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R E P O R T

of the

O M B U D S M A N

Annual Report for 1999

**For presentation to the National Assembly pursuant to
article 194(4) of the Constitution of the
Co-operative Republic of Guyana**

MISSION STATEMENT

The Office of the Ombudsman is established to guarantee protection to members of the public against the abuse or misuse of power by the bureaucracy. To achieve this goal the Office is committed and dedicated to the following:-

- (1) to investigate and resolve complaints promptly against injustice done to members of the public by government department and other authority;
- (2) to provide informal, dependable and freely accessible service to members of the public;
- (3) to treat members of the public with courtesy, compassion, honesty and respect their privacy;
- (4) to educate members of the public of the services of the Office of the Ombudsman;
- (5) to be ethical, transparent and accountable;
- (6) to offer guidance to members of the public whose complaints are outside the jurisdiction of the Office of the Ombudsman; and
- (7) to ensure that members of the public are treated alike and there is no discrimination on the ground of race, place of origin, political opinions, colour, creed or sex.

The Hon Mr. Justice S Y Mohamed
Ombudsman

Office of the Ombudsman
39 Brickdam, Stabroek
Georgetown
GUYANA

Tel: 61211, 62294
29th August, 2000

The Hon D C Jagan, SC, CCH, JP, MP
Speaker of the National Assembly
Parliament Building
Brickdam
GEORGETOWN

Dear Sir,

I have the honour to submit to you my annual general report on the performance of the functions of the Office of the Ombudsman for 1999.

I shall be grateful if you will lay it before the National Assembly in accordance with article 194(4) of the Constitution of the Co-operative Republic of Guyana.

Your obedient servant,


S Y MOHAMED
OMBUDSMAN

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INTRODUCTION

Antigua and Barbuda Resolution

The Antigua and Barbuda Ombudsman Dr. Hayden Thomas, in collaboration with the Commonwealth Secretariat, hosted a Commonwealth Regional Workshop on "Strengthening National Ombudsman and Human Rights Institutions in the Caribbean". Additional support was provided by the International Ombudsman Institute.

The workshop was declared open by the Governor-General of Antigua and Barbuda, His Excellency, Sir James Carlisle, and the keynote address delivered by the Minister of Health and Civil Service Affairs, Senator the Honourable Samuel Aymer.

This historic Regional Workshop held in St. John's from 9-12th March, 1998, comprised representatives from Ombudsman and Human Rights Institutions from Antigua and Barbuda, Bermuda, Guyana, Haiti, Jamaica, St. Lucia, Trinidad and Tobago, as well as representatives of the Governments of Commonwealth of Dominica and St. Kitts & Nevis, the Ombudsman of Argentine, Canada, Pakistan, Peru and South Africa. Also in attendance were a former Ombudsman of Barbados, representatives of the CARICOM Secretariat, the International Labour Organisation, the General Secretariat of the Organisation of American States (OAS), the Canadian Human Rights Commission, the Inter-American Commission on Human Rights of the OAS and the Non-Governmental Caribbean Human Rights Network.

The topics discussed included the development of the institutions in the Caribbean and around the world, their role and jurisdiction, methods of investigation, privatization of public services and management problems of Ombudsman and Human Rights Institutions. Working groups also discussed staff

training, funding strategies, co-operation with related organisations, improving public access to the Ombudsman and the establishment of new institutions.

The Workshop recommended the following:-

1. That the Heads of Government recognise the existence and the meaningful role of Ombudsman and Human Rights institutions in the furtherance of good governance and democracy and that encouragement be given to countries to establish such institutions where they do not now exist.
2. That a regional association be formed to encourage networking and collaboration among members.
3. That the Ombudsman and Human Rights Institutions be provided with the necessary financial, human, and physical resources to carry out their work.
4. That the independence and autonomy of the Ombudsman and Human Rights Institutions be maintained.
5. That the institutions remain vigilant in the face of changing situations, especially that of the privatization of public institutions, in order to ensure that the public concerns are met.
6. That the management capability of the institutions be strengthened.
7. That a workshop to continue regional collaboration be held within the next two years in Saint Lucia or Bermuda.

The Workshop expressed thanks to the host country Antigua and Barbuda and the main sponsors - the Commonwealth Secretariat and other collaborators.

Participants also acknowledged the presence of CARICOM and hoped that the important role that the offices of the

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Ombudsman play in ensuring good governance would be recognised by the Heads of Government and included in the Charter of Civil Society.

St. John's
Antigua
March 12, 1998

Corruption

His Excellency, the President, Bharrat Jagdeo speaking to sugar workers at Enmore, East Coast Demerara on Thursday, 25th November, 1999 said 'We have a lot of corruption still in government agencies despite the progress we have made. That has to go ... People have to understand that when they work in government agencies, they're there to serve the peoples of the country. They have to understand that and behave that way.'¹

This is a serious recognition of the state of affairs in Guyana and the Government should do something to arrest this trend. Guyana is not singular in this request. Corruption has been with us from time immemorial, and it will continue to exist. Corruption has acquired a variety of names - bribery, backhanders, swindling, embezzlement or even drug trafficking.

