

Report of the Parliamentary Commissioner for Administration – 2016

In Terms of Section 18 of the Parliamentary Commissioner for

Administration Act No 17 of 1981

Introduction

A learned Chief Justice once stated “the basic purpose of an Ombudsman is provision of a “watch dog” designed to look into the entire workings of administrative laws..... S/he can bring the lamp of scrutiny to other wise dark places, even over the resistance of those who would draw the blinds. If his/her scrutiny and observations are well-founded, corrective measures can be taken in due democratic process, if not no harm can be done in looking at that which is good”

“The reason why the Goddess is blindfolded is so that she cannot see what the lawyers and judges do” Frank McKinney Hubbord – 1867-1930

There is no one universal definition to an Ombudsman. However, there is widespread understanding that an Ombudsman is an Institution that receives, investigate and report on complaints about actions (or lack thereof) by the public administration.

The concept of such an independent body which is accessible to all and has the power to control the public administration of a country is recognized nearly worldwide and has been incorporated into different national legal systems. Today, the International Ombudsman Institution, a world-wide umbrella organization counts 147 public sector member organizations in 87 jurisdictions on all continents.

The UN General Assembly Resolution 63/169 on the role of Ombudsman refers to human rights standards that should be reflected in forming the mandate of Ombudsmen in turn allowing them to adhere to these standards in their work. Part of these standards is the access to justice including effective remedy, access to courts, fair trial, redress, judicial protection, due

process, legal certainty, undue delay, reasonable time and non-discrimination. The Resolution underlines “the importance of the autonomy and independence of the Ombudsman and stresses that these institutions” can have a proactive role by advising “the Government with respect to bringing national legislature and national practice in line with their international human rights obligations”.

The UN General Assembly Resolution 65/207 on the role of the Ombudsman reiterates the statements made in Resolution 63/169, with the work of the International Ombudsman Institution with satisfaction, encourages states to “consider the [...] strengthening of independent and autonomous Ombudsman” and encourages Ombudsman to “operate as appropriate, in accordance with Paris Principles”.

These resolutions also refer to the role Ombudsman play “in promoting good governance in public administration”. “Good governance” can be understood as a transparent, fair, all-inclusive and representative process of decision making and how these decisions are implemented by the administration. Ombudsman’s Institutions are important for monitoring the implementation of these decisions.

The ombudsman has motivated the government and other establishments in the delivery of timely, quality service to the public. One of the greatest strengths of the institution is its ability to allow the complainant to pursue the course of justice relatively cheaply and speedily with no cost which is valuable considering that most of the complainants belong to the less fortunate classes of the society.

The Ombudsman system provides a forum which enables citizens to have access to an independent, impartial and inexpensive dispute resolution mechanism which can resolve their grievances, protect their fundamental rights and restore their dignity and confidence in the democratic process.

The need for an office of the Ombudsman was first mooted in Sri Lanka at the South East Asian conference of jurists in January 1966. Article 156 of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka enjoined Parliament to provide for the establishment

of the Parliamentary Commissioner for Administration (Ombudsman). Parliament passed the Parliamentary Commissioner for Administration Act No.17 of 1981, which established the office and defined its powers, duties and functions. Subsequently the Parliamentary Commissioner for Administration (amendment) Act No.26 of 1994 which amended section 10 of the original Act, enabled the Ombudsman to entertain such written complaints or allegations of infringements of fundamental rights or other injustices directly from members of the public, subject to informing the Public Petitions Committee on the action taken thereon by the Ombudsman.

The Ombudsman is required at the conclusion of the investigation, to determine whether the decision, recommendation, act or omission of the public officer concerned complained of, was contrary to law, unjust, oppressive or improperly discriminatory or made in the improper exercise of his discretion.

Where the Ombudsman is satisfied after due investigation that a person's fundamental rights has been violated by a public officer or has suffered an injustice at the hands of such officer, he makes a determination to that effect.

