



**WAFAQI MOHTASIB (OMBUDSMAN)
OF
PAKISTAN**

**ANNUAL REPORT
2005**

**Wafaqi Mohtasib (Ombudsman)'s Secretariat
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Islamabad, 13th February , 2006

Dear Mr. President,

As required by Article 28(1) of the Establishment of the Office of the Wafaqi Mohtasib Order No. 1 of 1983 (P. O. 1 of 1983), I have great pleasure in forwarding the Annual Report on the working of the Office for the calendar year 2005.

Since this is the last report of my four-year term of office, a review of the output for the years 2002–2005 has been attempted to put the term in perspective along with a more detailed analysis of the performance of the outgoing calendar year.

In the year 2005, the most significant development concerning this Office was the entrusting as of 15th March of the complaints against Wapda and the Sui Gas companies to the National Electric Power Regulatory Authority (NEPRA) and the Oil and Gas Regulatory Authority (OGRA) in terms of the law on the subject — Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 and Oil and Gas Regulatory Authority Ordinance, 2002 respectively. Since such complaints in the past constituted about 60% of the entire workload of this office, the effect on the statistics of registration and disposal of complaints during the calendar year has been very significant.

The second development of considerable consequence was the establishment of the computerised Management Information System (MIS) on modern lines in the Wafaqi Mohtasib Secretariat's Head Office and its Regional Offices under the Access to Justice Programme (AJP) funded by the Asian Development Bank. This was done to ensure that the storage, analysis and retrieval of data relating to the many thousands of complaints registered annually was done on scientific lines and thereby substantially improve the efficiency of the Office in the handling of complaints and in redressing the grievances of the complainants.

Coming to the performance of the Office, during the outgoing calendar year (2005) 14,602 complaints were investigated of which 10,713 have been decided which works out to 73%. In these 10,713 decided complaints relief was provided in 8,934 i.e. 84%.

Strenuous efforts have been made over the past four years to reduce the time taken between the registration of complaints, their detailed investigation, and final disposal in 'findings' to the absolute minimum commensurate with the observance of the procedure laid down in the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations 2003. As a consequence of these efforts, it is heartening to report that of the 10,713 complaints decided during the year 2005, 4% were decided within three months, 28% within six months, 37% within one year and 31% in periods slightly in excess of one year.

Another aspect of performance has been the curtailing of pending complaints carried over from one year to the next not only in terms of numbers and percentages but also in the context of

their time-profile. In this regard an effort was made to ensure that the undecided complaints carried over from one year to the next should be restricted to those which were registered only in the year under report and the preceding year. The rationale for this is explained fully elsewhere in the report. It is gratifying to note that of the 3,889 complaints being carried over from the year under report (2005) to the next calendar year (2006) 1,277 complaints related to the year 2004 and 2,390 to 2005. Only an insignificant number of 222 related to years prior to 2004.

Over the past four years it has been the consistent policy of the Office to bring down the number of complaints pending finalization at the end of the year, both in absolute and percentage terms, by ensuring an excess of disposal over institution. In this context the pendency over the four years has declined from 22,219 in 2002 (55%) to 15,617 in 2003 (41%), 8,333 in 2004 (27%) and 3,889 in 2005 (27%). The major contributory factor for the relatively small number of complaints (3,889) carried over as pendency from the year 2005 is the entrusting of electricity and gas complaints to NEPRA and OGRA respectively.

The Findings and Recommendations of the Wafaqi Mohtasib can be represented against to the President in terms of Article 32 of P. O. 1 of 1983. During the year 1,079 decisions of the President against such representations were received. Of the total number the accepted representations were 320 (30%) while those which were rejected numbered 718 (66%). This amounts to a general endorsement of the efficient functioning of the Office in terms of the quality of the findings and recommendations made.

Not only must findings in complaints be finalised expeditiously but a follow-up of the implementation status of recommendations in each complaint is essential to ensure the credibility of the Office and the satisfaction of the complainants. During the year under report in 4,316 number of complaints implementation of recommendations was outstanding of which implementation in 3,277 complaints (76%) was effected. The follow-up in the remaining cases is being systematically pursued.

Mr. President, all that has been achieved over the last four years could not have been possible but for your support and that of your staff for which I am extremely grateful.

With best wishes,

Yours sincerely,

(Imtiaz Ahmed Sahibzada)

General Pervez Musharraf
The President Islamic Republic of Pakistan
Aiwan-e-Sadr
Islamabad

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CHAPTER 1

Introduction

This being the last Annual Report of the four-year term of Office (2002-2005) of the incumbent Wafaqi Mohtasib (Ombudsman) of Pakistan, a brief account of the measures taken during the last four years to improve the performance of the Office is given in the ensuing paragraphs.

The Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003

2. Article 10(11) of the President's Order No. 1 of 1983 which is the Charter of this Office provides for the Mohtasib to regulate the procedure for the conduct of business of the exercise of the powers under the Order. In pursuance of this regulations were formulated in 1999. Experience, however, showed that these were deficient in a number of areas and needed comprehensive revision to cope with the prevalent objective conditions. These were accordingly rationalised, made more comprehensive, recast and notified as the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003.

3. The more significant features of these recast regulations in the context of the present overview were: the prescribing of a number of separate formats for different kinds of findings so as to provide a measure of uniformity in the manner in which they were investigated and findings submitted thereon. These formats related to: (a) closure findings; (b) findings; (c) revised findings; and (d) rectified findings.

4. The substance of what constituted 'closure findings' was carefully identified and cast in terms of Regulation 23(1) (a) to (z), — Annex-I — to cater to all those situations in which further investigation of a complaint was to be closed on account of a procedural matter. On the other hand 'findings', as such, related to the investigation of a complaint on merits and in depth to determine the genuineness or otherwise of the allegations and the consequential relief to be provided in terms of recommendations for implementation. Since a provision (Article 11(2A)) was incorporated in the President's Order No. 1 of

1983 by the amending Ordinance, 2002, for the Mohtasib to alter, modify, amend or recall his recommendations in response to the intimation by the Agency complained against of the reasons for not complying with his recommendations, the format of 'revised findings' was devised to cater to such cases. In quite a number of cases the Agency complained against or the complainants intimated that the 'findings' contained mistakes or misrepresentation requiring correction and rectification. The format of the 'rectified findings' was a response to this situation.

5. The recast Regulations in general and the devising of specific formats for different categories of findings with subject-specific captions in each, along with a write-up on what needed to be included under each caption and how, led to uniformity of approach by the many investigating officers and consequently to greater efficiency in investigation and in the appraisal of the draft findings submitted.

