BOARD

Complaints against the National Insurance Board are mainly about delays in having claims processed by the Local Boards.

My investigations have revealed that delays are caused by the inability of the Local Board to identify contributions. This arises as a result of improper record keeping by employers and their failure to remit such contributions to the Board. In spite of the Board's efforts to increase public awareness, the public is still uneducated about the procedures necessary for the processing of claims and of their rights of appeal. I have received many complaints of frustration from members of the public in going back and forth in order to obtain and provide the information required by the Board.

My relationship with the senior officials of the Board is good and there is easy communication and cooperation in expediting the resolution of complaints.

CASE NO. 1

The complainant who had been employed in the Police Service had retired on medical grounds in 1977. Some twenty (20) years later she made a claim for benefits, from the National Insurance Board. This included sickness benefit for that period of her illness during which she had lost earnings; and disability benefit upon her retirement on medical grounds. It appeared that although the claim was made out of time, the National Insurance Board was willing to assist the complainant.

The complainant sought my assistance as the attending doctor had refused to complete the prescribed form certifying her illness.

I did not think that I should attempt to compel the doctor to do so. I however discussed the matter with a senior official of the Board and he agreed that if evidence of the complainant's illness could be found in the records of her employer, the complainant's claim would be processed. The files pertaining to the complainant were therefore obtained from the employer but they did not disclose evidence to support the complainant's claims.

My investigators also examined the documents which the complainant alleged substantiated her claim but they could not support her allegation. Consequently the claim was not allowed.

CASE NO. 2

The complainant informed me that she had made a claim for Widows' Pension consequent on the death of her common-law husband. The claim was not allowed by the National Insurance Board as she

could not produce evidence of a Decree Absolute of her husband's divorce from his first wife.

I considered the relevant sections of the National Insurance Act and it appeared to me that the Board's requirement could be met by evidence other than by production of a Decree Absolute. I discussed the matter with a senior officer of the National Insurance Board and he agreed with my opinion.

I therefore furnished the National Insurance Board with the following documents which I considered would be sufficient to support the complainant's claim:

1. A copy of the last Will and Testament of the deceased in which the complainant was the main beneficiary. Probate of the Will had previously been granted by the Court.
2. A letter to the former wife of the deceased seeking her assistance to which no reply had been received.
3. A document from the District Revenue Office in which the deceased had declared himself to be a divorcee.

The National Insurance Board was satisfied and honoured the claim of the complainant.

CASE NO. 3

The complainant was a former employee of the Labour Intensive Development Programme (LID). She made a claim to the National Insurance Board for retirement benefits. After one year of waiting she complained to me about the inordinate delay by the Board in processing her claim.

My enquiries revealed that the delay was caused as a result of the difficulty which the Board was experiencing in identifying contributions made on behalf of the complainant by her employer. Improper record keeping at LID office had been a major problem in its operation.

The National Insurance Board was considerate and expedited this matter by granting the complainant an interim retirement grant based on the contributions which had been identified. Meanwhile the Board delegated a compliance officer to locate contributions for the outstanding years.

PUBLIC UTILITY AGENCIES

During the period under review, I received a total of 48 complaints against the State-owned public utility agencies. These agencies are the Water and Sewerage Authority, Trinidad and Tobago Electricity Commission, the Public Transport Service Corporation and Telecommunication Services of Trinidad and Tobago. The subjects of complaint included personnel and industrial relations matters, consumer rate charges for services provided and inefficiencies of service. I am obliged to report however, that the function of my office was seriously impaired by the tardiness of responses from these agencies to relevant enquiries with the exception of the Public Transport Service Corporation which has always rendered prompt attention to my investigations.

One of the principal functions of this Office is to provide a swift remedy to aggrieved citizens, a fact which should be respected by all government departments if I am to effectively discharge the functions prescribed in the Constitution. At the end of this period, 35 complaints are still under investigation.

I also wish to highlight a rising number of complaints from citizens with respect to the tremendous increases in water rates charged by the Water and Sewerage Authority for service to their properties. My investigation revealed that following a major reclassification of properties in 1992, certain residences were reclassified into a higher rate structure. The changes in reclassification were made retroactive from 1986. The respective accounts therefore accrued overwhelmingly large sums of arrears. These customers have protested against the sudden steep increases and claim that they are financially unable to meet the outstanding balances on their accounts.

Another class of customers suffered a peculiar predicament. They are those persons who utilize their dwelling-houses for purposes of self-employed businesses. They are now compelled to pay the high commercial rate instead of the lower residential rates. In most instances, income from these small businesses are unable to sustain the rates charged. These customers have applied to the Authority for meters to be installed as a fair means of determining their liability. I am advised that the Public Utilities Commission and the Authority are actively working towards an equitable solution in these matters.

PUBLIC TRANSPORT SERVICE CORPORATION**CASE NO. 1**

The complainant who was employed by the Public Transport Service Corporation had made arrangements with her employers to

have her salary remitted to a bank. The facts giving rise to such a request were as follows:

In 1989 she had secured a loan from the bank to purchase a motor vehicle. In order to facilitate the repayment of the loan, she agreed to have her monthly salary remitted to the bank and had signed the necessary forms authorising her employers to do so.

On July 31, 1991 the car was repossessed by the bank. She was informed then that there was a lien on the vehicle for an unpaid balance owed by the first owner. The vehicle was subsequently sold by the bank and the complainant filed a writ in the High Court claiming damages against the Bank.

When she requested her employers to cease the remittance of her salary to the bank, she was informed that no such action would be taken unless the bank issued a letter that she was free of indebtedness.

When the matter was brought to my attention I enquired from her employers whether they had entered into a tripartite agreement with the bank to remit the complainant's salary as there was no reason why they should not cease such remittance on her authorisation.

The General Manager immediately responded, stating that the Corporation had indeed entered into a tripartite agreement with the Bank and in the absence of a restraining order from the Court would continue to fulfill its legal obligation to the Bank. Accordingly, I requested and obtained a copy of the purported tripartite agreement.

My examination of the document revealed, however, that it was simply a notification to the Corporation that the complainant had entered into an agreement with the Bank for the transmission of her salary to them. There was no obligation, legal or otherwise, which was binding on the Corporation. Every legally binding agreement imports a "quid pro quo", that is, consideration. The document was simply an arrangement whereby in order to obtain a loan from the Bank, the complainant had to arrange for her salary to be transmitted to them. By transmitting her salary to the Bank, the Corporation suffered a detriment rather than obtained consideration.

