

THE  
**PARLIAMENTARY DEBATES**

OFFICIAL REPORT

[VOLUME 2]

PROCEEDINGS AND DEBATES OF THE SECOND SESSION <sup>PART FOUR</sup> ~~OF THE NATIONAL~~  
<sup>FIRST</sup> ~~ASSEMBLY~~ OF THE ~~SECOND~~ PARLIAMENT OF GUYANA UNDER THE  
CONSTITUTION OF GUYANA.

*9th Sitting*

*Tuesday, 29th August, 1967*

NATIONAL ASSEMBLY  
*The Assembly met at 2.00 p.m.*

*Prayers*

*[Mr. Deputy Speaker in the Chair]*

*Present*

*His Honour the Deputy Speaker, Mr. R. C. Tello.*

*Members of the Government*

*Ministers*

*The Honourable L. F. S. Burnham, Q.C.,*

*Prime Minister*

*Dr. the Honourable P. A. Reid,*

*Minister of Trade*

*The Honourable N. J. Bissember,*

*Minister for Parliamentary Affairs (Leader of the House).*

*The Honourable R. E. Checks,*

*Minister of Local Government*

*The Honourable E. F. Correia,*

*Minister of Communications*

*The Honourable C. M. L. John,*

*Minister of Home Affairs*

*The Honourable R. J. Jordan,*

*Minister of Agriculture and Natural Resources*

*The Honourable W. O. R. Kendall, C.B.E., J.P.,*

*Minister of Health and Housing*

*The Honourable C. A. Merriman, J.P.,*

*Minister of Labour and Social Security*

*The Honourable S. S. Ramphal, C.M.G., Q.C.,*

*Attorney-General and Minister of State.*

*Parliamentary Secretaries:*

Mr. D. B. DeGroot,  
*Parliamentary Secretary, Office of the Prime Minister*

Mr. G. Bowman,  
*Parliamentary Secretary, Ministry of Agriculture and Natural Resources*

Mr. O. E. Clarke,  
*Parliamentary Secretary, Ministry of Education*

Mr. P. Duncan,  
*Parliamentary Secretary, Ministry of Local Government*

Mr. J. G. Joaquin, O.B.E., J.P.,  
*Parliamentary Secretary, Ministry of Works and Hydraulics*

Mr. C. V. Too-Chung,  
*Parliamentary Secretary, Ministry of Finance.*

*Other Members:*

Mr. W. A. Blair  
Mr. J. Budhoo  
Mr. M. Kasim  
Mr. R. G. B. Field-Ridley  
Mr. D. Mahraj  
Mr. H. Prashad, J.P.  
Mr. T. A. Sancho  
Mr. J. H. Thomas  
Rev. A. B. Trotman  
Mr. H. M. S. Wharton, J.P.

*Members of the Opposition*

Dr. C. B. Jagan,  
*Leader of the Opposition*

Mr. B. H. Benn  
Mr. Ram Karran  
Mr. R. Chandisingh  
Mr. H. J. M. Hubbard  
Mr. C. V. Nunes  
Mr. E. M. G. Wilson  
Mr. M. Hamid, J.P.  
Mr. D. C. Jagan  
Mr. H. Lall  
Mr. Mooneer Khan, J.P.  
Mr. Y. Ally  
Mr. L. Linde  
Dr. S. A. Ramjohn  
Mr. E. M. Stoby

Clerk of the National Assembly – Mr. F. A. Narain

Deputy Clerk of the National Assembly – Mr. M. B. Henry.

**ABSENT**

<b>The Honourable P. S. d'Aguiar,</b> <i>Minister of Finance</i>	..	..	..	..	..	<i>on leave</i>
<b>The Honourable Mrs. W. Gaskin,</b> <i>Minister of Education</i>						
<b>The Honourable M. F. Singh,</b> <i>Minister of Works and Hydraulics</i>						
<b>The Honourable M. W. Carter,</b> <i>Minister of Information</i>						
<b>Mr. W. G. Carrington</b>	..	..	..	..	..	<i>on leave</i>
<b>Mr. A. Chase</b>						
<b>Dr. Charles Jacob, Jr.</b>						
<b>Dr. F. H. W. Ramsahoye</b>						
<b>Mr. J. R. S. Luck</b>						
<b>Mr. R. D. Persaud, J.P.</b>						
<b>Mr. M. N. Poonai</b>						
<b>Mr. S. M. Saffee</b>						
<b>Mr. M. Bhagwan</b>	..	..	..	..	..	<i>on leave</i>

## ANNOUNCEMENTS BY THE SPEAKER

### Leave to Member

**Mr. Deputy Speaker:** The hon. Member Mr. Bhagwan has asked to be excused from today's sitting.

## PUBLIC BUSINESS BILL - SECOND READING OMBUDSMAN BILL

A Bill intituled:

“An Act to make provision for matters supplementary and ancillary to those provided for by part 2 of Chapter V of the Constitution of Guyana.” [The Prime Minister.]

**The Prime Minister (Mr. Burnham):** At the Constitutional Conference held in November of 1965, out of which Conference came the Constitution of an independent Guyana, it was agreed by those present and represented at the Conference that there should be instituted in Guyana the office of Ombudsman. The Constitution Report itself has been debated in this House and its recommendations approved and subsequently embodied in the Constitution.

It was thought fit by one of the political parties present that there should be the office of Ombudsman and this was agreed to by the other political party. In fact, some may recall that in early 1965 the Government, through the Attorney-General, did propose that this office should be established when there was a mission from the International Commission of Jurists. It was decided at the Conference of November 1965 that:

“The Ombudsman will have jurisdiction to investigate complaints regarding the acts, missions, decisions and recommendations of prescribed public bodies or authorities (including statutory corporations and governmental agencies), and of their officers or employees, which affect the interests of individuals or bodies of persons.”

I was reading there from Appendix I to Annex B of the Report of the British Guiana Independence Conference 1965.

Other matters were adverted to: for example, as to whether the Ombudsman should be able to act upon his own initiative, or should merely be able to investigate, make recommendations and report after there had been an application to him by a private individual, a body or a Minister. It was decided at the Conference, and embodied in the Constitution, that the Ombudsman should be able, on certain occasions, to act on his own initiative without necessarily receiving a complaint from an aggrieved person or a request from a Minister of the Government. The Ombudsman, it was proposed, should have the power to investigate all Government Departments and tender boards and Parliament was authorised, by the Constitution, to add any public bodies or authorities to the Ombudsman's jurisdiction in so far as investigation was concerned.

There were certain matters which were excluded from the competence of the Ombudsman, those which dealt with or impinged on the exercise of powers to preserve the safety of the state, or those which Ministers certified as affecting relations with other countries. It was also decided to exclude any matters which had to do with the exercise of powers in relation to investigating crime or determining whether a matter should go to the courts. The Ombudsman would have certain powers, even if a case came properly within his jurisdiction, to refuse to deal with it if there was a proper remedy aliunde, or if it was, in his opinion, something arising out of a frivolous and vexatious complaint.

It should be noted that the Ombudsman's appointment and general powers are dealt with in Part 2 of the constitution of Guyana, Articles 52 to 56. A perusal of these Articles would show that, for the effective functioning of the Ombudsman in his office, certain other ancillary provisions have to be enacted prescribing the procedure, the mode of taking

[THE PRIME MINISTER]

evidence, the implications of certain types of evidence, and the capacity of the Ombudsman to require certain types of evidence on certain specific cases and also to exclude certain types of evidence.

It will also be noted that, since the power was given to the Parliament to add any new bodies, when dealing with procedural matters it would not be amiss to add certain bodies to those specified and referred to in the Report to which I made reference before and in Articles 52 to 56 of the Constitution.

Therefore, basically, the object of this Bill which has been introduced into this House is to provide for ancillary or procedural matters as well as to add certain bodies the investigation of whose officers or administrative acts would come within the ambit of the Ombudsman's investigational powers.

The Bill which is before this House is a rather short Bill. I doubt whether there is any necessity to lecture or attempt to lecture on the excellence of the institution of the Ombudsman, the necessity for there being an Ombudsman, the advisability of there being an Ombudsman. It may be apposite to note that though Guyana is the first Commonwealth country in the Caribbean to have instituted the office of Ombudsman, it is not the first country in the Commonwealth to have this institution.

2.25 p.m.

There is, by statute, an Ombudsman in New Zealand by virtue of an Act which was passed in September, 1962, and the Guyanese Ombudsman, who was appointed on the 26th May, 1966, under the Constitution, had the opportunity to go to New Zealand as the guest of the Government of that country and to observe and learn at first hand how that institution works. I must say that he benefited considerably from that stay in New Zealand and has been most helpful to the Government, both through the literature which he was able to bring back and the notes he was able to

make of what he observed, in the drafting of this bit of legislation, which is before the House today.

I do not consider it necessary to go into any great detail at this stage. Perhaps it would be sufficient for me to point out that according to the arrangements here, Clauses 2 and 3 are intended to provide for the procedure; how a complaint is to be made, in what form, and matters like that. [*Mr. Ram Karran*: "Speak up."] I do not have, like my hon. Friend without a stomach, to shout to prove that I have something inside.

It is noteworthy that one finds here in Clause 2 (2) that if a person is detained, even in prison, and that person makes a complaint addressed to the Ombudsman, the envelope, if sealed, has to be forwarded to the Ombudsman unopened because one wants to be quite sure that there is no tampering or there is no improper influence introduced as between the complainant and the Ombudsman, but that the Ombudsman should be in receipt of exactly what was intended for him by way of complaint and that until he considers it necessary to investigate the complaint, what transpires is entirely a matter between himself and the complainant.

Section 4 deals with matters of evidence and specifically, perhaps, I may refer to Section 4, subsection 3, which allows a person who is bound by the provisions of the Official Secrets Act with respect to secrecy or in respect of any Act of Parliament replacing the same, to continue to enjoy the right to non-disclosure unless it is with respect to a matter concerning the complainant and the complainant gives in writing his consent to such disclosure.

