



**GUYANA**

**REPORT  
OF THE  
OMBUDSMAN**

**2002**

**R E P O R T**  
**of the**  
**O M B U D S M A N**  
**Annual Report for 2002**

**Presented to the National Assembly pursuant to  
Article 194(4) of the Constitution of the  
Co-operative Republic of Guyana**

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## **MISSION STATEMENT**

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

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



The Hon Mr. Justice S Y Mohamed  
Ombudsman

Office of the Ombudsman  
39 Brickdam, Stabroek  
Georgetown  
GUYANA

Tel: 226/1211, 226/2294  
8<sup>th</sup> November, 2003

The Hon Harri N. Ramkarran S.C., MP  
Speaker of the National Assembly  
Parliament Building  
Brickdam  
GEORGETOWN

Dear Sir,

I have the honour to submit to you my annual general report on the performance of the functions of the Office of the Ombudsman for Year 2002.

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

Your obedient servant,

  
.....  
S Y MOHAMED  
OMBUDSMAN

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## INTRODUCTION

### **Human Rights Day-Commemorating the Anniversary of the Universal Declaration of Human Rights**

The United Nations Charter was drafted at the San Francisco Conference in 1945 after the failure of the League of Nations to avert the second world war. The main purpose of the Charter is to achieve international co-operation in the promotion of, and encouraging respect for, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion<sup>1</sup>. The general concept embodied in the Charter was elaborated three years later on 10<sup>th</sup> day of December, 1948, fifty-five years ago, by over one quarter of today's members of the United Nations General Assembly by proclaiming one of the most important testaments of our times the Universal Declaration of Human Rights. (Universal Declaration), which contained an elaborate list of human rights proclaimed by the General Assembly to be 'a common standard of achievement for all peoples and all nations.'<sup>2</sup> The Universal Declaration was not unanimous. It was adopted by 48 votes to none with eight members abstained, all the Eastern European members at that time, with Saudi Arabia and South Africa<sup>2</sup>. The 10<sup>th</sup> day of December is set aside by the United Nations as 'Human Rights Day' to commemorate the anniversary of the Universal Declaration<sup>3</sup>.

Two years later the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome in November 4, 1950, constituted one of the most important achievements of the Council of Europe. It was founded on the Universal Declaration but represented more than 'a common standard of achievement'<sup>3a</sup>.

1. Halsbury's Laws of England 4<sup>th</sup> ed Vol 18 para 1625  
D. W. Bowett, *The Law of International Institution* (1963) 21
2. K. Tomasevski, *Education Denied* 36-39
3. *Human Rights Update* January 2003, 1-4
- 3a. Note 1 Bowett 236, S A de Smith *The New Commonwealth and its Constitution* (1964)

The Universal Declaration and the European Convention derived their shape and form from the fountains of human rights and freedoms the Magna Carta in 1215<sup>4</sup>, which guaranteed the right to personal liberty, immunity from wrongful detention and the right not to be deprived of property without due process, the Petition of Rights of 1628<sup>5</sup> which contained protests against taxation without consent of Parliament, the Bill of Rights of 1688<sup>6</sup> which limited the powers of the King and safeguard certain rights of the subject and the Act of Settlement of 1700<sup>7</sup> which regulated the succession to the throne.

The Universal Declaration was never translated into a universal human rights treaty. It did not itself impose any legal obligation upon States Members nor prescribed any legal right of the individuals. Consequently it was not recognized as binding on States Members when it was adopted and it is still not so regarded<sup>8</sup>. There is no institution or body to which an individual may legally complain to, where there is a breach of a human right proclaimed by Universal Declaration. All the General Assembly did was to proclaim the Universal Declaration as 'a common standard of achievement for all peoples and all nations'.

Whereas the European Convention imposed legal obligations on the parties to it, to ensure that their laws are in conformity with it and supplies machinery for ensuring compliance with its provisions. Article I of Convention provides that the parties 'shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of the Convention,' Any person, non-governmental organization or group of individuals claiming to be the victim of a violation of the rights set forth in the Convention may petition to the European Commission of Human Rights, which sits in private, and acts as an investigatory and reconciliatory body; if a friendly settlement cannot be reached by the Commission; it reports to the Committee of Ministers, which the petition has been lodged; alternatively, within a period of three months after the submission of the Commission's report, the case may be brought before the European Court of Human Rights; a judicial body constituted in 1959.

4. Note 1 supra, Halsbury's Vol 8 paras 832-833
5. S A de Smith, *Constitutional and Administrative Law* (1971) 453 and 500
6. K. C. Wheare *Modern Constitution*
7. Note 6 supra
8. Note 1 supra Halsbury's para 1626

Today the European Court of Human Rights works full time. It is the largest permanent court in the world; it rules on infringement of the Convention after citizens, from those countries, which have signed the Convention, exhausted all domestic remedies<sup>9</sup>. Nearly eight hundred million people have access to the Court; its jurisdiction stretches from Nuuk in Greenland to Petropaveloks in Russia Far East<sup>10</sup>. There is no such mechanism under the Universal Declaration.

The hopes and aspiration of the General Assembly were that State Members were to incorporate in their legal system the provisions of Universal Declaration to secure their 'universal and effective recognition and observance.'

The first step in proclaiming the Universal Declaration as an 'International Bill of Human Rights' was the adoption of two human rights covenants by the General Assembly in 1966 - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which came into force in March 1976<sup>11</sup>. The principles embodied in the Universal Declaration have been transformed into legal binding obligations and protect a wide range of human rights under these two covenants. They set out in more concrete details the basic fundamental rights proclaimed in the Universal Declaration, and imposed an obligation on all participating State Members to implement those rights.

