



லார்கீக கார்டு ஸாடன லார்கால
வருடாந்த ஸெயலாற்றுகை அறிக்கை
Annual Performance Report
2019



ஸரீஸாண கப்டுது ஸீலீடெ ஸார்கீலென்து கலெஸார்கீ (ஔலுஔீஸீலன்) கார்டுலு
நீருவாகத்துக்கான ஸாராளுமன்ற ஆணையாளர் அலுவலகம் (ஔம்புடீஸ்மன்)
OFFICE OF THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION
(OMBUDSMAN)

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Chapter 01 - Institutional Profile/Executive Summary

Office of the Parliamentary Commissioner for Administration

Annual Report for the year – 2019

1. Introduction

Before expressing views on the functions and the duties carried out by this Office during the year 2019, I may be permitted to mention the history as well as the role of the Parliamentary Commissioner for Administration commonly known as the Ombudsman. Such a brief reference to the history may help to have a clear understanding of the duties performed by the Ombudsman during the last year.

2. History

The need for an Office of the Ombudsman in Sri Lanka had been moved at the South East Asian Conference of Jurists held as far back as January 1966. The legal basis for the establishment of this Office is found in Article 156 of the Constitution of the Democratic Socialist Republic of Sri Lanka enacted in the year 1978. Consequently, Parliamentary Commissioner for Administration Act No.17 of 1981 was passed by the Parliament on 02.03.1981 defining powers, responsibilities and functions of the Office of Ombudsman in a detailed manner. Subsequently, the Parliamentary Commissioner for Administration Act No.17 of 1981 was amended by the Act Nos.16 of 1991 and 26 of 1994.

The Office of Ombudsman commenced its functions initially in 1981 at No.222, Galle Road, Colombo 04. Thereafter, the Office was shifted to No.594/3, Galle Road, Colombo 03 and was functioning there during the period 1989 – 2006. Again, it was moved to No.06, Elibank Road, Colombo 05 and was functioning there from 2006 to 2017. Currently, the Ombudsman's Office is situated at No.14, R.A. De Mel Mawatha, Colombo 04.

Listed below are the Commissioners appointed since the inception of the Office of the Parliamentary Commissioner for Administration.

<p>First Ombudsman Mr. Sam Wijesinghe 07.09.1981 – 31.07.1991</p>	<p>Former Secretary-General of Parliament</p>
<p>Second Ombudsman Justice L.H.De Alwis 01.08.1991 – 20.08.1993</p>	<p>Former Judge of the Supreme Court</p>
<p>Third Ombudsman Mr.D.H.J.Abeygunasekara 21.08.1993 – 30.11.1994</p>	<p>An officer from the Sri Lanka Administrative Service</p>
<p>Fourth Ombudsman Prof. B.E.S.J.Bastiampillai 23.01.1995 – 25.08.2000</p>	<p>Professor of History and Political Science, University of Colombo</p>
<p>Fifth Ombudsman Justice (Dr.) R.B.Ranaraja 01.06.2001 – 06.02.2010</p>	<p>Former Judge of the Court of Appeal</p>
<p>Sixth Ombudsman Mr. L.A.Tissa Ekanayake 23.06.2010 – 22.01.2019</p>	<p>Former Judge of the High Court</p>
<p>Present Ombudsman Since 30.01.2019 Justice K.T.Chitrasiri</p>	<p>Former Judge of the Supreme Court</p>

3. Duties and Functions

Article 156 of the Constitution of the Republic of Sri Lanka stipulates that the Parliament shall provide for the establishment of the Office of the Parliamentary Commissioner for Administration (Ombudsman). This position is tasked with the duty of investigating complaints or allegations of infringement of fundamental rights or other injustices caused or likely to be caused, while performing duties by public officers and by officers in public corporations or by officers in Local Government Institutions or any other similar institutions; and, remedying them and/or making appropriate recommendations to overcome those violations.

Accordingly, the Parliamentary Commissioner for Administration Act No.17 of 1981 was enacted establishing the Office of Ombudsman where powers, duties and functions of the Ombudsman are described and defined. The aforesaid Act was amended subsequently by the Act No.26 of 1994 enabling the Ombudsman to receive and entertain complaints of infringements of fundamental rights or other injustices directly from the members of the public.

The Ombudsman is required to investigate and inquire into the alleged infringement of fundamental rights or injustices caused or unfairness meted-out and then to determine whether the decision, act or omission of the public officer concerned is contrary to law, unjust, oppressive, discriminatory or had been made in the improper exercise of the discretion of the officer concerned. Where the Ombudsman is satisfied, after due investigation that a person's fundamental rights have been violated by a public officer or has suffered an injustice at the hands of such officer, he should make a determination and necessary recommendations accordingly. The Ombudsman, by way of relief to the person affected, may recommend that the act of the public officer concerned be reconsidered, rectified, cancelled or varied and direct the Head of the Institution to which the said public officer belongs, to notify within a specified time, the steps which he proposes to take, to give effect to the recommendation.

Mr. Sam Wijesinghe, who was one time the Secretary-General of Parliament of Sri Lanka, was the first Ombudsman of the Republic and in the Annual Report which he has submitted for the year 1984, had explained the duties and functions of the Ombudsman in the following manner.

The Ombudsman is an officer of Parliament. His task mainly is one that the Parliament traditionally performs viz; redressing grievances of individuals. Given that Parliaments now spend much of their time legislating generally rather than redressing particular grievances, emphasis placed on the Ombudsman and the courts to remedy injustices that individuals suffer in their dealings with the bureaucracy...The role of the Ombudsman in Sri Lanka covers areas where citizen and Government meet, hence the constitutional provision of the Ombudsman is perhaps more interesting.

Accordingly, it is clear that a noble duty is cast upon the Ombudsman to ensure protection of fundamental rights of the people referred to in the Constitution and also to protect them from any other injustices caused by the acts performed by the officers of the government and other similar institutions. At the same time, it must be noted that whilst protecting these rights of the people, it is also the duty of the Ombudsman to ensure that the administration policy of the Government is properly implemented, having due regard to the matters contained in Articles of the Constitution and to the provisions of the other legislative enactments and regulations made thereunder and of course to the rules contained in various circulars and directions issued by the government authorities.

4. *International Relations*

Parliamentary Commissioner for Administration currently holds membership of the International Ombudsman Institute. For the first time in 1997, the then Ombudsman attended its meeting of the Board of Directors held in Copenhagen in Denmark from 13th to 15th October 1997. Since then, the past Commissioners also have participated at subsequent conferences of International Ombudsman Institute representing Sri Lanka.

Ombudsman in Sri Lanka is a founder member of the Asian Ombudsman Association as well. However, due to the unavailability of allocated funds prevented Sri Lanka from being represented at the conferences of International Ombudsman Institute as well as Asian Ombudsman Association held in late 2018 and 2019.

Her Excellency Mrs. Joanna Kempkers, High Commissioner for Sri Lanka representing the Government of New Zealand, met with the Ombudsman on 07.08.2019 at the Ombudsman's Office in Colombo upon a request made by her. As a result, an opportunity was accorded for the Office of Ombudsman to understand the measures taken by the Ombudsman Office in New Zealand and to have a close relationship with the said Office. Subsequently, on an invitation extended by the Chief Ombudsman in New Zealand, an opportunity was offered to attend a programme organized by the said Office enabling us to familiarize with the role of the Ombudsman in New Zealand. Matters that were gathered through the aforesaid programme were immensely helpful to perform the functions of this office.

5. Procedure Adopted Upon Receiving Complaints

Each and every complaint/petition received by this office is entered in a separate register and then a specific number is allocated for that complaint. Thereafter, the complaints are classified according to the subjects such as; Pensions, Widows & Orphans' Pension Payments, Salary Anomalies, Salary Increments, Promotions, Lands, Unauthorized Constructions, Termination of Services, Reinstatement in office, Service Absorption, Admission to Universities/Schools, Misuse of Powers etc. These are the particular subjects allocated to and dealt with by the Office of Ombudsman and they belong to the category of "Management Service Officers" in the Government Service. Upon registering a complaint, it is referred to the respective Management Service Officer (Subject Clerk) and thereafter it is their duty to open up a file for each and every complaint. This selection of topic is being carried out by the Chief Management Service Officer at the office.