Good governance is a basic requirement of modern society. The government machineries responsible for carrying out routine business of administration are vested with vast powers to run the administration smoothly in the best interests of the public at large. The powers so given do not mean that the same are to be applied in violation of rules, regulations, natural justice and equity. The office of the Ombudsman has been established to diagnose, investigate, redress, and rectify the injustices if any done to a person through maladministration during the process of running routine administration. The exercise of the powers arbitrarily or refusal and delaying tactics in the discharge of official obligations for corrupt or biased motives is the main factor to be considered and rectified by the institution of Ombudsman.

Statistical Analysis

This office received 1310 complaints directly from the members of the public in addition to 112 complaints which were referred by the Public Petitions Committee of Parliament, for investigation and report during the year 2016. There were 459 complaints awaiting disposal at the end of the year 2015, thus making a total of 1881 complaints to be dealt with during the year under review.

A majority of those complaints were inquired into and reports thereon were submitted to the Public Petitions Committee within a short period. It is noteworthy that all the reports submitted by this office were accepted and acted upon by the Committee.

1395 complaints were disposed of summarily and 29 dealt with after interpartes inquiry making a total of 1424 disposals during the year 2016 leaving a balance of 457 complaints carried over to the year 2017.

This office has endeavored to settle as many disputes as possible expeditiously, contacting the relevant public officers over the telephone and writing to them to take suitable action, such as in cases where the officers have unduly delayed in attending to the matters concerning the complainants. Many complainants habitually bring their grievances to the attention of the President of the country, Prime Minister, Ministers of the Cabinet and other agencies, with copies to the Ombudsman. This conduct results in several agencies expending their time and resources on a single complaint and sometimes giving contradictory orders, which the relevant public officer may be at a loss to implement. Therefore, this office does not act on copies of complaints sent to others. There are other complainants who fail to provide sufficient information in order for this office to commence inquiries: for example information regarding the period of service in a station prior to seeking a transfer or seeking to remain in a station when they allege injustice in failing to grant a request for a transfer or an extension of service in that particular station. In others, the complaint may not disclose an injustice ex-facie, as in the case where an appointment is sought despite the lack of qualifications necessary for such an appointment. Undue delay in seeking relief is another ground on which complaints are rejected.

For instance, a person who has been served with a vacation of post notice, unless due to exceptional circumstances preventing him from doing so, must seek to be restored to his post within the stipulated three month period. Private disputes and matters dealt with by court judgments fall outside the jurisdiction of the Ombudsman.

Similarly a very high number of appeals were tendered by principals and teachers regarding their transfers, increments, promotions, arrears of wages, allowances, and pensions. Very often it was difficult to get the reports from the authorities in time. Many parents were making allegations regarding school admissions.

There was an increase in the number of complaints from teachers who alleged that they were discriminated against in granting appointments in the Principals' grade despite the fact that they had scored sufficient marks at the written exams.

It's regrettable to notice that certain institutions are very lethargic in sending reports when called for. Out of such institutions, the Mahaweli Authority, Ministry of Health and Department of Pensions are the most prominent.

In addition to the above problem, I have noted that the Mahaweli Authority and the Department of pensions are adamant and very reluctant to change the decisions they have taken. This type of behavior directly affects the helpless citizens who claim relief from these institutions. For instance, as regards a particular inquiry, although I had requested the presence of a zonal director, the Mahaweli Authority could only make available a land officer. The behavior of this officer was unbecoming of a public servant and he was not concerned with arriving at a reasonable settlement presumably on the instructions of his Department Head. I also note that the behavior of this officer put the very principles on which this office and the public service function, in jeopardy.

The Department of Pensions was handling their affairs smoothly until a couple of years ago under an able Director-General. But I should state that the standards they maintained have dropped sharply and this institution receives a sizable number of complaints at present. I remind

here that, officers are expected to act not only within the law but also with an open-mind and merely being appointed to a position does not justify arbitrary behavior.