Each State Member to the ICCPR undertakes to respect and to ensure to all individuals within its territory the rights recognized in the ICCPR 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

Most of the human rights mentioned in the Universal Declaration and in the elaborate provisions of the two covenants are enshrined in two places of our Constitution. First the ICCPR in Part 2 Title 1 of the

9. Halsbury's note 1 *supra* para 1629 et seq., Bowett note 1, 236 et seq. SA de Smith note 3a *supra*

10. *Time*, November 6, 1998

11. S. S. Ramphal (1988) 14 CLB 1165

Constitution under the caption 'Protection of Fundamental Rights and Freedoms of the Individual' (articles 138-153). These rights include - protection of right to life, protection of right to personal liberty, protection from inhuman treatment, protection from slavery and forced labour, protection from deprivation of property, protection of freedom of expression, protection of freedom assembly of and association, protection from discrimination and many others<sup>12</sup>. These rights are self-operating rights; they are rights, which operate by themselves, and do not require any legislative or other initiative by the State to bring them in force. They are human rights, which are described as civil and political rights<sup>13</sup>. They are fundamental because of the special protection afforded to them by the Constitution and can only be abridged in the manner stated by the Constitution. Article 153 gives a person a right to apply to the Court for redress if he alleges that any of the aforesaid rights has been contravened in relation to him. There is still a substantive range of human rights, which still remains to be covered under Part 2, Title 1 of the Constitution.

The United Nations Human Rights Committee (Committee) supervises the implementation of the ICCPR. The judicial jurisdiction of the Committee, one of the three jurisdictions of the Committee, is derived from the Optional Protocol under which a State Member accepts the competence of the Committee to consider a complaint called 'communication', from an individual alleging that he is the victim of a violation of the ICCPR. Only a communication of a State Member that acceded to the Optional Protocol can exercise such a right. Like any other body, the Committee has its own procedure when considering a communication. There is no oral hearing; the Committee is seized of the facts through communication. A communication received by the Committee is sent to the State Member for its observations and the complainant is also given an opportunity of making observation on the information provided by the State Member. The complainant must exhaust all available domestic remedies before making a communication to the Committee<sup>14</sup>.

12. Articles 138-153

13. Hon. Justice R. S. Pathak (1988) 14CLB 1171 at 1176-1177

14. Articles 40-41 ICCPR, Justice Lallah, notes on the ICCPR (1992) 18C LB at 1276

Guyana ratified the ICCPR on 15<sup>th</sup> February, 1977 and acceded to the Optional Protocol on 10<sup>th</sup> May, 1993<sup>15</sup>. The first communication to be considered by the Committee from Guyana was that of Yassin and Thomas who were sentenced to death by the Court of Appeal of Guyana. The Committee found that the facts presented before it revealed violations of the ICCPR for which the applicants were entitled to an effective remedy and recommended their release from custody. The applicants Yassin and Thomas applied to the High Court of Guyana to enforce the recommendation of the Committee. The Hon. Mr. Justice Carl Singh refused their application because the ICCPR was not incorporated into the municipal laws of Guyana. He, however, ordered that the Advisory Council on the Prerogative of Mercy to consider the recommendation of the Committee within 18 days and that the Minister within 5 days of such consideration express its own deliberate opinion to the President whether he should exercise any of his powers of the Prerogative of Mercy<sup>16</sup>.

The Privy Council held in a number of cases that the carrying out of a death sentence in certain circumstances is 'inhuman or degrading punishment or other treatment,' that the appropriate order in the circumstances is that the death sentence should be commuted to life imprisonment and a mandatory death sentence is inconsistent with the provisions of the Constitution. The Privy Council further held that a condemned man is entitled to sufficient notice of the date when the Advisory Council on Prerogative of Mercy would consider his case, be given a copy of all documents including the judge's report and international bodies report, if available, to make representation before a decision is taken by the Council. The Council is not bound to accept his representation but it must consider also the Report of International Bodies, if it does not accept the report it should explain why and, where a petition has been lodged to such bodies, the execution of the death sentence without consideration of such report is unlawful, such bodies should make every effort to deal with such petitions within a period of eighteen months, a few months over that period will be accepted<sup>17</sup>.

15. Human Rights Update January 13, 2003

16. In the matter of Abdool Yassin and Thomas 1998 No. 81-M Demerara

17. Lewis v AG of Jamaica (2000) 3WLR 1785

The decisions of the Privy Council above, are one of the several reasons that many Caribbean countries are pushing ahead for the establishment of the Caribbean Court of Justice and like Guyana have withdrawn either wholly or partially from the Optional Protocol.

Second, the human rights of the ICESCR are stated in Chapter 11 of the Constitution under the caption 'Principles and Bases of the Political, Economic and Social System'<sup>18</sup> (articles 9-39). The human rights in this Chapter include the right and duty to work, the right to rest, recreation and leisure, the right to free education from nursery to university, the equality for children born out of wedlock, the right to own personal property which includes dwelling houses and the land on which they stand, the equality of women and many others. The rights under this Chapter were further increased to give effect to the recommendation of the Constitutional Reform Committee as approved by the Oversight Committee on Constitutional Reform.

These rights are described as Directive Principles of State Policy. They are principles fundamental to the governance of the country, which require legislation by the State for them to be enjoyed. They are human rights, which by their nature cannot be regarded as self-operating. The resources required for realizing them would be such as to require the intervention of the State and therefore the need for State legislation<sup>19</sup>. Article 38 provides for national co-operation and development of economy 'in order to ensure the realization of the rights set out in this Chapter.' Though they are not enforceable in a court of law, article 39 provides that 'it is the duty of Parliament, the Government, the courts and all other public agencies to be guided in the discharge of their functions by the principles set out in this Chapter'. In India it is specifically stated in the Constitution that these rights are not enforceable in the Court.