Corruption exists in both developing and developed countries. Corruption is the 'politics of the belly' - a Cameroon expression of origin.² Corruption grows like a tree, when it is a seedling, you can uproot it with your fingers, A few years later, you will need a bulldozer. Let us uproot it in Papua New Guinea now.³

1 Guyana Chronicle, Saturday, November 27, 1999 at 3

2 ACP-EU The Courier October - November 1999 at 60

3 The Papua New Guinea Ombudsman B1 - Monthly Newsletter November 1995

Spending a night at a hotel in Ouagadougou Upper Volta, you entrust your clothes to the hotel laundry for a flat fee, displayed in your room, of 3,000 francs CFA, which you undertake to pay simply by calling the laundry service. On his arrival, the laundryman offers you a deal. Either you can accept the hotel's offer at 3,000 francs CFA or you can give your clothes to the laundryman personally, for 1,500 francs. The quality of service will be the same, since he will be dealing with your laundry which ever option you select, and he can arrange for you to receive a hotel receipt for 3,000 francs CFA. He is offering you corruption of the hotel's pricing system.⁴

In Africa you want a passport the process is as follows⁵ -

1. You obtain the form on which is clearly marked, "Not To Be Sold." Dishing out some money for obtaining that form does not necessarily mean having paid for it. But no more money, no form.
2. At the passport office, the forms are issued by a particular department. The sum of money required from an applicant is assessed on his appearance.
3. This form has to be filled out and certain sections authenticated by a Commissioner of Oaths, supposedly a respectable member of society. Unfortunately they need money too. When they get it, the form is signed and stamped. The second hurdle cleared.
4. The most important obstacle is the main passport officer. An appointment has to be fixed with his secretary to meet him or her. Before seeing her, the palms of the messenger who opens the door have to be greased.

At the secretary's office the applicant is alone with her. For the first time a figure is quoted, from a range of prices. For an

4 Note 2 supra at 67

5 Augustine Tommy, Corruption in Africa Note 2 supra 82-83

immediate rendezvous it is in foreign currency, whereas local currency may secure you an appointment in a few months' time.

There is a snag here if you decide to come back in three months. The secretary may not be the same one and you may have to start again. Best to pay and see the boss immediately.

The condition of the boss's office indicates that he is not someone who will take just anything.

The interview is a formality. Simple question, simple answer. Slip in what you think the chief is worth in the forms and with a smile he tells you to come for it the following day.

This is still not the end of the story. You pick it up in a different department altogether. The same ceremony has to be repeated to get to the chief-delivery officer. Palms must be greased until you get on to him or the reply is simple: 'The boss has not signed it yet, come tomorrow.' That tomorrow may never come unless you do the decent thing. When the booklet is finally retrieved, it may have cost the applicant up to 20 times more than it should.

This is the procedure for nationals of whatever status. Foreigners do not need to go through all this. They meet with the boss, out of his office, sometimes in the foreigner's office, where the package is paid for with a large cash sum, and of course in foreign currency. Since the foreigner knows that this money is just for the boss, another envelope is issued for the chief's subordinates who may or may not receive it.

In two days his booklet or sometimes, booklets are issued, not by the chief himself but by his messenger who is inevitable receives his "transport".

One of the best ways of becoming wealthy in Africa is to become a politician, and indeed a parliamentarian. Better still, a government minister. You are in charge of signing project contracts. Terms differ in various countries for the different types of contracts. In Gabon, in the 1980s a contract was either

"wet" (with a lot to it) or "dry" (the opposite). This scenario is not so different from that of the struggling passport applicant - it is only the scale that has changed.

Let us take the simple issue of the Customs Officer. The newly-employed graduate goes off to learn how to become a servant of the nation. How his contribution will help build a healthy nation by bringing in the much-needed funds for the purpose. At the end of the training he gains top marks and is posted to the office. Behind the desk, he has to be content with his salary, whereas out in the field, the less-qualified junior officer who stands up most of the day has already built three apartment blocks on the outskirts of a major town to be rented out. In the junior officer's home town or village, he builds a mansion.

The young, highly-qualified well-trained, obedient civil servant in the headquarters can never achieve this. He receives his promotion regularly, whereas the field officer remains out there. It is only when he reaches a certain status that he realises the field officer had been regularly bribing his bosses with an unspecified sum not to be promoted. He is making too much money from bribes, more than he would ever make elsewhere in the department. And if he is in a good team, why change? It should be explained here that team work not only means customs but also immigration, police and other similar officers.

It is unthinkable that corruption would surface in the prestigious European Union Commission which found itself in 1998 in financial irregularities and favouritism within its own ranks. The European Parliament called for an investigation by an independent committee of experts into the Commission's conduct. The Committee's report led to the immediate and en masse resignation of the European Commission.⁶

The experiences in Africa exist in Guyana. Corruption does irreparable damage to a country and its people. A citizen of a corrupt country is looked upon as a suspect in another country. Corruption damages a country's reputation; it hinders a country's development; it reduces growth, scares away foreign investment and undermines democracy. Let us all try to faithfully to execute our duty without fear or favour, in this way we will help to eradicate this monster - corruption in Guyana.