What is interesting and, I would submit, significant, is the fact that in an investigation by the Ombudsman, the protection of secrecy conferred by the Official Secrets Act, does not obtain and that no person giving evidence in an investigation being held by the Ombudsman can claim the protection of the Official Secrets Act or any Act of the Guyana Parliament replacing the same provided the

matter concerns the complainant and the latter has agreed.

Section 5 deals with the right, nay, the duty of the Attorney-General to certify in writing that any document or paper or thing should not be exhibited in an investigation if it is considered that such production or disclosure would prejudice the security of defence or international arrangements of Guyana, or would involve the disclosure of the deliberations of the Cabinet, or would involve the disclosure of proceedings of the Cabinet or any Committee of the Cabinet relating to matters of a secret or confidential nature which would be injurious to the public interest.

Section 6 deals with the obligation of secrecy imposed upon the Ombudsman and any officers operating under his aegis or umbrella, so to speak.

Section 7 deals with the right to question any proceeding before the Ombudsman for want of form in any Court or forum, which right is distinctly not allowed and even on any other matter except for lack of jurisdiction. So that if the Ombudsman, it would appear to me, decided that the subject matter of a particular complaint was within his jurisdiction to investigate and any other interested party thought the contrary, a declaration could be sought, no doubt, in the High Court.

2.35 p.m.

I would think also that if the Ombudsman held that he had no jurisdiction, it is possible, perhaps, that that decision by him can be questioned. But I should like it to be noted that this is a matter that will eventually have to be determined by a court; and I do not want to find myself in the position in which a British Chief Justice once found himself, in giving an undertaking as to the interpretation of a particular bit of legislation when he was Attorney-General, and when sitting as Chief Justice admitting that he was wrong and giving a contrary interpretation.

Now, Section 8 deals with the privileges which are attached to proceedings before the

Ombudsman, and Section 9 deals with the power and right of the Ombudsman to enter upon any premises, with or without the consent of the owners or occupiers thereof, for the purpose of carrying out any inquiry or investigation which is his responsibility at the time. There is, of course, to be noted the provision contained in subsection (3) of Section 9 to the effect that the Attorney-General may, from time to time by notice to the Ombudsman, exclude him from exercising the right of entry on premises, if the Attorney-General is satisfied that the exercise of such power of entry would be prejudicial to the security, defence or international relations of Guyana (including Guyana's relations with the Government of any other country or with any international organisation.)

Section 10 provides for the power of the Ombudsman to delegate his functions to persons. This power can either be general or with respect to particular cases, and such delegation would not restrict the Ombudsman from exercising, even while the delegation lasts, such powers as inhere in him under the Constitution or the provisions of this Bill when it becomes an Act.

As envisaged in the Constitution Report of November, 1965, provision was made in the Constitution and also in this legislation which is before the House, for the Ombudsman from time to time to publish reports, in general or in particular cases. This power in Section 11 is in addition to the obligation of the Ombudsman to lay an Annual Report before this House or to have laid before this House an Annual Report. If after he has investigated a matter no action is taken on his recommendations after he has found that there has been a prejudicial act, it is his duty, in addition to his obligation, to make a special report to this House, to inform the complainant or the body and or person against whom the complaint is made, as to the outcome of his investigations and the conclusions and decisions at which he has arrived.

[THE PRIME MINISTER]

Generally, it is considered necessary in circumstances like these to give teeth to the legislation. There should be a provision setting out offences, and this has been done in Section 12. The Section to which I refer deals with offences arising out of obstructing, hindering or resisting the Ombudsman in the exercise of his powers, refusing to comply or failing wilfully to comply with lawful requirements of the Ombudsman or any other person given certain powers under the Act, the making of false statements or attempts at misleading the Ombudsman — a most salutary provision in the context of our experience in this country where people are most free with their lips and allegations with no basis in proof — and also for acting in any manner inconsistent with his duty under certain provisions which are contained in Section 6.

This is an offence which can be committed by the Ombudsman because, under Section 6 (a) the Ombudsman or person performing the functions appertaining to the office of the Ombudsman or any office or employment thereunder, shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any of the provisions of Articles 53 and 54 of the Constitution. If the Ombudsman is in breach of that obligation to maintain secret certain formation or confidential documents which have come to his notice, he would be guilty of an offence under Section 12 (d) and he, like any other person who commits an offence under Section 12 shall be liable, on summary conviction, to a fine not exceeding \$500 or to imprisonment of a term not exceeding 12 months or to both such fine and imprisonment. This is merely put in *ex abundanti cautela*. It is not anticipated that there will be many breaches or many offences committed under section 12.

2.45 p.m.

Clause 13 deals with the mode of adding to the competence of the Ombudsman other

bodies and institutions. The Governor-General may by order amend the schedule which is appended to this Bill by additions or deletions or substitutions. In the schedule four bodies have been set down and it is not intended that this should be an exhaustive list of the bodies which we would like to see the Ombudsman having the right to investigate on complaint. The bodies here appearing in the schedule are —

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

The criterion for naming these four bodies is that they touch, or can touch, on personal, proprietary and economic interests of large sections of the community and it is only fair that, if we have the institution of Ombudsman, the Ombudsman should be capable of entertaining and investigating a complaint by any person or body alleging that there has been some wrong done by the managers, officers or employees of these statutory boards. I now formally move that the Ombudsman Bill, No. 14 of 1967, be read a Second time. [*Applause.*]

Mr. Hubbard: Mr. Speaker, the Bill which is before us is a procedural matter and in respect to its provisions relating to procedure we can have no quarrel. The duties of the Ombudsman, his functions and powers are set and circumscribed by the Constitution. This Bill merely seeks, as the Prime Minister has pointed out, to spell out the manner in which people may proceed to the Ombudsman and the manner in which he must deal with what is put before him.

The Ombudsman is an institution and, like every other institution, its strength or weakness will stem from the individual on whom the institution is founded. I do not propose to deal with personalities in this Bill. The Ombudsman has been chosen; he is in office; he was a previous Director of Public Prosecutions and in respect of that directorship there is a question mark known to some of us. All that notwithstanding, we leave the Ombudsman where he is.

There are two features of this Bill, however, which follow a pattern that seems to thread its way through most of the major legislation enacted or in the course of being enacted by this Government. The first is the denial of right: in clause 3 it is provided that no one shall have a right to be heard. The Ombudsman may come to his conclusions; the Ombudsman may decide, but no one in respect of whose problem the Ombudsman has jurisdiction will have a right to be heard.

It could be, and often is, the case that an individual wants a right to be heard in a matter where a hearing is not absolutely necessary but no one likes to feel that an institution, which is an individual, has reposed in it absolute discretion whether or not to hear an individual when he has a complaint.

I myself have little faith in the Ombudsman as an institution and his first Report is indicative of the limitation of his jurisdiction. He says:

“During the seven months’ period I received ninety-four complaints. Seventy-nine of these were not proceeded with because of lack of jurisdiction, three were withdrawn by the complainants, eleven were dealt with and one was still receiving attention at the end of the year.”

Of ninety-four complaints received by the Ombudsman, seventy-nine could not be proceeded with because no jurisdiction lay with the Ombudsman. His powers are circumscribed by the Constitution.

As I said, this Bill only seeks to provide the steps by which the public goes to him and the steps by which he evades the public or deals with what the public puts forward according to his absolute discretion.

There is another clause which deals with the right of the Attorney-General to exclude the Ombudsman from premises if in the discretion of the Attorney-General his entry upon those premises could be prejudicial to the security, defence or international relations of Guyana.

2.55 p.m.

These are words we have been hearing a great deal about ever since this country

became independent. Actually, it was the South African Luyt who made all most conscious of this business of security, the same South African Luyt who was honoured by this National Assembly in the absence of this Opposition.

We have had legislation specifically to deal with security. The legislation is known as the National Security (Miscellaneous Provisions) Act whereby, for possessing a canister of fly spray, I can be accused of possessing ammunition and be imprisoned. This question of security seems to be an obsession with this Government. This Government has used its powers with such discrimination that those persons constituting the Government must be well aware of the little esteem in which they are held.

Defence is in the hands of this Government and, in the minds of this Government, it is a relative term. We have the Venezuelans occupying our territory at Ankoko. We had the Throne Speech the other day which stated the Government’s determination to ensure our territorial integrity; and we have the fraternisation with these Venezuelan aggressors, as the Attorney-General and Minister of State (Mr. Ramphal) called them. Therefore, one is left to wonder what is meant by the word “defence”. I should be surprised if we do not one day find an instance where a citizen of Guyana, by birth, was excluded by fiat of the Attorney-General and Minister of State from visiting premises which are open to Venezuela or some other body hostile to the people and territory of Guyana.

Then there is the question of international relations. I presume that if the Ombudsman was in the Ministry of External Affairs — wherever that may be; I think it is in three places — it would be prejudicial to international relations. I say that there are instances where discretionary powers must lie but I am disturbed to find that this Government seeks, through this National Assembly, to claim a discretionary power where it really is unnecessary.



[MR. HUBBARD]

I would ask the Government to relax a little on this fixation about discretionary powers and security because do not let us forget that a nation's security is best preserved when all, or the overwhelming majority, of the people of a country feel that they have equal opportunities with everyone else under the Government and the law, when they feel that the endeavours of the Government are for the people in the territory and not for absentee landlords or absentee factory owners.

There were days when people maintained vocally and at length, in this ancient Chamber and outside of it, that the curse of this country was the absentee landlord. The new concept of development which is peddled by this Government is that we should supplement absentee landlords with the absentee factory, owners. To pursue such a policy is to undermine the security of the country by destroying its economic bases and by giving external agencies lien after lien upon the birthright of our people.