18. Articles 9-39

19. Note 13 supra

The Labour (Amendment) Act of 1984 affected the welfare of workers. It had the effect of nullifying a decision of the court. The human right affected was article 11 of the Chapter 11, which provides that co-operatives, trade unions and all social-economic organizations are entitled to participate in various management and decision-making processes of the State. The validity of the Act was challenged on the ground that the Trade Union Congress did not participate in any discussion in any stage of the Bill. It was argued on behalf of the State that the Directive Principles mentioned in Chapter 11 are not justiciable. The Court held, with few exceptions, that they are justiciable<sup>20</sup>. Soon after the decision was given an Act of 1988 amended the then article 39 to say that the aforesaid Directive Principles of Chapter 11 are not enforceable unless it is so provided by legislation<sup>21</sup>. No law, except one dealing with children born out of wedlock, has been passed to say that they are enforceable. Article 39 was further repealed and replaced by another provision by an Act of 2003 which says, inter alia, that 'Parliament may provide for any of those principles to be enforceable in any court or tribunal<sup>22</sup>.' Article 11 was also repealed, the right of trade union to be consulted was taken away<sup>23</sup>, but it was later restored as a fundamental right in article 149C.

The fundamental rights and freedoms as enshrined in Part 2 Title 1 of the Constitution do not encompass all the human rights of the Universal Declaration and the elaborate provisions of the two covenants, although some of them in the ICESCR have been elevated as fundamental rights and freedoms<sup>24</sup>.

The Human Rights Commission, not yet established, one of its many functions, is to monitor the observance of the international treaties, mentioned in the Fourth Schedule of the Constitution, including the ICCPC and ICESCR, with power to institute legal proceedings on behalf of a person who alleges that any of the human rights embodied in the aforesaid international treaties has been contravened in relation to him.

20. AG of Guyana v Mohamed Ali 41 WIR 176

21. Constitution (Amendment) Act 1988

22. Constitution (Amendment) (No.2) Act 2003

23. Note 22 supra

24. Articles 149A-149J, note 22 supra

But it is provided in article 154A<sup>25</sup>, that the human rights of the aforesaid treaties are 'enforceable in the manner hereinafter prescribed.' It is prescribed that 'the State shall, having regard to the socio-cultural level of development of the society, take reasonable legislative and other measures within its available resources to achieve the progressive realization of the rights' enshrined in those international treaties and, that a person who alleges that any of the rights under the aforesaid treaties has been contravened in relation to him without prejudice to any other action lawfully available may apply to the Human Rights Commission in such manner as the Commission may prescribe for redress. The provisions of article 154A are similar to the provisions in article 38. By these two articles the human rights under Chapter 11 and of the international treaties are regarded as 'programmed rights,' the implementation of which needs to be programmed according to the available resources, policies and priorities of the State for them to be realized and make their exercise possible<sup>26</sup>. It is for these reasons that the human rights enshrined in Chapter 11 and of the international treaties aforesaid are unenforceable until the State has provided for their implementation by legislation and the Human Rights Commission has prescribed the manner a person may apply to it for redress.

The Human Rights Commission therefore, shall not institute legal proceedings on behalf of a citizen whose rights, under the aforesaid international treaties, have been breached in relation to him, until the State has taken 'reasonable legislative and other measures within its available resources to achieve the progressive realization of the rights' and the Commission has prescribed the manner a person may apply to it for redress.

The fragile powers of the Ombudsman have not been strengthened by the recent legislation passed by Parliament.

25. Constitution (Amd) (No. 2) Act, 2003 Article 2 ICESCR Note 19 supra

26. Note 13 supra

# CORRUPTION

## *How old is corruption?*

*In December 1997, it was reported that a Dutch team of archaeologists found at Rakka in Syria about 150 cuneiform, inscriptions which indicate that the site contained an administrative centre of the Assyrian civilisation dating from the 13th century BC. A special archive was found, perhaps from the equivalent of a modern 'Ministry of the Interior', with data about employees accepting bribes, including the names of senior officials and the name of an Assyrian princess.*

*Quoted in European Parliament working paper.  
Measures to Prevent Corruption in  
EU Member States, March 1998*

*Referred by Jeremy Pope  
Confronting Corruption:  
The Elements of a National  
Integrity System at 3  
Transparency  
International*

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## **REVIEW OF THE YEAR 2002**

During the year 2002, I received one hundred and forty-nine complaints.

The complaints for the year 2002 are as follows:-

- (a) 48 within my jurisdiction –
  - (I) a summary of some of these complaints investigated is in Chapter 3;
  - (II) 5 of the above are still under investigation;
- (b) 101 outside of my jurisdiction

The complaints disposed of –

Justified/Rectified	-	16
Not Justified	-	7
Withdrawn	-	20
Jurisdiction declined	-	24
No jurisdiction	-	77

Sixty-two complaints were made by persons who walked into the Office of the Ombudsman without an appointment. No appointment is required to see the Ombudsman. Accessibility to the office of the Ombudsman is alive and kicking.

## **Education on the functions of the Office of Ombudsman**

In order to continue to educate and make the public aware of the functions of the Office of the Ombudsman, the office has printed a brochure outlining its functions. These brochures are expected to be distributed widely to the public. Education on the functions of the office is an ongoing exercise and every effort will be made to continue this exercise and to spread it as widely as possible to every member of the community.

## **Overseas visitor**

During the year I received the Special, Rapporteur Doudon Diene on Contemporary Forms of Racism, Racial Discrimination and Xenophobia of the United Nations Commission on Human Rights who enquired into the functions of the Office of the Ombudsman with respect to racism.

## **Acknowledgement**

I acknowledge with thanks the reports of my colleagues from several countries, which provided me with useful information of their offices. It is amazing to see the money they spent on their reports. Some of them sent me their reports by DHL. I hope with my limited financial resources to reciprocate by sending my report to them

## **Accommodation**

The Office of the Ombudsman is housed in a three-storeyed building, 39 Brickdam, Stabroek, Georgetown. The office was moved to its present position in July, 1994, from Vlissengen Road, Georgetown. The building now housed the Public Service Appellate Tribunal (Tribunal), the Office of the Ombudsman, the Police Complaint Authority (Authority), the Land Court and the Guyana Bar Association. The Police Authority and Guyana Bar Association occupy the first floor with a room by the Tribunal. The Land Court occupies the second floor, and a room by the Office of the Ombudsman and the third floor by the Tribunal and the Office of the Ombudsman. The staff of the Office of the Ombudsman is on two floors; on the third floor the Ombudsman shares a room with the Tribunal. The present accommodation affects the administration of the Office of the Ombudsman. The Ombudsman needs a separate building.