International Ombudsman Institute

There exists an International Ombudsman Institute established in 1978 at the University of Alberta, Edmonton, Canada, which provides space, a library and administrative support for the Institute Secretariat. The Institute was incorporated as a non-profit organisation whose objects include the promotion of the concept of Ombudsmanship, its development, encouragement and support of research in the Ombudsman field. It provides programmes for Ombudsman of various countries to meet, exchange information and experience. It collects, stores and disseminates information about the Ombudsman institution. The Institute holds a conference every four years; conferences have been held in Edmonton, Alberta, Canada 1978, Jerusalem (1980), Stockholm (1984), Canberra (1988), Vienna (1992) and Buenos Aires (1996), the next to be held in Durban, South Africa (2000).

I have been invited to the conferences in Buenos Aires and South Africa but I have not been able to get the government's approval to attend.

Special Report

Article 194(3) of the Constitution provides that where the Ombudsman makes a recommendation and within a reasonable time thereafter no action has been taken which appears to the Ombudsman to adequately to remedy the injustice, he may lay before the Assembly a special report on the case. Three officers of the Guyana Police Force were dismissed by the Commissioner of Police. I find they were dismissed without a

hearing and recommended their reinstatement. The Commissioner refused to reinstate them. I therefore by letter of 30th December, to the Speaker of the National Assembly laid a special report to the National Assembly. The substance of that special report is at page 30 of this report.

I tried to speak to the Commissioner on the telephone but without success. I also wrote him of my efforts to speak to him. But he later said he was 'unaware of any effort being made by the Ombudsman to contact him'. The evidence clearly shows that he was aware of my efforts to contact him.

The Ombudsman

In the Commonwealth Caribbean, the Ombudsman is referred to by different names. In Guyana, Barbados, Trinidad & Tobago and Antigua & Barbuda, he is referred to as the Ombudsman. In St. Lucia and Jamaica, he is referred to as the Parliamentary Commissioner. But in 1999 Jamaica changed the name from Parliamentary Commissioner to Public Defender,⁷ a name commonly used by some South American countries.

Police Brutality

The evidence in a disciplinary charge against a policeman for assaulting a female member of the public in the police station was 'while she was sitting on a stool in the subordinate officer in charge office, making her statement to a constable'. The policeman' entered the office and slapped the complainant on her right side ear, pushed her on the floor and kicked her twice on her left side. He took the stool and hit her on her head with it'. The complainant was escorted to the Suddie Hospital where she was examined. Disciplinary charge was instituted against the policeman and was given a fine of five days' pay.⁸

Guyana Post Office

The Postmaster General did not reply to four of my written or telephone inquiries.⁹

7 Public Defender (Interim) Act, 1999 (Jamaica)

8 Page 28

9 Page 35

*In the Republic of Georgia, **200 judges** a few years ago were quizzed on television about their **legal competency**. About **175** flunked the test and were replaced.*

World Bank President
James Wolfensohn
- Stabroek News
Thursday February 17, 2000 at 5.

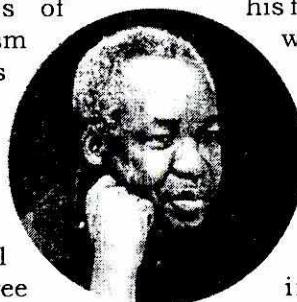
Good governance is a question of **principles** rather than of **precise rules** carved in **stone**, and must be seen as an **ongoing process**. It is not **synonymous** with **democracy**.

John Corrie, Co-Chairman
(British Conservative MEP)
on the opening of the 29th Session
of ACP-EU Joint Assembly
in Nassau Bahamas
The ACP-EU Courier
December 1999 - January 2000 at 8.

Julius Nyerere, a man of wisdom

Julius Nyerere, the former Tanzanian president died on Thursday 14 October. This simple and honest man leaves behind memories of view of socialism and his independence international

his frankness, a particular with an African face unremitting desire for from regional and powers.



Julius was born in 1921 as one of the many sons of Zanaki, a small tribe in Tanganyika. He gained a degree in history at the University of Edinburgh, returning to his country in 1952. Two years later, he transformed the Tanganyika African Association from a cultural association into a political party, the Tanganyika African National Union (TANU). He claimed that the party was the people in action, and despite the British attempts to break the movement, Nyerere turned TANU into the leading political force in the country. (70 out of 71 seats in the 1960 elections). He negotiated and achieved a peaceful transition to independence in 1961. He was elected president with 97% of the votes in 1962. (He was re-elected in 1965, 1970 and for the last time in 1980). In 1964 he achieved union between Tanganyika and Zanzibar, forming the United Republic of Tanzania. After the failure of the free-market system inherited from the British, he experimented with African socialism, which he called *ujamaa* (*spirit of community in Swahili*). He gave it up as a result of failure of certain measures, such as collectivisation of the land. He re-oriented his policies by gradually moving towards a mixed economy. In 1985, he gave up his position as head of state in order to devote himself to reforming his party. After having retired to his native village, he still frequently acted as an ambassador for the third world or as a mediator for the Organisation of African Unity (OAU).

The unity of Africa was the other main concern of this President of Tanzania. But unlike most of his African counterparts who became prominent after independence.

Nyerere really did believe in the unity of the continent. He thought that without it, the people of Africa would have no future, except as perpetual victims of imperialism and exploitation, and that Africans must develop themselves, whatever the cost.