6. The formats of (a) closure findings; (b) findings; (c) revised findings; and (d) rectified findings are at Annexes II, III, IV & V, respectively.

Manuals (Policies & Procedures of Agencies)

7. To ensure that the draft findings emanating from the investigating officers for the approval of the Mohtasib were actually based on the position obtaining in the law, rules, regulations and policy circulars of the 'agencies' of the Federal Government against whom complaints of mal-administration were brought, and to facilitate the task of the Investigating Officers in the investigation process, it was decided to compile a series of Manuals on the laws, rules, regulations, and policy circulars concerned of those Agencies against which most of the complaints are registered. Thus eighteen Manuals on, *inter alia*, WAPDA, KESC, SLIC, FBlSE, SNGPL, SSGPL, PTCL, HBFC, PLI, EOBI, YIPS, SMEDA, ADBP, Passport & Immigration, Estate Office, Pension & G. P. Fund and PMDC were compiled. These circulars have not only guided the investigating officers but has also led to the desired objective of bringing about uniformity in 'recommendations for implementation' in the 'findings' of similar categories of complaints based on more or less similar facts and have thereby eliminated dissimilarity of conclusions and recommendations in similar or identical cases.

Establishment of Appraisal/Orientation Wing

8. Despite the laying down of subject-specific formats for different kinds of findings as indicated in paragraphs 3 & 4 and the compilation of manuals containing the laws, rules, regulations and policy circulars of the agencies referred to in paragraph 7, quite a number of draft findings are submitted on the wrong format or are deficient in not being based on the applicable law, rule, regulation or policy circular or being very indifferently drafted in terms of language. This necessitates the rectification of the deficiencies by the Mohtasib himself or referring the draft findings to the concerned investigating officers

with a detailed note on what further aspects of each case need to be investigated and the laws, rules/regulations/policy circulars which are relevant in this regard. To facilitate this task and to assist him in this regard an Appraisal Wing was established at the Headquarters consisting of an Adviser to the Mohtasib with some ancillary staff. This Wing has been of great help in ensuring the requisite quality and uniformity in intricate cases involving complicated laws, rules and regulations.

9. There is a continuous turn-over amongst the investigating officers either on transfer, repatriation or conclusion of contracts. As a consequence new investigating officers are periodically inducted. Coming from diverse backgrounds it was felt that suitable orientation and training for them was essential before being entrusted with the actual work of investigation. The Appraisal Wing was consequently re-designated as the Appraisal and Orientation Wing. Every new inductee is required to be oriented here for about a fortnight in the essentials of the charter of this office i.e. P. O. 1 of 1983, the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003, the Freedom of Information Ordinance, 2002 and the basic features of the various Manuals that have been compiled. This brief orientation has proved immensely useful in preparing the new inductees for the work in hand.

Amendments in P. O. 1 of 1983

10. The institution of the Wafaqi Mohtasib was created by the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order 1983 (President's Order No. 1 of 1983). The experience of working under this law over the years brought out certain areas either requiring new provisions or modifications of existing ones. As a result of deliberations of a Committee, appointed by the Ombudsman, these areas were narrowed down to the following:-

- (i) the need to enlarge the definition of the term 'Agency' as given in Article 2(1) of the said Order to bring statutory bodies within the purview of this Office;
- (ii) the need to enable the Wafaqi Mohtasib, on his being so satisfied, to alter, modify, amend or recall a recommendation at the instance of the 'Agency' complained against;
- (iii) the need for administrative and financial autonomy, to be conferred on the Wafaqi Mohtasib so as to facilitate his work and make him as independent as possible of the Executive arm of Government;
- (iv) substitution of clause (1) of Article-8 so as to facilitate the appointment of staff, other than contractual employees, by the President or by a person authorized by him and determine the terms and conditions of their service.

11. The President's Order No. 1 of 1983 was accordingly amended by the President through the amending ordinance submitted by the Law Division i.e. The Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) (Amendment) Ordinance, 2002.

12. A comparative statement of the old provisions and approved amendments is given below:-

Article	Article before Amendment	Article after Amendment
2(1)	"Agency" means a Ministry, Division, Department, Commission or office of the Federal Government or statutory corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court;	"Agency" means a Ministry, Division, Department, Commission or office of the Federal Government or statutory <u>body</u> , corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court;
8(1)	The members of the staff, other than those mentioned in Article 20 or those of a class specified by the President by order in writing, shall be appointed by the President in consultation with the Mohtasib.	The members of the staff, other than those mentioned in the Article 20, shall be appointed by the President, <u>or by a person authorised by him, in such manner as may be prescribed by the Federal Government.</u>
11(2A)		<p><u>New Sub-Article after Article 11(2)</u></p> <p>If after considering the reasons of the Agency in respect of his recommendations under clause (2), the Wafaqi Mohtasib is satisfied that no case of mal-administration is made out he may alter, modify, amend or recall the recommendations made under clause (1):</p> <p>Provided that where the order is made on a complaint, no order shall be passed unless the complainant is given an opportunity of being heard.</p>

Article	Article before Amendment	Article after Amendment
24(1)	The Mohtasib shall be the Chief Executive of the Office.	The Mohtasib shall be the Chief Executive of the Office <u>and shall enjoy administrative and financial autonomy as may be prescribed by the Federal Government.</u>
24(2)	The Mohtasib shall be the Principal Accounts Officer of the Office in respect of the expenditure incurred against budget grant or grants controlled by the Mohtasib and shall, for this purpose, exercise all the financial and administrative powers delegated to a Ministry or Division.	The Mohtasib shall be the Principal <u>Accounting</u> Officer of the Office in respect of the expenditure incurred against budget grant or grants controlled by the Mohtasib and shall, for this purpose, exercise all the financial and administrative powers delegated to <u>him</u> .

13. The amendment in Article 8(1) has provided for the decentralization of the recruitment function of the regular staff of the Mohtasib's Office from the President to the Mohtasib. This position has now been reflected in the draft rules entitled 'Office of Wafaqi Mohtasib (Ombudsman's) Employees' (Appointment, Promotion and Transfer) Rules, 2004' on the subject which have since been submitted to the Establishment and Law Divisions of the Government for approval.