## **Death of the Parliamentary Commissioner of St. Lucia**

Mr. Selwyn Vincent the Parliamentary Commissioner of St. Lucia (Ombudsman) died on June 2, 2003 in St. Lucia.

His death was a shock to my Caribbean colleagues and me as it occurred less than one month after our meeting with him in Jamaica of May this year. He showed no sign of illness.

He was a pleasant and jovial person. He was preparing at the time of his death to host a sponsored Commonwealth Workshop on 'Enhancing the Public Profile of the Ombudsman's Office in the Caribbean' in St. Lucia on June 30<sup>th</sup> July 4<sup>th</sup>, 2003. But death robbed him of this opportunity to witness this workshop.

I join with my Caribbean colleagues in extending deepest sympathy to his family, friends, his staff, the people and Government of St. Lucia. Mr. Madison Adrian Stanislaus has succeeded Mr. Vincent as Parliamentary Commissioner of St. Lucia.

## **University of Guyana Students**

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

## **Ministry fails to reply to the Ombudsman's correspondences**

The Ministry or Agency has not replied to the Ombudsman's correspondences:

- (1) Guywa - although three reminders were sent. one complaint referred;
- (2) NIS - to four complaints referred

**BUDGET OF THE OFFICE  
OF THE OMBUDSMAN**

**\$12,426,000.00**

**Expenses**

Salaries and Allowances	10,850,000.00
National Insurance Scheme	191,000.00
Stationery, Cleaning Materials and Refreshments	216,000.00
Fuel and Lubricants	89,000.00
Transport, Travelling and Postage	286,000.00
Telephone Charges	167,000.00
Other Services Purchased	374,000.00
Subscription to International Organisation	148,000.00

**Grand Total**

**12,321,000.00**

**Balance**

**105,000.00**

**G\$197 = US \$1**

**Staff of the Office of the Ombudsman**

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

## **SELECTED COMPLAINTS SUMMARIES**

### **GUYANA REVENUE AUTHORITY**

#### **Guyana Revenue Authority tells a lie to dismiss one of its officers.**

The complainant received a letter of 5<sup>th</sup> December, 2001 from the Guyana Revenue Authority which says –

We refer to the incidents of Malpractices with Fraudulent Intent committed by you and the subsequent interviews with you held by the Commissioner-Customs & Trade Administration and the Internal Auditor relative to same.

You are hereby informed that the Revenue Authority has found you guilty by virtue of the overwhelming evidences against you for these malpractices for which we have zero tolerance.

Accordingly, you are dismissed from the Authority's employ with immediate effect (5<sup>th</sup> December, 2001).

The complainant sought my assistance on his dismissal. By letter dated 10<sup>th</sup> December, 2001 I wrote the Authority and informed it, *inter alia*, that the alleged 'incidents of Malpractice with Fraudulent Intent' arose out of an incident in which the complainant caused three persons to be charged in October 2001 for offences under the Customs Act Chapter 82:01. The charges were eventually dismissed for want of prosecution on 28<sup>th</sup> November, 2001 by a magistrate. The goods, which were the subject matter of the charges were consigned to a businessman who alleged that the complainant between 1966 and 2000 purchased US currency to the value of \$US 88,200.00 from his cambio and that the complainant demanded one million dollars from him to secure the release of his motor vessel which was seized because of the aforesaid charges. As a result of the above allegations made against the complainant by the businessman disciplinary charges were brought against him.

Mr. Lambert Marks, Commissioner, Customs and Trade Administration and Mr. G.N. Dwarka, Assistant Commissioner, Internal Auditor, conducted an investigation into the charges (hereafter referred to the Marks's report). The complainant denied the allegations in the investigation conducted by Mr. Marks. He did not hear anything of the results of the investigation until he received the aforesaid letter of dismissal of 5<sup>th</sup> December, 2001. I asked the Authority for -

- (a) its comments on the above;
- (b) a copy of the Marks's report, notes and statements of the investigation; conducted by Mr. Marks and
- (c) any other documents and particulars pertaining to the same incident.

The Authority did not reply to my aforesaid letter of 10<sup>th</sup> December, 2001.

By the letter of 11<sup>th</sup> January, 2002, I wrote the Authority again informing it, inter alia, that it did not reply to my letter of 10<sup>th</sup> December, 2001 and that the Marks's report of November 7, 2001 found that the allegations against the complainant were not substantiated. There was another report of November 23, 2001 by G.N. Dwarka, Assistant Commissioner Internal Auditor, a member of the Marks's investigating team, who investigated the same allegations conducted by the Mr. Marks. He concluded that it is evident that the complainant 'did in fact committed both offences as were alleged and for which disciplinary action should be taken against him.' He accepted affidavit evidence by persons, some whom testified in the investigation conducted by the Marks, without enquiring into the truth of the contents of those affidavits, and without giving the complainant an opportunity to answer those allegations stated in the affidavits. The Dwarka's report was an attempt to overturn the Marks's report. I asked the Authority for its response on the above and of my letter of 10<sup>th</sup> December, 2001.

The Authority by letter of 17<sup>th</sup> January, 2002 replied to my letters of 10<sup>th</sup> December, 2001 and of 11<sup>th</sup> January, 2002. It said that the complainant must follow the established grievance procedure for settlement of Industrial Employee Grievances disputes, Mr. Dwarka carried out his investigation on the instruction of the Commissioner-General and that I should inform the Authority how I come in possession of the two reports since the Authority did not circulate them.