I informed the Corporation of my opinion and findings and further advised that money due to a person could not be paid to a third party without that person's consent nor without an order of the Court. Thus, the complainant's salary could not be transmitted to the Bank without her consent. If such consent was given, it could be withdrawn at any time.

The Corporation complied immediately with my recommendation and ceased transmission of the complainant's salary to the bank.

CASE NO. 2

A resident of Tobago sought my assistance in obtaining compensation for injuries she had sustained in an accident while travelling in an auto-bus owned by the Public Transport Service Corporation (PTSC) from Scarborough to Charlotteville on August 16, 1985.

She stated that, at the time of the accident, representatives of PTSC had visited her in hospital and assured her that she would be fully compensated for all injuries sustained as a result of the accident as the bus was fully insured.

Upon her discharge, the complainant sought to receive the compensation due to her on several occasions, but without success.

On my enquiries, I was informed by the PTSC that under the Public Authorities Protection Act, her claim was statute-barred.

Nevertheless, the Corporation had taken a decision to consider certain claims including that of the complainant which were affected as a result of their insurers being placed under judicial management, with a view to making an 'ex gratia' payment.

Because of the delay being experienced in having the matter brought to a head, I took the liberty of assessing the damages and forwarded a letter to the Corporation dated May 22, 1991 embodying my assessment of the damages suffered by the Complainant from all of the available evidence. I was then informed that the Corporation would not make the 'ex gratia' award to the complainant as they had previously indicated.

I was of the opinion that the Public Authorities Protection Act did not protect statutory corporations which though performing duties of public utility, are also incorporated for the purpose of earning profits.

Further, when the complaint was made, the matter was well within the four-year limitation period covered by the Limitation of Personal Actions Ordinance Chapter 5 No. 6. Had the Corporation denied liability at that stage and declined to treat with the complainant she could have taken the matter to court. To lead her on in the belief that she was to be compensated and then to raise technical defences against her, of which the Corporation can only avail itself in a court of law, I considered to be highly irregular and unethical of a Corporation established for the purpose of performing a public service.

I conveyed my opinion on this matter to the Chairman of the PTSC and made a recommendation under Section 96(2) of the Constitution that the complainant be paid the sum of eight thousand (\$8,000.00) dollars as compensation for the injuries she had sustained in the accident of 1983. I specified that this payment should be made within eight (8) weeks of my request. Within three

(3) weeks I was informed by the General Manager that my recommendation was accepted. The complainant was paid shortly thereafter.

TRINIDAD & TOBAGO ELECTRICITY COMMISSION
CASE NO. 1

A resident of Maracas Bay complained to me that over a two year period he was charged an exorbitant sum of \$20,171.07 for consumption of electricity at his residence.

He informed me that his only electrical appliances were a refrigerator and a television set. He further informed me that he had made several visits to T&TEC Office, Arima, informing them of the situation, but to no avail. He stated that on his last visit there he mentioned that the high charge of electricity to his premises was probably due to a faulty meter. He was told by one of the officers that he would have to pay \$500.00 if the problem was to be rectified.

In frustration, he brought the matter to my attention. I requested a report from T&TEC who eventually acknowledged that the complainant was erroneously billed and that his bill had been accordingly rectified.

TELECOMMUNICATION SERVICES OF
TRINIDAD & TOBAGO
CASE NO. 1

Mr. G. made a complaint to me that TSTT had forwarded a letter to him stating that he owed the sum of one thousand two hundred and twenty-nine dollars and forty-three cents (\$1,299.43) as arrears for telephone calls and he should come to the office and indicate how he proposed to liquidate the debt.

He informed me that he did not acknowledge the letter from TSTT since he had previously visited the Company to inform them that some of the telephone numbers listed on the bill were unknown to him and that he had made no such calls. He stated that the clerk whom he saw insisted that he pay half the arrears in order to avoid disconnection. He refused to do so, as it would have appeared to be an admission that he had made the calls.

The complainant also informed me that on 7th August, 1991, three years after his original complaint to them, he received a letter from TSTT which stated that his complaint had been thoroughly investigated and that he was indebted to the Company in the sum of four hundred and ninety-eight dollars and eighty-three cents (\$498.83). He was advised to come in and discuss the matter with them. He stated that after thinking things over, he wrote two

letters on 30th April 1991, one to the Commercial Manager and the other to the Director in which he stated that he did not wish to pay the bill because of the time lapse and the inconvenience caused by the absence of the telephone. He subsequently (three months later) wrote another letter to TSTT again stating why he would not pay the arrears of \$498.83.

I brought the complainant's matter to the attention of TSTT and asked for their report. The Company replied that the arrears of \$498.83 would be waived with a view to maintaining good customer public relations and that the complainant's telephone would be re-installed.

However, eighteen months later, the complainant called to state that TSTT informed him that his telephone could not be re-connected since there were no lines connected to his home.

I subsequently spoke with TSTT and was informed that there were no feeder cables attached to the complainant's line to which a telephone could be connected. TSTT stated that they were unable to tell me when the feeder would be connected.

A month later, I received a letter from TSTT which informed me that the complainant's installation was completed and that he is now a subscriber to TSTT.

The matter was successfully resolved.

TOBAGO HOUSE OF ASSEMBLY

The Tobago House of Assembly is one of the most cooperative government bodies when it comes to responding to my enquiries and implementing my recommendations. However, over the past two years, I have observed two areas in which critical problems often arise. The first relates to damage to properties in the course of public works being carried out by the Works Division.

Although the Assembly has admitted liability for such damage, its reasons for not taking remedial action is due to the shortage of funding by the Central Government. The Assembly has been promising to put these matters on a priority list and to deal with them as funding becomes available. However, matters remain outstanding for several years with a consequent deterioration in complainants' premises.

It appears that the Assembly selects matters on the priority list for inclusion in the following year's Estimate. Approval has not been given in these matters for several years with the result that complainants in some cases have been undergoing hardship. There are on record at the present time, six outstanding matters in which the Assembly had promised to take remedial action.