Although his model cannot be described as a success and failed to enable his country to take off, thanks to his policies Tanzania has remained and continues to remain free of the conflicts that have troubled so many of its neighbours. And, somehow, it still enjoys one of the least effective healthcare systems and one of the highest rates of literacy in Africa, including among women, which is quite an achievement.¹⁰

REVIEW OF THE YEAR 1999

During the year 1999 I received (208) two hundred and eight complaints, 39 (thirty-nine) less the previous years.

The complaints for the year 1999 were as follows:-

- (a) within my jurisdiction
 - (i) 69 a summary of some of these complaints fully investigated is in Chapter 3;
 - (ii) 12 of the above are still under investigation;
- (b) 139 outside of my jurisdiction.

The complaints disposed of in 1999 were as follows:-

Justified	-	30
Not Justified	-	13
Withdrawn	-	14
No Jurisdiction	-	<u>139</u>
 Total		<u>196</u>

The Ombudsman has jurisdiction only over departments of Government and certain agencies. The agencies are¹:-

Central Board of Health
 Central Housing and Planning Authority
 Sea Defence Board
 Drainage and Irrigation Board

¹ Schedule Ombudsman Act Cap. 19:04; the jurisdiction of the Ombudsman has not been extended since 1971

Public Corporations established under the Public Corporations Act, Cap. 19:05

Guyana Rice Development Board

National Insurance Board

City Council, Town Council and other town councils and district councils, within the meaning of the Municipal and District Councils Act, Cap. 28:01 and local authorities under the Local Government Act, Cap. 28:02

Further I have no jurisdiction over the Judicial Service Commission, the Public Service Commission, the Teaching Service Commission, Police Service Commission², and Public Service Appellate Tribunal. Certain matters are excluded from the Ombudsman's jurisdiction³ and where the complaint has a remedy in the court⁴. The Ombudsman may conduct an investigation where complaint has a remedy by way of proceedings in the Court if satisfied in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings⁵.

2 Article 192(6)

3 Article 193

4 Article 192(3)(a)

5 Proviso to article 192(3)(a)(i)

University of Guyana Students

During the year several students from the University of Guyana visited my office and sought my assistance on certain aspects of their study programme on the powers and duties of the Ombudsman.

Overseas Visit

During the year, I received visitors from the Prisons Department of the United Kingdom, they were carrying out a study of our Prison Service and they enquired into the functions of the Office of the Ombudsman with respect to the prisoners.

Acknowledgement

I acknowledge with thanks the Reports of my colleagues from several countries which provided me with useful information of their offices. I hope with my limited financial resources to reciprocate by sending my Report to them.

Office of Professional Responsibility

This is an internal body of the Police Force which investigates complaints against the Police. It is separate from the Police Complaints Authority.

During the year 1999, I received ten complaints from the public against the police. Three of these concern police brutality. These complaints were forwarded to the Office of professional Responsibility for investigation. The investigation revealed that disciplinary action was taken against one police.⁶ The other two disciplinary actions are still in progress.

Whenever a complaint is made against a policeman for assaulting a civilian, the matter is referred to the DPP for advice. But when a complaint concerns a civilian assaulting a policeman, the police in most cases take action against the civilian and do not refer the matter to the DPP for advice.

**BUDGET OF THE OFFICE
OF THE OMBUDSMAN**

Expenses

Salaries and Allowances	5,872,000
National Insurance Scheme	113,000
Stationery and Cleaning Materials	75,000
Fuel and Lubricants	77,000
Transport, Travelling & Postage	276,000
Telephone Charges	79,000
Other Services Purchased	269,000
Contribution to International Organisation	<u>146,000</u>
 Grand Total	 <u>6,907,000</u>

Balance 184,000

G\$ 185 - US \$1

Staff of the Office of the Ombudsman

Ombudsman
 Secretary to the Office of the Ombudsman
 Confidential Secretary to the Ombudsman
 Administrative Assistant
 Accounts Clerk 11
 Typist Clerk 11
 Office Assistant
 Cleaner

SELECTED COMPLAINT SUMMARIES**SUPREME COURT REGISTRY****Ref. No. 20/99 Unlawful Termination of Services**

The complainant was employed by the Registrar of the Supreme Court as a cleaner at the New Law Library, Victoria Law Courts, Georgetown. According to her contract, her services 'may be terminated on one month's notice given by the Registrar' without giving any reason for such termination. The complainant was given a notice dated 30th October, 1998 informing her that her services were no longer required with effect from 2nd November, 1998. This was in breach of the contract of her employment because she was not given the one month's notice of termination of her services. Her complaint was referred to the Registrar on the 14th April, 1999. No reply was received although reminders were sent on 11th June, 1999 and 20th July, 1999.

On the 25th November, 1999, I informed the Registrar of my letter of 14th April, 1999 and the reminders of 11th June and 20th July, 1999 and because of her failure to reply I recommended that the complainant be given one month's pay in lieu of notice and three months' pay as damages. By letter dated December 6, 1999 the Registrar replied by saying that she had responded to my last reminder of 20th July, 1999 and that she had enclosed a copy. In fact no copy was enclosed. What was enclosed was a letter dated September 18, 1998 to the complainant giving her the required one month's notice of termination of services at October 31, 1998. This letter gave several reasons for the termination of her services.