Both my letters of 10<sup>th</sup> December, 2001 and 11<sup>th</sup> January, 2002 requested the Authority for its comments and response of the several matters raised in them. The letters were intended to elicit information or clarification from the Authority of its side of the matter but the Authority's letter of 17<sup>th</sup> January, 2002 offered none, but only mentioned the matters stated in the preceding paragraph. I was expecting the Authority to justify its action but it preferred to remain silent and sit on the administrative fence. If it did this to the Ombudsman, I wondered what it would do to the ordinary man. After it failed to supply me with copies of the reports, it asked me how I got possession of them. To this, I said, in the mildest of language it was an impolite request.

The Marks's report did not find the complainant guilty of 'malpractices with fraudulent intent.' The Authority did not deny this. Yet the Authority dismissed the complainant with immediate effect because he 'was found guilty by virtue of the overwhelming evidences against you for these malpractices for which we have zero tolerance.' The Authority's assertion therefore, that the complainant was found guilty of 'malpractices' **was a deliberate false representation**. How could the Authority do such a thing? The complainant was entitled to a copy of Marks's report since it adversely affected him. Such a course would have provided fairness to him. The reasons why it did not give the complainant or me a copy of Marks's report, because the report found the allegation against the complainant not substantiated.

No reasons were given why the Dwarka's investigation was initiated, when the matter was concluded by the Marks's investigation. The obvious reason for Dwarka's investigation was to reverse the findings of Marks's report.

I invited the Authority for its 'comments and response' to my letters of 10<sup>th</sup> December 2001 and 11<sup>th</sup> January 2002. It offered none. Yet the Authority falsely told the complainant in its letter of dismissal that he was dismissed because he was found guilty of malpractices with fraudulent intent and of the subsequent interviews he had with the Commissioner - Customs and Trade Administration and the Internal Auditor.

The allegations before both enquiries were the same. By having a second enquiry on the same allegations, the complainant was being tried twice and this the Authority could not do.

Mr. Dwarka treated the affidavit evidence as if they were verses of the Holy Scriptures. They were inviolable and could not be contradicted. So he believed he was right when he accepted that affidavit evidence as true without giving the complainant an opportunity to answer the affidavit's evidence. He did not carry out an enquiry as to the truth of the contents of the affidavit evidence but came to the conclusion that the complainant did in fact committed both offences, that the complainant 'who had actually purchased the currencies and for which he denied that he ever made such purchases' and that the only conclusion to be drawn is that the complainant 'is guilty of both offences and for which appropriate disciplinary action is recommended'.

The complainant did not appear before Mr. Dwarka or gave him any statement of denial. The assertion 'which he denied' is therefore untrue. The complainant was not aware of Dwarka's enquiry. He was entitled to be informed of the allegations made against him in the affidavits and a reasonable opportunity to reply to those allegations. Mr. Dwarka did not afford him such an opportunity. He found the complainant guilty of the allegations without a hearing. God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam', God said, 'where are thou? Hast thou not eaten of the tree, whereof I commanded thee that thou should not eat'. Dwarka's report is null and void. It is unacceptable. In any event the Authority did not dismiss the complainant on Dwarka's report but on Marks's report. The Authority did not deny this. The letter of dismissal of 5<sup>th</sup> December, 2001 made no reference of Dwarka's report.

The Authority referred to the grievance procedure for settlement of industrial dispute and Employee Grievance and that the complainant should follow that procedure. The Authority was then trying to hide its unusual and irregular behaviour of this matter behind a grievance procedure. That procedure does not preclude the Ombudsman from investigating the complainant's complaint for the palpable injustice done to the complainant.

The Authority offered no evidence against the persons who committed the offences under the Customs Act. The cases against them were dismissed for want of prosecution. They were allowed to go free. But the complainant was dismissed on Marks's report, which did not find him guilty of any wrongdoing.

The Authority did not act honourably in this matter. It refused to give me copies of the reports. The Authority handling of the matter lacked openness and transparency. Everything, except Marks's report, was done clandestinely. The Authority by its deliberate irregular act brought shame and disgrace to the complainant and his family. It robbed the complainant and his family of their daily bread. The complainant's future life was destroyed. The Authority told a lie to dismiss him. The Authority has committed an unpardonable act.

For the reasons given above, I recommended that the Authority apologized to the complainant for the embarrassment it caused him and to reinstate him without loss of benefits.

The Authority did not comply with my recommendation; it sought the advice of the Hon. Attorney General who advised without giving any reasons, that the complainant should institute proceedings to challenge his dismissal. I asked the Authority to give me a copy of the advice of the Hon. Attorney General. It replied by saying that the advice of the Hon. Attorney General was given orally. I spoke to and wrote the Hon. Attorney General to review his oral advice, he promised to do so, but did not. An officer of the Attorney General's Chambers spoke to me on the telephone and told me that she was looking into the matter. I did not hear from her also, although I reminded her of her promise on the telephone.

## **REGION 4**

### **Non-payment for work done**

The complainant says that he entered into a contract with Region 4 to do certain work to the value of \$159,500.00. The work covered 1,160 rods at \$137.50 per rod. However, the work actually done by the complainant covered 1,260 rods at \$137.50 rod = \$173,250.00. This additional work occurred because of certain obstacles the complainant had encountered which were not provided for under the original contract. He brought this to the attention of the engineer and invited him to visit the site. He claims the engineer did not visit the site. The total value of work done by him was \$253,250.00. He received payment of \$143,000.00. Region 4 therefore owed him \$110,250.00. He made several requests for the above balance but without success.

He sought my assistance. I wrote the Regional Executive Officer who says the complainant was not authorized to do any extra work and refused to pay the additional amount. I advised the complainant to consult a lawyer. I do not know whether he did, but a third party informed me that the Region settled the matter with him.

## **GUYANA OIL COMPANY**

### **Failure to issue medical certificate**

The complainant was stationed at Providence Terminal of Guyana Oil Company (Guyoil). He complains that he was sick in December, 2001 and that Guyoil did not forward his medical certificates to the NIS for him to uplift his sickness benefit. I informed Guyoil of his complaint. Guyoil replied by saying that the medical certificates were forwarded to NIS. But NIS made certain queries, which Guyoil said would be sorted out and forwarded to NIS.