14. Article 11(1) of P.O. 1 of 1983 provides that where "... the Mohtasib is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the Agency concerned ..." to, *inter alia*, "... take actions on his findings and recommendations ...". Article 11(2) prescribes that "The Agency shall, within such time as may be specified by the Mohtasib, inform him about the action taken on his recommendations or the reasons for not complying with the same." There was no provision for the course of action that could be taken by the Mohtasib when convinced of the reasons given by the Agency for not complying with his recommendations. The insertion of Article 11(2A) has taken care of this deficiency and has empowered the Mohtasib, where he feels that no case of mal-administration has been made out, to alter, modify, amend or recall the recommendations made earlier under Article 11(1). This has facilitated the task of the President in as much as quite a number of findings are suitably changed at this stage thereby reducing the number of representations to the President in terms of Article 32 of P. O. 1 of 1983.

15. The exercise of financial and administrative powers by the Mohtasib was somewhat restricted under the earlier dispensation as contained in Article 24(1) and 24(2). Quite a number of cases relating to essential aspects of financial and administrative management had to be sent to the Finance Division for concurrence and approval. This was a time consuming and cumbersome process militating against the efficient, effective, and independent functioning of the office. Through the amendments in these Articles the position has been rectified and the following powers have consequentially been delegated by the Finance Division to the Mohtasib thereby making the Office more independent of the Executive.

S. No.	Name of Power	Powers Delegated to Wafaqi Mohtasib
1.	Re-appropriation of funds	Full powers of re-appropriation of funds from one head of account to another head of account. However, before re-appropriating funds from and to Establishment Charges, the Wafaqi Mohtasib will consult Finance Secretary.
2.	Sanction expenditure on any item	Full powers within the allocated budget.
3.	Hiring buildings for Office	Full powers subject to observance of rental ceiling and space entitlement prescribed by the Works Division.
4.	Creation of new posts	Full powers for creation of temporary posts upto BPS-19 during the financial year provided the expenditure is met from within the allocated budget of Wafaqi Mohtasib Secretariat. Further budget allocation of these posts would be reviewed at the time of preparation of next budget.
5.	Change of nomenclature and upgrade/downgrade any post	Full powers for re-designation, up-gradation/down-gradation of posts subject to policy guidelines issued by the Establishment Division from time to time.
6.	Powers to sanction advance payment for any expenditure	Full powers.

Freedom of Information Ordinance-2002 Procedure for Processing of Complaints under Section 19(1) of the Ordinance

16. In terms of Section 19(1) of the Freedom of Information Ordinance, 2002 if an applicant is not provided the information sought within the prescribed period he can file a complaint with the Mohtasib who may, after hearing him and the representative of the Agency concerned, direct that the information in question be provided or he may reject the complaint. The procedure for handling complaints in terms of this Section in the Mohtasib's Office was prescribed through a Circular issued by the Office under which the different steps involved from the registration of the complaints to its actual disposal were required to be completed within a period of 21 days. This procedure has worked extremely well and all cases that were registered during the course of the years were disposed of within the prescribed period.

Studies

17. During the course of the last four years (2002 to 2005) a number of studies were conducted by the Office of the Wafaqi Mohtasib on important issues in terms of Article 9(3) of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, under which the Mohtasib may arrange for studies to be made or research to be conducted regarding any aspect of the functioning of an 'Agency' of the Federal Government so as to root-out corrupt practices and injustice. These studies are briefly recapitulated in the ensuing paragraphs.

(i) The Report of the Joint Diagnostic Committee on Wapda

18. Complaints admitted in the Office of the Wafaqi Mohtasib (Ombudsman) for Pakistan for the year 2002 revealed that 62% of the total number of complaints pertained to WAPDA. This percentage was only 17% in the year 1984 and 24% in 1993. To address this issue, the Wafaqi Mohtasib, in consultation with Chairman, WAPDA, decided that a 4 Member Committee of officers of Wafaqi Mohtasib (Mr. Mohsin Kamal, Adviser as Convenor, and Mr. Nadeem Ashraf, Director General as Member/Secretary) and the WAPDA [Brig. (R) Saeed Ahmad Malik, General Manager (M&S) and Col. Nadeem Khalid, Director/Complaints] should undertake a Joint Diagnostic Study with the following terms of reference:-

“to examine the existing organizational structures, arrangements, policies and procedures of WAPDA relating to billing in general and detection billing in particular and the internal systems available for redress of grievances arising therefrom and suggest measures for bringing about improvements therein”.

19. The Committee held a number of meetings for this purpose and also visited the field Offices of the Agency for observing the working of the ground. After detailed deliberations recommendations were formulated and forwarded to Wapda and the Ministry of Water and Power for implementation.

20. The recommendations, however, despite being actively pursued with the Ministry have not been implemented.

(ii) Special Study on Works Division

21. The Wafaqi Mohtasib's Annual Report for the year 2004 identified the following three major areas of mal-administration requiring special study to assist the Works Division in taking corrective action:

- (i) Illegal occupation of government accommodation *inter alia*, including houses trespassed by the Islamabad police.
- (ii) Illegal pool of houses in respect of Bureau of Emigration and Overseas Employment.
- (iii) Mal-Administration in Federal Lodge/Hostels because of misuse of outdated Rules for allotments.

22. The study was accordingly conducted in 2004 on the basis of information obtained from the Ministry of Housing and Works, Estate Offices, PWD, I.G. Islamabad Police, Bureau of Emigration and Overseas Employment, discussions with various officials of these organisations and site visits and Recommendations were formulated and forwarded to the Agency for implementation.

23. It is hoped that the recommendations will assist the Ministry in taking remedial action for mitigating the listed problems.

(iii) Adjustment Lending in the Zarai Taraqati Bank Limited (ZTBL)

24. During the course of investigation of various complaints against the ZTBL, it was felt that the loaning operations of the Bank at times contained the element of lending to current borrowers/defaulters for the purpose of showing high rates of disbursement and recovery of loans, perhaps with the tacit approval of the management, which had adverse effect on the health of the Bank and the credit meant for the agricultural sector. It was consequently decided to examine the issue through a study by an Adviser of the Wafaqi Mohtasib's Office which was carried out during 2004 and certain recommendations in the matter were made which were duly communicated to the Bank for consideration.

(iv) Establishment of PCOs through Fraudulent Means

25. New telephone connections are provided by the Pakistan Telecommunication Company Limited (PTCL) on submission of prescribed application. Following documents are required to be attached with the application:

- (i) Copy of the National Identity Card (NIC)
- (ii) Documentary evidence of ownership or copy of lease agreement of tenement where connection is desired.
- (iii) NOC from the owner (in case of hired premises) and copy of his NIC.
- (iv) Supporting documents in case the telephone is desired on priority.