I told her that since her letter of September 18, 1998 gave reasons for her dismissal, she could not invoke the one month's notice as stated in her contract. She had dismissed the complainant for a cause and for this the complainant should

have been given notice of the allegation stated in the said letter of September 18, 1998 and a reasonable time to reply to the said allegation and further a hearing if necessary. This was not done. I therefore informed her that my recommendation stated in my letter of 25th November, 1999 still stands, and to inform me if she would comply with my recommendation on or before 11th August, 2000. I have received no response. I am still pursuing the matter.

FORESTRY COMMISSION

Ref. No. 45/99 Redundacy of Post Librarian Assistant

The complainant was employed as Library Assistant of Guyana Forestry Commission (Commission) since 1990. During her stay with the Commission she went on several courses sponsored by the Commission to improve her skill. She improved the organisational structure of the library. She applied to have her position upgraded to that of a Librarian. The Commission appreciated her work in a letter of October 24, 1997 to her and asked to be patient. There was no complain in the performance of her duty. She reasonably expected that her request would be granted. This did not happen.

The Commissioner of Forests (ag) on September 25, 1998 issued a bulletin to all staff members informing them of the introduction of a new organisational structure that would unavoidably result in some posts being made redundant.

The Commission eventually advertised in the Daily Chronicle of 31st December, 1998 for the post of Librarian. Any person, including the complainant, would believe on reading this advertisement of 31st December, 1998 that the post of Library Assistant would still exist and that a new post of Librarian would be created. The complainant however, satisfied the requirements of the post as advertised and applied for it.

It was after the aforesaid advertisement of 31st December, 1998 and her application for the post, that the Commission

informed the complainant by letter of 1999-0-18 that it was implementing a new organisational structure and that her position of Library Assistant would be redundant and that she would no longer be required from that date. She was given severance payment which she accepted.

The Commission did not fill the post of Librarian as advertised on 31st December, 1998 but on the 5th March, 2000, the Commission again advertised for the post of Librarian, this time with increased qualification which the complainant did not possess.

I am still pursuing the matter.

GUYANA POLICE FORCE

Ref. No. 63/99 Police Brutality

A female complainant and a policeman's wife had a misunderstanding. The complainant went to the police station at Suddie, Essequibo Coast to make a complaint. At the police station she was assaulted by the policeman in the presence of other police officers.

The police took no action on the assault committed upon her by the policeman. She made several visits to the police station to enquire of the progress in the matter only to be told to come back and that the file was sent to the DPP for advice. This was a simple matter of an assault committed in the presence of police officers, yet the police sent it to the DPP for advice. If the matter did not involve a policeman, I believe the police would have acted otherwise. The complainant eventually filed a private criminal charge of assault against the policeman. The DPP advised that the policeman be charged departmentally for conducting himself in a discreditable manner. He pleaded guilty to the departmental charge and was fined five (5) day's pay. The DPP eventually discontinued the private criminal charge brought against the policeman.

The written notes of evidence against the policeman at the departmental charge were -

The Defaulter (the policeman) pleaded guilty to the charge - to bring discredit on the reputation of the Force. That is to say you assaulted the complainant contrary to section 4(d)(vii) of the Police Discipline Act Cap. 17:01.

Facts

Defaulter is stationed at the Suddie Police Station and resides with his family at Golden Fleece Estate, opposite to his neighbour, the complainant. They are not on speaking terms. On 1998-11-12 about 8.45 hours the defaulter's wife and the complainant had a quarrel, the complainant went to the Suddie Police Station to report the matter. While she was sitting on a stool in the Subordinate Officer, in charge office, making her statement to a constable. The defaulter entered the office and slapped the complainant on her right side ear, pushed her on the floor and kicked her twice on her left side. He took the stool and hit her on her head with it. The complainant was escorted to the Suddie Hospital where she was examined.

The defaulter stated that everytime he is out on duty the complainant always abuse and molest his family. On the day in question he lost control and assaulted the complainant. He was very sorry as to what he had done and stated that he would not do that again.

Findings and Recommendations

Defaulter should not take the law into his hand as he was a policeman. He is found 'guilty' as charged. Recommended that he be fined five (5) days' pay.

Ref. No. 15/98 Lance Corporal

The Commissioner of Police says that the Divisional Commander reported the lance corporal's absence from duty. The lance corporal claims that during the aforesaid period of absence he was granted leave of absence, by an inspector, his supervisor. The Commissioner by letter of 1995-08-17 deemed the lance corporal to have illegally withdrawn from the Force in contravention of section 37A(1)(b) of the Police Act Cap. 16:01 and struck him off the Force 'in accordance with the powers vested in me under the provisions of article 212(3) of the Constitution'. Under the above s. 37A(1)(b) of the Police Act an Inspector, Sub-ordinate Officer or Constable who withdraws from the Force without notice or consent is also liable on a summary conviction to a fine or imprisonment. No disciplinary or criminal charge was preferred against the Lance Corporal.¹

Ref. No. 21/98 Sergeant

The Commissioner says that the sergeant was identified as a suspect, he stayed away from work and did not produce any sick leave for the days he was absent. The Sergeant, however, claims that he delivered a medical certificate to the Deputy Superintendent, his Supervisor to cover the period of his absence. The Deputy Superintendent denied receiving the medical certificate. The Commissioner by letter of 1991-09-04 to the Sergeant deemed the Sergeant to have illegally withdrawn from the Force in contravention of section 37A(1)(b) of the Police Act Cap. 16:01 and struck him off the Force 'in accordance with the powers vested in me under the provisions of article 212(3) of the Constitution'. Under the above s. 37A(1)(b)of the Police Act an Inspector, Sub-ordinate Officer or Constable who withdraws from the Force without notice or consent is also liable on a summary conviction to a fine or imprisonment. No disciplinary or criminal charge was preferred against the Sergeant.