I informed the complainant of the above. I did not hear from him. I believe his problem has been solved.

## **MINISTRY OF AGRICULTURE**

### **Non-Payment of acting Allowance**

The complainant was appointed Chief Security Officer of a Project Executing Unit of the Drainage and Irrigation Board with effect from 1996-04-01 and approval was given for him to be paid an acting allowance equivalent to the difference between his substantive salary and that of a Chief Security Officer. But he was paid instead the difference between his substantive salary and that of Security Supervisor. This continued until 1<sup>st</sup> February, 2002 when the Project Executing Unit became redundant. So he was underpaid for six years.

The complainant requested the Ministry to pay him the difference of salary as aforesaid, without success.

He sought my assistance. I informed the Ministry of the complainant's problem. The matter is still continuing.

## **MINISTRY OF LABOUR, HUMAN SERVICES AND SOCIAL SECURITY**

### **Wrongful dismissal of worker**

The complainant was employed by the University of Guyana. She claimed that the University of Guyana wrongfully dismissed her.

She made a complaint to the Ministry of Labour against her dismissal. She claimed that she had not heard from the Ministry.

I wrote the Ministry of Labour which said that the complainant was a member of the University of Guyana Workers Union, which represented her at conciliatory meetings at the Ministry of Labour. There were several meetings and no agreement was reached. A 'dead lock' was declared. The next stage was arbitration for which the Union applied, but management for the University of Guyana refused to agree because it is stated in the Collective Labour Agreement that arbitration is by mutual consent. As a consequence of the refusal by the University, the issue was at a stalemate.

The Ministry said that the complainant was aware of its attempts to solve her problems. She had retained a lawyer who visited the Ministry of Labour on two occasions and who was apprised of the position. To say that she did not hear anything from the Ministry is incorrect.

I informed the complainant of the above and, advised her to seek legal advice. I did not hear from her.

## **MINISTRY OF HOUSING**

### **Reallocation of house lot**

The complainant was allocated a house lot in Housing Scheme on the East Coast of Demerara. He paid the full sum of fifty-eight thousand dollars (\$58,000.00) for the said lot in 1996 and later twelve thousand dollars (\$12,000.00) for the transport after an Agreement of Sale was signed. He claims that in February of 2001, he was forcibly dispossessed of his lot, which was given to another person. He complained to the Ministry but his complaint was received discourteously. He was subsequently told in 2001 that he would be re-located another house lot in the same Housing Scheme. He went several times to the Ministry to find out when he would be re-located the house lot, but was told to come back. He went several times and was told the same thing.

He complained to me and I wrote the Ministry, which assured me that he would be re-located. He was subsequently allocated the house lot and signed the Agreement of Sale. He is now in possession of the house lot.

## **NATIONAL INSURANCE SCHEME**

### **Contributions properly recorded**

The complainant was employed by Guyana Sugar Corporation Ltd, (Guysuco) which paid regularly her contributions to the National Insurance Scheme (NIS). The NIS contribution record shows that she made nine contributions short to allow her to receive a NIS pension. Her contributions were 741 whereas she was required to make 750 contributions to get a pension. The NIS contribution record shows contributions for the years 1981-1982 as 39, whereas Guysuco says there were 52 contributions for the said period.

The National Insurance Scheme claims that prior to January 1982, contributions were not recorded on a calendar year basis, that is, from January to December. There were recorded from April of one year to March of the other.

The period therefore 1979/1980 refers to April 1979 to March 1980 and the period 1980/1981 refers to April 1980 to December 1981. Contributions from January 1982 were no longer posted to an insured person's record from April to March but from January to December.

The 39 contributions therefore for the period 1981/1982, represented the period April 1981 to December 1981. Thereafter the contributions were recorded from January to December. The NIS also says that her maximum contributions during her period of employment from September 1969 to December 1993 were seven hundred and forty-one because there were only seven hundred and forty-one weeks during that period.

The complainant explored the options available to her by appealing to the National Insurance Appeals Tribunal from which decision she appealed to the Commissioner of National Insurance who also disallowed her appeal. These appeals were made on March 02, 1985, and May 15, 1997, respectively.

The complainant was informed of the above. I did not hear from her.

### **Complaint of wrong date of appointment and of reduced pension and gratuity**

The complainant complains of her wrong date of appointment and of reduced amount of pension and gratuity. She was appointed to the post of Personnel and Industrial Relations Manager with effect from January 1, 1998. She claims that the appointment should have been with effect from 1<sup>st</sup> August, 1995. The position of Personnel and Industrial Relations Manager was advertised, and she applied for the job; she was one of three candidates interviewed by the Assistant General Manager (Administration) and Assistant General Manager, (Operations). After the interview, she was called by Assistant General Manager (Administration) who congratulated and told her that she was the successful candidate for the position and that her date of appointment would be from the 1<sup>st</sup> August, 1995. Notwithstanding that assurance and, of the established practice that an appointment takes effect from the date nearest to the interview, she was appointed as from January 1<sup>st</sup> 1998 three years after the interview.

The complainant further claims that her gratuity was calculated at \$2,702,411.00 and pension \$54,048.00 per month as from January 1, 2001. It was subsequently reduced to \$2,387,709.00 as gratuity and \$47,754.00 as pension per month without any reasons.

I referred her complaint to the NIS, which claims that no assurance was ever given by the Assistant General Manager (Administration) that she would be appointed Personnel and Industrial Relations Manager from the 1<sup>st</sup> August, 1995. Further, her appointment was a decision for the Board of Directors, and not that of the Assistant General Manager (Administration). The complainant's letter of appointment dated June 5, 1998 was effective from January 1<sup>st</sup> 1998. There was no other instrument of appointment.

With regards to the computation of her gratuity and pension, NIS says that there was a mistake in the computation of her retirement benefits. She did not serve in the capacity of Personnel and Industrial Relations Manager for at least three (3) years prior to her retirement. In such case her average annual salary over the last three years should have been used in the computation and not her annual salary based on her final salary. The National Insurance Scheme further claims that although the corrected gratuity and pension were (\$2,387,709.00) and (\$47,754.00) per month respectively, the overpaid amounts were not recovered which she received from January 1, 2001. Her gratuity and pension were corrected from April 2002.