26. During the course of investigation of complaints against PTCL it was observed that in a number of cases connections were sanctioned without proper scrutiny of the documents. This resulted in unscrupulous elements obtaining connections by producing fake documents. Connections provided were subjected to indiscriminate use as illegal public call offices (PCO). This resulted in loss of revenue to the company and initiation of recovery proceedings against individuals whose documents were misused.

27. To address the issue a study was undertaken in 2004 by an Adviser of the Wafaqi Mohtasib's Office. The recommendations of the study were communicated to the PTCL for consideration and adoption to control the problem.

(v) Procedures for Reimbursement of Expenses Incurred by Retired Government Servants on Account of Hospitalization and Medicines

28. The Federal Government Employees and their families are entitled to free medical treatment under the Federal Services Medical Attendance Rules (FSMAR) 1990. Considerable number of complaints from retired government servants regarding the cumbersome and time consuming procedures prescribed by the Health Division for reimbursement of expenses incurred on hospitalization and medicines having been voiced, it was decided to take *suo moto* notice of the matter. Accordingly a study was initiated by an Adviser of the Wafaqi Mohtasib's Office during 2005 and report in the matter containing an in-depth analysis of the issues involved was prepared and sent to the concerned Ministries/Divisions for considering the implementation of the recommendations contained in it both for the 'short' and the 'long' terms. Having being conducted during the calendar year 2005, the Executive Summary of this study is contained in Annex-VI.

Handbook for Investigating Officers

29. The need for the compilation of a Handbook for the use of Investigating Officers of the Wafaqi Mohtasib's Office was felt for some time. Consequently, an attempt in this regard was made.

30. The Handbook brings together for the first time the Law establishing this Office, the revised Regulations framed under it for the investigation and disposal of complaints, and select 'Findings' of the Mohtasib in earlier cases which are representative of the different categories of complaints generally handled by the Office in respect of the major complained-against 'Agencies' of the Federal Government. It also contains important decisions of the President on representations against the Findings of the Mohtasib and a few rulings of the Superior Judiciary on issues of special relevance to the functions of the Office. Also included are a number of advisory 'Circulars' issued by the Mohtasib over the years on different aspects of the working of the Office. The text of the Freedom of Information Ordinance 2002 has also been included along with the instructions for handling cases under it in respect of the role assigned to the Office of the Mohtasib.

31. The purpose of the Handbook is to make available in an easily accessible form the basic documents relating to the functioning of the Office of the Mohtasib for the orientation, guidance and periodic reference of the Investigating Officers in the process of investigation of complaints and the drafting of 'Findings' in each case for the approval of the Mohtasib. It is hoped that it will serve the purpose for which it is intended and help to improve the quality of the work and output of the Investigating Officers.

32. The Findings include, *inter alia*, a substantial number relating to a variety of complaints against WAPDA, KESC, the Sui Southern & Northern Gas Distribution Companies and the State Life Insurance Corporation which currently comprise most of the case load. With the establishment of NEPRA, OGRA and the appointment of an Insurance Ombudsman as complaint resolution Centres for such complaints, the workload would be reduced and the representative findings covering these categories would need to be excluded from subsequent editions.

33. Since the representative findings are intended to illustrate the different categories of findings, such as 'closure findings', 'findings', 'revised findings' and 'rectified findings' prescribed by regulations 24(1), 24(3), 26(2) and 28(1), respectively, of the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003, these, of necessity, relate to the calendar years 2003 and 2004 as the Regulations in question were revised in 2003. With the passage of the years and new precedents becoming available, both of the Superior Judiciary and of the President's decisions, these illustrative findings would perforce have to give way to others so as to reflect the changed realities.

Monitoring of the Implementation Status of Recommendations

34. The work of the Mohtasib in the past was essentially restricted to ‘findings’/ ‘recommendations for implementation’ flowing from the investigation of complaints registered in the Office. In some cases where the recommendations were not implemented the complainants concerned came up with ‘implementation complaints’ to the Mohtasib which were then individually handled by the investigating officers and ultimately the Mohtasib. It was felt that the systematic and periodic monitoring of implementation of recommendations in findings was as important a task as the original investigation of a complaint and, therefore, should not be left to the individual complainants to pursue with the Agencies concerned. Consequently this was taken up as a regular feature of the functioning of this Office and formats for quarterly monitoring of implementation with the designated officials of the concerned Agencies was resorted to. This has resulted in substantially better compliance the details of which have been given at the relevant place in this report.

Institution and Disposal of Complaints

35. The objective of any adjudicatory authority is to ensure that cases/complaints are disposed of expeditiously so that for a given time span of working, usually a calendar year, the disposal exceeds the institution thereby reducing the pendency of outstanding cases to the minimum. As a consequence of the various measures adopted in this regard the position relating to pendency has improved considerably. The following table shows the position in terms of numbers and percentages.

Table 1: Institution & Disposal of Complaints During the Years 2002 to 2005

2002			2003			2004			2005			Total		
Institution	Disposal	%	Institution	Disposal	%	Institution	Disposal	%	Institution	Disposal	%	Institution	Disposal	%
31,613	28,680	91%	25,761	3,2363	126%	25,327	32,611	129%	15,136	19,580	129%	97,837	113,234	116%

36. It is clearly apparent from this table that the percentage of disposal vis-à-vis institution has progressively increased from 91% in 2002 to 129% in 2005 giving an over all percentage of 116% for the four-year period. The principle reason for the slightly reduced percentage of disposal over institution in the year 2005 is because of the reduction in the number of complaints registered during the year because of entrusting of complaints against WAPDA and the Sui Gas Companies to NEPRA and OGRA respectively.

CHAPTER 2

Institution and Disposal of Complaints

The efficiency or otherwise of an institution like that of the Wafaqi Mohtasib can be gauged from an analysis of the institution and disposal of complaints by it within a specified time frame and its comparison with the previous years. The following tables provide an indication of the functioning of this office for the calendar year 2005.

Table 2: Institution and Disposal of Complaints, 2002-2005

Year	Received	Disposal <i>in limine</i>	Admitted	Carry Over	Total Workload (d+e)	Disposal after Detailed Investigation			
						Relief	Rejected	Total (g+h)	% i ÷ f
<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>	<i>g</i>	<i>h</i>	<i>i</i>	<i>j</i>
2002	31,613	10,636	20,977	19,286	40,263	13,567	4,477	18,044	45
2003	25,761	10,346	15,415	22,219	37,634	16,921	5,096	22,017	59
2004	25,327	10,581	14,746	15,617	30,363	18,433	3,597	22,030	73
2005	15,136	8,867	6,269	8,333	14,602	8,934	1,779	10,713	73

2. During the year 2005, 15,136 complaints were registered, of which 8,867 were disposed of *in limine* leaving a balance of 6,269 to be investigated in detail. With the carry-over of 8,333 complaints from the previous year, the total workload for detailed investigation during the calendar year under report came to 14,602 complaints. Of these 10,713 complaints (73%) were disposed of leaving a balance of 3,889 (27%) complaints as carry-over to the next calendar year i.e. 2006.

