

Report of the Parliamentary Commissioner for Administration – 2017
In Terms of Section 18 of the Parliamentary Commissioner for
Administration Act No 17 of 1981

Introduction

“Those days have gone when the country was ruled by the bureaucracy. It is People’s Government, responsible to the people more or less on democratic lines and Parliamentary practice.... Make the people feel that you are their servants and friends, maintain the highest standard of honour, integrity, justice and fairplay.” (Address by Quaid-E-Azam to Gazetted Officers, Chittagong, 25 March 1948)

The history of Ombudsman, as it was originally called and is still called today by the overwhelming number of institutions and scholars, dates back to nineteenth century. In 1809, the Swedish Parliament made the decision to appoint an Ombudsman to “supervise the king, his office and courts for the Riksdag. Looking at the key idea behind the establishment of the Ombudsman, which is the delivery of justice to citizens by providing an easily accessible body authorized to supervise the public administration and investigate individual complaints. 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.

The government should make the people feel that the public service personnel are their servants and friends. Some government servants do not want to be either friends or servants of the people but on the contrary rule over them.

The common man felt betrayed and had no recourse to any injustice committed against him. Going to courts was a long tedious and expensive route and getting justice from merely filing complaints against erring officers to their superiors was mostly futile.

Since the establishment of the office of Ombudsman, we have travelled a long distance in our quest for providing swift and easy justice to the distressed citizens of Sri Lanka. From the modest beginning after it's inception, the relief provided now runs into thousands every year and continuously on the rise.

The founders of the Swedish original did not place human rights at the core of the Institution's concern. However, when the concept of the Ombudsman started operating around the world, gradually, the idea of the Ombudsman Institution should be a watchdog and guardian of citizen's human rights began to take roots. As Keith rightly put it "good administration is after all an essential human right". The core tasks of the Ombudsman Institution as supervisor of administrative actions oftentimes has a human right component due to the fact that maladministration can cause infringement of essential human rights. Many newly established Institutions in the post-communist states in Eastern Europe as well as in Central Asia were vested with an explicit mandates to protect human rights. The UN High Commissioner for Human Rights, stressed the important role of Ombudsman even if they are not mandated explicitly with protection of human rights. It was observed the nexus between the Ombudsman's task to address "weak dysfunctional institutions of governance" and the obligation of states to "alleviate human rights conditions".

The UN General Assembly Resolution 63/169 on the role of Ombudsman refers to human rights standards the rule of law and the principles of justice and equality as 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 legislation 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, notes 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.

In addition, Ombudsman’s Institutions also help to overcome the limits of traditional court systems; there is an inherent “power imbalance between the government and those it governs”. However, the traditional court system cannot fully address this structural problem. Going to court or a tribunal is a question of affordability and, of several instances are required to achieve redress, the dimension of time is added on top of it. Even the best legal aid system cannot fully abolish these aspects. On the other hand “the government always has deep pockets” and time is not an issue. Furthermore, the Ombudsman is often more effective than a court in addressing administrative shortcomings, because the Ombudsman has the power to point out systematic issues based on the number of complaints received over years. It is also a very flexible and cost-effective means. In addition, an Ombudsman Institution has advantages over a traditional court system as it generally provides for a low-threshold access especially for vulnerable groups of the population and this helps to “strengthen their capacity to seek a remedy”.

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 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.

Many of the complaints lodged and were inquired into, established that they were connected to matters in which it was essential either for a department or government or for a statutory authority such as a Corporation or Board to act in accordance with the laws as they had been enacted by Parliament. Also these complaints often related to the failure to act according to subsidiary rules and regulations even though such rules and regulations were embodied in Establishment Codes. Sometimes, procedures enjoined to be observed in the regulations and rules, even if they were prescribed in manuals, had not been followed.

There were some cases where the grievances borne by a complainant had occurred owing to the negligence of administrators and authorities to implement fairly, and without discrimination, governmental policies and procedures. Additionally, a lack of understanding and inflexible severity were noticeable where policy or procedure was followed.

An easily removable cause for complaint constantly arose from the insensitivity of the bureaucracy, be it in government departments, or statutory bodies. Letters were regularly never replied to, inquiries by clients of services or by affected officers were unanswered, and a lack of courtesy towards individuals had irked many of the petitioners.

Supercilious behavior among public officials needs to be eschewed. It would contribute to more satisfactory public relations which is an essential element in good administration. There is a remarkable absence of good public relations in most components of the public sector. And not to provide information at a time when information is regarded to be a vital ingredient of administration is indicative of ignorance on the part of officials, or simple indifference.

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.

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.

Statistical Analysis

This office received 1310 complaints directly from the members of the public in addition to 70 complaints which were referred by the Public Petitions Committee of Parliament, for investigation and report during the year 2016. There were 457 complaints awaiting disposal at the end of the year 2016, thus making a total of 1837 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.