Once a file is opened in respect of a particular complaint, the subject clerk makes a minute in the file summarizing the contents of the complaint. Thereafter, he/she, having discussed the nature of the complaint with the Administrative Officer, both of them meet the Ombudsman and seek his advice and guidance as to the steps that are to be taken in connection with the complaint.

It is a very important meeting and, at that point, the Ombudsman carefully considers the contents of the complaint along with other documents annexed thereto. The first and foremost issue that would be looked into is to ascertain whether the complaint/allegation, falls within the jurisdiction of the Ombudsman. In determining this issue, Ombudsman carefully addresses his mind to the matters contained in Sections 10, 11 and 17 of the Parliamentary Commissioner for Administration Act (hereinafter referred to as the Act). If the complaint does not fall within the ambit of the Act, the complainant is informed forthwith giving reasons for the inability to proceed with the matter.

When the Ombudsman decides to proceed with the application, he makes appropriate orders as to the steps that are to be taken in connection with each and every complaint. If the Ombudsman feels that it is necessary to obtain more information, such as the relief sought, and against whom the complaint is made, then such information is requested from the applicant. Thereafter, every effort is made to conclude the case in accordance with the provisions of the Act and very often it will depend on the nature of the complaint.

Having decided to proceed with the matter, generally, observations are called from the officers holding higher positions than the officials against whom the allegation is made. Many instances are found where the authorities have decided to grant relief soon after they receive the said letters by which the observations are being called. There are instances where this office had to send several reminders to get the observations on the issue. In a fair number of cases, the Ombudsman was able to see a meaningful outcome after exchanging several letters. In the event that the Ombudsman is unable to achieve an acceptable decision adopting such a process, the relevant parties are summoned to this office for a formal inquiry.

This inquiry is held observing the rules of natural justice giving every party an opportunity to present their respective cases in the presence of each other. Whenever a violation of a fundamental right or an injustice has been caused to the complainant, the Ombudsman makes every effort to ensure granting relief to the victim. If he fails to achieve an acceptable solution by such a cause of action, further inquiries are made to rectify the errors made. If the Ombudsman is unsuccessful in all such endeavours, he makes a determination on the issue and informs the same to the respondent-party to ensure that it is implemented within a given period of time. If no action is taken within the time so specified, the Ombudsman shall forward a copy of his report to His Excellency the President and to the Parliament for appropriate action. At this stage, it must be noted that the Office of Ombudsman always maintains strict confidence when following the procedure referred to hereinbefore.

Having mentioned the manner in which the applications are being processed and the actions taken thereafter, I will now refer to a few matters covering different areas where this office was able to grant reliefs to the applicants who sought the intervention of the Ombudsman. I believe it will be of somewhat assistance to understand properly the nature and the type of the applications made to this office during the year under review.

No: OMB/P/2/4/4711

Name: Mr. S.G.C. Keerthirathna

Mr.Keerthirathna who served as a Multi Tasks Assistant at Sri Lanka Ports Authority made a complaint stating that he was not selected for the Post of Controller (Operations) though he had successfully obtained high marks at the written examination and also was present himself for an *viva-voce* interview held for the recruitment to the said post. He has further stated that, the 12 marks that he was entitled to, for his services in the Operations Division had not been considered by the interview board. Pursuant to the calling of reports in this regard from the Chief Human Resource Manager of Ports Authority, he sent the marks allocated to the candidates present at the interview for us to consider. Thereafter, inquiries were made from the Chairman of the Ports Authority as to the reasons why the complainant was not given marks, due to him for the services he has rendered in the Operations Division as opposed to the marks allocated to Mr. C.A.Thilakarathna who had no specific contribution towards the operational process. Consequently, after a lapse of 1 ½ years from the date of the interview, due to the intervention of this office, steps were taken to grant the applicant 12 marks to which he was entitled to, for his service experience and then placed him in the Post of Controller (Operations) at the Ports Authority with effect from 11.07.2019.

No: OMB/P/2/1/169

Name: Mrs. A.A.Dayawathi Alahendra

Mrs. Dayawathi's complaint was that a previous recommendation made by Justice L.H. De Alwis, former Ombudsman on 16.10.1991 had not been implemented by Pradeshiya Sabha, Thanamalwila and therefore, she was deprived of occupying her residence and the land which consisted 40 acres in extent where she was running a farm. It was due to the acquisition of the said land by the Government for the use of Udawalawe National Park.

Having called for reports, the Divisional Secretary informed us that there was a possibility of granting her alternate land or in the alternative paying her compensation and has then requested her to send her consent to consider the grant either a block of land or compensation. Complainant thereafter had requested to allocate her a land close to Ratnapura and if it is not possible to pay her compensation. Accordingly, she was informed to make her request to the Divisional Secretary to obtain compensation based on the Government Valuation made by the Department of Valuation since the Divisional Secretary was unable to find a suitable land in Ratnapura.

No: OMB/P/2/8/2412

Name: Mr. K.M. Wickramasinghe

Mr. K.M. Wickramasinghe made a complaint in relation to a common issue stating that the authorities of Raththota Pradeshiya Sabha has constructed a building on the cemetery land that had been used by the residents in Gansarapola, Raththota for two generations and has stated that the authorities now do not allow those residents to use the said land as a cemetery. It was brought to our notice that a section of the residents in the village including the complainant were not allowed to use it as a cemetery having constructed a building on it and thereby reducing the land available for the cemetery though some are being allowed to use the balance land as a cemetery. In order to prevent such a discriminatory situation in the future, necessary recommendations were made to the Secretary, Raththota Pradeshiya Sabha, who is the authority responsible for the management of the said cemetery under the Pradeshiya Sabha Act. Accordingly, Raththota Pradeshiya Sabha having agreed to implement the recommendations made by this Office, allowed the residents in Gansarapola also to use it as a general cemetery without any division being made among the members of the society.

No: OMB/P/2/8/2312

Name: Mr. S.Abeygunasekara

A disciplinary inquiry had been held against Mr.Abeygunasekara. Imposing a punishment consequently, the disciplinary authorities have decided to deduct 1% from his gratuity payment and also to recover 50% of the dues payable by him to the government also from his gratuity. Upon an appeal being made to the Secretary, Ministry of Public

Administration, against the said decision invoking the powers vested in him (the Secretary) under section 12 of the Minutes of Pension, altered the said decision and increased the punishment making it to deduct 2% from his monthly pension and to recover all the dues payable to the Government either from his gratuity or from his pension. Mr. Abeygunasekera's complaint was that such an increased punishment by the appellate body was unreasonable and/or unjustifiable; and, therefore, it was untenable. Upon intervention by the Ombudsman, the Secretary of the Ministry of Public Administration who succeeded the Secretary, who made the decision to increase the punishment, altered the decision taken by his predecessor and decided to reverse the decision to deduct 2% from monthly pension and replaced the decision to deduct only 0.5% from the monthly pension of the applicant. Accordingly, steps were being taken by the Department of Pensions to prepare and pay the corrected pension due to him.

No: OMB/P/2/7/435

Name: Mr. P.V. Chandradasa

This applicant, who retired due to his poor health conditions, made a complaint that even though it had lapsed 22 months from the date of his retirement he had not been paid his pension. Due to the intervention by this office, action was taken to pay him the monthly pension along with arrears.

No: OMB/P/2/10/1314

Name: Mrs. M.R.N.N .Wijayathillaka

This applicant complained that her daughter was not admitted to K/M Pinnawala Central College though she had passed the Scholarship Examination obtaining 164 marks. During the period that the child was preparing for the examination, her father had died in another country while serving there. He had died on 28th July 2015 and his last rites had been performed only on 15th September 2015. This is the period during which she was preparing and sitting for the exam. Pursuant to the reports being called from the Principal of K/M Pinnawala Central College on the issue of failure to admit this girl to the school, an inquiry was held summoning the officials of the Ministry of Education to this office. In that inquiry, it was revealed that a student namely Gihan Anjana who has not obtained the necessary pass marks at the Scholarship Examination had been admitted to this school. Accordingly, having considered the discriminatory treatment meted-out to her

and also the occurrence of the death of her father when she was preparing and sitting for the examination, recommendation was made to admit the daughter of the applicant to this particular school. On that recommendation, the girl was admitted to Grade 9 in this school for the year 2019.