The Ombudsman is an institution which springs from a necessity to reassure public opinion that the Government's action may be reviewed. It is, in itself, an admission that all is not well and that the population is divided. But the institution of the Ombudsman as circumscribed by the Constitution, which was worked out by the coalition parties and British imperialists, prohibits the Ombudsman from functioning in the area where some overseeing by an outside authority is most necessary at the present time.

I cannot say for certain but I would presume — and presume not unreasonably — that the matters brought before the Ombudsman in the seven months and which could not be entertained for want of jurisdiction, were mainly matters pursuant to discrimination in employment, promotion or discipline in the Public Service.

3.05 p.m.

The Civil Service Association has been, as we well remember, most critical about the Public Service Commission. I do not know that it would be satisfied by an expansion of the Ombudsman's powers to include an enquiry into the activities of the Public Service but it is a terrible indictment of that institution indeed, I refer to the Public Service Commission, when those who come within its jurisdiction seek to have set upon it, a board of review. A board of review over the Public Service Commission would, in fact, amount to an expansion of the powers of the Ombudsman but without using the institution of the Ombudsman.

The other question that arises is the adequacy of the financial provision made by this Government to enable the Ombudsman to function efficiently even within a circumscribed area. The Ombudsman, on first appointment, operated from the house in which he lived and he had to type his own letters and things like that. I hope that this individual and this institution will be treated somewhat better than the other Constitutional institutions. The Elections Commission has not been so well treated because the Elections Commission, as far as I know, does not even have a vote on which to get paper and a typist, or a secretary to summon members to a meeting.

The Government has put into the Constitution this Ombudsman and excluded a main centre of public concern. We conclude that the Ombudsman was put into the Constitution for the same reason that that other institution was written in, the institution of consultation, something which looks good on paper, which helps to give the Government a good Tory press, but which does nothing to bridge the divisions within our community. This may tend to breed misunderstanding of the functions and powers of the Ombudsman, and thereafter, the belief, arising out of that misunderstanding, that people are being shoved around, that in reality the Ombudsman has no jurisdiction, and we may

well find that the price we pay for a good image abroad is a strengthening of division rather than a healing of our wounds.

The list of cases dealt with by the Ombudsman is very routine. The Ombudsman is required to deal with claims for refunds of income tax and he can boast that the claims have been rectified; the income tax has been refunded. Now, if this Ombudsman were a gift of self-sacrificing, free, public labour it would not be implausible, but when the Ombudsman is the costly institution that it is, it becomes tragic that we have to spend the money we have spent on the Ombudsman, and will be required to spend later on if he is to delegate his functions to a sub-Ombudsman or Deputy Ombudsman, just to have claims for refunds rectified.

Another claim: momentous! of the greatest public concern! It is a claim against the Ministry of Education against the delay in notification of a pension award, and the judgment of the Ombudsman is that the claim is not justified.

Of course, we do not know from what is written here whether the claim is not justified or whether the claim that there was delay in notification is justified. The claim of the pensioner, or the claim of delay, whatever it is, it is too much money to be spent on this Ombudsman to have these matters corrected.

### 3.15 p.m.

Then we have another claim, a momentous claim against the Post Office — delay in delivery of letters. Well, I can say from personal experience that no claim concerning a delay in the delivery of a letter by the Post Office is ever unjustified. I have seen a case where a registered letter from New Amsterdam took 14 days to reach a Post Office Box in Georgetown, and I have seen a case where a letter sent by ordinary post took 4 days less — 10 days — so I can well understand the good Ombudsman finding that a claim that the Post Office has delayed the delivery of a letter is justified.

The Post Office does not ever reply to letters. Let me give you an example from my personal experience. I wrote a letter to someone abroad, had it registered, paid for an acknowledgment receipt, and the card which should have borne the addressee's signature was returned to me unsigned. There was no date stamp from the Office. I wrote and sent a letter which was delivered, then after waiting a week, I sent a copy of the letter to the Ministry asking whether this letter had been received. After several days I received a cyclostyled letter acknowledging it and then about 10 days afterwards, I received a letter saying that the letter and the reminder had both been received and that I might expect action.

Again, we found that the Ombudsman judged complaints concerning "Delay in replying to letter and discourtesy" to be justified. I think that the Ministry of Information, after this procedural Bill is passed, might be persuaded to spend some of the \$50,000 that we gave it yesterday in informing the public minds of what the Ombudsman can do and what he cannot do, and in trying to prevent this institution from wasting expensive public time. It may well be that the public servants are frustrated. But that is not the fault of the public servant. It is the fault of those who have persuaded him that his only lot in life is frustration, that promotion can only be given to a very select few and the rest of them have to remain where they are.

This is a new institution in most parts of the world, and I hope that the Government will alter its attitude in those areas of public business which are excluded from the Ombudsman's jurisdiction so that the people as a whole may feel secure and content; and that those whose job it is to serve the public may likewise feel secure in their employment and be possessed of a reasonable expectation that selfless endeavour will be appreciated irrespective of party affiliation. In so doing, we will have the Ombudsman functioning as he was

[MR. HUBBARD]

intended to function when first set up in the original country.

I wish to say that for our part, the procedural legislation which is before us presents little that is good. We are convinced that the institution of the Ombudsman is a fraud upon our own people and upon people in the world at large.

Mr. Ram Karran: Mr. Sydney King who was at one time a member of the People's Progressive Party used to say that the capitalists were willing to do anything for the working-class people, even to pray for them. This procedural manoeuvre that we are seeing here today is, to my mind, an exercise by the Government in attempting to pray for unfortunate people, without attempting to do anything whatever to relieve them.

3.25 p.m.

Among other things, this Bill seeks to allow the Ombudsman to investigate certain statutory boards. What boards are named? The Central Board of Health, the Central Housing and Planning Authority, the Sea Defence Board and the Drainage and Irrigation Board. Anyone conversant with these statutory boards will recognise that they are impotent statutory boards.

I recall a case where my friend, the former Minister in the Interim Government for Communications and Works and for the Sea Defence Board passed a resolution that Sea Defences should be put up on the area bordering Mr. Fraser's estate. Mr. Fraser was a member of the Interim Government. My friend will recall that even though the Board made such a decision it was not law; something else had to be done, but the Government, quite unconstitutionally began to build the sea defences in that area even though the sea was nearly three miles away from the country road and there were other sections where the sea was quite near to people's houses.

This is only an illustration to show that the institutions which the Ombudsman will have power to investigate are themselves spoils. One would have thought that the Government would have discontinued such institutions. One would have thought that the boards included in the Schedule would have been the Rice Marketing Board, the Rice Development Company and the Guyana Development Corporation.

So many things are happening day after day at the Rice Marketing Board. The Manager left and went to Jamaica. He said he was entitled to annual leave and because he did not get the leave he should draw salary for the time he was working and salary in lieu of leave. I used to be a member of the Board. I told him he was mad. He wanted to draw salary twice for the same period.

The General Manager left and went to Jamaica. He returned and I think his salary is higher than that of the Attorney-General with all the perquisites and so on. The Board has now taken a decision to pay the Manager of the Board that money he had claimed when he was supposed to have been on leave. He is being paid twice for the same work.

One would have thought that the Ombudsman would have been capable of examining things like that. One would have thought that the Ombudsman would have been able to examine what we did here yesterday. The Government, has organised or reorganised the Rice Marketing Board and the Rice Development Company. The latter failed to repay a loan from the C.D.C. During the time of the P.P.P. Government profits were made in the Rice Development Company, and on the basis of such profits, payments were made to the C.D.C., but instead of allowing the farmers organised under the P.P.P., or under any party for that matter, to continue repayment of the loan, the Government sought to reorganise the Company.

Having reorganised the Board and the Rice Development Company and having

found that the reorganisation has cost the taxpayers, in general, and the rice farmers, in particular, more losses, the Government now seeks to reorganise again with Peter Bayley as Manager and Chairman of the Rice Marketing Board.

This was done without consultation. The Government said, "Ours is a consultative democracy." Those were the words of the Prime Minister and the Prime Minister is a man to his word. It was done without consultation with the farmers, without consultation with anybody. The last time when the Board was reorganised it was said, "When the people picket, loose the dogs on them." They reorganised with the dogs. I do not know how they are going to reorganise now. They will have to get guns and bayonets.

I do not know whether the Ombudsman will be able to investigate these boards where a lot of harm is done, where workers, farmers and ordinary people are discriminated against. When this same gentleman, the Ombudsman, was Director of Public Prosecutions, and the present Minister of Finance — I like to call names — was charged with an offence, namely, being in charge of secret papers, he went with his hands behind his back to the Governor and asked, "Can I prosecute Mr. d'Aguiar before he leaves the country?" I do not know whether this man, the Ombudsman, would have the courage to investigate the complaints that will be taken to him, or whether he will be able to make the sort of investigation that will bring some measure of relief to Guyanese.

My colleague who has just spoken referred to the Report of the Ombudsman. It is a shocking and disgraceful thing for a man to be paid the salary of a judge and to waste one year investigating delays in replying to letters and discourtesy. In my spare time in the afternoons I can do ten times the number of cases that the Ombudsman had to investigate for the whole year, and I get results. This gentleman has spent one year inquiring from the Post

Office Department about the delay in replying to a letter and about discourtesy. This is a shocking disgrace. I do not want the job, but I say that in my spare time I sit down at home, answer the telephone and get my affairs fixed faster. I handle matters that are far weightier. I make representations even to Ministries and get results.

Does the Government mean to say that the Ombudsman, who is paid such a fantastic salary, can only write a Report of ten pages with most of the Report dealing with the delivery of mail? This principle of taking complaints to people is not new. In the old days when people had confidence in the priests they used to tell them about things that were going on. When it was found that the priests, or the majority of them, were in collusion with wealthier persons, landlords and capitalists, they lost confidence in them. Other methods had to be found, but the idea is not new.