Secondly, several complaints have been made by daily paid workers of alleged discrimination in the obtaining of employment. Enquiries into these complaints have been particularly difficult since there is at present no existing permanent establishment list and proper records of seniority.

For several years now the Tobago House of Assembly and the recognised bargaining union have been engaged in revising a permanent establishment list. Complaints of discrimination in employment is directly related to the contraction of the economy, in particular a decrease in the development projects which previously assimilated a comparatively large section of the skilled and unskilled labour force.

This problem is not peculiar to Tobago but by far the majority of complaints against the Tobago House of Assembly are of this nature.

In addition to the complaints stated above, I have also received several complaints from retired daily rated employees that they have not received terminal benefits for the entire period of their service because records cannot be located.

These complaints are related to the change in administrative responsibility from Central Government (Ministry for Tobago Affairs, then CAST) to the House of Assembly.

CASE NO. 1

The complainant is the owner of a dwelling house situated on the crest of a hill which abuts the public road.

In 1973, the Works Division (Tobago House of Assembly) widened the road. In so doing it cut into the slope on which the complainant's house stands. This resulted in land slippage which, over the years, began to affect the structure of the house.

The Technical Officer, Works Division had admitted in 1975 that Government was liable and recommended remedial work to arrest the slippage. Since that time no action has been taken.

In 1991, this Office was advised that the work would be undertaken in 1992. However, no work was done in 1992 and I was informed in that year that the project would begin in 1993.

The complainant is of the view that he is being discriminated against and victimized by the Tobago House of Assembly. I have written to the Acting Technical Officer to enquire if the Assembly has identified funds for this project in 1993.

I intend to pursue the matter.

CASE NO. 2

The complainant was the legal personal representative of her father and sought my assistance on 20th October, 1992 in obtaining death benefits and other payments due to his estate. He was a former employee of the Tobago House of Assembly.

My enquiries revealed that on 18th July, 1988 the Comptroller of Accounts had conveyed approval for payment of gratuity to the legal personal representative of the deceased and also death benefits to be paid by the Tobago House of Assembly.

The legal personal representative had obtained a Grant of Letters of Administration on 6th August, 1990 but no action had been taken by the Comptroller of Accounts and the Tobago House of Assembly to pay her until my intervention.

CASE NO. 3

The complainant was the tenant of a private landlord. The dwelling house which he tenanted was demolished in the course of the construction of the Claude Noel Highway. He claimed that he had not been notified of the contemplated demolition and that he was in Trinidad at the time it took place. All his personal effects were lost as a result of the demolition. He stated that some of the effects had been removed to government offices where they were utilised while the rest was left by the roadside, and was either stolen or destroyed in the course of time. He estimated his loss at thirty-eight thousand dollars (\$38,000.00). After several years of making representations to the Works Division, Tobago House of Assembly, in person and through his attorney-at-law and having received no response whatever, he sought my assistance.

I was informed by the Works Division that there was no evidence of the complainant's claim on record.

I was of the view that the complainant had sustained an injustice. Having regard to the absence of documentary evidence, I advised him that he should obtain statements from two officials of the Works Department who could support his claim.

He obtained statements from an officer who worked in the furniture department, Works Division and another officer who was present at the site of the demolition.

As the Tobago House of Assembly was in no position to dispute the claim made by the complainant, the complainant agreed, on my advice to a compromise and accepted the sum of twenty thousand dollars (\$20,000.00) in full and final settlement of his claim.

OTHER MINISTRIES/BODIES/AGENCIES

Complaints against Other Ministries/Bodies/Agencies were comparatively less than for other Ministries. The response from bodies and agencies such as the Airport Authority of Trinidad and Tobago and Caroni (1975) Limited has been particularly swift and there is easy communication between my officers and these bodies.

PART IV

APPENDICIES

THE OMBUDSMAN AND HIS SOCIETY
THE CASE OF TRINIDAD AND TOBAGO

by

Joy Henry B.Sc. (Hons) Sociology
Investigator, Office of the Ombudsman

The Ombudsman is defined by the International Bar Association as:

"An Office provided for by the Constitution or by an action of the Legislature or Parliament, and headed by an independent, high-level public official who is responsible to the legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action and issue reports."

The principal characteristics to be derived from this definition are as follows:

1. The Office of the Ombudsman is a legal, formal institution. Its existence, functions, privileges and obligations are defined by statute, that is, it is not just another complaint handling device, such as a citizen's advice bureau, a newspaper column or a call-in radio program.
2. The Office is a personalized one inseparable from the person of the Ombudsman, in whom is vested all its powers. The Ombudsman is a figure of authority and respect in his society. As Larry Hill puts it:

"The Ombudsman is a high ranking official, especially so at the national level. In Sweden, senior judges are appointed ... Usually the choices are people who have already achieved prominence in such fields as law, higher education, diplomacy or other Government Services. Their personal status thus builds upon the office's formal legally established rank. The authority figure of the Ombudsman is further enhanced by his independence, as he is responsible only to Parliament."

3. The Ombudsman's powers to investigate are extensive. In the case of Trinidad and Tobago, as in other jurisdictions, he has power to enter and inspect any premises over which he has jurisdiction and can call for, examine and, if necessary, retain any document kept on such premises and there to carry out any investigation in pursuance of his function. He is also vested with the powers of a High Court Judge to summon witnesses to appear before him and compel them to give evidence on oath and to produce documents relevant to the proceedings before him. This power is further enhanced as the Ombudsman can act on his own motion and initiate an investigation. It is to be noted that all information obtained by the Ombudsman in the course of an investigation is privileged information and can only be used for the purpose of his investigation. This provision is an additional safeguard for the public.

4. Finally, the Ombudsman recommends corrective action and publishes reports. This impunitive nature of the institution is often regarded as an anticlimax to the overall power of the Ombudsman and raises question of his effectiveness. This is particularly so in societies such as ours in which coercive power has had a significant role in our history.

However, the absence of coercion is an essential element of the Ombudsmanship and rests on the expectation that the prestige and status of the Ombudsman and his office in the society would be sufficient to ensure the acceptance of the Ombudsman's recommendation. The classic example of this relationship between the Ombudsman and the bureaucracy is the famous Sachen Hausen case in which the British Foreign Minister accepted the recommendation of the newly established Parliamentary Commissioner for Administration although he disagreed with the recommendation.