No: OMB/P/2/10/1426

Name: Mr. K.K.P. Nishantha

An application had been made to admit the daughter of this complainant to grade 01 in Maliyadeva Girls' School, Kurunegala, for the year 2019, on the basis that the complainant-father had been transferred to Kurunegala Hospital with effect from 01.01.2019. Even though the transfer order had been received well before the application was submitted, no notice had been received for him to be present at the interview. Upon inquiries being made, it was found that the reason for not summoning for the interview was that the father had not reported for duty at the Kurunegala Hospital till then though the letter transferring him had been issued well before the date of calling for applications. Subsequently, it was revealed that the reason for not reporting for duty was the failure to release him from his duties due to the shortage of doctors at Dambadeniya Hospital. Having conducted inquiries in this regard, summoning the two parties to this office, recommendation was made to admit the daughter of the complainant to grade 02 at Maliyadeva Girls' School, Kurunegala considering the fact that the delay in reporting for duty was beyond the control of the complainant and it was basically due to the exigencies of services of doctors serving in the Government. The said recommendation was accepted by the Ministry of Education and the girl was admitted to the school to commence her studies in Grade 02 in the year 2020.

No: OMB/P/2/10/1516

Name: Mrs .V.R .Anoma Madhubashini

This complaint had been made due to the failure to admit the daughter of the complainant to Grade 01 at G/Sanghamitta Balika Vidyalaya for the year 2019. The complainant had submitted her application on the basis of "approximate residence". When the inquiries were made in this regard, it was revealed that the two students who had already been selected are residing in places where there is more distance to the school than the place where the applicant is residing. This was revealed only after the Administrative Officer

and the Subject Clerk of this office visited the respective houses and the school and then measuring the distances with the help of Google Maps using an iPad. Having found the correct distances of the respective parties, recommendation was made to have the child admitted to the school. Consequently, this girl was admitted to G/Sanghamitta Balika Vidyalaya with the approval of the Ministry of Education too.

No: OMB/P/2/1/295

Name: Mrs. Nandika Lakmali

This complaint was made stating that Panadura Urban Council has refused to issue a copy of a Street Line Certificate, which was needed by the complainant for her to apply for a loan for the purpose of having an extension to the house where they were living. It was observed by this office that the right to obtain a copy of Street Line Certificates, which is considered as a public document, must be ensured and such a right cannot be violated by a public official. Accordingly, our recommendation was to issue a copy of the said document to the applicant. Secretary of the Panadura Urban Council, being a senior public officer disregarding the aforesaid right of the public, did not adhere to our recommendation and had sought further clarification from the legal division of the Department of Local Government. Their advice was to comply with the recommendation of this office. Finally, the requested, a copy of the Street Line Certificate was issued to the complainant in accordance with our recommendation.

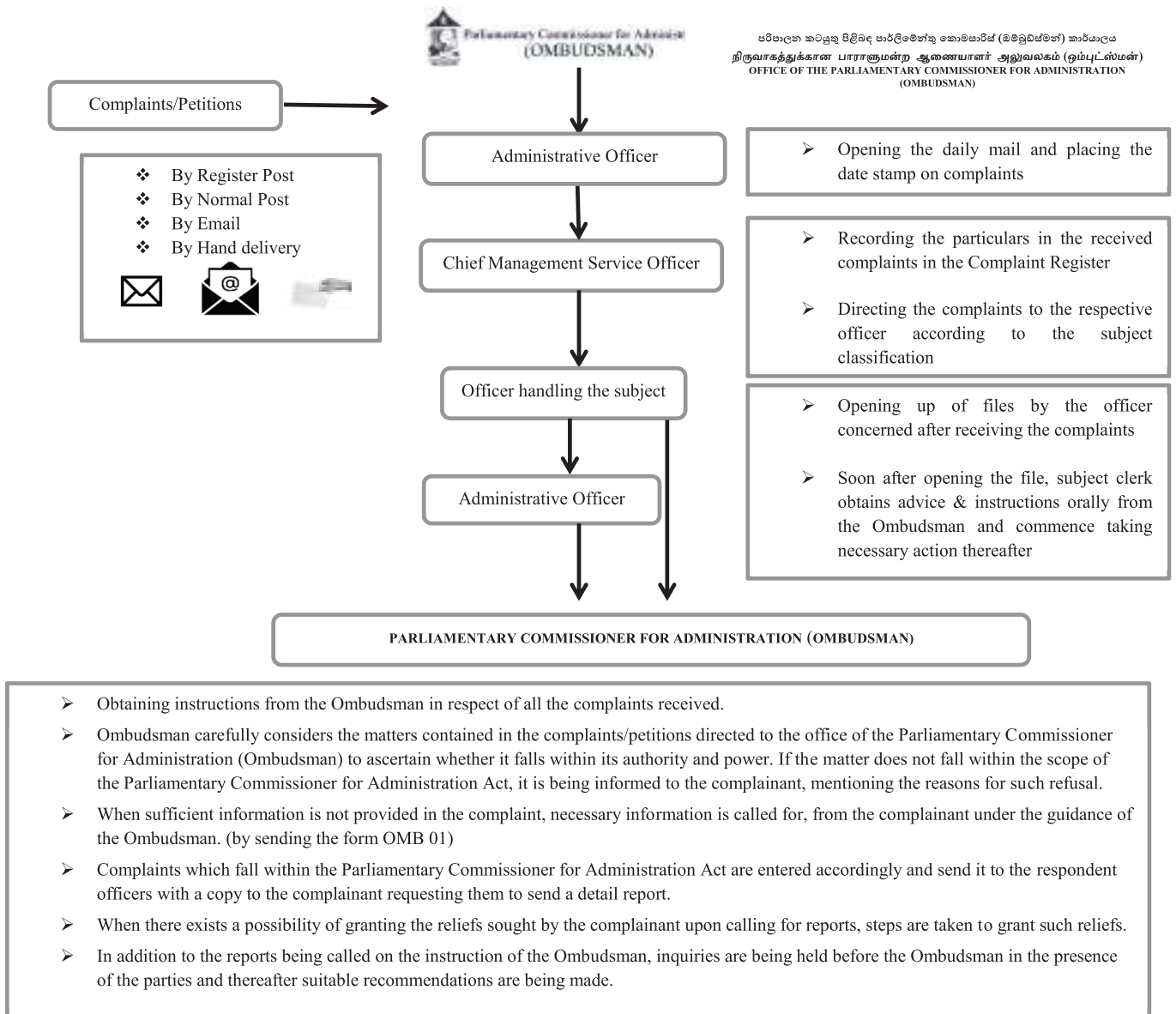
No: OMB/P/2/7/658

Name: Mr. W.M. Premathillaka

A complaint was made to Ombudsman for not paying the complainant of his revised pension even though 06 years had lapsed from the date of his retirement. Upon inquiries being made, the Ombudsman was informed that the request made by the complainant could be granted within 02 months from the date of complaint.

Letters of gratitude sent by those who have obtained reliefs due to the Ombudsman's intervention are annexed for purposes of completion of the Annual Report

6. Various Stages of the Procedure Followed After Receiving Complaints



***7. Observations
and
Suggestions***

7.1 Observations

Basically, the role of this institution is to inquire into the complaints that come within the scope of the Office of Ombudsman in terms of the powers and duties vested under the Parliamentary Commissioner for Administration Act and the subsequent amendments made thereto. Accordingly, steps were taken during the last year too, under the provisions contained in the aforesaid Act to remedy alleged injustices caused by public officers in the exercise of their duties towards citizens, as referred to in Article 156 of the Constitution. In doing so, this office made every effort to remedy the alleged injustices that were referred to us for redress. Whenever no amicable settlement was possible, this office made every other means, such as writing to the officers concerned repeatedly and also by contacting them even over the telephone, depending on the circumstances of each case, endeavoring it to have those issues settled expeditiously. During the year under review, 1343 complaints were disposed of summarily and 63 were dealt with having held inquiries *inter-parte* making it to a total of 1406 and the balance 961 complaints were carried over to the year 2020 for further action.