My friend the hon. Prime Minister had to go "down under" for the system of Proportional Representation. He went to Tasmania. Now for the Ombudsman he goes to New Zealand.

3.35 p.m.

We know that the cradle of the Ombudsman is in Europe. It is true that the United Kingdom has recently fallen in line to create the office of Ombudsman. Perhaps one of Harold Wilson's methods of making the English working class happy is to introduce the idea of an Ombudsman. I would have thought that the hon. Prime Minister, who went to Geneva to attend a conference, would have gone to the cradle of the Ombudsman to get our Ombudsman to understudy what is taking place there, rather than going to New Zealand — [*The Prime Minister*: "Let us know which country you are talking about."] One would have thought that the Ombudsman would have been sent to the cradle of the Ombudsman because the Ombudsman there is not limited to impotent boards like the Central Board of Health, the Central Housing and Planning Authority, the

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Sea Defence Board and the Drainage and Irrigation Board.

Today the Prime Minister told us that the I.C.J. was around when the hon. Attorney-General and Minister of State proposed that the Ombudsman should have the authority to investigate certain bodies. It is significant that he should mention the I.C.J. for the recommendations of the I.C.J., as we see, are observed in the breach. One would have thought that the Ombudsman would have been in a position to tell the Government that the I.C.J. came here, made certain recommendations and the Government must observe the recommendations made by this body.

The hon. Minister of Local Government (Mr. Cheeks) arbitrarily suspended the constitution of the Craig Village Council. He said so himself because his colleague Remington, the Chairman of the Village Council, is an ardent member of the P.P.P. The Prime Minister tried to get him to cross over. That is why the constitution of the Craig Village Council was suspended. *[Interruption by the hon. Prime Minister.]* The hon. Prime Minister can talk of the courts but we know that the institutions of the courts are very expensive.

Craig Village Council is a very poor local authority. *[Mr. Cheeks:* "Its members do not know that; tell that to the Chairman."] They know that. The Minister is a so-called "friend" of the ratepayers in Craig Village and yet he harasses the people all the time by increasing taxation. The people who plant rice in Craig Village are going to be burdened with an additional debt as a result of that monstrosity which the Government introduced yesterday.

It is no use saying that the courts are there for people to seek redress. If that were so, then the office of Ombudsman would not have been necessary at all. The courts are limited in many respects, particularly in time and money.

If you go to the Labour Exchange you will find that people are being discriminated against. People who have worked in the Public Works Department in West Demerara and who have five and six years' experience are being retrenched. I am not saying that they are friends of the P.N.C. or the U.F., but I know that people with no service are being employed in West Demerara. The procedure at the Labour Exchange is: "First come, first go." You, Mr. Speaker, who are conversant with trade union practices know that persons with five years' service ought to be given a chance before those people with no service at all.

If the Government wishes to change its policy it ought to announce it. It has a highly paid Minister of Information; a man who is competent and who is capable of expressing his own views and the views of the Government. These people who are affected cannot go to the courts; they cannot go to the Ombudsman; they cannot go anywhere unless they go crawling on their bellies to the hon. Minister of Labour and Social Security and beg him and others like him to consider them for employment.

If you go to some business places you will see, day after day, that workers who are supposed to leave their jobs between 4 p.m. and 4.30 p.m. are working until 6 p.m. Their employers are friends of the Prime Minister. He goes and talks with the Managing Director and he sees the workers working up to 6 p.m. Does he find out whether they are paid for working overtime? They are not! The Labour Department refuses to send investigators to these places and none of these workers can go and say: "We are being exploited; we are being asked to work overtime and we are not paid for it." *Mr. Merriman:* "Is there any machinery?" There is ample machinery. Get investigators and go and investigate your friends as well! Lock me up when I break the law. All the people who breach the law ought to be prosecuted, and that is why I hope that the hon. Prime Minister and his Colleagues will think of putting teeth into the powers of the

Ombudsman so that justice may be done always.

3.45 p.m.

The Prime Minister said that people who are in prison will be allowed to address letters to the Ombudsman and that those in charge of people in such institutions will have to send the letters unopened. In the same breath, he talks about security of the State and dealings of the State. He ought to have told us that the High Commissioner for Canada went and told them to stop tapping his telephone. The High Commissioner should know. [Mr. Merriman: "Tell us who are still in your pay. I would like to know."] I wonder whether the High Commissioner could have been able to go to the Ombudsman and tell him "to stop tapping my telephone." He cannot go to the Courts.

A person will have the envelope sent to the Ombudsman sealed. No letter is handed to the prison officials unless it is opened, so I do not know whether this law will be changed. We shall think of it in the Committee Stage, whether this law needs to be amended to supersede override the Prison Regulations. [The Prime Minister: "Read Section 2, subsection (2)."] Apart from that, the hon. Prime Minister knows that a large number of the people who frequent our prisons are people who cannot read and write. A person who is blind or cannot read and write must find some means of communicating with the Ombudsman in order to solve his problem.

This is a living case. There is a blind man, who walks around town asking people to lead him. He has a little room in Albouystown. For six years he has paid one dollar a month for electricity. All he has is a little radio. All of a sudden, whether it is on account of somebody stealing the electricity or a defect in the plant I do not know, but his light bill has gone up to six dollars a month. This man has been going to the Electricity Corporation for over six months. All he is using is the radio. He does not use

the light to see because he is blind. [Mr. Jordan: "Maybe somebody else is using his light."] He cannot find six dollars. He asked officials of the Corporation: "Would you make an exception in this case? Because of his blindness he wants to have a radio. But the Electricity Corporation cannot help this man; his problem is unsolved and he is in perpetual darkness. That man should be able to go to the Ombudsman and get assistance.

Let us hope that the Ombudsman's report next year, having regard to the fact that four more bodies with statutory powers are to be added to his responsibility, will be more important.

Mr. Deputy Speaker: I think I shall take the suspension now. The sitting is suspended until 4.30 p.m.

*Sitting suspended at 4.*

4.38 p.m.

*On resumption --*

The Attorney-General and Minister of State (Mr. Ramphal): Mr. Speaker, before I make my observations on this Second Reading debate on the Bill that is before the House, there is a matter arising out of the speech made in the Chamber this afternoon by the hon. Member Mr. Ram Karran to which I feel obliged to draw attention. In the course of his speech, Mr. Ram Karran suggested, indeed asserted, that there was an occasion on which the High Commissioner for Canada had complained to the Prime Minister that his telephone was being tapped. This is a most serious allegation and one that one would not have expected from an hon. Member of this Chamber, except on the basis of the most profound examination of the facts and unless he was in a position to support it.

I have taken the trouble to secure from the Hansard writers a transcript of the words used by the hon. Member, and I have also taken the trouble to communicate these to the Acting High Commissioner for Canada during the suspension. He has conveyed to

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me the most absolute denial of such an allegation and has said that there had never at any time or in any way been any communication from the Canadian High Commissioner or indeed from anyone else from the office of the High Commissioner for Canada in Guyana of the kind mentioned by the hon. Member.

I think it is not necessary to do more for the record is, I think, a sad commentary on the length to which hon. Members opposite are prepared to go that they are willing to involve people who are in our country on the basis of the diplomatic status in matters of internal politics, and it is to be deplored. I would hope that we will not have occasion to speak about it again.

When we debated the Citizenship Bill last week in this House, I welcomed the opportunity that was provided on that occasion for us to discuss in rather wider terms than the measure before the House, the constitutional provisions that had laid the foundation for the Bill. The debate on this Bill provides an almost identical parallel, and as in the case of the Citizenship Bill so with respect to the Ombudsman Bill there is, it seems to me, much value in providing hon. Members in the course of this debate with an opportunity to discuss the provisions of the Bill against the background of these constitutional provisions. Indeed, this is almost unavoidable.

The Bill, as its long title recites, is a Bill for an Act to make provision for matters supplementary and ancillary to those provided for by Part 2 Chapter V of the Constitution of Guyana. Part 2 of Chapter V of the Constitution, as hon. Members will recognise, contains the provisions providing for the establishment of the of Ombudsman and defining the general scope of his functions and powers. This being the first occasion on which the House is formally discussing in any depth the office of

Ombudsman, it is right, I think, to put on record the developments that led up to the establishment of this institution.

Hon. Members will recall that when the Commission of Inquiry was constituted by the International Commission of Jurists at the invitation of the Government of Guyana in 1965, the Government in its memorandum to the Commission put forward proposals for the Commission's consideration in which we suggested that provision ought to be made in the Independence Constitution for the establishment of the office of Ombudsman. In its formal memorandum to the Commission, which was published fully in Guyana, the government, after reviewing the existing constitutional arrangements and procedures providing guarantees against discrimination, against irregularities and malpractices in Government, expressed this particular proposal in the following way, and I quote from Volume 1, page 37, paragraph 41 of the Government's memorandum:

"The Government recognises, however, that the system of judicial review, while ensuring ultimate redress for discriminatory treatment, does not always provide a speedy remedy for the abuse of authority or administrative malpractice. It has therefore sought to find some other correctional procedure supplementary to the judicial process which could provide swift redress without the financial hazards of litigation. A similar procedure has recently been sought in a not dissimilar situation in Mauritius. In 1964, Professor S. A. de Smith was appointed Constitutional Commissioner for Mauritius and in his Report published earlier this year by the Government of Mauritius he has proposed an Ombudsman for that country. The Government of British Guiana accepts the principle of an Ombudsman and would be willing to write into the Constitution provisions for his creation and authority. The details of the arrangement under which he will function are matters that will need to be examined with care."

4.45 p.m.

The relevant paragraphs of Professor de Smith's Report were reproduced in an Appendix to the Report of the International

Commission of Jurists. In their Report, the Commission accepted the Government's proposal and expressed the view that Professor de Smith's more detailed proposals were worthy of close study. The Commission concluded their own recommendations on this point with the following words which I read from the Report of the International Commission of Jurists on British Guiana.