Investigation is still continuing.

### **Survivor's pension wrongfully withheld**

The complainant is receiving survivor's pension. She did not receive any pension between July 1993 and May 1998. The National Insurance Scheme (NIS) says that the complainant was paid twice for the period May 6, 1991 to May 29, 1993; and July 2, 1990 to May 6, 1991 but the complainant maintained that she was out of the country from 13<sup>th</sup> April, 1991 and did not return until 2<sup>nd</sup> May, 1998. National Insurance Scheme (NIS) refused to pay any survivors benefits until the overpayment was deducted from her pension.

She sought my intervention and I informed the NIS of the above, and enclosed photocopies of the entries in her passport to show that she left the country in April 13, 1991, returned 2<sup>nd</sup> May, 1998. She did not uplift any pension or authorized anyone to uplift any pension from NIS on her behalf. She did not receive any payment since May 1991.

National Insurance Scheme subsequently replied to say, that it has dispatched letters to the complainant requesting submission of Life Certificate, but offered no explanation to the complainant's claim that she was out of the country during the relevant period. NIS has certainly committed a fraud.

### **Refusal to reply to complainant's application for pension**

The complainant says that he applied to NIS for old age pension and NIS has not informed him of his application. I informed NIS of his complaint. The National Insurance Scheme says that the complainant's claim has been processed and he will be paid his old age pension with effect from 1<sup>st</sup> June, 2001.

The complainant was informed accordingly.

## **GUYANA POLICE FORCE**

### **Correct of discharge certificate**

The complainant was given a discharge certificate by the Guyana Police Force, which stated that his conduct was satisfactory. He misplaced the certificate. In 1998, he applied for a copy of that discharge certificate, but received one which stated that his conduct was unsatisfactory. He tried to get the certificate corrected but without success.

He complained to me and I investigated the matter. The police sometime later informed the complainant to call and uplift the certificate, which says that, his conduct is satisfactory.

## **GUYANA PRISONS**

### **Disputing Warrant of Committal**

A prisoner was convicted for the offence of rape on the 17<sup>th</sup> March, 1998 and sentenced to fifteen years' imprisonment. He was also on a murder charge and subsequently pleaded guilty to the lesser offence of manslaughter and sentenced to twenty years' imprisonment on the 15<sup>th</sup> November, 2001 to run concurrently with the sentence of fifteen years for the offence of rape on 17<sup>th</sup> March, 1998.

The prisoner claimed that his lawyer requested the judge for his sentence to begin from the commencement of the fifteen years for the offence of rape and that the judge granted this request. But the order committing him to prison did not say so, but said that the twenty years to run concurrently with the sentence of the rape of 17<sup>th</sup> March, 1998. He claimed that this should not be so, and asked me to investigate the matter.

I investigated his complaint and found that the judge refused his lawyer request and ordered that the twenty years' sentence to run concurrently from the date of the commencement of the criminal sessions in October 2001 and not from the commencement of the date, 17<sup>th</sup> March, 1998 he was convicted for the offence of rape.

The complainant was informed accordingly.

### **GUYANA DEFENCE FORCE**

The complainant, a member of the Guyana Defence Force suffered multiple injuries as a result of an explosion while he was on duty on Camp Grooms. He was hospitalized for several weeks at Linden Hospital and Georgetown Hospital. He was discharged from the hospital and still complained of feeling unwell. Several other soldiers were injured as a result of the explosion and were sent abroad for medical treatment. He complained that the same treatment should be given to him.

The Force says that their medical specialist advised that his medical condition was not substantial and could be treated locally. His condition is being carefully monitored; he continues to receive counseling just like the other soldiers involved in the unfortunate incident and he has been granted sick leave with full pay to allow for his convalescence.

The treatment provided for ranks overseas, was done so at no cost to the Government of Guyana and entirely upon the advice of an expert from the United States Southern Command in consultation with local practitioners who had examined them.

### **TEACHING SERVICE COMMISSION**

The complainant, a teacher of a primary school in Berbice was sent home by the headmaster when he reported for duty. The Teaching Service Commission cannot deal with his dismissal because there is no such Commission. He was advised to wait until the Commission is established or he may seek the advice of an attorney to secure redress in the Court.

## APPENDIX A

### Statistical Summary of Complaints

2002	Justified/ Rectified	Not Justified	Pending	Jurisdiction Declined	Withdrawn	No Jurisdiction	Total
G.R.A	1	-	-	-	-	-	1
Prisons	-	-	-	-	1	6	7
Police	2	5	-	-	3	-	10
G.D.F.	1	-	-	3	4	-	8
N.B.I.C.	-	-	-	-	-	1	1
PC Authority	-	-	-	9	-	-	9
Ministry of Education	-	-	-	1	2	-	3
T.S. Commission	-	-	-	-	-	1	1
Region 3	3	-	-	-	-	-	3
P.H.G.	-	-	-	-	1	-	1
Region 4	1	-	-	-	-	-	1
Guywa	-	-	-	-	2	-	2
E.P. Agency	1	-	-	-	-	-	1
G.P.O.	-	-	-	-	1	-	1
N.I.S.	2	1	5	-	2	-	10
Court	1	1	-	11	-	-	13
Region 5	1	-	-	-	-	-	1
Ministry of Finance	-	-	-	-	1	-	1
U.G.	-	-	-	-	-	1	1
Omai	-	-	-	-	-	1	1
CANU	-	-	-	-	1	-	1
C.H. & P.A.	1	-	-	-	-	-	1
M. & C.C.	-	-	-	-	1	-	1
Guyoil	1	-	-	-	-	-	1
M.M.A.	-	-	-	-	1	-	1
Legal Practitioner	-	-	-	-	-	4	4
Legal Aid	1	-	-	-	-	-	1
Advice & Misc.	-	-	-	-	-	62	62
G Com.	-	-	-	-	-	1	1
<b>Total</b>	<b>16</b>	<b>7</b>	<b>5</b>	<b>24</b>	<b>20</b>	<b>77</b>	<b>149</b>

**APPENDIX B**  
**CHAPTER 19:04**  
**OMBUDSMAN ACT**  
**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Short title.
2. Mode of complaint.
3. Procedure in respect of investigation.
4. Evidence.
5. Disclosure of certain matters not to be required.
6. Secrecy of information.
7. Proceedings not to be questioned or to be subject to review.
8. Proceedings privileged.
9. Power of entry on premises.
10. Delegation of powers.
11. Reports.
12. Offences.
13. Prescription of authorities subject to the Ombudsman's jurisdiction.