3. Over the past four years it has been the consistent policy of the Office to bring down the number of complaints pending finalization at the end of the year by ensuring an excess of disposal over institution. In this context the pendency over the four years has

been brought down from 22,219 in 2002 (55%) to 15,617 in 2003 (41%), 8,333 in 2004 (27%) and 3,889 in 2005 (27%).

Table 3: Total Number of Complaints Received Against the Federal and the Provincial Agencies During the Year 2005

S. No.	Description	2004		2005	
		Complaints	Percentage	Complaints	Percentage
1.	Federal Agencies	22,773	90%	12,555	83%
2.	Provincial/Private Agencies and others	2,554	10%	2,581	17%
Grand Total:		25,327	100%	22,773	100%

4. During the year under report, 15,136 complaints were instituted of which 12,555 complaints are against Agencies of the Federal Government. As is evident from Table-2, this is the lowest figure since 1984. The reason for this sharp fall in institution of complaints is that, as required by the law on the subject and dealt with in a later portion of this report, as of 15th March, 2005 complaints against Wapda, SNGPL & SSGPL have been entrusted to NEPRA and OGRA, respectively, while this Office has dealt only with the complaints in this regard registered upto 15th March 2005.

5. As can be seen from Table-3 during the year 2005 only 2,581 complaints were received against the provincial/private agencies which is slightly more than the year 2004, but the percentage has increased to 17% over the 10% of the year 2004 on account of the reduced number of complaints registered against the Federal Agencies (12,555) during the year under report as compared to the previous year (22,773). As usual, complaints against the Provincial Agencies are being referred to the concerned offices of the Provincial Mohtasibs for further processing under intimation to the complainants.

Complaints Processed at Regional Offices

6. Article 9(4) of P. O. No. 1 of 1983, authorises the Mohtasib to set-up its regional offices when and where required. Consequently, in order to provide relief to the common citizens at their doorstep, seven Regional Offices are functioning all over the country besides the Headquarters Office at Islamabad. Registration and investigation of complaints at these Regional Offices not only provides easy access to the citizens but also saves them the inconvenience of travelling to the headquarters at Islamabad and the consequential financial liability involved therein. Table-4 on the next page indicates the pattern of the complaints instituted and disposed of at the different Regional Offices.

Table 4: Institution and Disposal (After Detailed Investigation) of Complaints During the Year 2005

S. No.	Name of the Office	Admitted	Disposed of	Disposal in terms of Admittance (Percentage)
1.	Head Office, Islamabad	1,783	2,203	124%
2.	Regional Office, Lahore	1,181	2,082	176%
3.	Regional Office, Karachi	807	1,408	174%
4.	Regional Office, Peshawar	1,212	2,697	223%
5.	Regional Office, Quetta	135	144	107%
6.	Regional Office, Sukkur	353	874	248%
7.	Regional Office, Multan	332	498	150%
8.	Regional Office, Faisalabad	372	658	177%
9.	Regional Office, D. I. Khan	94	149	159%
Total:		6,269	10,713	171%

7. The above table shows that during the year 2005 the cumulative disposal was 171% of the admitted complaints. The Regional Office, Sukkur, achieved distinction by clearing the backlog and registering a disposal of 248% over the admitted complaints during the year under report. The head office at Islamabad and the Regional Offices of Lahore, Karachi, Peshawar, Quetta, Multan, Faisalabad and D. I. Khan, also did very well by posting disposal percentages of 124%, 176%, 174%, 223%, 107%, 150%, 177 and 159% respectively.

8. Though the overall quantum of complaints registered and disposed of at Quetta and D. I. Khan are relatively small in absolute terms, the Offices are being retained, being the Provincial Headquarter of Balochistan, in the case of Quetta, and a focal point for citizens of remote areas of the N.W.F.P. in the case of D. I. Khan.

Time Profile of Disposal of Complaints

9. It has been the consistent policy of the working of this Office over the past four years to progressively reduce the time taken in the final disposal of complaints. Table-5 on the next page indicates the time profile of disposal of complaints.

Table 5: Time Profile of Disposal of Complaints during the Year 2005

S. No	Name of the Office	Within 3 months	Within 6 months	Within 1 year	More than year	Total Disposal
1.	Head Office, Islamabad	166	747	745	545	2,203
2.	Regional Office, Lahore	88	736	866	392	2,082
3.	Regional Office, Karachi	82	297	334	695	1,408
4.	Regional Office, Peshawar	54	782	1,240	621	2,697
5.	Regional Office, Quetta	26	71	34	13	144
6.	Regional Office, Sukkur	31	149	223	471	874
7.	Regional Office, Multan	7	56	221	214	498
8.	Regional Office, Faisalabad	32	131	223	272	658
9.	Regional Office, D. I. Khan	2	6	48	93	149
Total:		491	2,981	3,935	3,316	10,713
		4%	28%	37%	31%	

10. As is evident from the table, during the year under report, 488 (4%) of complaints were decided within three months; 2,975 (28%) within six months; 3,934 (37%) within one year and 3,316 (31%) within periods exceeding one year. Thus on the average 10,7131 complaints (69%), were disposed of within one year of their institution.

Representations to the President

11. While finalizing the investigation of a complaint, efforts are made to base the recommendations, in most cases, on the understanding reached between the complainant and the Agency's representative, within the context of the law and the rules, so that there is no difficulty in the implementation process and the according of relief. However, in some cases the Agencies complained against do not agree to the relief, or its quantum, contained in the recommendations of the findings. In such cases they have the option of reverting to the Wafaqi Mohtasib for reconsideration of his recommendations under Article 11(2A) of President's Order No. 1 of 1983, or exercising the right conferred on them by Article 32 thereof through preferring representation against the findings to the President.

12. The statistical profile of representations to the President during the year under report is reflected in Table-6 on the next page.