"We do not think that it is possible to be specific as to the nature of the organ of investigation until the matter has been more fully considered and the views of interested parties obtained. All we can say at this stage is that we consider it necessary that there be instituted a summary, inexpensive and easily available authority with the duty of investigation and reporting on complaints of racial discrimination in all areas of governmental responsibility, provided it be made clear that recourse to this authority will not debar a citizen from asserting in the courts any of the fundamental rights guaranteed by the Constitution."

Professor de Smith's scheme for an Ombudsman for Mauritius was based to a considerable extent on the provisions of the Parliamentary Commission (Ombudsman) Act, 1962 of New Zealand, and New Zealand, as I believe, the Prime Minister pointed out in his opening remarks, was the first country in the Commonwealth to have established the office of Ombudsman. The New Zealand legislation and, of course, the de Smith Report were available to the Guyana Independence Conference in London and a great deal of time, care and attention was spent in consideration of draft provisions for ultimate incorporation in the Independence Constitution.

It is not necessary for me to go over the details of these various provisions as they now appear in Part 2 of Chapter V of the Constitution. Suffice it to say that they were drafted after the fullest opportunity had been given for public comment on the Government's proposals, after consideration of Professor de Smith's recommendations for Mauritius, after examination of comparative legislation in New Zealand and after examination of what by then had

become available in the form of the British Government's White Paper on an Ombudsman for the United Kingdom.

I think, particularly having regard to some of the remarks made on the other side in the course of the day, that it may be of some value to touch, however briefly, on some of the more salient features of these provisions. Let it be remembered, in the first instance, that the Ombudsman is a high officer of state. He is appointed by the Governor-General acting on the advice of the Prime Minister, after the Prime Minister, in pursuance with the Constitution and in accordance with the procedures there laid down, had consulted with the Leader of the Opposition. Hon. Members will be aware of the provisions of the Constitution providing for consultation in these matters.

Once the Ombudsman has been appointed, he holds office for a fixed period of four years and during that time he enjoys the same security of tenure, security against removal from office, as is enjoyed by a Judge of the Supreme Court of Judicature. In fact, we were particularly fortunate in having secured for appointment to this high office someone who had previously held the important office of Director of Public Prosecutions and the Government has reflected the importance it attaches to the office of Ombudsman in having it graded, in terms of status and emoluments, with the office of a Judge of the Court of Appeal.

As regards the Ombudsman's functions, he has a general jurisdiction to investigate complaints regarding the acts, omissions, decisions and recommendations of all Government Departments and of all Ministers, officers, employees, and members of whatever description, of these Departments, being actions taken by them in discharge of their administrative functions.

The Ombudsman is entitled to act on his own initiative, or on receiving complaints from any aggrieved individual or body. Moreover, any Minister of the Government or, indeed, any hon. Member of this Assembly may request the Ombudsman to



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investigate any matter within his jurisdiction and may do so irrespective of whether the Minister or the Member concerned is himself personally aggrieved.

As in the case of the New Zealand Ombudsman, and more directly under the legislation that has since been enacted in the United Kingdom for the U.K. Ombudsman, the Guyana Ombudsman is concerned with faults in administration. I think it is important that we should understand the nature of the jurisdiction entrusted by the Constitution to the Ombudsman because many of our remarks, whether in this Chamber or outside, will entirely miss their mark unless we place the functions of this important office in their proper context and their proper perspective.

The Ombudsman is concerned with faults in administration; he is concerned with administrative irregularity or malpractice. It is not the role, it is not the function of the Ombudsman, to criticise policy. It is not his function to examine a decision on the exercise of discretionary powers unless it appears to him that in the process of arriving at that decision the functionary concerned has been affected by a fault, by an irregularity, in the administrative process.

He is entitled to report on any decision, on any recommendation, on any act or omission or, indeed, on any failure to act if, as a result of his investigations, he finds the action taken, or the failure to act, to be contrary to law, if he finds it to be based wholly, or even partly, on a mistake of law, if he finds it was improperly discriminatory, if he finds it was unreasonably delayed, or if he finds it was in any other way manifestly unreasonable or unjust.

4.55 p.m.

There are, of course, inevitably, some areas of governmental action that are excluded from the Ombudsman's jurisdiction. These are not matters of secrecy. These areas of exclusion are set out

in the First Schedule to the Constitution itself. They include such matters as those relating to our relations with other countries. They include matters affecting the exercise of powers to preserve the security of the state. They include the exercise of powers in relation to the investigation of crime which our Constitution specifically entrusts to the Director of Public Prosecutions. They include matters entrusted by the Constitution to the Service Commissions, and it was a little surprising to hear suggestions from the other side of the House that the Ombudsman should have the right to review, as it were, the exercise by the Service Commissions of their Constitutional functions.

I think those who are familiar with these matters will acknowledge that Professor de Smith is one of the leading constitutional lawyers of the Commonwealth — indeed is himself a Faculty member of that same College of the University of London from which the hon. Members opposite once drew their legal advisers. Professor de Smith had himself adverted to this question when he considered the proposals for Mauritius and I think it would be sufficient for me, on this question whether the Ombudsman should have anything to do with the exercise by the Service Commissions of their functions, to refer to what he said on that occasion. I read from paragraph 44 of his Report as it was reproduced in the Report of the International Commission of Jurists:

“I also found that many people thought that he (the Ombudsman) should be entitled to investigate the recommendations and decisions of the public Service Commission, the Police Service Commission, certain public corporations and local authorities; though nobody thought that he should be allowed to encroach upon the preserves of the Judiciary or the Judicial and Legal Service Commission. There is, however, an important reason why he should not be empowered to investigate the recommendations of the Service Commissions (or their decisions, when they acquire executive powers).”

If I may interpolate, all the Guyana Service Commissions now exercise executive powers. I continue:

"At present no reason is given for the appointment or promotion of A, or for the refusal to appoint or promote B, C and a hundred others, to any given post. If persons who had been passed over were entitled to complain to the Ombudsman, the Commission would be obliged to give him reasons for their decisions in every such instance; and the burden cast upon them, which in any event would be heavy with responsibility, would, I believe, become insupportable."

In fact, what you would do would be to pass over to the Ombudsman the right, and indeed the function, of exercising all over again the functions of the Service Commissions.

Finally, in these areas of exclusion, while the Ombudsman exists to supplement the judicial process, he is not, of course, in any sense, a substitute for the courts and he would not normally, therefore, have jurisdiction where there is a remedy open to the individual through the courts or, indeed, through any other independent or impartial statutory authority.

Nevertheless, the provisions of the Constitution dealing with this function make it quite clear that even in these cases he may investigate a complaint where he is satisfied that the only remedy open to the complainant is recourse to the courts for the purpose of enforcing the constitutional guarantees as set out in the Bill of Rights and, in general, he has an overriding discretion to act if he thinks that the remedy available to the citizen through the courts, even if it is not a remedy by way of seeking relief or redress for a constitutional wrong, is not one which the man could reasonably be expected to seek.

I think it is fair to say that the constitutional framework within which the Guyana Ombudsman functions provides him with a plenitude of authority and of power to perform these very important and significant functions entrusted upon him.

After he has completed his investigation he may make recommendations to the department, to the Minister, or to the authority concerned and, in any event, he must communicate to the aggrieved person, to the complainant, on whose request the investigation was contemplated, the results of his investigation.

In addition to this, he is required to lay before Parliament an annual report. It was in pursuance of this provision that the first report of the Ombudsman has already been tabled in this House. But, in addition to that, if in any particular case the Ombudsman is dissatisfied with the action that has been taken pursuant to his recommendation, if he finds that having completed his investigations and reported to the department or Ministry there is failure on the part of the executive to take account of his findings, then he may come to Parliament in a special report at any time and bring these matters to the notice of this honourable House.

It is this power to bring to the attention of Parliament instances of irregularity - if those instances occur and are discovered by him on the basis of complaints - this power of publicity, public revelation, that in the end constitutes the strongest weapon in the armoury not only of the Guyana Ombudsman but of Ombudsmen as they are functioning all over the world.

These are the essential functions of the Ombudsman as they are set out in the Constitution. The Constitution itself recognises that there will be need, from time to time, for Parliament to supplement these provisions by prescribing the procedure for making complaints or requests, the procedure for conducting an examination or investigation, or prescribing the powers, duties and privileges of the Ombudsman in relation to the exercise of his functions and, more particularly, with regard to obtaining the disclosure of information for the purpose of investigation and report. It is with this power to supplement the

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constitutional provisions that this Bill is essentially concerned.

There are, I believe, when the realities of the constitutional structure are recognised and understood, a number of grounds on which both as a Government and as a country we may be justifiably proud with regard to the establishment of the Ombudsman.

5.05 p.m.

Of course, as the Prime Minister indicated and, unfortunately, as the hon. Member Mr. Ram Karran is unaware, it is not a Swiss but a Scandanavian Institution. The best known and perhaps the longest established model is the Swedish Ombudsman. Within recent times, as the bureaucratic machine everywhere has grown necessarily larger and more powerful, a feeling has become widespread in many countries, and this feeling has grown more intense as the years have rolled by since the end of the last war, that existing parliamentary, judicial and even administrative safeguards against improper, unfair or merely negligent conduct on the part of public officers were in themselves inadequate.

If I may for just a moment refer to Professor de Smith's report — he voiced a sentiment that has been felt in a large number of instances:

“Ministers were responsible to Parliament; the courts dispense justice to aggrieved persons; statutory tribunals had been set up to deal with special classes of claims and controversies; yet each kind of remedy had significant limitations, and there was no doubt that some legitimate grievances entertained by ordinary citizens against the administration were not being redressed.”

These were not words spoken in relation to Guyana. They were the words of a distinguished lawyer against a background of administrative procedures generally. It was hoped that the appointment of an independent officer to investigate complaints, to rectify irregularities and to strengthen confidence between administrator and the man in the street

would achieve this without impeding the business of government.