In Trinidad and Tobago, the Ombudsman reports to Parliament both in the form of Special Reports in cases where his recommendations have not been accepted or implemented by the bureaucracy and or Annual Reports on the performance of his Office. The Ombudsman is also empowered by legislation to publish reports relating to the exercise of his functions or to a particular case in the public interest from time to time. Parliament is therefore the final power of the Ombudsman as well as the reason for his existence - he belongs to it, his entire operation is in its interest and, in the final analysis, the life and relevance of the institution depends on it.

While the Ombudsman is a comparatively new institution originating in Sweden in 1809 and has now spread through out most of the democratic world, a similar figure of authority and respect can be traced in most traditional societies. In these societies, justice is based on the mutual understanding of right and wrong, between individuals rather than on formalised law. Modern democratic society in its attempt to ensure the rights of an individual against injustices by Government agencies has formalised and legalised this historical figure and invested him with powers over the executive as described above.

Traditional societies are generally described as being small and homogeneous with widespread consensus. It is undoubtedly because of this that it was commonly believed that Ombudsmanship could be effective only in similar societies. This idea has been successfully refuted and Bernard Frank in his Ombudsman and Human Rights Revisited. He has noted that one of the most commendable features of the institution of the Ombudsman is its adaptability.

Ombudsman offices can be found in the most divided societies and, in fact, the institution is deliberately used as a means of protecting minority groups as in Mauritius and Israel. Modern democratic societies are highly stratified. Groups can be divided along lines of socio-economic status, race, ethnicity/culture, religion, gender, age and even health. The broad principle underlying the idea of the Ombudsman is the State's commitment to the Ideals of Democracy. The ideal of democracy is participation. Democracy tends to rely on compromise rather than consensus and persuasion rather than coercion.

As societies differ in their structure and historical experiences, it is expected that their new institutions would be affected and even be determined by such structures and experiences; a fact which was recognised by the Ombudsman of Trinidad and Tobago when the office was established in 1977. (Sudama 1980) Professor Harold Lutchman, in accounting for the failure of the Office of the Ombudsman in Guyana to function effectively in its first two years, stated:

"The slow growth of the office 'in Guyana' during its first two years of operation was due to political conflict between the Government and the Opposition. The conflict was based on racial differences which had expressed itself in the violence in 1962, 1963 and 1964. The fact that it was born in a racially divided society, the aftermath of violent happenings had not lost its sting and it seems that social cleavage will die a hard slow death."

The social history of the people of Trinidad and Tobago has been one of rapid transformation in its legal and political structures from the 1930s to the 1970s. In 1946, we attained universal adult suffrage, in 1959 we obtained full internal self government, in 1962 independence was granted, and in 1976 we became a republic. In less than four decades we have been transformed from a people with few legal and political rights to a people who subscribe to the Vienna Conventions on political, social and economic rights.

While political and legal changes have been significant, other institutional structures retain their basic characteristics, their response to change continues to be slow. In particular, the bureaucracy is anachronistic in its forms. Contrary to the ideal of modern open bureaucracy it retains its secrecy and over centralization (Mills) of the colonial past. On this is superimposed practices of political patronage, nepotism and other forms of discrimination. (Le Guerre).

The secretive nature of Government administration is reflected in the several complaints from members of the public that on enquiring about their matters, "they are being given the run around", or served with letters stating that the matter is receiving attention while their requests to see senior officers are constantly denied.

Over centralization has resulted in cumbersome, protracted processes and failure to make decisions except by top management in the smallest of matters. The necessary corollary of such practices is delay in decision-making. It is noteworthy that the majority of complaints received by this Office are about delay.

In spite of Government efforts at decentralization, little progress has been made.

The many complaints of discrimination in selection for employment that are received in this office attest to the fact that discriminatory practices are a part of our bureaucratic culture.

From the foregoing it is evident that there is an absence of communication between the bureaucracy and the public, a fact which was noted by Professor Selwyn Ryan as a member of the Constitution Commission of 1972.

The mere description of the structure and practices of the bureaucracy in Trinidad and Tobago and the relationship that exists between it and the public, tells us that the Ombudsman has a significant role to play in bringing the relationship between the bureaucracy and the public more in keeping with the democratic ideals of participation and accountability. The Ombudsman has the potential to be an important agent for effecting social change. He not only investigates but mediates, advises and guides.

In the exercise of his functions in any jurisdiction, the Ombudsman has four (4) main goals to achieve in the society: first, Public awareness of the existence of his office; second, making his services available and accessible to the public; third, gaining the confidence of the public and fourth, resolving complaints to the satisfaction of both the complainants and the bureaucracy.

The social history of the British Commonwealth Caribbean has produced a people who are willing to demand their rights. In the first year of operation, the Office of the Ombudsman of Trinidad and Tobago received 1,098 complaints, a figure which is comparatively high given the population as compared with the standards of the Ombudsman in any jurisdiction. This indicates that public awareness of the existence of the Office of the Ombudsman of Trinidad and Tobago was high at the very beginning.

The Ombudsman generally seeks to increase public awareness.

The media has always been regarded as one of the most effective means of disseminating information and forming public opinion. In Trinidad and Tobago, the media has been heavily criticized. Trevor Sudama, in assessing the role of the media in relation to the Ombudsman, has referred to the press as 'weak and supine.' It is agreed that the media in Trinidad and Tobago thrives on sensationalism and information appearing in even the most prestigious newspapers is viewed warily. In our experience, however, the media has been helpful in carrying information relevant to the performance of the Office.

Even so, the best medium for informing the public about the Office of the Ombudsman has been the public itself. Many complainants seek the assistance of the Ombudsman on the advice of persons who are aware of the existence of the Office and its functions. This method of spreading information is a part of our cultural heritage. People form conversations everywhere they meet; in the bus, in the marketplace or the hospital bench.

From the inception of this Office, the Ombudsman has sought to make the public aware of his services through lectures at various fora and publications.

Such efforts have received positive responses.

In seeking to make his service available and accessible to the public, Ombudsmen agree that the majority of their clients come from the lower socio economic strata of society. Mr. Maloney, former Ombudsman of Ontario, has commented that the majority of complainants are the "poor and disadvantaged." However, the Ombudsman's clients are by no means restricted to these classes.