Disputes between private parties, and the matters that had been dealt with or are being adjudicated before court, fall outside the jurisdiction of the Ombudsman. One other notable matter is the delay that had been caused when making applications to this office. Such delay may lead to reject a particular complaint at the very outset unless reasons for such delay is clearly explained.

It is to be noted that inadequacy of information provided by the applicants for us to proceed with a complaint is an obstacle to commence inquiries. In such a situation, this office is compelled to request the applicants to provide the required information to this office. In any event, we usually send a particular form prescribed and named as “OMB-01” to all the applicants requiring them to answer the questions mentioned therein so that we will be able to obtain required and necessary information such as the officers against whom the application is made and the exact decision by which the alleged violation of rights had been committed.

This office received 297 complaints against the Ministry of Public Administration. It is necessary to mention that the officials there, for the reasons best known to them, were reluctant to take action as expected. While referring to this aspect, I am reminded of the most important role of this office namely, to make recommendations to remedy administrative decisions, which are being taken in an erroneous manner. Under such circumstances, it is unavoidable that those officers who engage in making such erroneous administrative decisions become unhappy by the decisions made by the Ombudsman. Our attention has been drawn to many such instances where the officials were not inclined to implement our recommendations. Accordingly, a doubt may be created in the mind of an individual on the question of delay in sending the reports to this Office by the officials attached to the Ministry of Public Administration.

Even though the number of complaints received against the Department of Pensions had increased noticeably, we were able to grant many reliefs amounting to 50, out of all those complaints. Sending response without causing much delay by the Department of Pensions could have been the reason for such a satisfactory outcome. However, it is to be noted that there were instances where reminders too, had to be sent to obtain their responses.

Complaints made against officers of the Ministry of Education and the Department of Education also were at a high level. It is regretted to note that some of the institutions come under the said Ministry also were slow in replying to the Ombudsman. Such indolence may have been due to the fact that there are a large number of officers serving under this Ministry.

It is observed that some of the Local Authorities were lethargic in taking legal action particularly when it comes to the matters such as; allowing trees to grow causing disturbance to neighbours, causing unnecessary noises through various factories, not having adequate drainage systems to flow water, allowing unauthorized constructions to stand. Even though many recommendations were directed to those authorities, requesting them to take action to demolish unauthorized structures, unfortunately those were not adhered to in the way expected, resulting it not achieving the desired results.

It is necessary to note that during the pendency of an inquiry or investigation upon a complaint being received, the officials whose decisions had been challenged, expended

time and effort, trying to justify a decision or action that they have taken without paying due heed to sense of justice or fairness. Moreover, regardless of the gravity of the wrong done and its deleterious effects on individual citizen, officials seem to have continued in taking wrongful action or spurious decisions, despite the justifiable complaints being made against them. It is to be noted that such conduct never enhances proper administration and indeed vitiates the same. Also, it leads to distancing from good governance as public officials do not readily receive citizens and listen to them who bring in legitimate complaints to their notice.

7.2 Suggestions

Having considered the matters pertaining to the complaints made to this office following suggestions could be made to remedy the erroneous administrative decisions.

Upon considering the facts contained in the complaint bearing No: OMB/P/2/10/1486 made by Mr. Gayan Dasanpriya of Bemulla, Mudagamuwa, it came to light that the main reason for his daughter, Nethumika Kahawalage was not selected for the money given as bursaries for low income groups in the Grama Niladhari Division, to which she belonged to, was the careless manner adopted when determining the income of her family by the Grama Niladhari.

It is observed that the reason for such a decision by the Grama Niladhari was that he did not act in the correct manner specified in the circular bearing No: ED/01/12/08/01 dated 01.02.2016 which had been issued to all Divisional Secretaries by the Ministry of Education.

Following suggestions may be made to avoid such issues:

- I. Introducing a proper methodology in order to identify exact low-income earners when there is such a requirement.
- II. Adopting a formal and proper system to supervise the duties of Grama Niladharis through Divisional Secretaries and Grama Niladharis (in charge of Administration) for the purpose of minimizing shortcomings that may arise when performing duties by Grama Niladharis.

- III. Making a proposal to the Cabinet of Ministries to have the number of students who are entitled annually to such bursaries, enhanced.
- IV. Making a proposal to the Cabinet of Ministers to have the income level of the families who are entitled for bursaries, appropriately altered from time to time.

When attention is drawn to the facts in the complaint made by Mr. A.G. Anura of Yodhakandiya in Thissmaharama under file No: OMB/P/2/7/369 for not receiving his pension, it was observed that it may have been due to the shortcomings found in the circulars issued to determine pensions. Reason to state so is explained below.

As it stands now, it is necessary to have it mentioned in the letter of appointment of any officer that his post is pensionable and also is required that he/she shall have at least 10 years of service, for him/her to be entitled to the pension.

If there is a shortfall in the said ten-year period, then the period of service that he has served as a daily paid officer is to be calculated considering the number of days served, if available and the way it is to be calculated is depicted in the Pension Circulars No: 2/2013 and 3/2008. In the said circulars it is mentioned that the contribution to the Widows and Orphans' Pension of an employee is charged and calculated on the basis of a calendar month though only the number of working days is counted to determine the period of service when counting 10 year service period for the purpose of payment of Widows and Orphans' Pensions. Accordingly, it is observed that an injustice had been caused to Mr. A.G. Anura, when calculating his period of service for the purpose of his pension rights since he was short of few days to complete 10 years.

This issue can be avoided if the circulars are amended to apply the basis similar to the way that the contributions are charged for the Widows and Orphans fund or by determining the amount payable as the monthly contribution on the basis of number of days that an officer has served.

The issue in file bearing No: OMB/P/2/7/238 was that the complainant, being the husband, namely Mr. Upali Hewamanna, of the officer who has retired from Teacher's Service with effect from 23.12.1996, was deprived of the payment of Widowers & Orphans' Pension. She had died of a cancer on 07.06.2013.

The reason for the said denial of the pension to Mr. Upali Hewamanna was that his wife had expressed her disclaim to have the benefits under the provisions of the Widowers and Orphans Pension Act, No. 24 of 1983 on the basis of non-alteration and therefore did not contribute for Widowers and Orphans' Pension.

However, Mr. Hewamanna had submitted a letter under her signature but it was only after the demise of his wife though date of that letter appeared as a date prior to the date of her death. In that letter she had informed her inclination to contribute to Widowers and Orphans Pension fund in terms of the Public Administration Circular No. 13/2004. Mr.Hewamanna has submitted the said letter along with an affidavit to the Department of Pensions in terms of the Pensions Circular No. 3/2014.

The request made in the said letter had been refused by the Department of Pensions for the reason that the complainant's wife had submitted the earlier letter to the Zonal Director of Education, Piliyandala, expressing her disinclination to contribute to the Widows Fund and also because there was no provision in the circular dated 31.12.2014 to accept a subsequent letter despite the fact that the circular dated 31.12.2014 allowed for the officers who had not expressed their disinclination to exercise the option to contribute to the Widowers and Orphans Pension Scheme. However, due to strict interpretation of the applicable circulars, Mr. Upali Hewamanna, being the husband of an officer who had served the Government Service was deprived of his Widowers' Pension.

Following suggestions may be made to avoid such injustices caused under those circumstances:

- I. Amending circulars enabling an officer who had expressed disinclination to contribute towards the widowers and orphans pension scheme, to change it to the other way around by a subsequent a letter.
- II. Enacting laws enabling the spouse of such officer to make a claim when there is a sudden demise of his wife who had expressed her disinclination and to amend the circulars accordingly.
- III. Paying attention to make suitable amendments to the circulars enabling the beneficiaries to obtain reliefs in a flexible manner removing the complexity in current circulars.

8. Statistical Analysis

8.1 Statistical Analysis

There were 1770 complaints received directly from the members of public, in addition to the 24 complaints referred to us by the Parliamentary Petitions Committee during the year 2019. Also, there were 479 complaints that were brought forward from the year 2018. At the same time, there had been 94 requests that had subsequently been made in the files which had already been disposed of. Accordingly, altogether there were 2367 complaints that were dealt with, during the year under review.