“These hopes,”

he continued,

“have already been substantially fulfilled both in Denmark and New Zealand.”

Denmark had introduced the office of Ombudsman in 1953 and since the Danish constitution bore a fairly close resemblance to the British constitutional system, this particular development made the Ombudsman exportable. It moved to the Antipodes in 1962 with the establishment of the New Zealand Ombudsman. Since then, Britain and a number of other countries, at the level of public debate, widely canvassed the system and I believe that the hon. Prime Minister had himself proposed the establishment of an Ombudsman some years ago when this land was British Guiana and he was sitting on the opposite side of the House.

Guyana, in 1966, became the first country in the Western Hemisphere to have provided for the office of Ombudsman and it became, I believe, the first country anywhere to have provided for it in the national Constitution.

Not so long ago, I had the privilege of representing Guyana as a participant at the United Nations Seminar on Human Rights in Jamaica. That seminar was concerned with the practical arrangements for the effective protection of civil and political rights. We acknowledged as a seminar that most countries had now included in their national constitutions legal guarantees of one kind or another which provided a structure of constitutional safeguards. What we were concerned about was the need to make these guarantees effective and, where necessary, to supplement them by practical arrangements which would remove these basic human rights from the area of mere constitutions promulgation to that of practical fulfilment.

It was, I think, in recognition of the role that the Ombudsman could play in these practical areas that the Human Rights Division of the United Nations, who were

responsible for organising that seminar, invited Mr. Alexis Bexelius, the Swedish Ombudsman, to take part in the seminar as an expert participant.

Mr. Bexelius is, as it were, the Deen of the world's Ombudsmen, and it was a matter of some satisfaction that he was deeply interested in and warmly welcomed this inauguration of the office of Ombudsman in the Western Hemisphere, for which, we in Guyana were responsible. Today, Ombudsmen are appearing everywhere, sometimes under different names — in some places as Parliamentary Commissioners — but they are appearing in many parts of the world, both within and outside the hemisphere. Indeed, since the Guyana Ombudsman was created, Ombudsmen have been established at the Provincial level in Canada and at the City level in the United States.

The Guyana Ombudsman is a developing institution. The Ombudsman himself has visited New Zealand where he has had an opportunity of examining the working of the system there. It is an institution which, to a very special degree, depends on the personal qualities of the Ombudsman himself; but it also depends for its success in a very large measure on the readiness of the community to make use of the facilities it provides. The Ombudsman is charged with authority and he has all the necessary powers to make that authority effective. He has behind him the full weight of the Constitution and provided that the public, provided that the individual, provided that the citizen, is ready to make use of these facilities, there is everything available in the constitutional, legal and structural machinery to provide an appropriate basis for redress.

Indeed, a society that does not make use of the machinery of this kind when it is provided, if it declines to take advantage of the informal, swift, inexpensive machinery that the Ombudsman provides, could hardly be heard to complain if it fails to secure redress for grievances.

5.15 p.m.

This Bill, as the Prime Minister pointed out when he moved the Second Reading, seeks to arm the Ombudsman with these additional powers, powers mainly of a procedural nature. In the exercise of his functions he needs the full support of the community if his office is to play the important role that the Constitution assigns to it. But most of all, we must not expect too much of the office of Ombudsman, if I may adopt the language of Mr. Bexelius, the Swedish ombudsman — a country that has had very many years of experience in the workings of the institution. I commend it to hon. Members and to the community. Mr Bexelius in Jamaica advised us that:

“An institution of an ombudsman is no cure-all and the ombudsman must not be looked upon as an oracle ready to give answers on all questions and solve all problems. By co-operation with the authorities concerned and with experts, it is however possible for the ombudsman to give meaningful contributions in many different fields, but there is of course a certain limit for the possibilities to formulate opinions in questions outside the ordinary curriculum.

Much experience is gathered by an institution of an ombudsman from different fields. Few public organs get so wide and far-reaching survey over the public administration as such an institution. This enables the ombudsman to contribute to the common efforts to safeguard the rights and freedoms of the citizens by observations and proposals to a further extent than any other state organ.”

I believe that the Guyana Ombudsman can function in this way. I believe that this Bill will assist in enabling him to do so and through these efforts, the rights and freedoms of the citizens of Guyana must find an effective supplementary safeguard against the dangers of erosion to which they are inevitably exposed, not only here, but everywhere in the world as the bureaucracies through which our modern societies must function themselves expand and develop in the interest of the national well-being.

As I listened to the carping criticisms of hon. Members opposite, I had the feeling

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which, I suppose, several other hon. Members must have shared, that some hon. Members opposite seem jealous of the existence of others in the community — such as the Ombudsman — to whom aggrieved persons may turn to secure redress against governmental action. It is surely a mark of the Government's high standards of fair dealing and constitutional propriety that it has taken the initiative in establishing the office of Ombudsman under the Constitution, and further of supplementing it with powers of the kind proposed in this Bill. I say nothing of the sincerity of the Opposition's asseverations of solicitude for the rights of the individual when it is they who oppose the institution and seek to belittle and scoff at it during the early years of its development. *[Applause]*.

Mr. Khan: I have listened very carefully to the speech made by the hon. Attorney-General and I wish to make two observations. We on this side of the House would like to make our position very clear. It seems to me that the Attorney-General has misconstrued everything that has been said by Members from this side of the House. We are not opposed to an institution to which people can turn for redress. What we want is an institution to be set up in reality and not only in name, for that is what the office of the Ombudsman is at the moment.

It is very strange that the office was set up in April, 1966, on the coming of Independence, and after six months of functioning — from the Report which we now have before us — the Government has only now seen it necessary to promulgate legislation to widen the scope of activities within which the Ombudsman could operate. I wish to read from page 3 of the Report of the Ombudsman:

“During the seven months' period I received ninety-four complaints. Seventy-nine of these were not proceeded with because of lack of jurisdiction, three were withdrawn by the complainants, eleven

were dealt with and one was still receiving attention at the end of the year.”

It took the Government one year and two months to discover that the Ombudsman was functioning in a very limited area, and was not capable of handling things that were going to him from time to time.

In the context of the political situation as it exists in Guyana today, the Coalition Government seeks more direct and indirect cover to shelter itself. Our problems will continue to mount in Guyana as long as this Government continues to adopt and follow this vindictive and discriminatory policy. It is a waste of time to tell us that you are widening the powers of this institution and its area of jurisdiction with the hope that the problems that arose from being vindictive and discriminatory will be solved. This is an illusion. One would expect that the Government would reconsider its policy very carefully in order to find out the causes and the areas within which these problems arise.

5.25 p.m.

I have said before that the Government is now seeking shelter and the office of Ombudsman has been created primarily, now that the Government is finding itself in trouble, to give cover to all the activities against which the people of Guyana are raising their voices and it is done not for internal consumption but for outside consumption, to show the outside world that in Guyana there is an institution to which people can go to seek redress. When people abroad ask, “Why are you having all these problems in your country?”, it can be said, “That may be so, but people have recourse to the Ombudsman; they can go to the Ombudsman to seek redress”. In reality this has not been so and is not so.

Let us hope that with the implementation of these provisions the Government will not attempt to muzzle the Ombudsman or the office of the Ombudsman, but that it will, in fact, give people a legitimate hearing of their complaints. Perhaps it will be necessary shortly to widen the scope the Ombudsman

in order to permit him to investigate many of the activities of the Ministers on the Front Benches. This, too, is causing a very serious problem in our country. Right now there is an investigation going on into the unfortunate air crash in which the two Fredericks brothers died. I wonder how many in the ministerial ranks are trying to find out who were the partners in the services that were hiring the planes and I wonder whether they will allow the Ombudsman to investigate and find out whether it is not true that the wife of the Minister of Finance and a Minister were principals in the Company. *[Interruption.]*

Hon. Members on the other side have sat down and allowed the wife of the Minister of Finance to use money allocated in the P.I.F. Fund to purchase an unfit aircraft and to operate it in Guyana, thereby causing the death of two of Guyana's worthiest sons. I believe it was yesterday, or the day before, that something which was known before came out in public print, namely, that Mrs. D'Aguiar is one of the principals in the company. That company was granted a loan of \$200,000(U.S.) by the G.D.C. It came from money which is supposed to be set aside by this Government to assist small people to develop Guyana.

I hope that the Prime Minister will take action and weed out such persons, irrespective of who they are. This is a type of discrimination that should not be tolerated by any Government. The Government has now come here to tell us that it is creating a front in order to allow people to seek redress.

That is not all, the Ombudsman should be permitted to investigate and find out how many Ministers of the Government, and ex-Ministers, operating under the name of "Accara". *[Interruption.]* I say this because the problems in Guyana are mounting. Now that the Prime Minister is in his seat I want him to assure us that the Ombudsman will be permitted to investigate the serious troubles which are faced by the Tender Board. As Prime Minister he knows that the

procedures set out are not being followed. People came from the back and get tenders. The Government must not tolerate that. End this discrimination and these practices within the ministerial ranks! The Government must stop it. These are serious problems that are arising in Guyana. *[The Prime Minister: "Rice bags."]* Don't worry with the rice bags. Ask the Chairman of the Rice Marketing Board and he will tell you that those rice bags were very useful to the Rice Marketing Board when the cost rose by nearly ten per cent.

Members on this side of the House have said time and again that the Government should administer the country fairly for the benefit of all people and should not discriminate. If it continues to act in this manner endless problems are going to confront the nation and it will need to come to Parliament more regularly to seek wider power in order to justify the statement that it is functioning within the system of "consultative democracy".

The Prime Minister speaks of what is written in the Constitution, namely, that the Leader of the Opposition should be consulted. We know that this is in the Constitution but the Prime Minister knows full well that the method of consultation is just a farce. The members of the Government are making "consultative democracy" a farce and the quicker they try to end this state of affairs the better for Guyana.