Table 6: Representations to the President

Description	Number	%age
Representations Accepted	320	30
Representations Rejected	718	66
Number of Representations Remanded	40	4
Number of Representations Withdrawn	1	-
Total	1,079	100

13. It will be seen from the foregoing table that of the representations preferred against the findings of the Wafaqi Mohtasib collectively by both the Agencies of the Federal Government and the complainants, 1,079 were decided by the President during the year of which in 718 (66%) cases the decisions of the Wafaqi Mohtasib were upheld. In only 320 cases i.e. 30% the view point of the Agencies was accepted and in 40 representations the cases were remanded to the Wafaqi Mohtasib for further investigation keeping in view the guidelines provided. The total number of representations to the President (1,079) represents just 10% of the total number of complaints (10,713) disposed of by the Wafaqi Mohtasib after detailed investigation. This, along with the fact that the rejected representations (718) were 66% of the total number of representations (1,079), is indicative of the quality of the findings.

Implementation Status of ‘Findings/Recommendations’ During the Years 2002, 2003, 2004 and 2005

14 In the early part of the year 2002 it was realised that whereas large numbers of complaints were decided after detailed investigations containing recommendations for implementation, no systematic account was kept of the number of findings in which the recommendations had been implemented. It was generally left to the complainants to individually pursue the Agencies for the early implementation of the recommendations. This was not a satisfactory state of affairs as it was the responsibility of the Office to ensure a follow-up of the recommendations in each case and not leave it solely to the concerned complainants to do so. Consequently as of April 2002 a system was introduced, both at the Headquarters and at the Regional Offices, to systematically monitor the position in this respect every quarter. This has proved to be of great benefit in terms of reminding the Agencies for early implementation of findings to the immense satisfaction of the complainants. The implementation status of findings/recommendations over the four-year period (2002 to 2005) is contained in Table-7 on the next page.

Table 7: Implementation Status of Findings

Period	Brought Forward	Fresh Cases	Total Workload	Implemented	Under Implementation	Percentage of Implementation
01-04-2002 to 31-12-2003	-	5,249*	5,249	3,642	1,607	69%
01-01-2004 to 31-12-2004	1,607	3,044	4,651	3,342*	1,309**	72%
01-01-2005 to 31-12-2005	1,309	3,007	4,316	3,277	1,039	76%

It is apparent from the table that the percentage of implementation has progressively increased from 69% in 2002-2003 to 72% in 2004 and 76% in 2005. This is a satisfactory state of affairs which it is hoped will improve further during 2006.

* This includes the cases brought forward from previous periods.

** This includes Review Petitions and Representations filed by the Agency under Article 12(2A) and 32 of P.O. 1 of 1983.

CHAPTER 3

Carry-over of Complaints to the Calendar Year 2006

The registration and disposal of complaints is a continuous process spread over the course of each calendar year. As a consequence there are always complaints registered in one year which, of necessity, have to be carried over to the next as the time available for their disposal during the year of registration, particularly those instituted in the last quarter, is understandably inadequate keeping in view the procedure for the investigation process prescribed by the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003. However, efforts were made to ensure that the pendency at the close of each calendar year reflects complaints instituted only during that year and the preceding calendar year.

Table 8: Time Profile of Pending Complaints

S. No	Name of the Office	Year of Institution of Complaints			Total
		Prior to 2004	2004	2005	
1.	Head Office, Islamabad	33	161	685	879
2.	Regional Office, Lahore	18	202	365	585
3.	Regional Office, Karachi	31	333	420	784
4.	Regional Office, Peshawar	22	225	282	529
5.	Regional Office, Quetta	0	3	37	40
6.	Regional Office, Sukkur	89	96	168	353
7.	Regional Office, Multan	13	156	232	401
8.	Regional Office, Faisalabad	16	68	125	209
9.	Regional Office, D. I. Khan	0	33	76	109
Total:		222	1,277	2,390	3,889

2. As Table-8 on the preceding page shows, the efforts made to restrict the pendency optimally to two calendar years have, for all practical purposes, been fruitful in as much as of the total number of pending complaints (3,889) only 222 relate to the period prior to the calendar year 2004, the balance being of 2004 (1,277) and 2005 (2,390).

3. The number of complaints carried over to the calendar year 2006 from 2005 and earlier, and the Agencies to which they relate are indicated in the table listed below:

Table 9: Pending Complaints

S.No.	Name of the Agencies	No. of Pending Complaints
1.	Cabinet Division	51
2.	Commerce Division	157
3.	Communications Division	177
4.	Minorities, Culture, Sports, Tourism and Youth Affairs Division	7
5.	Defence & Defence Production Division	61
6.	Education Division	194
7.	Environment, Local Government and Rural Development Division	1
8.	Establishment Division	8
9.	Finance Division	319
10.	Food, Agriculture and Livestock Division	11
11.	Foreign Affairs Division	1
12.	Health Division	22
13.	Housing and Works Division	138
14.	Industries and Production Division	20
15.	Information and Broadcasting Division	7
16.	Information Technology & Telecom. Division	480
17.	Interior Division	249
18.	Kashmir Affairs, Northern Areas and State & Frontier Region Division	5
19.	Labour Manpower & Overseas Pakistanis Division	64
20.	Petroleum and Natural Resources Division	119
21.	Population Welfare Division	3
22.	Prime Minister's Secretariat	5
23.	Railways Division	141
24.	Religious Affairs, Zakat & Ushr Division	20
25.	Scientific and Technological Research Division	2
26.	Social Welfare and Special Education Division	2
27.	Water and Power Division	1,595
28.	Women Development Division	2
29.	Zakat & Ushr Division	15
30.	Non-Federal/Provincial/Private	13
Total:		3,889

CHAPTER 4

Incidence of Complaints against various Agencies during the Year 2005

Incidence of Complaints against the ‘Agencies’

A glance at the following Table indicates the Agency-wise incidence of complaints during the year under report. WAPDA, which provides electricity to millions of consumers throughout the country, had the maximum number of complaints i.e. 2,181 (pending from previous year and those instituted upto 15th March 2005 only) which constitute 35%, PTCL with 1,015 complaints or 16%, Allama Iqbal Open University with 353 i.e. 6%, State Life Insurance Company with 210 or 3%, Sui Northern & Southern Gas Company with 196 (pending from the previous years and those instituted upto 15th March 2005) which is 3% and the Estate Offices with 187 i.e. 3%, were among the six most complained against Agencies in descending order.

Table 10: Volume of Complaints against the Major Agencies

Agency	2001	2002	2003	2004	2005
WAPDA	13,642	13,167	9,545	9,253	2,181
PTCL	2,772	1,957	1,331	1,227	1,015
SNGPL-SSGPL	1,181	1,394	1,005	832	196
AIOU	588	415	324	342	353
SLIC	525	401	284	216	210
Estate Offices	215	185	172	195	187

Major Causes of Complaints

2. Tables 11 to 16 on the following pages indicate the causes of complaints against the top six most complained-against Agencies of the Federal Government.