Table 1: Statistical Analysis – Year 2019

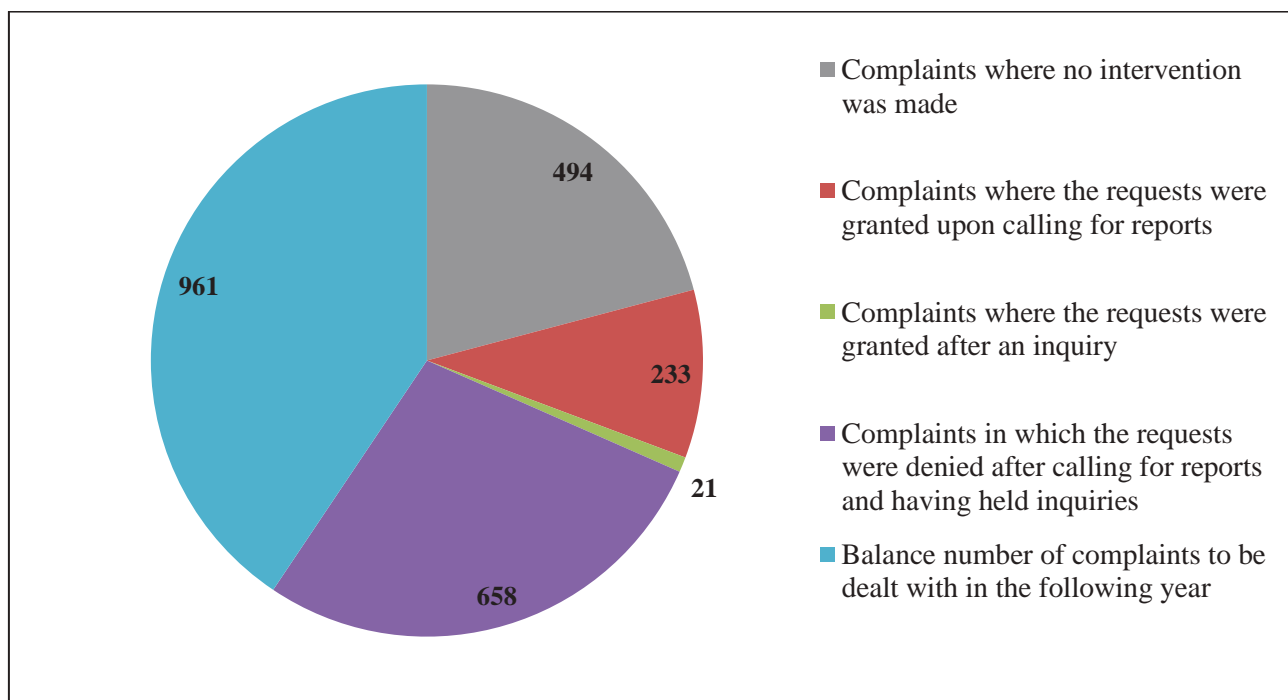
	Pending	Closed	Total
Balance Complaints from the year 2018			479
(1) Total number of complaints received during the period 01.01.2019 to 31.12.2019			
(I) Directly from complainants	1770		
(II) Referred by the Parliamentary Public Petitions Committee	24		
(2) Total number of complaints received during the year 2019			1794
(3) Number of files re-opened due to requests made on various grounds			94
Total number of complaints that were dealt with during the year 2019:-			2367

Total number of complaints investigated during the year 2019:-			
(1) Number of files terminated at preliminary stages :-			
i. Outside the jurisdiction of the Ombudsman		322	
ii. Complaints in which no specific reliefs were sought		172	(494)
(2) Number of complaints inquired into having called for reports from the respective institutions :-			
i. Complaints in which the reports were called upon considering the facts mentioned in the complaint – Not concluded	642		
ii. Complaints in which further reports were called for upon considering the matters mentioned in the reports received – Not concluded	409		
iii. Complaints where the requests were granted after receiving the reports		230	
iv. Complaints in which reliefs were granted on our recommendations made considering the reports that were called for		3	
v. Complaints in which the requests were denied after calling for reports		616	(849)
(3) Complaints where the inquiries were held with the participation of the parties when a decision could not be arrived by calling for reports :-			
i. Number of inquiries held having summoned the complainants and the respondents having looked at the reports received – Not concluded	41		
ii. Complaints in which the requests were denied after having held inquiries		42	
iii. Complaints in which the recommendations were made at the conclusion of the inquiries – Not concluded	23		
iv. Number of complaints in which reliefs were granted having implemented the recommendations made		21	
v. Number of complaints in which the recommendations were disregarded		-	(63)
Balance number of complaints to be dealt with as at 31.12.2019			961

8.2 The manner in which the complaints were dealt with

Totality of the complaints that were to be dealt with for the year 2019 were amounting to 2367 and out of which 961 complaints were carried forward to the following year. Accordingly, 1406 complaints were disposed of during the year 2019. (As shown in Table 1 – Statistical Analysis) Following is the summary in relation to the manner in which those complaints were dealt with.

Graph 1: Manner in which the complaints that were dealt with for the year 2019



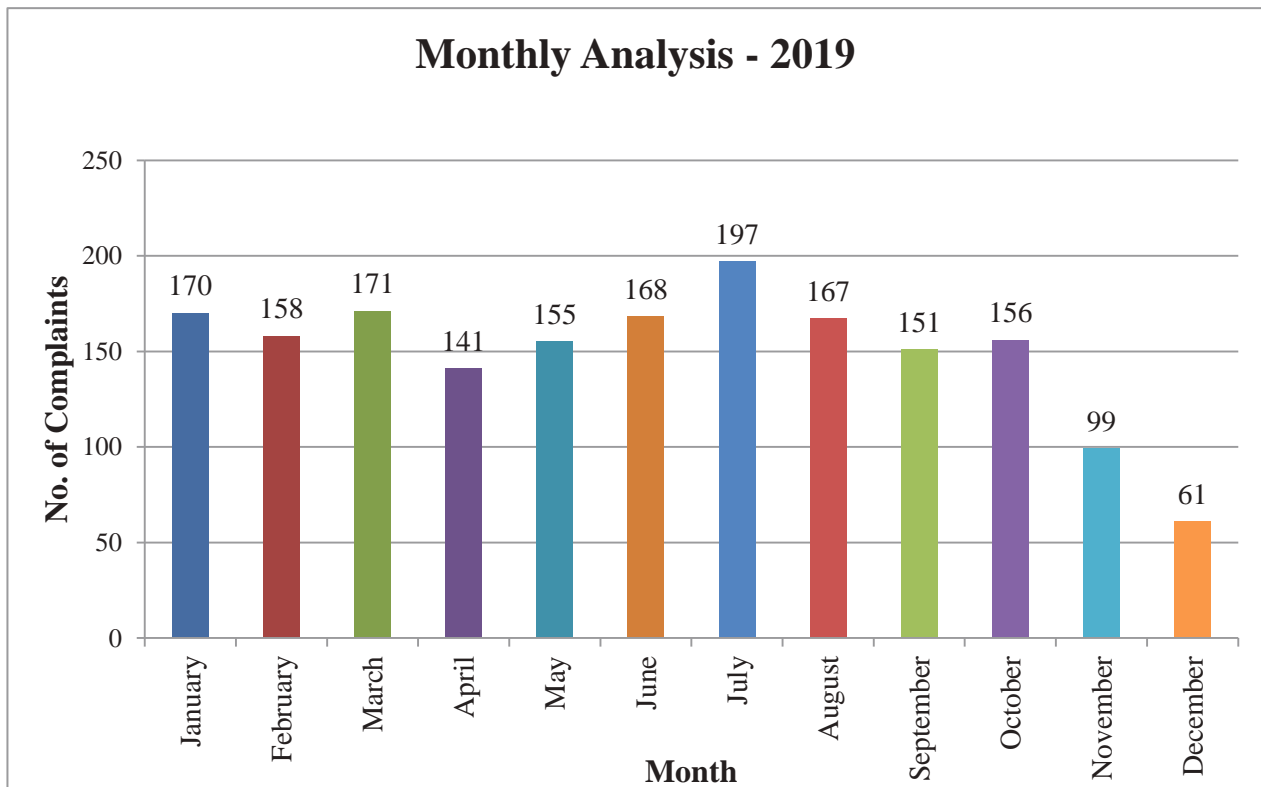
Manner in which the complaints were dealt with	Number of Complaints
● Complaints where no intervention was made	494
● Complaints where the requests were granted upon calling for reports	233
● Complaints where the requests were granted after an inquiry	21
● Complaints in which the requests were denied after calling for reports and having held inquiries	658
● Balance number of complaints to be dealt with in the following year	961
Total number of complaints that were dealt with during the year 2019	2367