Let me take this opportunity to appreciate the Hon. Minister of Education and his able permanent secretary for introducing various changes regarding the admission of children to schools. Similarly I expect that the principals and teachers will be treated fairly, especially regarding their transfers and promotions. Further, the guidelines on the transfer of teachers serving at a particular school for extended periods should be strictly adhered to. No one should be allowed to influence the decisions taken by the Ministry and the Hon Minister and the secretary may also be informed of the activities of a few corrupt senior officers working at the Ministry.

The directive principles of State policy and fundamental duties enunciated in chapter VI of the Constitution Article 27(5) states “The State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups, and shall, take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice”.

Violating the above principles a leading girls’ school close to Colombo, had refused to admit a child just because her father is a Tamil/ Catholic. The recommendations were sent out but the outcome was never reported.

While the policy makers wax eloquent on the need to preserve ethnic and religious harmony they shun away from the thought of integrating schools now segregated on ethnic and religious bases, so that students from different backgrounds could mix together at a very early age, which will go a long way to dissipate the distrust that prevails amongst the different ethnic groups.

Some local authorities are very lax in enforcing the law against persons who have erected unauthorized structures within their territorial limits, to the inconvenience of inhabitants in the vicinity. Many recommendations to these authorities to take action to demolish these structures have not brought about the desired results.

The complaints against officers of the Department of Education both at the central and provincial government continue to be very high. Our letters to the Ministry at Isurupaya and the Provincial Education authorities are not attended promptly, leaving us to send several reminders to get the report, but the attendance at inquiries by the relevant officers has improved. I have noticed that whenever a principal of a school decides to transfer a teacher whom he dislikes, he manipulates such transfer by withholding a time table from the teacher concerned.

Whenever an inquiry or investigation into complaint was pursued, officials expended time and effort in trying to justify a decision or action without paying due heed to sense of justice or the fairness of an issue in dispute. Regardless of the gravity of the wrong done and its deleterious effects on individual citizens, officials seem to have continued in persisting in taking the same sort of wrongful action or spurious decisions despite the justifiable complaints that are made against them.

It never enhances good administration and indeed vitiates it if public officials persist in being adversarial in attitude. Furthermore, it detracts from good administration if public officials do not readily receive them and listen to citizens bringing in legitimate complaints, but instead treat them with distance and remoteness.

The commoner complaints stem from adherence by officials and authorities to too much legalism and formality which occasions delays; failure to employ reasonableness and administrative fairness, misinterpretation and wrongful use of government policies, procedures, regulations and rules; reluctance and refusal to meet and sort out problems with the complainants which could then have led to an earlier equitable settlement; resorting to unilateral action without listening to the aggrieved; interminable delays in taking decisions to solve simple issue; hostile disposition, insensitivity and indifference towards the sufferer from unjust action. It has been common practice for departments or authorities who agree with the determination to delay its implementation.

I was earlier requested to submit my views relating to the changes in the relevant Constitutional provisions and, keeping in view the quality of work, the ways and means of

improving the activities of this office and the objective of delivering the best service to the less privileged people of our society I presented the same to the sub-committee. It is however regrettable that, the members that had discussed the recommendations have pointed out that they could not be accepted as my inquiries are not carried-out inter-partes. I need not get involved with these remarks, but simply refer to the relevant provisions of the Act and the meaning of an 'inquiry'. This institution affords ample opportunity to both parties to make their submissions. My institution does not allow lawyers to appear for any party and does not safeguard bureaucracy.

With all the above difficulties, the office managed to dispose a fair number of complaints received. The cadre of the office has not been filled. There is no accountant or a book-keeper appointed to the office. Reluctance of officers to serve in this office is noticeable. It may be due the absence of an opportunity to perform adequate overtime duties or to receive any other perquisites associated with offices.

Table: 1 STATISTICAL ANALYSIS.