1197 complaints were disposed of summarily and 24 dealt with after interpartes inquiry making a total of 1221 disposals during the year 2017 leaving a balance of 616 complaints carried over to the year 2018.

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.

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.

Table: 1 STATISTICAL ANALYSIS.

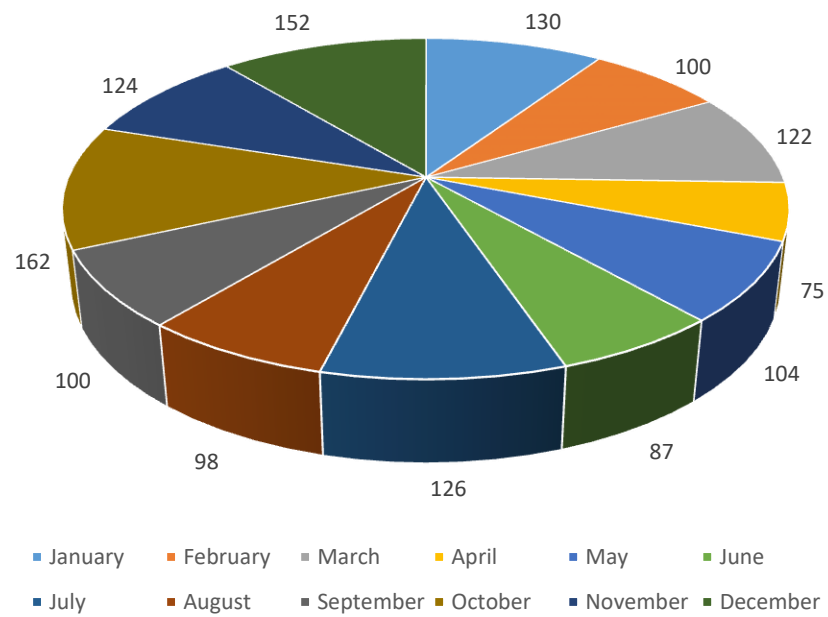
Balance complaints to be investigated, carried over from the year 2016		457	
Total number of complaints received during the period 01.01.2017 to 31.12.2017			
(a). Directly from complainants.	1310		
(b). Referred for investigation and report by the Public Petitions Committee.	70	1380	
Total number of complaints to be investigated during the year 2017			1837
Total number of complaints investigated during the year 2017			
(a).Number of complaints made out for relief			
(1) Settled without inquiry.	69		
(2) Referred to relevant authority for suitable action.	47		
(3) Complaints which were dismissed after considering the reports sent by the relevant institutions.	318		
(4) Complaints which were fulfilled the request after called the reports.	103		
(b) Number of Complaints concluded summarily			
(1) Disposed without investigating due to the same complaint being made to a parallel tribunal/ institution.	127		
(2) Inadequate information to proceed to inquiry.	14		
(3) No case made out for relief.	43		
(4) Outside the jurisdiction of the Ombudsman	75		
(5) Inordinate delay in making the complaint	61		
(6) Copies directed to this office, having sent the complaints to other institutions.	315		
(7) Complaints directed to other ombudsman offices	25	1197	
Total number of complaints investigated and reported on after inter-parties inquiry.		24	1221
Balance number of complaints to be investigated and reported on as at 31.12.2017.			616

Monthly Analysis.

Total number of complaints received during the year 2017 along with the balance brought forward from the year 2016 was 1380. The highest number of 162 complaints was received in October, and in April only 75 complaints were lodged.

Table: 2 - Total Numbers of Complaints Received During Each Month in 2017

	Month	Total
1	January	130
2	February	100
3	March	122
4	April	75
5	May	104
6	June	87
7	July	126
8	August	98
9	September	100
10	October	162
11	November	124
12	December	152
	Total	1380



Out of the complainants who lodged complaints during the year, 1027 were male and 353 were female.

Table :3 Total Number of Complaints Received in 2017
Categorized According to Gender

Month	Male	Female	Total
1. January	103	27	130
2. February	77	23	100
3. March	88	34	122
4. April	60	15	75
5. May	74	30	104
6. June	71	16	87
7. July	91	35	126
8. August	69	29	98
9. September	69	31	100
10. October	119	43	162
11. November	93	31	124
12. December	113	39	152
Total	1027	353	1380