1 Ombudsman Report 1998 at 34, Stabroek News August 16, 22, 2000 Guyana Chronicle August 21, 25, 2000

Ref. No. 30/98 Constable

The Commissioner's letter of 1998-05-01 to me, says that the constable contended that he submitted his application for annual vacation leave to a sergeant who authorised him to proceed on leave. The sergeant denied this and said that the constable did not report for duty as he was required to do on 27th March, 1996. The Commissioner concluded by saying that he did not believe that the sergeant permitted the constable to proceed on leave and that the constable walked off the job and as such absconded and his services were properly terminated. There were four disciplinary charges, of absence without leave, which were still pending against the constable. These charges were similar to the one for which he was dismissed. Notwithstanding these charges the constable continued to work with the Force. It is while working with the Force that the Commissioner concluded that 'the constable walked off the job and as such absconded and his services were properly terminated.' No disciplinary charge was preferred against the constable.

I find that the above named three officers committed acts of misconduct under the Police (Discipline) Act Cap. 17:01(Act) and for which they should have been disciplined and given a hearing under the said Act but instead the Commissioner exercised his power under the Constitution and under the Police Act to dismiss the officers without a hearing. This he cannot do, he must follow the procedure set out under the above Act. The Commissioner has no power of dismissal without a hearing and, this applies also when he exercises his powers under the Constitution and the Police Act. In all cases an officer must be given a hearing before the Commissioner decides to exercise his powers of dismissal. I therefore by letter of 3rd November, 1998 to the Commissioner recommended their re-instatement. The Commissioner on 24th November, 1998 replied to my letter of 3rd November, 1998 but referred only to the case of the lance corporal that he was removed from office under article 212 (3) of the Constitution. I did not hear from him again. The Commissioner has not implemented my recommendation, I

therefore by letter of 30th December, 1999 to the Speaker of the National Assembly laid a special report to the Assembly under article 192 (3).

I tried again to speak to the Commissioner on the matter. On 99-01-05, my Secretary spoke to his Secretary and she said that she would find out from the Assistant Commissioner (Admin.) what was the position of the matter. She received no reply.

On 99-02-18 and 99-02-19, I tried also to speak to the Commissioner on the telephone but on both occasions his Secretary told me that he was at a meeting. She asked of the nature of the matter I wished to speak to him about. I told her. She said she would look into it. I also told her that whenever he was free if he could return my call. I received no call.

One would expect in the normal course of business his secretary would have informed him of my efforts to speak to him. If it would have been otherwise the affairs of Government would come to a standstill. On the 11th March, 1999 I wrote the Commissioner as follows -

I enclosed a copy of my letter dated 3rd November, 1998 sent to you. In it I asked you if you would inform me on or before 11th December, 1998 whether you have accepted my recommendation. I received no reply except one dated 1998-11-24 concerning the lance corporal. This reply appears not to have accepted my recommendation with respect to the lance corporal.

On 99-01-05, my Secretary spoke to your Secretary and she said that she would find out from the Assistant Commissioner (Admin.) what was the position of my aforesaid letter. I received no reply.

On 99-02-18 and 99-02-19, I tried to speak to you on telephone but on both occasions your Secretary told me that you were at a meeting. She asked of the nature of the matter I wished to speak about. I told her. She said she would look into it. I also told her that whenever you are free if you could return my call. I

received no call. There is nothing more I can do with this matter except to make a report to the National Assembly according to article 194(3) of the Constitution.

This matter has been going on for years and the complainants have been making regular enquiries of their matters.

With very best wishes.

Yours sincerely,


S.Y. MOHAMED
OMBUDSMAN

The Commissioner acknowledged the aforesaid letter of 11th March 1999 and said that the matter concerning the sergeant and the constable was receiving attention but offered no explanation or excuse for not returning my telephone calls.

In another letter of the 14th March, 2000 to Mr. Edward Wills, D.S.M on another matter, I mentioned my aforesaid letter of 11th March, 1999 and asked him what help he could give in this regard. Mr. Wills replied on March 24, 2000 saying that the 'complaint made to Commissioner was brought to his notice and same is receiving positive attention'. If by chance, which is unbelievable, he did not receive my telephone calls, he had notice of my letter of 11th March, 1999 and my letter of March 24, 2000 to Mr. Wills.

The matter appeared in the newspaper and the Commissioner went on to state that he was 'unaware of any effort being made by the Ombudsman to contact him' and 'neither had he any indication that the Ombudsman was in communication or attempted to communicate with him'. (Guyana Chronicle, Monday, August 21 and 25, 2000).