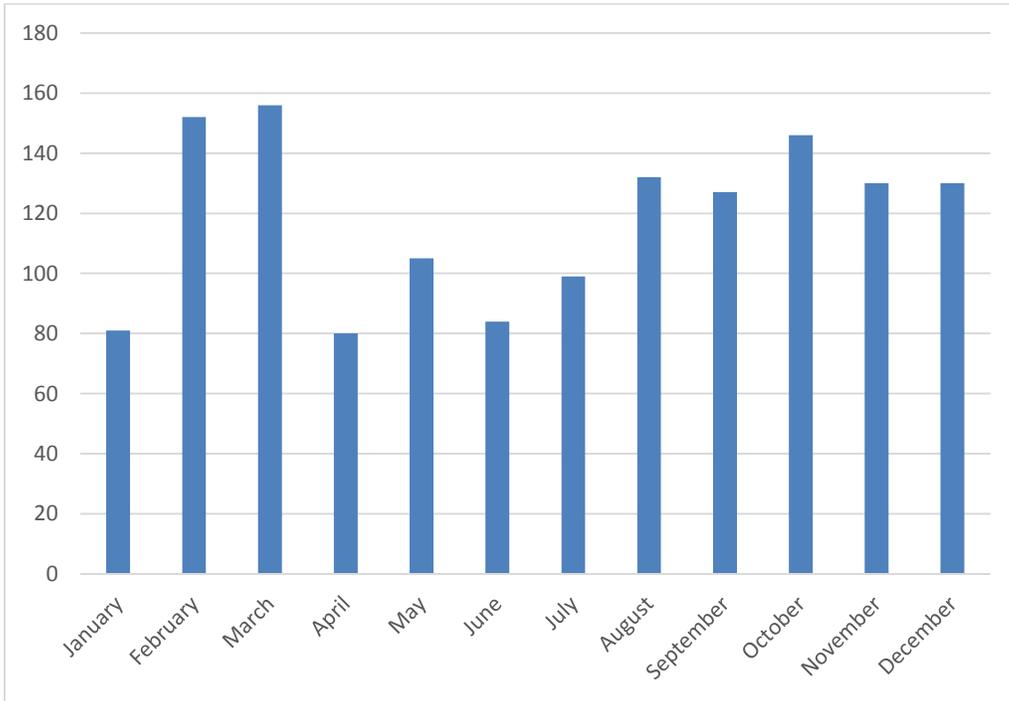
Balance complaints to be investigated, carried over from the year 2015		459	
Total number of complaints received during the period 01.01.2016 to 31.12.2016			
(a). Directly from complainants.	1310		
(b). Referred for investigation and report by the Public Petitions Committee.	112	1422	
Total number of complaints to be investigated during the year 2016			1881
Total number of complaints investigated during the year 2016			
(a).Number of complaints concluded summarily			
(1). Settled without inquiry.	100		
(2). Disposed without investigating due to the same complaint being made to a parallel tribunal/ institution.	86		
(3). Inadequate information to proceed to inquiry.	69		
(4). Referred to relevant authority for suitable action.	35		
(5). No case made out for relief.	78		
(6). Outside the jurisdiction of the Ombudsman.	66		
(7). Inordinate delay in making the complaint.	73		
(8). Complaints which were dismissed after considering the reports sent by the relevant institutions.	425		
(9) Complaints which were Fulfilled the request after Called the reports.	110		
(10) Copies directed to this office, having sent the complaints to other institutions.	328		
(11) Complaints directed to other ombudsman offices	25	1395	
(b). Total number of complaints investigated and reported on after inter-parties inquiry.		29	1424
Balance number of complaints to be investigated and reported on as at 31.12.2016.			457

Monthly Analysis.

Total number of complaints received during the year 2016 along with the balance brought forward from the year 2015 was 1422. The highest number of 156 complaints was received in March, and in April only 80 complaints were lodged.

Table: 2 - Total Numbers of Complaints Received During Each Month in 2016

	Month	Total
1	January	81
2	February	152
3	March	156
4	April	80
5	May	105
6	June	84
7	July	99
8	August	132
9	September	127
10	October	146
11	November	130
12	December	130
	Total	1422



Out of the complainants who lodged complaints during the year, 1039 were male and 383 were female.