**SCHEDULE - Authorities subject to the Ombudsman's jurisdiction.**

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AN ACT to make provision for matters supplementary and ancillary to those provided, Subtitle 2 of Title 5 of the Constitution of the Co-operative Republic of Guyana.

[9<sup>TH</sup> SEPTEMBER, 1967]

1. *This Act may be cited as the Ombudsman Act.*

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

(2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of an 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.

3. (1) Where the Ombudsman proposes to conduct an investigation under article 192 (1) of the Constitution he shall afford to the principal officer of the department or authority concerned an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make, orally or in writing as deemed sufficient by the Ombudsman, representations relevant to the matter investigated.

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

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

(4) If, during or after any investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee of any department or authority to which article 192 of the Constitution applies, the Ombudsman may refer the matter to the authority competent to take such disciplinary or other proceedings against him as may be appropriate.

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

(6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person, out of moneys provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those, that are for the time being prescribed in the Sixth Schedule to the Criminal Law (Procedure) Act, so, however, that the like functions as are so

prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this subsection, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.

4. (1) Subject to this section and section 5, the Ombudsman may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information and to produce any documents or papers or things which in the Ombudsman's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any department or authority, and whether or not such documents, papers or things are in the custody or under the control of any department or authority.

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

(a) any person who is an officer or employee or member of any department or authority to which article 192 of the Constitution applies and who in the Ombudsman's opinion is able to give any such information as aforesaid; or

(b) any complainant; or

(c) any other person who in the Ombudsman's opinion is able to give any such information; and for that purpose may administer an oath. Every such examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of Title 21 of the Criminal Law (Offences) Act (which relates to perjury).

(3) Subject to subsection (4) no person who is bound by the provisions of any enactment, other than the Official Secrets Acts, 1911 to 1939 (or any Act of the Parliament of Guyana replacing the same in its application to Guyana) to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

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

(5) Subject to subsection (4) every person shall have the like privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things, as witnesses have in any court.

(6) Except on the trial of any person for an offence under Title 21 of the Criminal Law (Offences) Act in respect of his sworn testimony, or for an offence under section 12 of this Act, no statement made or answer given by that or any other person in the course of any inquiry by, or any proceedings before, the Ombudsman under the Constitution of this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(7) No person shall be liable to prosecution for an offence against the Official Secrets Acts, 1911 to 1939, or any enactment, other than this Act, by reason of his compliance with any requirement of the Ombudsman under this section.

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

(a) might prejudice the security, defence or international relations of Guyana (including Guyana's relations with the Government of any other country or with any international organisation);

(b) might involve the disclosure of the deliberations of Cabinet; or

(c) might involve the disclosure of proceedings of Cabinet, or of any Committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest, the Ombudsman shall not require the information or answer to be

given or, as the case may be, the document or paper or thing to be produced.

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

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

(a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any of the provisions of articles 192 and 193 of the Constitution;

Provided that no disclosure made by any such person in proceedings for an offence under section 12 of this Act, or under Title 21 of the Criminal Law (Offences) Act and by virtue of section 4 (2) of this Act, or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions or the provisions of section 3 (4) or section 11 of this Act, shall be deemed inconsistent with any duty imposed by this paragraph; and

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

7. 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, squashed, or called in question in any court.

8. (1) Except in the case of proceedings for an offence under section 12 (d), no proceedings, civil or criminal, shall lie against any person appointed to any office, or to perform any functions, referred to in section 6 for anything he may do or report or say in the course of the exercise or

intended exercise of his functions under the Constitution or this Act, unless it be shown that he acted in bad faith.

(2) Anything said or any information supplied or any document, paper or thing produced by any person for the purpose or in the course of any inquiry by or proceedings before the Ombudsman under the Constitution or this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

9. (1) The Ombudsman may, for the purpose of executing any provisions of article 192 of the Constitution but subject to this section, at any time enter upon any premises occupied by any department or authority to which the article applies and inspect the premises and, subject to sections 4 and 5 of this Act, carry out therein any inquiry or investigation that is within his jurisdiction for the said purpose.

(2) Before entering upon any premises the Ombudsman shall notify the principal officer of the department or as the case may require the authority by which the premises are occupied.

(3) The Attorney General may from time to time by notice to the Ombudsman exclude from the application of subsection (1) any specified premises or class of premises, if he is satisfied that the exercise of the power conferred by this section might prejudice the security, defence or international relations of Guyana (including Guyana's relation with the Government of any other country or with any international organisation).

10. (1) With the prior approval in each case of the President, 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 section 8 (1) of this Act.

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

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

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

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

12. Every person who -

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

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

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

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

is liable on summary conviction to a fine of five hundred dollars (\$500.00) and to imprisonment for six months.

13. (1) The authorities mentioned in the Schedule are authorities to which article 192 of the Constitution applies.

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

## **SCHEDULE**

### **AUTHORITIES SUBJECT TO THE OMBUDSMAN JURISDICTION**

Central Board of Health

Central Housing and Planning Authority

Sea Defence Board

Drainage and Irrigation Board

Public Corporation established under the Public Corporation Act, 1988

Guyana Rice Development Board

National Insurance Board

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