8.3 Monthly Analysis

Total number of complaints lodged for the year 2019 was 1794. Lowest number reported was 61 and it was for the month of December and the highest number reported was 197 which was for the month of July. Relevant particulars are described in graph 2 below:

Graph: 2 Complaints made for each month for the year 2019

Monthly Analysis



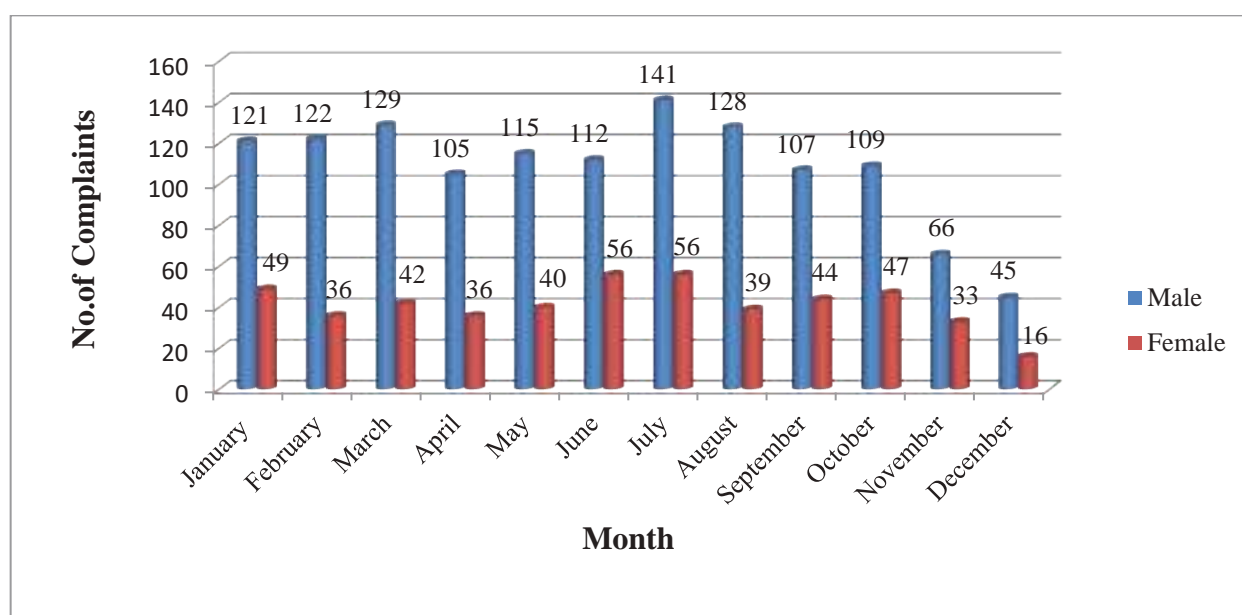
8.4 Analysis under the category of Male/Female

1300 complaints were made by males while 494 were by females. Those are described in Table - 2 and in Graph - 3.

Table: 2 – Total number of complaints for 2019 on the basis of male and female

Month	Male	Female	Total
January	121	49	170
February	122	36	158
March	129	42	171
April	105	36	141
May	115	40	155
June	112	56	168
July	141	56	197
August	128	39	167
September	107	44	151
October	109	47	156
November	66	33	99
December	45	16	61
Total	1300	494	1794

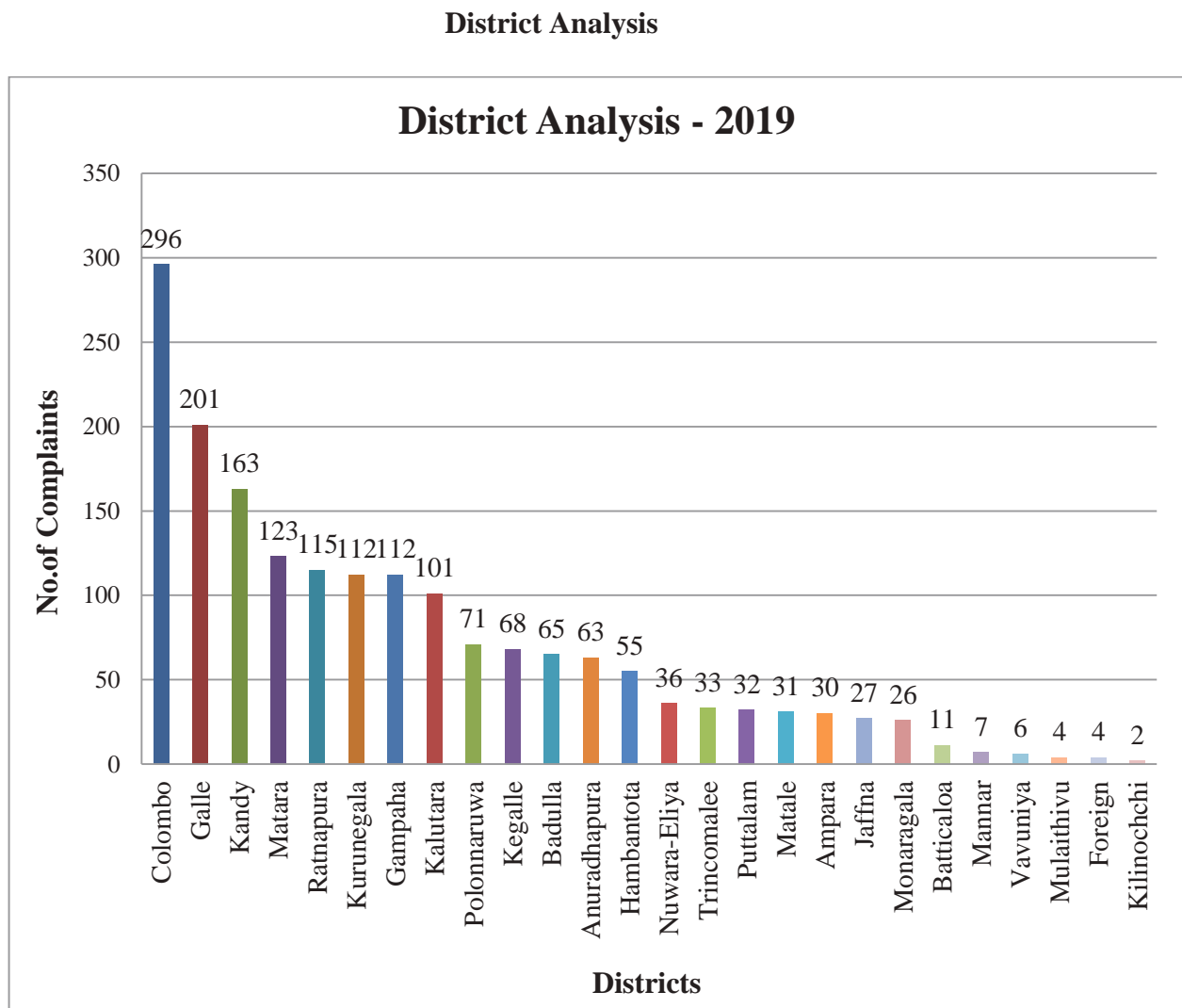
Graph 3: - Total number of complaints for 2019 on the basis of male and female



8.5 Analysis on the basis of Districts

Highest number of complaints for the year 2019 were received from the District of Colombo and it was amounting to 296. Next highest was from Galle District and it was 201 and the number of complaints from Kandy District were 163. Lowest number was 02 and it was from Kilinochchi District. Refer Graph 4 below.