By letter of August 28, 2000 the Commissioner, after an absence of one year and ten months, and after two letters dated

17th June, 1999 and 6th December, 1999, replied to my letter of November 3, 1998 and said, that the officers were deemed to have illegally withdrawn from the Force in accordance with section 37A (1)(b) of the Police Act Cap. 16:01. He offered no explanation or excuse for not entertaining my requests to speak to him.

By letter of November 1, 2000 I replied to the Commissioner's letter of August 28, 2000 and asked him to reconsider his stand on the matter and to accept my recommendation. I also referred to my various attempts, stated above, to speak to him on the matter. I told him that in England a department might disagree with the Ombudsman's recommendation but it would however implement the Ombudsman's recommendation out of respect of his office.

The Commissioner by letter of November 20, 2000 replied to my letter of November 1, 2000, maintained his stand on the matter and that the officers could apply to rejoin the Force. He again never mentioned any reasons why he did not entertain my requests to speak to him.

From the foregoing the Commissioner has refused to accept my recommendation, and was aware of my attempts to speak to him but denied this in the newspaper.

The Commissioner owes an apology to the nation by saying that he was unaware of my approaches to speak to him when the evidence manifestly disclosed that he ignored such approaches.

The parliamentary intention was that the reports of the Ombudsman should be loyally accepted by the local authorities concerned and should not dispute an Ombudsman's report and should carry out their statutory duties in relation to it.²

2 R v Commissioner for Local Administration ex p Eastleigh BC 1988) 3 All ER 151 at 156

GENERAL POST OFFICE**Ref. No. 43/99 Denial of Superannuation Benefits and Leave**

The complainant presently residing in the United States of America wrote the Personnel & Industrial Relations Manager of the General Post Office informing him that he had not received his pension, gratuity and his entitlement to his thirty-five (35) days' leave for the year 1997. He was unsuccessful and sought my intervention.

I wrote the Corporation on 22nd June, 1998 about the matter and received no reply. My officer was promised on the telephone that a reply would be forth coming, but she received none. I also spoke to the General Post Master, he promised to send a reply. I received none.

By letter of 23rd June, 2000 I wrote the Post Master General, recommending that the complainant be paid his gratuity, pension and 35 days leave for the year 1997. I asked him to inform me on or before the 24th July, 2000 whether he would implement my recommendation. I received no reply. I am still pursuing the matter.

NATIONAL INSURANCE SCHEME**Ref. No. 35/99**

Two complainants were unable to get a record of their contributions from the NIS. As a result of my intervention they were able to receive such a record.

Ref. No. 68/99

One complainant was given a grant but no pension. I wrote the NIS on the matter but did not receive a reply. I was informed by the complainant that he was given a pension.

Ref. No. 4/99

Two complainants were interdicted from duty on half pay until the investigation of certain alleged irregularities at the NIS. Eight days after the interdiction they were dismissed by the NIS with immediate effect. They were not placed on any disciplinary charges. I wrote the NIS on the matter. After sometime, one of the complainant rang to say that NIS has decided to re-instate them, but I have not been so informed by NIS.

MINISTRY OF EDUCATION**Ref. No. 10/99 Watchman not being paid annual leave, etc.**

Eight security guards employed by the Ministry of Education complained that they were not receiving annual leave, sick leave, overtime, etc. I referred their complaints to the Ministry of Education. After consultation with the Ministry of Labour, the Ministry agreed to pay the guards the following:-

(1) Guards are presently paid fifty-five dollars per hour. The Ministry however proposes to pay the guards an additional sum.

(2) Guards who were employed on an hourly basis are entitled to one (1) day leave with pay for every twenty (20) days worked. This would amount to eighteen (18) days in a year. Presently guards attached to the Ministry of Education are granted one (1) day per month. This however will be regularized with effect from February, 2000.

(3) The granting of sick leave with pay is not compulsory. Notwithstanding this, it has been decided to grant guards seven (7) days sick leave with pay with effect from February, 2000. Further payment for any extension of sick leave will be considered at the discretion of the Permanent Secretary.

(4) Guards attached to the Ministry of Education are paid overtime at double time rate for Saturday, Sundays and holidays and time and a half for any other time beyond eight (8) hours a day.

APPENDIX A**STATISTICAL SUMMARY OF COMPLAINTS**

1999	Withdrawn	Justified	Not Justified	Pending	Jurisdiction Declined	No Jurisdiction	Total
<u>National Insurance</u>		5	2	4			11
<u>Ministry of Education</u>		10					10
<u>Guysuco</u>	1						1
<u>National Library</u>			1				1
<u>Guyana Water Authority</u>		2	2				4
<u>Ministry of Finance (Valuation)</u>		1					1
<u>Lands & Surveys Department</u>				3			3
<u>Region 3</u>				1			1
<u>Special Constabulary</u>			1				1
<u>Ministry of Labour & Health</u>	1		2				3
<u>Guyana Electricity Corporation</u>			1				1
<u>Guyana Defence Force</u>	2						2
<u>Inland Revenue</u>	1						1
<u>Ministry of Housing</u>	2						2
<u>Supreme Court Registry</u>	1	1					2
<u>Deeds Registry</u>	1	1					2
<u>Guyana National Energy Authority</u>		1					1
<u>Legal Advice & Miscellaneous</u>					98		98
<u>Georgetown Sewerage & Water Commission</u>	1						1
<u>Courts</u>					11		11
<u>Transport & Harbours Department</u>			1				1
<u>Ministry of Agriculture</u>	1						1
<u>Region 2</u>		1		1			2
<u>Police</u>	3	7	3	2		4	19
<u>Prisoners</u>		1		1		22	24
<u>Lawyers</u>						4	4
TOTAL	14	30	13	12	-	139	208

APPENDIX B**FUNDAMENTAL RIGHTS AND FREEDOMS
OF THE INDIVIDUAL**

40.(1) Every person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, disease, ignorance and want. That right includes the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely -

- (a) life, liberty, security of the person and the protection of the law.
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation.