Table :3 Total Number of Complaints Received in 2016
Categorized According to Gender

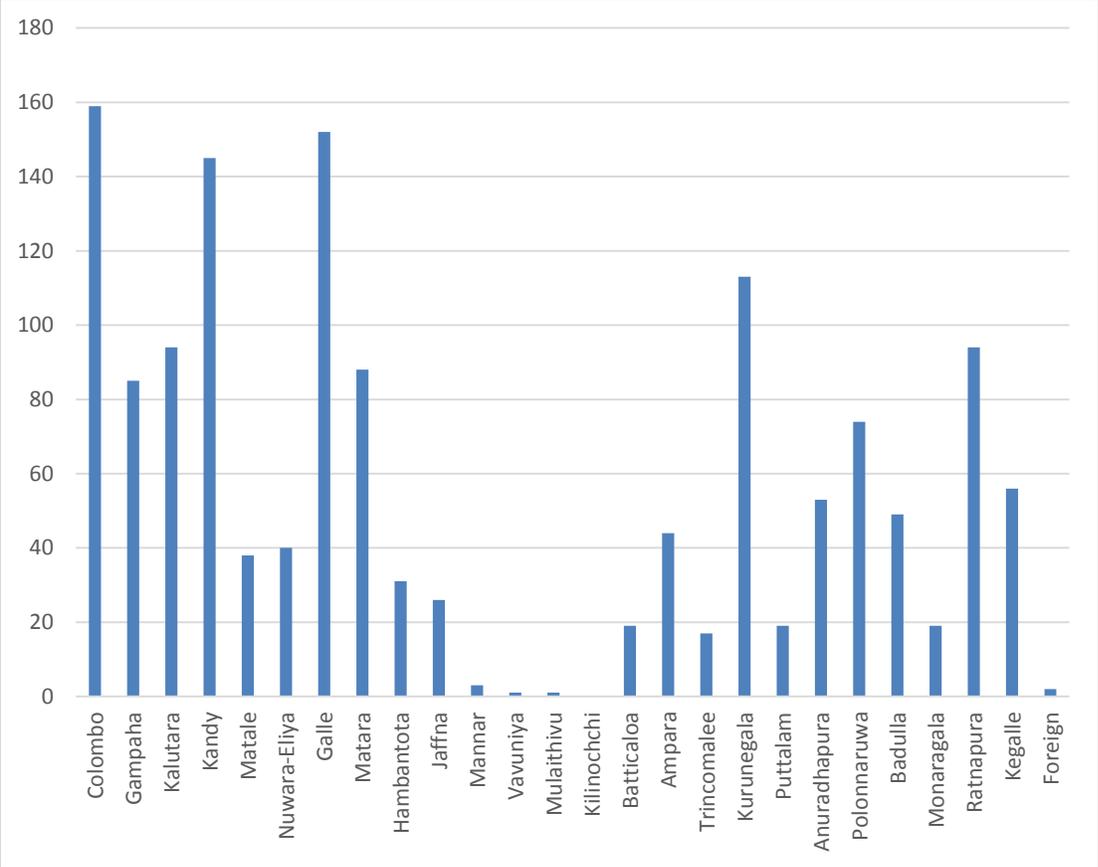
Month	Male	Female	Total
1. January	58	23	81
2. February	113	39	152
3. March	92	64	156
4. April	64	16	80
5. May	73	32	105
6. June	63	21	84
7. July	75	24	99
8. August	103	29	132
9. September	92	35	127
10. October	104	42	146
11. November	99	31	130
12. December	103	27	130
Total	1039	383	1422

District Analysis

The most number of complaints received during the year 2016 was from the Colombo District (159), followed by Galle district (152) and Kandy District (145).