Graph: 4 –Total number of complaints received for the year 2019 according to the Districts that they reside permanently



8.6 Analysis based on the Respective Subjects

In the year 2019, there were considerable number of complaints in respect of the matters such as; granting of permanency in office, termination of employment, reinstatements, promotions, salary anomalies, salary increments, claims for arrears due, abuses of power, inaction of the officers concerned, pension issues, problems on paying widows & orphans dues, payments of employees provident fund, unauthorized constructions & annoyances made, issuing of licenses, issues relating to building permits. Refer Table 3 below.

Table 3: - Complaints received against the public officers on the basis of respective Subjects

	Subject	Number of Complaints
1	Service Absorption, Recruitment, Appointments, Confirmation, Antedating	321
2	Land permits, Grants of State Lands	252
3	Miscellaneous	157
4	Promotions, Seniority	156
5	Salary Anomalies, Increments, Arrears, Allowances	135
6	Pension, W&O	121
7	Termination of Employment, Reinstatement, Extension	117
8	Transfers from place of work	95
9	University / School Admissions, Examination results	85
10	Delay, Incompetence, Negligence, Abuse of power.	72
11	Unauthorized Constructions / Nuisances	67
12	Roadways	53
13	Harassment at Work Place	51
14	Compensation, Poor relief, Samurdhi	35
15	Licenses, Building Permits	26
16	EPF / ETF / Gratuity	25
17	Electricity, Water, Telephone Connections, Disconnections.	23
18	Loans, Recovery, Rescheduling	3
Total number of complaints		1794

8.7 Analysis as to the Categories such as Ministry, Corporation, Public institution etc.

Looking at the following Table, it is seen that there exists a large number of complaints against the Ministry of Public Administration and the Ministry of Education & Higher Education. When conducting inquiries, it was revealed that majority of the complaints were on issuing of Grants and Permits to State Lands and many of those were against the respective Divisional Secretaries. Refer Table 4 below:

Table 4: - Complaints received against the public officers in the Ministries, Departments, Authorities and Public Institutions etc.

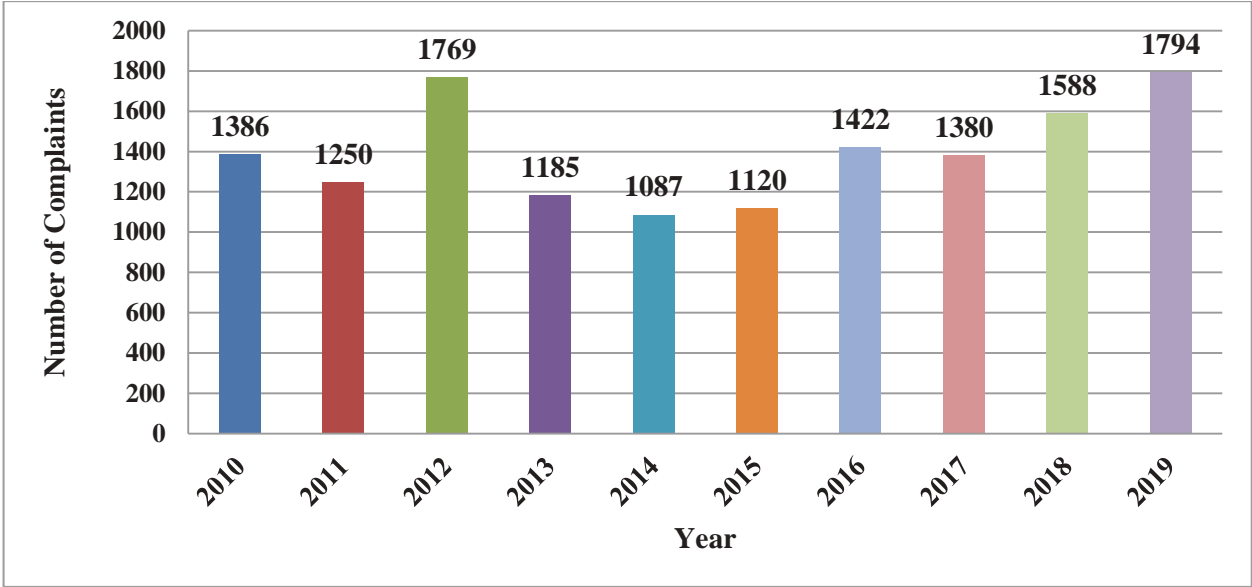
	Ministries, Departments, Authorities etc.	Number of Complaints
1	Public Administration	297
2	Education & Higher Education	242
3	Provincial Councils & Local Government Institutions	230
4	Pensions	175
5	Different Institutions	117
6	Corporations/Authorities/Boards(CPC,CEB,SLAA,RDA,SLBC,SLRC)	107
7	Posts and Telecommunication	95
8	Defense & Internal Security	79
9	Health and Indigenous Medicine	63
10	Transport (SLCTB, CGR, CMV)	61
11	Lands & Land Reforms Commission	38
12	Public Services Commission (Central and Provincial)	28
13	Home Affairs; District Secretariats, Divisional Secretariats	27
14	Agriculture	26
15	National Water Supply & Drainage Board	24
16	State Banks	22
17	Social Services / Samurdhi	17
18	National Policy and Economic Affairs	16
19	Finance	15
20	Forests	15
21	Labour	14
22	Cooperative Development	14
23	Bureau of Foreign Employment	12

24	Universities	11
25	Irrigation & Mahaweli Authority	9
26	Department of Survey	8
27	Justice	5
28	Registrar General	4
29	Governor's Secretariats	4
30	External Affairs	4
31	Department of Motor Traffic	3
32	Urban Development Authority	3
33	Auditor General	2
34	Department for Registration of Persons	2
35	Department of Examinations	2
36	Plantations	1
37	Public Trustee Department	1
38	Department of National Archives	1
	Total number of complaints	1794

8.8 Analysis of the complaints received by the Ombudsman’s Office during the last 10 years

Upon considering the complaints received for the last 10 years including those of the complaints for the year 2019, it is observed that the highest number of complaints had been made within the last year namely 2019. The number was 1794. Next highest number was 1769 in the year 2012 and it was 1588 in 2018. Lowest number had been received in 2014. Refer Graph 5 below:

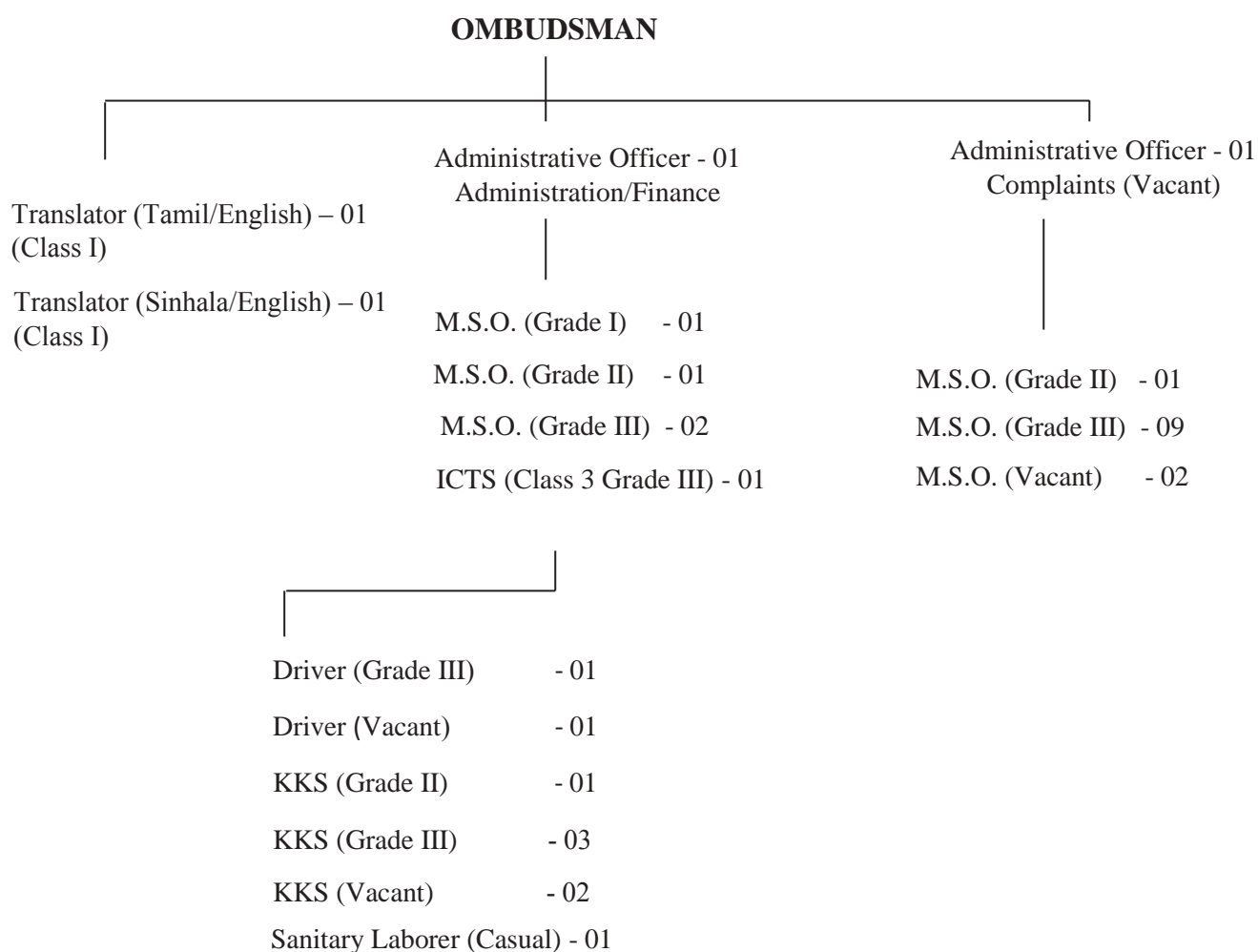
Graph: 5 – Complaints received for the last 10 years