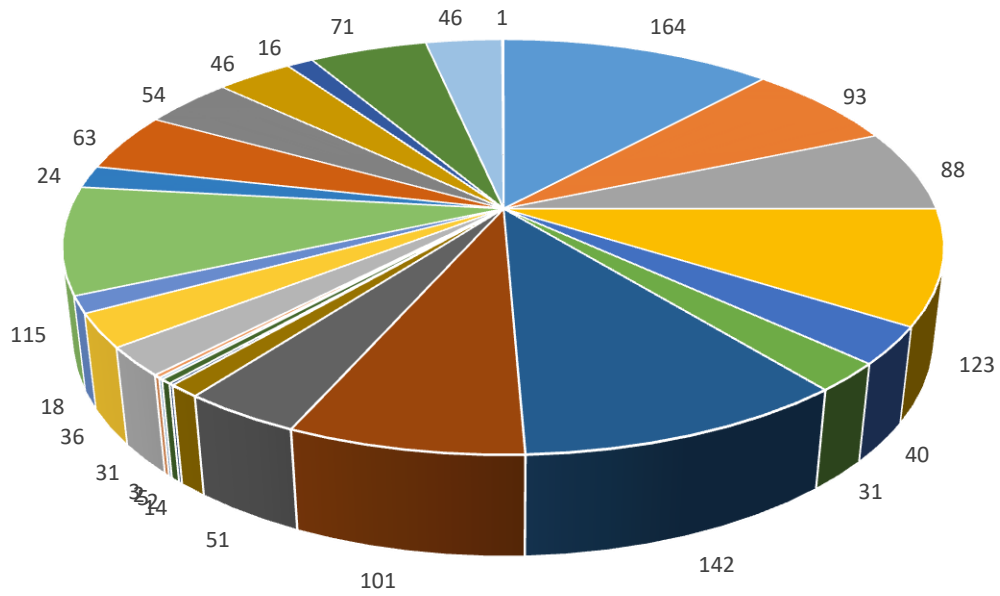
District Analysis

The most number of complaints received during the year 2017 was from the Colombo District (164), followed by Galle district (142) and Kandy District (123).

Table: 4 - Total Number of Complaints received in 2017 categorized according to the complainants' domicile district wise

Districts	Number of complaints 2017
Colombo	164
Gampaha	93
Kalutara	88
Kandy	123
Matale	40
Nuwara-Eliya	31
Galle	142
Matara	101
Hambantota	51
Jaffna	14
Mannar	02
Vavuniya	05
Mulaithivu	02
Kilinochchi	03
Batticaloa	31
Ampara	36
Trincomalee	18
Kurunegala	115
Puttalam	24
Anuradhapura	63
Polonnaruwa	54
Badulla	46
Monaragala	16
Ratnapura	71
Kegalle	46
Foreign	01
Total	1380

Number of complaints 2017



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 2017.

Table: 5 Total number of complaints against Public officers received during the year 2017 subject wise

		2017
01	Service Absorption, Recruitment, Appointments, Confirmation, Antedating,	134
02	Termination of Employment, Reinstatement, Extension	118
03	Promotions, Seniority	71
04	Land permits, Grants of State Lands	99
05	Delay, Incompetence, Negligence, Abuse of power.	126
06	Salary Anomalies, Increments, Arrears, Allowances	101
07	Pension, W&O	96
08	Compensation, Poor relief, Samurdhi	52
09	Transfers from place of work	70
10	Tsunami Assistance	02
11	University / School Admissions, Examination results	96
12	EPF / ETF / Gratuity	24
13	Police Abuse of Power / Inaction	19
14	Unauthorized Constructions / Nuisances	50
15	Loans, Recovery, Rescheduling	11
16	Licenses, Building Permits	37
17	Electricity, Water, Telephone Connections, Disconnections.	14
18	Harassment at Work Place	37
19	Roadways	42
20	Miscellaneous	181
	Total	1380

Ministry/ Public Institution Analysis.

The Ministry of Public Administration (263) and the Ministry of Higher Education (218) 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.