The Ombudsman of Fiji visits the different islands that comprise the State; and Ombudsmen in large jurisdictions create permanent branch offices or operate "mobile clinics." In this country, the Ombudsman has adopted the practice of making himself accessible and available to the public in general.

In fact, complainants visiting the office for the first time are always interviewed by the Ombudsman and, in his absence, by the next senior member of staff. Office is held once a month in Tobago and in the two other main towns in Trinidad, San Fernando and Arima. The Ombudsman and his Investigators also make visits to sites where necessary. Visits are also made to prisons and other institutions.

Finally, accessibility may be nullified by the legal requirement under the Ombudsman Act that all complaints to the Ombudsman must be made in writing. The Ombudsman has delegated a member of staff to assist complainants who are unable to do so to reduce their complaint to writing.

Racial differences are sometimes regarded as a possible impairment of the independence and representativeness of the Ombudsman and this could erode the confidence of the public in the Ombudsman himself. In considering the creation of the Office of the Ombudsman in Trinidad and Tobago, the question of racial differences was highly stressed and the proposal that three Ombudsmen be appointed to represent the three major races was debated. This was rejected by the Wooding Constitution Commission which felt that it could place its faith in one man who could straddle the different racial groups. The Commission stated, 'experience has shown that the society has been able to produce men of unquestionable integrity and proven impartiality. We do not think it has ceased to do so. We confidently expect that an individual can be found who is obviously capable of filling the office.' This question was again considered by the Constitution Commission which was headed by Sir Isaac Hyatali.

The issue centers on two questions. Firstly, whether a single Ombudsman could be sufficiently independent to decide adjudicate on a matter involving a person of his own race and one of another. Secondly, on that expressed by Ryan, that symbolic representation is often just as important as effective representation.

The record shows that there have been no allegations of racial bias against the Ombudsman. In addition, the services of the Office are used by all races, as it is by all classes and genders.

The final goal of the Ombudsman is to have the respect of the bureaucrat and the Parliament. The Constitution Commission of 1976 noted that where the institution of the Ombudsman has been successful as in Sweden and New Zealand, it was due to the energies of the first Ombudsman. The energy of the Ombudsman contributes to the success of his office mainly in his dealing with the public - creating awareness of the office etc. His success with the bureaucracy and Parliament, however, depends mainly attitude of the officials of these institutions to the Office. In this connection, it is useful to recall the words of the Ombudsman of Trinidad and Tobago, as recorded in his Tenth Annual report at pages 13 and 14:

Most of the complaints I have investigated which have been sustained are resolved before the stage of recommendation to the department concerned. However, there are instances in which I have made recommendations and government administrators generally have shown their respect for my office by adopting my recommendation.

There are instances however where the administration has not accepted my recommendations and I am under a legal obligation to refer the matter to Parliament under Section 96 (4) of the Constitution. During my second year in office, I laid my first Special Report before Parliament. The matter related to a widow whose gravel was won from her land without her permission. It was a clear case of trespass. Nothing has been done so far by Parliament in this matter. This experience of the inaction and indifference by Parliament has left me hesitant to lay Special Reports. It demonstrates the lack of respect for the institution and the difficulty of Ombudsmanship in this country. A far cry from the respect and regard that is given to its counterpart in places such as New Zealand, England and Scandinavia.

The words of a member of Parliament recorded in the 13th Annual Report of the Ombudsman are equally as important:

As you know, Mr. Speaker, under this administration, the reports of the Ombudsman were debated for the first time in the history of this country and that is principally because we had indicated to the country in our manifesto, that we considered this institution and this office, a vital and significant one and we made a commitment there to strengthen that institution during our term of office. Not only did we debate the reports of the Ombudsman in 1987, 1988 and 1989, but under your guidance, Mr. Speaker, we were able to establish a parliamentary committee under the

Chairmanship of the President of the Senate, in fact, looking at the Office of the Ombudsman with a view to strengthening it in keeping with the manifesto commitment and pledge.

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EXTRACTS FROM THE CONSTITUTION
OF
TRINIDAD AND TOBAGO
CHAPTER I

The Recognition and Protection of Fundamental
Human Rights and Freedoms
Rights enshrined

Recognition and
 declaration of
 rights and
 freedoms.

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:-

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) the right of the individual to respect for his private and family life;
- (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
- (e) the right to join political parties and to express political views;
- (f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;
- (g) freedom of movement;
- (h) freedom of conscience and religious belief and observance;
- (i) freedom of thought and expression;
- (j) freedom of association and assembly;
 and

(k) freedom of the press.

Protection of
rights and
freedoms.

5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not -

(a) authorise or effect the arbitrary detention, imprisonment or exile of any person;

(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

(c) deprive a person who has been arrested or detained -

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(iii) of the right to be brought promptly before an appropriate judicial authority;

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

(d) authorise a court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;

(e) deprive a person of the right to a fair hearing in accordance with the principles fundamental justice for the determination of rights and obligations;

(f) deprive a person charged with a criminal offence of the right -

(i) to be presumed innocent until proved guilty

according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;

(ii) to a fair and public hearing by an independent and impartial tribunal; or

(iii) to reasonable bail without just cause;

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak English; or

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO
ACT NO. 4 OF 1976

PART 2

OMBUDSMAN

Appointment
and conditions
of office.

91. (1) There shall be an Ombudsman for Trinidad and Tobago who shall be an officer of Parliament and who shall not hold any other office of emolument whether in the Public Service or otherwise nor engage in any occupation for reward other than the duties of his office.

(2) The Ombudsman shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

(3) The Ombudsman shall hold Office for a term not exceeding five years and is eligible for re-appointment.

(4) Subject to subsection (3) the Ombudsman shall hold office in accordance with section 136.

(5) Before entering upon the duties of his Office, the Ombudsman shall take and subscribe the oath of office before the Speaker of the House of

of whose members are appointed by the President or by a Minister or whose revenue consist wholly or mainly of moneys provided out of public funds;

(c) any authority empowered to determine the person with whom any contract shall be entered into by or on behalf of Government;

(d) such other authorities as may be prescribed.

Restrictions
on matters for
investigation

94. (1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

(2) The Ombudsman shall have power to investigate complaints of administrative injustice under section 93 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.