Table 11: Major Causes of Complaints against WAPDA

Cause of Complaint	2004			2005		
	Received	Admitted	%	Received	Admitted	%
Excessive/wrong/inflated billing	8,944	7,187	78	2,154	944	43
Imposition of penalty	552	513	5	1,013	879	40
Disconnection	310	136	1	77	15	1
Delay in providing connection	265	138	2	143	22	1
Delay in replacement of defective meter	255	135	1	83	23	1
Delay in installation of poles/transformers	115	35	1	94	18	1
Others	1,991	1,109	12	845	280	13
Total:	12,432	9,253		4,409	2,181	

3. In case of WAPDA, excessive/wrong/inflated billing led to 944 complaints, which is 43% of total cases entertained against this Agency. This aspect, therefore, needs the attention of the Agency so that its billing system is streamlined and made consumer friendly. The second major cause of complaint was imposition of penalty (40%), which can also be linked with the above category, as at the time of lodging the complaints, the complainants were unable to identify the cause of excessive billing.

4. In case of the PTCL, which is the second most complained against Agency, 368 complaints i.e. 36% were on account of over-billing. In 10% cases the cause of grievance was delay in provision of the utility connection.

Table 12: Major Causes of Complaints against PTCL

Cause of Complaint	2004			2005		
	Received	Admitted	%	Received	Admitted	%
Excessive/wrong/inflated billing	748	572	47	562	368	36
Delay in providing connection	220	151	12	155	100	10
Disconnection	61	44	4	124	79	8
Others	1,046	460	37	865	468	46
Total:	2,075	1227		1,706	1,015	

5. In so far as the cause of complaints in respect of SNGPL and SSGPL is concerned, the trend remains the same as that in respect of electricity and telephones. That is in most of the cases (39%), the complaints were regarding over-billing and delay in the provision of the facility.

Table 13: Major Causes of Complaints against SNGPL & SSGPL

Cause of Complaint	2004			2005		
	Received	Admitted	%	Received	Admitted	%
Excessive/wrong/inflated billing	500	412	49	171	77	39
Delay in providing connection	316	256	31	256	78	40
Disconnection	57	47	6	11	4	2
Others	255	117	14	116	37	19
Total:	1128	832		554	196	

6. Allama Iqbal Open University (AIOU), which provides education to hundreds of thousands of students, was at the fifth position among the most complained against Agencies. Here, most of the complaints i.e. 65% were on account of delay in issuance of degrees, certificates and results. This requires the attention of the University management so that delays on this account can be eliminated.

Table 14: Major Causes of Complaints against AIOU

Cause of Complaint	2004			2005		
	Received	Admitted	%	Received	Admitted	%
Non-issuance of Diploma/ Certificates/Results	320	230	67	317	229	65
Failure to give admission	86	65	19	45	34	10
Administrative irregularities	42	18	5	128	64	18
Others	31	29	9	31	26	7
Total:	479	342		521	353	

7. In the case of State Life Insurance Corporation (SLIC), which is the fifth most complained against Agency, 69% of the complaints were on account of non-payment or delay in the payment of insurance claims.

Table 15: Major Causes of Complaints against SLIC

Cause of Complaint	2004			2005		
	Received	Admitted	%	Received	Admitted	%
Non-payment of Insurance claims	92	75	35	121	81	39
Delay/non-payment of death claims	64	55	26	91	65	30
Administrative irregularities	88	41	19	75	43	21
Others	85	45	20	36	21	10
Total:	329	216		323	210	

8. In the case of Railways, administrative irregularities and misconduct was the major cause of complaints (24%) followed by delays in payment of pensions and G P. Fund (11%).

Table 16: Major Causes of Complaints against Railways

Cause of Complaint	2004			2005		
	Received	Admitted	%	Received	Admitted	%
Misconduct of Officials/ Administrative Excesses	219	60	28	184	39	24
Delay in payment of Pension/G. P. Fund	91	55	26	33	18	11
Discrimination in appointments	11	5	2	18	4	3
Delay in payment of outstanding service dues	25	12	6	32	12	7
Delay in refund of excess amount	15	12	6	18	7	4
Others	108	68	32	176	82	51
Total:	469	212		461	162	

CHAPTER 5

Issues Relating to Complaints against Some Agencies

Departments of the Provincial Government (NWFP)

Office of the Wafaqi Mohtasib (Ombudsman) was established for investigation of complainants of mal-administration against the federal government agencies which include its ministries, divisions, commissions or statutory bodies, corporations and other offices of the Federal government. Since there were no Ombudsmen appointed at the provincial level, complaints of mal-administration received against provincial government departments were also entertained. These arrangements continued till 1992 when the offices of the Ombudsman Sindh and AJK were established. This was followed by appointment a Provincial Mohtasib in the Punjab and Balochistan in 1996 and 2001 respectively. On establishment of the offices of the Provincial Ombudsmen, registration of fresh complaints relating to the concerned province was discontinued. Complaints already registered and under investigations were transferred to the respective offices for processing.

2. Complaints against ‘agencies’ of the North-West Frontier Province are, however, still being registered and processed in the Wafaqi Mohtasib Secretariat because of the non-existence of a similar forum in the Province. The Hisba Act, which is under the active consideration of the NWFP government, envisages appointments of Provincial and District Mohtasibs in the near future. Till these offices are established, complaints against NWFP ‘agencies’ would continue to be processed by this Office in the interest of the general public.

3. However, as is evident from Table-17 on the ensuing page, despite the number of complaints received in this regard, relatively only a small percentage of these has been admitted for detailed investigation during the period 2002 to 2005. This is so on account of the fact that strict criteria govern the eligibility of a complaint for detailed

investigation by this Office. The remaining complaints received but not admitted are passed on to the relevant Agencies of the Provincial Government for appropriate action.

Table 17: Complaints received in respect of the Provincial Government of NWFP

2002		2003		2004		2005	
Received	Admitted	Received	Admitted	Received	Admitted	Received	Admitted
397	28	347	10	201	8	306	16

Ministry of Defence

4. Complaints relating to Defence Division, Defence Production Division, Armed Forces of Pakistan and any department under the management or control of the said Divisions or forces are out of jurisdiction vide proviso to Article 9 of Establishment of Wafaqi Mohtasib (Ombudsman) Order No. 1 of 1983 read in conjunction with CMLA's Secretariat order dated 13.8.1984. Despite the limitation of jurisdiction, complaints regarding various administrative matters involving delay in the processing of pension claims, payment of G. P. Fund, grant of increase in pension, payment of miscellaneous service dues, disciplinary issues etc. continue to be filed in this Office. The aggrieved parties usually are low-paid civilian employees paid out of defence services estimates or personnel below the commissioned ranks or their dependents. Despite the limitation in jurisdiction of this Office, the concerned 'agencies' promptly responded to the references made by this Office and granted relief to the complainants by implementing the recommendations contained in the findings. The willing cooperation and assistance of these 'agencies' is acknowledged.