Why could not the Schedule be amended? Can the Prime Minister tell us honestly what problems arise at the Central Board of Health? There are no problems of significance there; there are no problems to necessitate investigation by the Ombudsman. If there are any, they are purely administrative and the Ombudsman, to whom we are paying so much money, should not be wasting his time on them. The Central Housing and Planning Authority is mentioned. What nonsense is this? This is not an area in which the Ombudsman should function. There are no problems there. What problems arise at the

[MR. KHAN]

Sea Defence Board? there are problems when the tides override certain areas on our coastlands. Perhaps it will take a little time but, administrative-wise, these problems can be resolved.

5.35 p.m.

We would like to see areas like the Guyana Marketing Corporation included because there are serious problems affecting the livelihood of the farmers of this country. While it may be true that with the present Chairman of the Guyana Rice Marketing Board we may have less problems which affect the majority of the farmers of Guyana.

We feel that the Guyana Electricity Corporation should also be included in the Schedule. These are national problems and one would expect that another area in which the Ombudsman should be allowed to function is the Guyana Development Corporation. It is true that the Prime Minister is in charge of this but, being a busy man, the Prime Minister would not be able to look into all these problems.

Of course we come to a more serious corporation, the giant rice corporation that the Government expects to set up. [*The Prime Minister*: "Will."] It will be set up, but it is not in the Schedule at the moment. You will create it very shortly so you should put it in the Schedule. [*The Prime Minister*: "You cannot put it before it becomes a legal entity."] You know that the rice corporation is going to be set up. Are you going to wait until it is set up then come back to the House — [*The Prime Minister*: "No, we are going to amend the Schedule."] Are you going to amend the Schedule to include that corporation as well as the Guyana Electricity Corporation? [*The Prime Minister*: "Provided your argument is sufficiently persuasive."] I know that the Prime Minister is famous for saying one thing and doing something else. I hope we will get the undertaking that the Schedule will be amended accordingly.

Finally, I should like to pose one question to the Prime Minister and I should like him to give this House a very clear answer: Will the Ombudsman be allowed to function within the ambit of this limited jurisdiction? I pose this because, as I have already said, we on this side of the House are not opposed to the creation of any institution to which people can go and seek redress, but we do not want to find that, in future, the area in which the Ombudsman will be operating will be under ministerial muzzle. We would like the Prime Minister to give a clear undertaking to this House that within the limited area in which the Ombudsman will now function, he will be free and he will not be muzzled.

*Mr. Jagan*: The hon. Attorney-General and Minister of State correctly referred to the provisions of the Constitution and the provision dealing with the appointment of an Ombudsman. As I remember, he is appointed by the Governor-General on the advice of the Prime Minister after consultation with the Leader of the Opposition. It would seem, therefore, that with respect to the appointment of the Ombudsman, the Leader of the Opposition whether his wishes would be accepted or not — should be consulted before the Prime Minister recommends to the Governor-General the person to be appointed.

Clause 10(1) of the Bill states:

"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 as mentioned in subsection (1) of section 8 of this Act."

Now some of the functions referred to, for instance some of the functions hereinafter referred to, would be functions under Clause 4 where the Ombudsman may summon persons and he would have the right to examine and so on. Under that provision, it seems that the Prime Minister has the right to approve of the persons

whom the Ombudsman decides to appoint under Clause 10(1).

It would seem that, in carrying out the functions of the Ombudsman, the Leader of the Opposition should have some say as to the person to be selected. But under Clause 10(1) it would seem — not it would seem, it is quite clear — that the Leader of the Opposition would not be consulted with respect to the person to be selected by the Ombudsman. The Ombudsman selects the person and, provided that person is approved of by the Prime Minister under Clause 10(1) — [The Prime Minister: "I approve the delegation, not the person."] Looking at the provisions dealing with the Ombudsman, it would seem that there is no provision in the Constitution with respect to the Ombudsman delegating his power.

Clause 10 deals with empowering the Ombudsman to delegate his power. The only provision in the Constitution which may seem to enable the Ombudsman to do so is Article 55 which reads as follows:

"Parliament may make provision for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Part, including (without prejudice to the generality of the foregoing power) provision —"

(c) is the relevant provision which reads as follows:

"(c) for the powers, duties and privileges of the Ombudsman or of other persons or authorities which respect to the obtaining or disclosure of information for the purposes of any investigation or report by the Ombudsman."

Article 55(c) deals with three things: powers, duties and privileges of the Ombudsman or of other persons or authorities with respect to the obtaining or disclosure of information. A person appearing before the Ombudsman, under the Bill, could claim certain privileges if the Ombudsman asks him a question which is incriminatory.

5.45 p.m.

Therefore, the duties and privileges would refer not to the Ombudsman but to the persons who may appear before the Ombudsman. But it goes on further and states:

"for the powers, duties and privileges of the Ombudsman or of other persons or authorities with respect to the obtaining or disclosure of information for the purposes of any investigation or report by the Ombudsman."

So, it would seem that this power under (c) is to enable the Ombudsman to make a report, not any other person. It would seem that the only provision under which it would appear that the Ombudsman could delegate his power is 55 (c) and I would say that Article 55 (c) cannot apply because it is stated: "report by the Ombudsman." It could not mean the person to whom the Ombudsman delegates power because, at the end of it, it deals with the report by the Ombudsman and the persons or authorities who may appear before the Ombudsman in the conduct of an investigation.

Even if I am wrong in saying that the Ombudsman has no power to delegate his duties, it seems that under the provisions of the Constitution the Leader of the Opposition should have some say. It seems to be the whole spirit of the Constitution in the appointment of an Ombudsman.

There is one other point to which I should like to refer. It is a point which was dealt with by my hon. Friend Mr. Ram Karran in respect of Clause 2 (2) of the Bill. It deals with the question of a person who may wish to send a complaint to the Ombudsman and it reads as follows:

"Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge, or after conviction 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."



[MR. JAGAN.]

The hon. Member Mr. Ram Karran referred specifically to the prisons. Chapter 83 Regulation 99 states:

“He shall inspect all letters sent to, or by any prisoner, except those for debtors and misdemeanants of the first class; and if he shall deem it necessary to withhold any letter, he may do so, and shall forthwith lay it before the Superintendent of Prisons.”

In view of what is stated in Clause 2 (2) of the Bill, it would seem that if, previously, a prisoner had sent a letter to anyone the prison authorities had a right to look at the letter even before it was put into the envelope. The way in which this provision is worded would indicate that the communication to the Ombudsman must be in a sealed envelope, it must be forwarded unopened to the Ombudsman, but it does not go so far as to say that the prison authorities have no right to inspect the letter before it is put into an envelope and sealed. Under this provision, the prison authorities may still claim the right to look at the letter before it is put into an envelope. [*The Prime Minister*: “We shall see into it.”]

There is just one other point with which I wish to deal. I had raised it earlier with the Legal Adviser to the Prime Minister. Clause 3 (1) deals with the provision where the Ombudsman would be required to follow the natural rule of justice. For instance, before he could report adversely, which report could affect somebody, he has to call that person and give that person a hearing. The jurisdiction of the Ombudsman can be found either in the Constitution or it can be found in this Act. Once the Ombudsman under the Constitution is investigating a matter, then he would have jurisdiction to do so. If he could not investigate, as he said in his Report, in respect of certain things which are excluded in the Constitution, then he would have no jurisdiction.

Let us take a case where he has jurisdiction to investigate a matter under the Constitution. For instance, let us put a

hypothetical case. There is a complaint made to him which, under the Constitution, he can investigate. He, however, does not carry out the provision of Clause 3 (1) in respect of allowing a person the right to be heard. I would say that although he did not follow the rule of natural justice, he can make a report adverse to that person.

Let us go on to Clause 7 of the Bill, which reads as follows:

“No proceeding of the Ombudsman shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman shall be liable to be challenged, reviewed, quashed, or called in question in any court.”

I just referred to a case where the Ombudsman investigates a case, which he has power to do under the Constitution. He does not carry out the duties under Clause 3 of the Bill, therefore the decision is made against the person although he had the right to be heard. The Ombudsman had the jurisdiction to investigate the complaint because his jurisdiction is derived from the powers under the Constitution, but in carrying out the investigation, he did not follow the rule of natural justice as required by Clause 3. It would mean that that aggrieved person has no redress under Clause 7 because there is a lack of jurisdiction. Clause 7 should therefore be amended to allow such a person to appeal. Clause 3 says that the person has a right to be heard. If the Ombudsman fails to carry out that duty, it is not a question of a lack of jurisdiction. He had jurisdiction under the Constitution to investigate that complaint.

5.55 p.m.

Therefore, it is wrong to deprive such a person of the right of redress into the courts. It does not matter that there is a similar provision in New Zealand or any other country. The question is whether it is right or wrong. Those were the three points that I wished to be heard on.

*The Prime Minister* (replying): During the course of this debate there have been

criticisms, some plausible and others worthless. With respect to the contention that Clause 3 (3) of the Bill is unnecessarily and harshly restrictive, it can be said that if the decision is going to be adverse, well then the provisions of Clause 3 (1) will apply, and therefore the person will be heard either orally or in writing.

The fallacy here is not to recognise that a person can bring his complaint or urge his point of view orally or in writing, if he is a person involved or concerned. All that subclause (3) of Clause 3 really says is that he will not have a right to be heard orally, but certainly he will have a right to put his representations, etc., fully in writing if he is a person involved in the particular complaint. There is nothing particularly restrictive in so far as this provision is concerned.

The allegation has been made that the *Report of the Ombudsman* indicates that his jurisdiction is too limited and, consequently, a number of complaints which were made could not have been considered. If one looks at the Report one will see that though a number of the complaints were not proceeded with — 12 of them, for instance, referred to incidents or alleged incidents which took place previous to the 26th of May — some complaints, however, could not be entertained because they fell outside of the Ombudsman's jurisdiction as prescribed or limited by the First Schedule of the Constitution, more specifically item 4.