(2) The provisions of Title 1 of Part 2 shall have effect for the purpose of affording protection to the aforesaid fundamental rights and freedoms of the individual subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

PROVISIONS TO SECURE PROTECTION OF LAW

144.(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) It shall be the duty of a court to ascertain the truth in every case provided that every person who is charged with a criminal offence -

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;
- (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence or he fails without reasonable excuse (the proof whereof shall lie on him) to attend court.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that

behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or nature than the most severe penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other tribunal prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other tribunal, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings, for the determination of the existence or extent of any civil right or obligation before any other tribunal, including the announcement of the decision of the court or other tribunal, shall be held in public.

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(10) Nothing in the preceding paragraph, shall prevent the court or other tribunal from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other tribunal -

- (a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of decency, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required so to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -

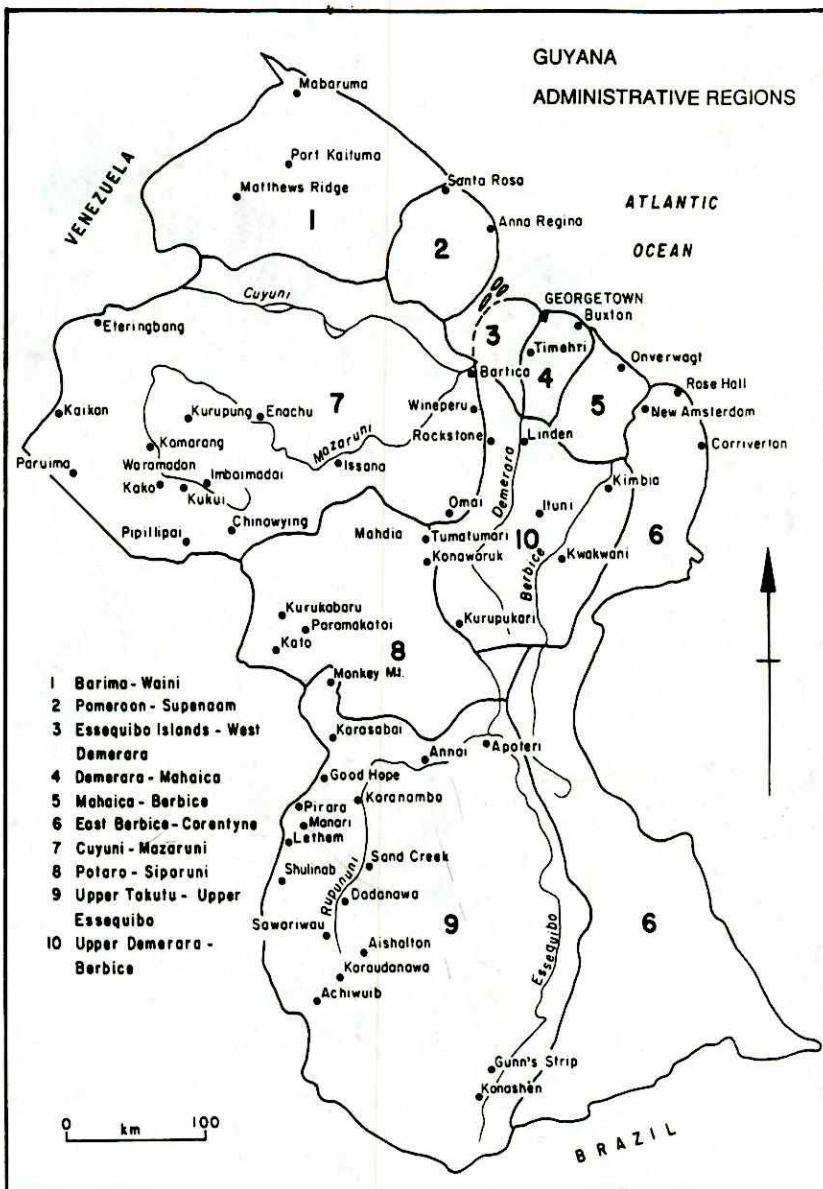
- (a) paragraph (2) (a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) paragraph (2) (e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (c) paragraph (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that

member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention the provisions of paragraph (1), paragraph (2) (d) and (e) and paragraph (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Noting contained in paragraph (2) (d) shall be construed as entitling a person to legal representation at public expense but, subject thereto, it shall be the duty of the state to ensure that every person charged with a criminal offence is given fair trial and accordingly to make provisions for legal aid to be given in suitable cases.

(14) In this article "criminal offence" means a criminal offence under the law of Guyana.

APPENDIX C**Map of Guyana**

APPENDIX D

Map of the Caribbean Community Countries