(3) Where in the course of an investigation it appears to the Ombudsman that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper.

(4) The Ombudsman shall not investigate -

(a) any action in respect of which the Complainant has or had

(i) a remedy by way of proceedings in a court; or

(ii) a right of appeal, reference or review to or before an independent and impartial tribunal other than court; or

(b) any such action, or action taken Third

with respect to any matter, as is Schedule described in the Third Schedule.

(5) Notwithstanding subsection (4) the Ombudsman

(a) may investigate a matter notwithstanding that the Complainant has or had a remedy by way of proceedings in a court if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;

(b) is not in any case precluded from investigating any matter by reason only that it is open to the Complainant to apply to the High Court for redress under section 14 (which relates to redress for contravention of the provisions for the protection of fundamental rights).

95. In determining whether to initiate, continue or dis- Discretion
continue an investigation, the Ombudsman shall, subject to of
section 93 and 94 act in his discretion and, in particular Ombudsman
and without prejudice to the generality of this discretion,
the Ombudsman may refuse to initiate or may discontinue an
investigation where it appears to him that -

(a) a complaint relates to action of which the Complainant has knowledge for more than twelve months before the complaint was received by the Ombudsman;

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

(c) the complaint is frivolous or vexatious or is not made in good faith; or

(d) the Complainant has not a sufficient interest in the subject matter of the complaint.

96. (1) Where a complaint or request for an investigation is duly made and the Ombudsman decides not to investigate the matter or where he decides to discontinue investigation of the matter, he shall inform the person who made the complaint or request of the reasons for his decision. Report on investigation

(2) Upon the completion of an investigation the Ombudsman shall inform the department of government or the authority concerned of the results of the investigation and if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, he shall inform the department of government or the authority of the reasons for his opinion and make such recommendations as he thinks fit. The Ombudsman may in his original recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.

(3) Where the investigation is undertaken as a result of a complaint or request, the Ombudsman shall inform the person who made the complaint or request of his findings.

(4) Where the matter is in the opinion of the Ombudsman of sufficient public importance or where the Ombudsman has made a recommendation under sub-section (2) and within the time specified by him no sufficient action has been taken to remedy the injustice, then, subject to such provision as may be made by Parliament, the Ombudsman shall lay a special report on the case before Parliament.

(5) The Ombudsman shall make annual reports on the performance of his functions to Parliament which shall include statistics in such form and in such detail as may be prescribed of the complaints received by him and the results of his investigation.

Power to
obtain
Evidence

97. (1) The Ombudsman shall have the powers of the High Court to summon witnesses to appear before him and to compel them to give evidence on oath and to produce documents relevant to the proceedings before him and all persons giving evidence at those proceedings shall have the same duties and liabilities and enjoy the same privileges as in the High Court.

(2) The Ombudsman shall have power to enter and inspect the premises of any department of government or any authority to which section 93 applies, to call for, examine and where necessary retain any document kept on such premises and there to carry out any investigation in pursuance of his functions.

Prescribed
matters
concerning
Ombudsman

98. (1) Subject to subsection (2), Parliament may make provision -

(a) for regulating the procedure for the making of complaints and requests to the Ombudsman and for the exercise of the functions of the Ombudsman;

(b) for conferring such powers on the Ombudsman and imposing such duties on persons concerned as are necessary to facilitate the Ombudsman in the performance of his functions; and

(c) generally for giving effect to the provisions of this Part.

(2) The Ombudsman may not be empowered to summon a Minister or a Parliamentary Secretary to appear before him or to compel a Minister or a Parliamentary Secretary to answer any questions relating to any matter under investigation by the Ombudsman.

(3) The Ombudsman may not be empowered to summon any witness to produce any Cabinet papers or to give any confidential income tax information.

(4) No Complainant may be required to pay any fee in respect of his complaint or request or for any investigation to be made by the Ombudsman.

(5) No proceedings, civil or criminal, may lie against the Ombudsman, or against any person holding an office or appointment under him for anything he may do or report or say in the course of the exercise or intended exercise of the functions of the Ombudsman under this Constitution, unless it is shown that he acted in bad faith.

(6) The Ombudsman, and any person holding office or appointment under him may not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(7) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any enquiry by or proceedings before an Ombudsman under this Constitution is privileged in the same manner as if the enquiry or proceedings were proceedings in a Court.

(8) No proceedings of the Ombudsman may be held bad

for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of an Ombudsman is liable to be challenged, reviewed, quashed or called in question in any Court.

THIRD SCHEDULE

MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by the Attorney General to affect relations or dealings between the Government of Trinidad and Tobago and any other Government or any International Organization.

2. Action taken in any country or territory outside Trinidad and Tobago by or on behalf of any officer representing or acting under the authority of the Government of Trinidad and Tobago.

3. Action taken under any law relating to extradition or fugitive offenders.

4. Action taken for the purposes of investigating crime or of protecting the security of the State.

5. The commencement or conduct of civil or criminal proceedings before any court in Trinidad and Tobago or before any international court or tribunal.

6. Any exercise of the power of pardon.

7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or an authority to which section 93 applies not being transactions for or relating to -

(a) the acquisition of land compulsorily or in circumstances in which it could be required compulsorily;

(b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could be acquired compulsorily.

8. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed.

9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to -

(a) the terms and conditions of service as such member;
or

(b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.

10. Any action which by virtue of any provision of this Constitution may not be enquired into by any court.

LAWS OF TRINIDAD AND TOBAGO

Chapter 2:52

OMBUDSMAN ACT

An Act to make provision for giving effect to Part 2 of Chapter 6 of the Constitution.

(Assented to 24th May, 1977)

Enactment: ENACTED by the Parliament of Trinidad and Tobago as follows:

Short
Title
Mode of
Complaint

1. This Act may be cited as the Ombudsman Act.
2. (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing.

(2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened to the Ombudsman by the person for the time being in charge of the place where the writer is detained.

Procedure
in respect
of inves-
tigation
No. 4
of 1976

3. (1) Where the Ombudsman proposes to conduct an investigation under section 93(1) of the Constitution set out in the Schedule to the Constitution of Trinidad and Tobago Act, 1976 (in this Act referred to as "the Constitution") he shall afford to the principal officer of the department or authority concerned, an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had a opportunity to make such representations.