Table: 4 - Total Number of Complaints received in 2016 categorized according to the complainants' domicile district wise

Districts	Number of complaints 2016
Colombo	159
Gampaha	85
Kalutara	94
Kandy	145
Matale	38
Nuwara-Eliya	40
Galle	152
Matara	88
Hambantota	31
Jaffna	26
Mannar	03
Vavuniya	01
Mulaithivu	01
Kilinochchi	00
Batticaloa	19
Ampara	44
Trincomalee	17
Kurunegala	113
Puttalam	19
Anuradhapura	53
Polonnaruwa	74
Badulla	49
Monaragala	19
Ratnapura	94
Kegalle	56
Foreign	02
Total	1422



Subject Analysis.

There were a significant number of complaints lodged regarding appointments to office, termination of employment, promotions, salary anomalies, increments, arrears, abuse of power/inaction by police officers as well as other public servants, pensions, employees provident fund payments, unauthorized constructions and nuisances during the year 2016.

Table: 5 Total number of complaints against Public officers received during the year 2016 subject wise

		2016
01	Service Absorption, Recruitment, Appointments, Confirmation, Antedating,	128
02	Termination of Employment, Reinstatement, Extension	109
03	Promotions, Seniority	76
04	Land permits, Grants of State Lands	102
05	Delay, Incompetence, Negligence, Abuse of power.	136
06	Salary Anomalies, Increments, Arrears, Allowances	105
07	Pension, W&OP	104
08	Compensation, Poor releif, Samurdhi	32
09	Transfers from place of work	58
10	Tsunami Assistance	04
11	University / School Admissions, Examination results	109
12	EPF / ETF / Gratuity	14
13	Police Abuse of Power / Inaction	24
14	Unauthorized Constructions / Nuisances	53
15	Loans, Recovery, Rescheduling	16
16	Licenses, Building Permits	18
17	Electricity, Water, Telephone Connections, Disconnections.	12
18	Harassment at Work Place	45
19	Roadways	39
20	Miscellaneous	238

Ministry/ Public Institution Analysis.

The Ministry of Public Administration (280) and the Ministry of Higher Education (239) were the Ministries against whose officers the largest number of complaints was received. The majority was made against Divisional Secretaries, mainly relating to the issue of land permits and grants. Although the law of succession has been clearly set out in the relevant Act, deciding questions of possession and occupation are not that simple. It has been disclosed at inquiries that some officers working in the Divisional Secretariats are not above board in issuing land permits/grants under the provisions of Land Development Ordinance.

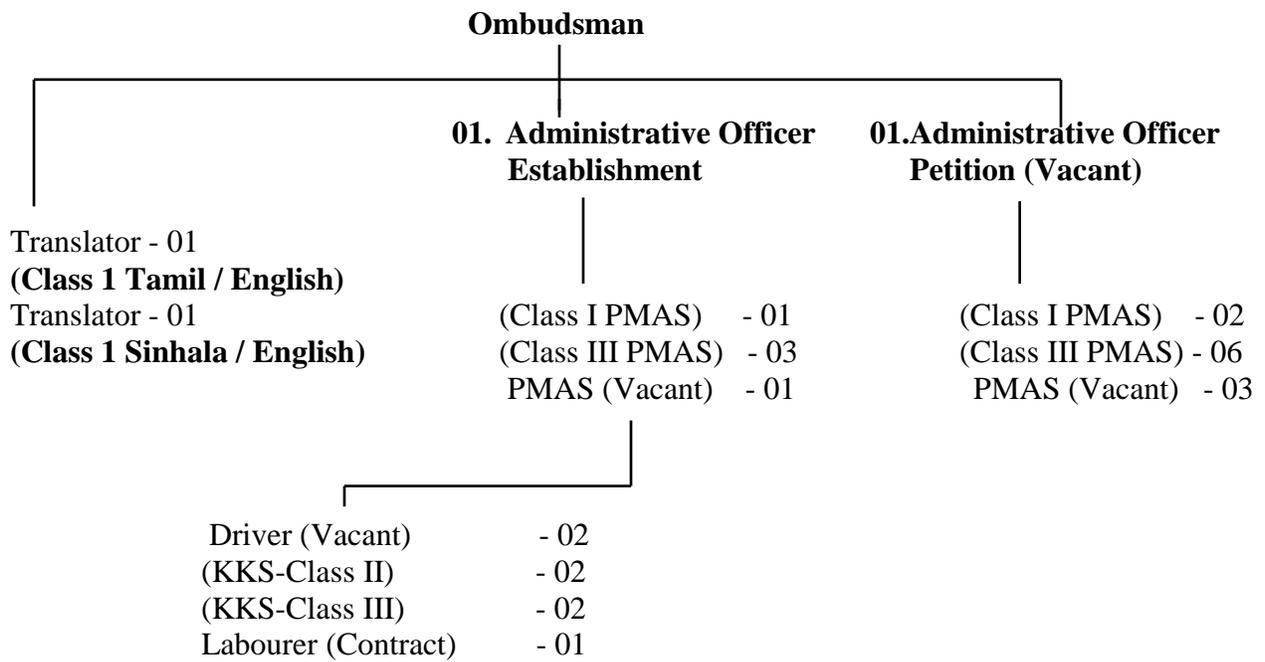
Table: 6 Number of complaints against officers of Ministries, Departments, Authorities and Public Institutions – 2016