8.9 Office Staff

Approved cadre for this office is 32 in number. However, as shown in the structure below, only 25 officers were attached to this office as at the end of 2019. It is to be noted that delay might be occurred in the progress of work due to the said prevailing shortage of the staff of this office.

OFFICE SRTUCTURE



8.10 Annual Budget

Recurrent Expenditure amounting to Rs.28,470,000 and the capital Expenditure of Rs.1,100,000.00 totaling it to Rs.29,570,000.00 had been set-apart for the year 2019 and the real expenditure had been Rs.28,613,358.00 and the balance came to Rs.956,642.00.

Vote 22 - Office of the parliamentary Commissioner for Administration

01 – Operational Activities

01 – General Administration and establishment services

<u>Subject</u>	<u>Description</u>	<u>Net Provision</u>	<u>Real Expenditure</u>	Rs.
	Total Recurrent Expenditure	28,470,000.00	27,966,083.00	
	Total Personal Emoluments	13,988,000.00	13,810,834.00	
1001	Salaries & Wages	10,670,000.00	10,556,697.00	
1002	Over Time & Holiday Payments	318,000.00	280,508.00	
1003	Other Allowances	3,000,000.00	2,973,629.00	
	Traveling Expenses	830,000.00	823,686.00	
1101	Domestic	80,000.00	74,486.00	
1102	Foreign	750,000.00	749,200.00	
	Supplies	1431,000.00	1337,002.00	
1201	Stationary & Office Requisites	600,000.00	580,211.00	
1202	Fuel	672,000.00	608,451.00	
1203	Diets and uniforms	159,000.00	148,340.00	
	Maintenance Expenditure	790,000.00	650,787.00	
1301	Vehicles	500,000.00	493,437.00	

1302	Plant Machinery & Equipment	170,000.00	143,904.00
1303	Building & Structures	20,000.00	13,446.00
	Contractual Services	10,950,000.00	10,765,218.00
1401	Transport	10,000.00	960.00
1402	Postal & Communication	600,000.00	593,419.00
1403	Electricity & Water	1,580,000.00	1,518,357.00
1404	Rents & Local taxes	8,120,000.00	8,051,330.00
1409	Other	640,000.00	601,152.00
	Transfers	581,000.00	578,556.00
1505	Subscription & Contribution Fees	380,000.00	379,636.00
1506	Property loan Interest	201,000.00	198,920.00
	Capital Expenditure	1,100,000.00	647,275.00
	Acquisition of Capital Assets	477,840.00	30,850.00
2102	Furniture & office Equipment	477,840.00	30,850.00
	Capacity Building	622,160.00	616,425.00
2401	Training & Capacity Building	622,160.00	616,425.00
	Total Expenditure	29,570,000.00	28,613,358.00
	Total Financing	29,570,000.00	28,613,358.00
	Financing	29,570,000.00	28,613,358.00
	Domestic	29,570,000.00	28,613,358.00

9. Conclusion

The system in place through the Office of Ombudsman provides a forum for the citizens to have access to an independent, impartial and inexpensive dispute resolution mechanism, which help resolving their grievances, protect their fundamental rights, restoring their dignity and it will help to have confidence in a democratic process.

Sound system of administration is a basic requirement in the modern society. With the view of achieving this goal, the government machinery that is responsible when carrying out routine business in the administrative process, is vested with enormous powers to perform the functions and duties, smoothly and 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, and against the Rules of natural justice and equity.

The office of Ombudsman is always open for the purpose of diagnosing, investigating, redressing and rectifying injustices, if any, caused to a person by way of maladministration. Exercising powers arbitrarily or refusing to act duly and applying delaying tactics in the discharge of official obligations with corrupt or biased motivations are the main factors that are to be looked into and to be rectified by the Office of Ombudsman.

In the present-day context, seeking redress from courts have become very expensive. It is not a secret that seeking redress through court or a tribunal depends on the availability of necessary finances. It is not an exaggeration to state that the Ombudsman is more often fruitful than going to court to have the administrative errors corrected particularly because the Ombudsman has the necessary experience and power, having dealt with a large number of complaints over years. It is a more flexible and cost-effective system as well. Moreover, the office of Ombudsman has the advantage of providing its services especially for vulnerable groups of the society to initiate the complaint process with minimal expenses if not for zero expenses. Further, it is advantageous over the traditional court system. Similarly, it is significant to note that this institution does not allow lawyers or an agent to appear on behalf of a complainant.

I also must mention that when inquiring into allegations, this institution affords ample opportunities to both parties to present their cases upon studying the matters pertaining to the complaint in depth.

Having stated that I need to comment on the attitude taken by the responsible officials towards achieving the goals intended by the enactment of the Ombudsman Act. Looking at the files maintained by this office, I have observed that there have been instances of some public officials making decisions according to their own whims and fancies, ignoring laws, regulations and rules or giving them their own interpretations. Officials executing their duties in that manner forget that they tend to violate fundamental rights and human rights of the people depriving them of their legitimate expectations in addition to the pain of mind they suffer.

I have also seen that some officials are not inclined or unable to settle issue conciliatorily. Furthermore, it had been noticed that some officials apparently are not competent enough or are unable to deal with issues especially when it comes to the issues in relation to disputes among parties. This practice of not settling issues cordially stems from the attitude of treating a complainant as an adversary and also because of their unwillingness to accept official fallibility.

Although the problems and difficulties faced with, in the process of problem-resolving, have been highlighted in this report to some extent, I must, at the same time, state that there had been considerable degree of co-operation extended by all officials enabling me to discharge my duties more effectively.

In conclusion, I must state that with the help of the staff in this office, the Office of Ombudsman has managed to dispose of a fair number of complaints received despite the difficulties that they are faced with. The approved cadre of the office has not been completed. Neither an Accountant nor a Book-Keeper is appointed to this office. Reluctance of officers to serve in this office is a noticeable factor particularly when the

allowances paid to the staff of the institutions which discharge the same functions, are not being paid to the members of staff in this office.

Finally, I must state that I would be failing in my duty, if I do not appreciate the hard work performed by the members of the staff in this office. I take this opportunity to extend my profound gratitude to the members of the staff in this office who have worked tirelessly against all barriers, to achieve the targets we were aiming at.

Justice K.T. Chitrasiri
Parliamentary Commissioner for Administration
(Ombudsman)