(2) Every such investigation shall be conducted in private.

(3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries as he thinks fit.

(4) Where, during or after any investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee or any department or authority to which section 93 of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such disciplinary or other proceedings against him as may be appropriate.

(5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.

(6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person out of money provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those, that are for the time being prescribed for attendance in the High Court, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this subsection, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.

(7) For the purposes of section 93(2) (a) of the Constitution a complaint may be made by a person aggrieved himself or, if he is dead or for any reason unable to act for himself, by any person duly authorized to represent him.

(8) Any question whether a complaint or a request for an investigation is duly made under this Act or under Part 2 of Chapter 6 of the Constitution shall be determined by the Ombudsman.

Evidence

4. (1) The power of the Ombudsman under section 97 of the Constitution to summon witnesses and to compel them to give evidence on oath and to produce documents shall apply whether or not the person is an officer; employee, or member of any department or authority and whether or not such documents are in the custody or under the control of any department or authority.

(2) The Ombudsman may summon before him and examine on oath

(a) any person who is an officer or employee or member of any department authority to which section 93 of the Constitution applies or any authority referred to in the Schedule and who in the Ombudsman's opinion is able to give any relevant information;

(b) any Complainant; or

(c) any other person who in the Ombudsman's opinion is able to give any relevant information, and for that purpose may administer an oath. Every examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of the Perjury Ordinance.

(3) Subject to subsection (4) no person who is bound by the provisions of any enactment, other than the Official Secrets Act, 1911 to 1939 of the United Kingdom in so far as it forms part of the law of Trinidad and Tobago, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, where compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any Complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply any information or answer any question or produce any document or paper or thing relating only to the Complainant, and it shall be the duty of the person to comply with that requirement.

Disclosure
of certain
matters
not to be
required

(5) Except on the trial of any person for an offence under the Perjury Ordinance in respect of his sworn testimony, or for an offence under section 10, no statement made or answer given by that or any other person in the course of any inquiry or any proceedings before the Ombudsman under the Constitution or this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(6) No person shall be liable to prosecution for an offence against the Official Secrets Act, 1911, or any enactment, other than this Act by reason of his compliance with any requirement of the Ombudsman under this section.

5. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing -

(a) might prejudice the security, defence or international relationship of Trinidad and Tobago (including Trinidad and Tobago relationship with the Government of any other country or with any international organizations);

(b) will involve the disclosure of the deliberation of Cabinet; or

(c) will involve the disclosure of proceedings of Cabinet or any Committee of Cabinet, relating matters of a secret or confidential nature, and would be injurious to the public interest, the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper, or thing to be produced.

(2) Subject to subsection (1), no rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall apply in respect of any investigation by or proceedings before the Ombudsman.

Secrecy of
information

6. A person who performs the functions appertaining to the Office of the Ombudsman or any office or employment thereunder -

(a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any provisions of sections 93 and 96 of the Constitution, so, however, that no disclosure made by any such person in proceedings for an offence under section 10, or under the Perjury Ordinance by virtue of section 4(2) or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions or the provisions of section 3(4) or section 9, shall be deemed inconsistent with any duty imposed by this paragraph; and

(b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the proviso to paragraph (a)

Notice of
entry on
premises

7. Before entering upon any premises pursuant to section 97(2) of the Constitution the Ombudsman shall notify the principal officer of the department or the authority by which the premises are occupied.

Delegation
of powers

8. (1) With the prior approval in each case of the Prime Minister, functions hereinbefore assigned to the Ombudsman may from time to time, by direction under his hand, be delegated to any person who is appointed to any office or to perform any function referred to in section 6.

(2) No such delegation shall prevent the exercise of any power by the Ombudsman.

(3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.

(4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

9. (1) The Ombudsman may from time to time in the public interest publish reports relating generally to the exercise of his functions or to a particular case or cases investigated by him, whether or not the matters to be dealt with in such reports may have been the subject of a report to Parliament.

(2) The form of statistics of complaints received

by the Ombudsman and the results of his investigation required by section 96(5) of the Constitution to be included in the annual report to Parliament by the Ombudsman on the performance of his functions shall be prescribed by regulations made under section 12.

10. A person is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months who -

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;

(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act;

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act; or

(d) in a manner inconsistent with his duty under section 6(a), deals with any documents, information or things mentioned in that paragraph.