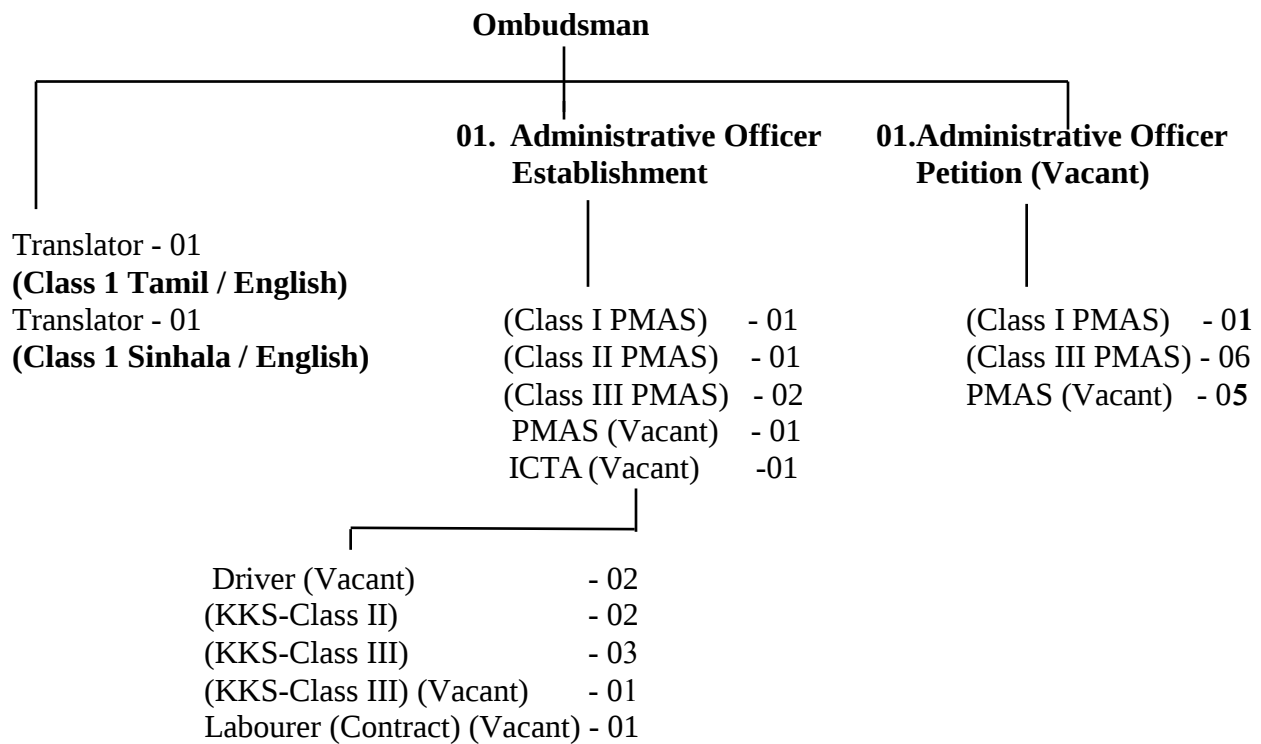
Table: 6 Number of complaints against officers of Ministries, Departments, Authorities and Public Institutions – 2017

Ministry, Department, Authority etc.	Number 2017
Public Administration	263
Education and Higher Education	218
Corporations/Authorities(CPC,CEB,SLPA,RDA)	63
Public Services Commission (Central and Provincial)	36
Defense & Internal Security	59
Provincial Councils & Local Government	208
Transport (SLCTB, CGR, CMV)	38
Health and Indigenous Medicine	67
Labour	07
Finance	17
Agriculture	29
State Banks	19
Pensions	74
Justice	19
Irrigation & Mahaweli Authority	31
Posts and Telecommunication	18
Social Services / Samurdhi / REPPIA	08
Lands & Land Reforms Commission	37
Cooperative Development	14
National Water Supply & Drainage Board	07
Registrar General	04
Forests	08
Plantations	03
Others	133
Total	1380

Office Staff.

This office has an approved cadre of 32. However, as the organization chart shows, there were only twenty one (20) officers attached to this office at the end of the year 2017 (Please vide the chart).

Organization Chart.



Annual Budget.

A sum of Rs.24,676,000.00 was allocated for recurrent expenditure and a sum of Rs.1,474,000.00 for capital expenditure, making a total of Rs.26,150,000.00 for the year 2017. The actual expenditure for the year was Rs.24, 351,000.00, saving a sum of Rs.1, 799,000.00.

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

Rs.000			
Object	Description	2017	2017
		<u>Net Provision</u>	<u>Expenditure</u>
	Recurrent Expenditure	24676	22922
	Personal Emoluments	9478	9444
1001	Salaries & Wages	6040	6011
1002	Over Time & Holiday Payments	66	66
1003	Other Allowances	3372	3367
	Traveling Expenses	711	681
1101	Domestic	22	21
1102	Foreign	689	660
	Supplies	695	689
1201	Stationary & Office Requisites	455	454
1202	Fuel	230	227
1203	Diets and uniforms	10	08
	Maintenance Expenditure	1002	887
1301	Vehicles	467	467
1302	Plant Machinery & Equipment	100	95
1303	Building & Structures	435	325
	Contractual Services	12293	10733
1401	Transport	120	119
1402	Postal & Communication	550	545
1403	Electricity & Water	597	597
1404	Rents & Local taxes	10706	9197

1405	Other	320	275
	Transfers	434	425
1505	Subscription & Contribution Fees	338	335
1506	Property loan Interest	96	90
	Other Recurrent Expenditure	63	63
1701	Losses & Write off	63	63
	Capital Expenditure	1474	1429
	Acquisition of Capital Assets	1424	1424
2102	Furniture & office Equipment	1424	1424
	Capacity Building	50	05
2401	Training & Capacity Building	50	05
	Total Expenditure	26150	24351
	Total Financing	26150	24351
	Financing		
	Domestic	26150	24351

(L.A. Tissa Ekanayake)

Parliamentary Commissioner for Administration

(Ombudsman)