Now, item 4 of the First Schedule of the Constitution states:

“Action taken in respect of appointments to offices or other employment in the service of the Crown or appointments made by or with the approval of the Governor-General or any Minister, and action taken in relation to any person as the holder or former holder of any such office, employment or appointment.”

Nowhere is there the right to question or to take a complaint to the Ombudsman with respect to those offices enumerated and/or

referred to in item 4 of the First Schedule. For the information of my hon. Friend who vaguely knew that the institution of Ombudsman was European in origin, but who thought that it originated in the “nation” of Geneva, which “nation” I have not seen in any books — I have extreme tolerance and solicitude for his simplicity — Sweden was the nation in which it originated; and even in Sweden it is not possible to question appointments such as those enumerated and referred to in item 4 of the First Schedule.

We heard it said glibly by the hon. Member Mr. Hubbard that undoubtedly the majority of complaints must have been on the grounds of alleged discrimination. As long as the complaint does not refer to any of the matters specifically excluded in the First Schedule or in the Constitution, Articles 53 - 56, discrimination is a ground upon which the complaint will be made. Therefore, since the ombudsman's Report does not clearly state the exact nature of the grievances — it states the subject but not necessarily the nature of the grievance complained against — it is to jump to rash conclusions to assume that they were all allegations of discrimination. Amongst those that have been rectified have not been incidents of discrimination. I do not know and I would not attempt to know.

6.05 p.m.

I, like everyone here who has a penchant for accuracy and propriety, would reply - *[Interruption by Mr. Ram Karran.]* You would not understand any of those words. Rather, all I can do is to go by what the Ombudsman says. There is no basis on which it can be assumed that those complaints rectified were complaints with respect to discrimination. It is interesting to note that a fairly high percentage of those complaints which were entertained were found not to be justified by the Ombudsman.

There is a tendency in this House on the part of those who would drag in the representatives of foreign Governments to

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denigrate these institutions. They would denigrate the institution of the Supreme Court; they would denigrate the institution of Ombudsman. It is a sign of frustration; it is a sign of hopelessness, because certainly one will find in the ranks of the Opposition sufficiently intelligent people to appreciate that continued denigration of these institutions, if successful, will mean that when the members of the Opposition come to work the institutions there will be no public faith in them. I would assume, in spite of the mouthings of the "dougla", that the members of the Opposition have reached a position where they say, "We will never get into power. We will be like little children and try to tear down every institution". [Mr. Ram Karran: "You spoke about secret files. You boasted about it. Look in the Hansards."]

The contributions made by Mr. Jagan are much more important, even though I cannot agree with his conclusions. There was an obvious attempt to accept the institution of Ombudsman without attempting any vulgar allusions to the holder of the post or to the powers which have been conferred on him. I think it is only right and proper that I should answer some of the queries put up by my hon. and learned Friend, Mr. Derek Jagan.

He says that Clause 3(1) provides for the observance of one rule of natural justice, *audi alteram partem*, but Clause 7 would not give a complainant an opportunity to question a decision which was taken in the course of proceedings where the provision in Clause 3(1) had been ignored. I am afraid that I cannot agree with my hon. and learned Friend, because when one looks at Clause 7 one sees that -

"No proceedings of the Ombudsman shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman..."

Well, a decision that is arrived at without an observance of the provisions of Clause 3(1)

is a decision that is arrived at without jurisdiction.

As a lawyer, my learned Friend knows that a Magistrate may sit and you cannot question successfully his jurisdictional capacity if the person before him is charged, let us say, with larceny under the Summary Jurisdiction (Offences) Ordinance, but if he purports under the Summary Jurisdiction (Offences) Ordinance, after having found the person guilty, to sentence him to more than six months, you can attack the sentence on the basis of absence of jurisdiction to give a sentence of that length of time. I would say that is analogous to the hypothetical case posed by my hon. and learned Friend. I therefore cannot agree with him insofar as that contention is concerned.

With respect to his contention that delegation of powers under Clause 10(1) would be *dehors* or *ultra vires* of the Constitution, I would say that here again he is wrong and I would refer him in the first place to Article 125 of the Constitution, paragraph (9), which stipulates that -

"The Interpretation Ordinance as in force immediately before 26th May 1966 shall apply."

Having done that, I would then refer my hon. and learned Friend to the Interpretation Ordinance, Chapter 5, first to Section 21 (1) (c), which reads as follows:

"no rule shall be inconsistent with the provisions of any enactment;"

Enactment would include the Constitution. Then I would seek to attract his attention to section 21 (2) of Chapter 5, which was amended by Section 4 (b) of Ordinance No. 16 of 1960 which states that in this Section "rules" include "regulations, by-laws, proclamations, orders, notifications, directions, notices and forms." Therefore it follows that a direction cannot be inconsistent with the provision of an enactment, and if perchance there is an attempted delegation by the Ombudsman of any power which he is not competent under the Constitution to delegate, that purported delegation is *pro tanto* void and of no effect.

Furthermore, my learned Friend sought to recognise that what is sought in Clause 10(1) of the Bill is not to give the Ombudsman the power of delegation with respect to powers conferred by the Constitution, but with respect to functions hereinbefore assigned to him within this bit of legislation. Therefore, since my learned Friend, I am sure, will concede that if any power conferred exclusively by this legislation can be delegated in terms of a provision of the legislation, that such delegation cannot be *ultra vires* of the Constitution unless the delegation is of a function conferred both by the Constitution and the Act.

6.15 p.m.

I do not recognise any power given by this Act which is the power given by the Constitution, but, in any case, there are two answers. If the Ombudsman feels that any power given here is coincident with the power under the Constitution and he proposes to delegate, his delegation will be void. In any case, we only propose that he should delegate the functions which he is capable of delegating.

I think my hon. and learned Friend must be congratulated and I do not join issue with him carpingly. He shows that he is exercising his mind, and unless a lawyer exercises his mind, he is doomed to be at the bottom of the pile. I must congratulate him upon these very subtle points which he has introduced into his arguments.

When, however, he moves on to the plane of what is clearly political and seeks to argue that since the appointment of the Ombudsman is by the Governor-General on the advice of the Prime Minister after consultation with the Leader of the Opposition, therefore, delegation of functions by the Ombudsman should be with the approval of the Prime Minister after consultation with the Leader of the Opposition, I am forced to join issue with him very firmly because, subtle though he

has been in another field, he has missed a certain subtlety in Clause 10(1).

Now the Prime Minister has certain powers with respect to who will be the Ombudsman and in that respect his powers are limited by the constitutional necessity for consultation with the Leader of the Opposition. But under Clause 10(1) the Prime Minister is not involved in the question as to who the delegatee is. The Prime Minister is merely involved in whether such a function ought to be delegated to such persons employed in the Ombudsman's office. The Prime Minister's interest, therefore, is only in the advisability, from a policy point of view, of delegating such a power to a person who does not hold the substantive office of Ombudsman.

There is no doubt that with a new institution, to Guyana in particular and to many countries in the world in general, we have got to learn by trial and error. In fact, it was because of our recognition that a number of complaints have not been entertained — because no Schedule had been provided — that we are providing a Schedule. May I say, as I said before, to perhaps those who did not hear, that the Ombudsman advised the present Schedule and we are going to work on this Schedule to see how it works. That is why we have provided for an informal Amendment of the Schedule so that, without the laborious process of coming to this House, we can add other bodies and corporations which are not excluded by the terms of the Constitution.

I listened with interest to what I would consider the intelligent contribution of the hon. Member Mr. Khan. I can understand that intelligence is not at a premium in certain parties, considering the events of Sunday gone. Now the hon. Member Mr. Khan suggests that the Guyana Marketing corporation ought to be added. He suggests that the larger corporation, which will consist of the two present rice corporations combined, ought also to be added. I have taken particular note of this and will seek to consult with the Ombudsman as to whether

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promise my hon. Friend Mr. Khan that there is no intention on our part to keep out any of these corporations.

What will also be necessary — and here I am addressing my remarks to the intelligent, not to those who cook elections to consider is item 8 of the First Schedule to the Constitution. We know these organisations or corporations which are commercial, or which take part in commercial exercises, would be debarred from the Ombudsman's jurisdiction. I think that basically, and from the point of view of motive, forgetting the political embroilments which have to be injected as a matter of posturing and mythology, the hon. Member Mr. Khan's motive cannot be questioned. We will consider this most closely and if we are convinced that the Ombudsman's office staff can immediately be in a position to service complaints arising from these organisations or corporations, as soon as it is practicable, the Schedule will be enlarged by subsidiary legislation, if the First Schedule of the Constitution is not an impediment.

My learned and hon. Friend Mr. Jagan, and this fact I must concede, makes a very interesting point when he points out that the Director of Prisons can open the letter or that the letter cannot get into the envelope

he feels that, as at present staffed and organised, he can undertake this. I can until it reaches the person in charge of the prison. Administrative arrangements will have to be made by way of subsidiary legislation so that nonsense will not be made of the provision which seeks to see that communications between persons detained and the Ombudsman are not opened by a third party.

I am most grateful to my learned and hon. Friend Mr. Jagan and may I say, even at the risk of indulging in personalities, I congratulate him and the hon. Member Mr. Khan for their contributions which have been most helpful during the course of the debate on this Bill.

*Question put, and agreed to.*  
*Bill read a Second time.*

### ADJOURNMENT

The Minister for Parliamentary Affairs (Leader of the House) (Mr. Bissember): Tomorrow being Wednesday, the Motion which remains on the Order Paper in the name of the hon. Leader of the Opposition (Dr. Jagan) will be taken first and this matter after.

I move that this House do not stand adjourned until 2.00 o'clock on 30th August, 1967.

*Adjourned accordingly at 6.30 p.m.*