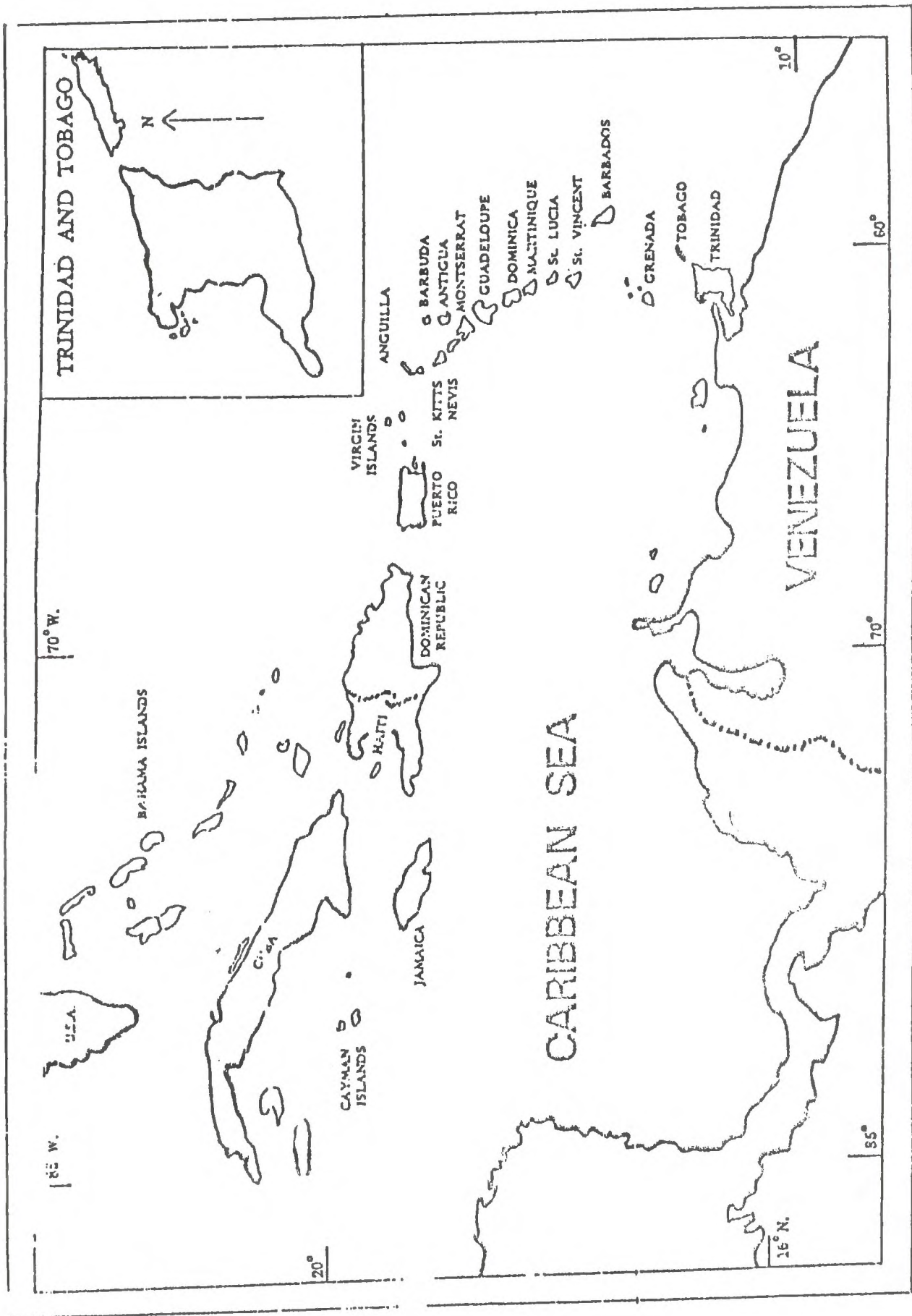
Prescription
of authori-
ties subject
to the
Ombudsman's
jurisdiction

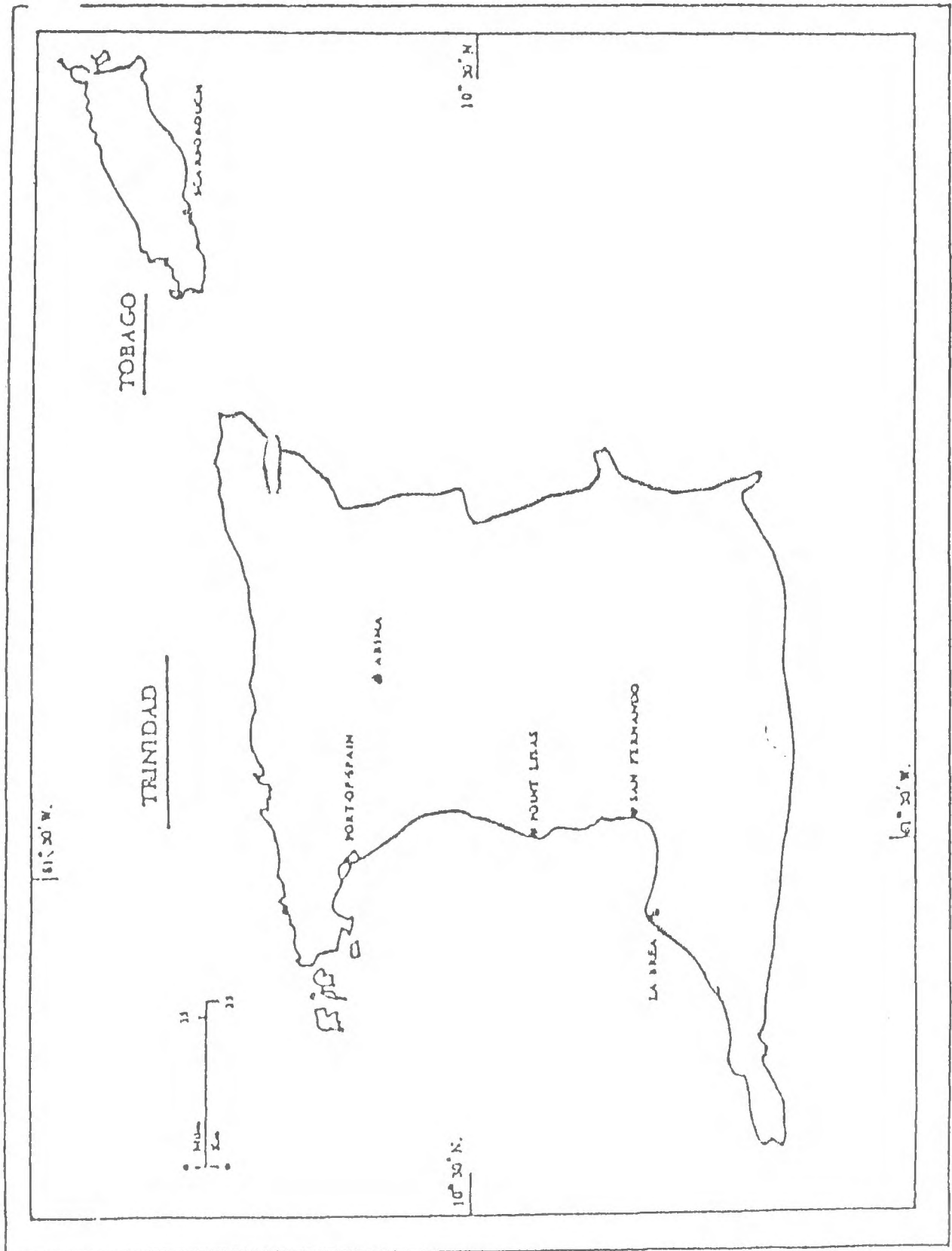
11. (1) The authorities mentioned in the Schedule are authorities to which section 93(3) (d) of the Constitution shall apply.

(2) The President may, by Order, amend the Schedule by the addition thereto or deletion therefrom of any authorities or the substitution therein, for any authorities or other authorities.

Regulations

12. The President may make regulations for the proper carrying into effect of this Act, including in particular, for prescribing anything required or authorised to be prescribed.





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