Ministry, Department, Authority etc.	Number 2016
Public Administration	280
Education and Higher Education	239
Corporations/Authorities(CPC,CEB,SLPA,RDA)	68
Public Services Commission (Central and Provincial)	43
Defense & Internal Security	90
Provincial Councils & Local Government	93
Transport (SLCTB, CGR, CMV)	43
Health and Indigenous Medicine	73
Labour	05
Finance	03
Agriculture	34
State Banks	13
Pensions	96
Justice	18
Irrigation & Mahaweli Authority	34
Posts and Telecommunication	19
Social Services / Samurdhi / REPPIA	11
Lands & Land Reforms Commission	43
Cooperative Development	21
National Water Supply & Drainage Board	12
Registrar General	03
Forests	08
Plantations	01
Others	172
Total	1422

Office Staff.

This office has an approved cadre of thirty. However, as the organization chart shows, there were only twenty one (21) officers attached to this office at the end of the year 2016 (Please vide the chart).

Organization Chart.



Annual Budget.

A sum of Rs.15,696,000.00 was allocated for recurrent expenditure and a sum of Rs.350,000.00 for capital expenditure, making a total of Rs.16,046,000.00 for the year 2016. The actual expenditure for the year was Rs.15,711,000.00, saving a sum of Rs.335,000.00.

HEAD 22 - Office of the Parliamentary Commissioner for Administration 01 - Operational Activities 01 - General Administration and Establishment services

Object	Description	Rs.000	
		2016	2016
		<u>Net Provision</u>	<u>Expenditure</u>
	Recurrent Expenditure	15696	15588
	Personal Emoluments	9192	9167
1001	Salaries & Wages	5034	5027
1002	Over Time & Holiday Payments	73	68
1003	Other Allowances	4085	4072
	Traveling Expenses	1760	1759
1101	Domestic	13	12
1102	Foreign	1747	1747
	Supplies	668	637
1201	Stationary & Office Requisites	410	402
1202	Fuel	250	227
1203	Diets and uniforms	08	08
	Maintenance Expenditure	674	671
1301	Vehicles	569	568
1302	Plant Machinery & Equipment	105	103
1303	Building & Structures	-	-
	Contractual Services	2973	2929
1401	Transport	20	17
1402	Postal & Communication	500	475

1403	Electricity & Water	240	225
1404	Rents & Local taxes	2199	2199
1405	Other	14	13
	Transfers	429	425
1505	Subscription & Contribution Fees	324	323
1506	Property loan Interest	105	102
	Capital Expenditure	350	123
	Acquisition of Capital Assets	290	63
2102	Furniture & office Equipment	290	63
	Capacity Building	60	60
2401	Training & Capacity Building	60	60
	Total Expenditure	16046	15711
	Total Financing	16046	15711
	Financing		
	Domestic	16046	15711

(L.A. Tissa Ekanayake)

Parliamentary Commissioner for Administration

(Ombudsman)