5. The following recommendations for re-examination of rules/laws were made to the Ministry of Defence as a result of the detailed investigation and analysis of the complaints in the concerned cases:-

- (i) Extension of the provisions of Finance Division O.M. No. F.2(2)Reg.6/96 dated 3.7.97 granting ordinary family pension to unmarried daughters over 21 years of age to cover cases of special family pension.
- (ii) Review of the Defence Services (JCOs and non-commissioned ranks) Provident Fund Rules to bring it at par with Central Provident Fund (Defence Services) Rules, 1979 applicable to civilians paid out of Defence Services Estimate to entitle them to claim interest on the balance upto the date of payment in case of delay on account of administrative reasons by the account authorities.

6. During the course of the year 2006 it is proposed to follow-up the implementation status of recommendations indicated in the foregoing paragraph.

7. The major causes of complaints against the 'Agencies' which come within the purview of the Ministry of Defence are indicated in the following table.

Table 18: Major Causes of Complaints against Ministry of Defence

Causes of Complaints	2004		2005	
	Received	Admitted	Received	Admitted
Grant of disability pension	13	0	0	0
Delay in grant of pension/family pension & related matters	75	17	74	26
Delay in payment/transfer of G. P. Fund	15	9	12	8
Delay in payment of misc. service dues	18	4	8	1
Matters relating to Military Lands & Cantonment Boards	20	8	7	2
Disciplinary matters	16	0	25	0
Misc.	135	16	113	20
Total	292	54	239	57

Cantonment Boards

8. Cantonment Boards are responsible for provision of municipal facilities in the cantonment areas declared as such under the provision of section 3(1) of Cantonment Board Act, 1924. These include facilities mentioned below.

- (i) Provision of drinking water
- (ii) Garbage collection services
- (iii) Street lightening
- (iv) Repair and maintenance of streets
- (v) Matters relating to property located in cantonment areas
- (vi) Matters relating to public safety, building control etc.
- (vii) Approval of building plans
- (viii) Issue of NOCs for hoarding and bill boards.
- (ix) Issue of birth and death certificates and other documents.

9. The first category of complaints received against the Cantonment Boards are generally against the non-provision of the facilities listed above. The second category relates to complaints from the employees of the boards regarding personal matters

involving terms and conditions of service, promotion, seniority, pay fixation, disciplinary action etc. However, complaints under this category are not entertained on account of the limitation imposed on the jurisdiction by clause (2) of article 9 of the Establishment of the Wafaqi Mohtasib (Ombudsman) Order No. 1 of 1983. Complaints, however, in respect of post-retirement benefits such as: (i) Pension; (ii) Gratuity; (iii) G. P. Fund; (iv) C. P. Fund; (v) Group Insurance; (vi) Benevolent Fund; (vii) Travel concessions; (viii) Medical facilities (to the retired employees); (ix) Employees Old-age Benefits; and (x) Denial of admissible perks and privileges; and in service claims such as: (i) Medical Reimbursement claims; (ii) Allotment of accommodation and housing facilities; (iii) Denial of admissible perks and privileges; (iv) Delay and discrimination in the grant of various advances such as Motor Car Advance, Motorcycle Advance, House Building Advance and G. P. Fund Advance; (v) Educational and other Benefits for the children of employees, are processed by the Office as not being, strictly speaking, “service matters”.

Pakistan Telecommunication Authority (PTA)

10. PTA is a statutory body established under the Pakistan Telecommunication (Reorganisation) Act, 1996. The functions of the Authority include regulation, establishment, operation and maintenance of telecommunication systems and telecommunication services in Pakistan. For this purpose the Authority grants and renews licenses to private limited companies to establish, maintain and operate telecommunication facilities. Provision and operation of Pay Phone Services is one of such facilities. Complaints were received against PTA for its failure to take action against the Pay Phone Companies who were PTA licensees and were violating the terms and conditions of the contract agreements with the PCO operators.

11. Detailed Investigations of a number of complaints against the PTA for breach of contract between the PTA licensees and the PCO operators revealed that PTA is responsible only to grant licenses to pay phone companies in accordance with its laid down procedures and is not a party to any agreement between its licensee and the PCO operator. It had, therefore, no legal authority to enforce the contract between the licensee and the PCO Operators or adjudicate any alleged violation of terms of agreement. The only option available to the PCO Operators in case of any dispute was to seek relief through the civil courts of competent jurisdiction which generally is costly and time consuming.

12. In the case of Wapda and the Electricity Companies and the Gas Transmission Companies (SNGPL & SSGPL) the required authorities (NEPRA and OGRA) have been established under the relevant laws to resolve disputes between the consumers and the licensees i.e. those who provide the required facilities and services, without the need to have recourse to the law courts for resolution of their disputes or breach of contracts. The absence of a provision to this effect in the Pakistan Telecommunication (Reorganisation)

Act, 1996 prevents the PTA from adjudicating disputes between its licensees and other stake holders. The need for the establishment of an authority on the lines of NEPRA and OGRA to resolve disputes between the licensees of PTA and the consumers was, therefore, found necessary and it was accordingly recommended in Findings in Complaint No. Reg.H/5923/2005 dated 31.12.2005 that PTA should initiate a suitable amendment in its law in this regard and, after getting it approved, frame rules governing the resolution of such disputes in a cost-effective manner by an 'authority' to be established for the purpose.

Gas Distribution Companies

13. With its establishment in 1983, the office of the Wafaqi Mohtasib started adjudicating complaints received from consumers of gas against distribution companies, namely, Sui Northern Gas Pipelines Limited (SNGPL) and the Sui Southern Gas Company Limited (SSGCL), in pursuance of the definitions of the "Agency" and "Mal-administration" as embodied in Article 2(1) and Article 2(2) of the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983.

14. With the promulgation of the Oil and Gas Regulatory Authority Ordinance, 2002, the Oil and Gas Regulatory Authority (OGRA) has, in terms of sections 6, 11, 12, and 42 of the Ordinance, attained exclusive jurisdiction to decide complaints, not only relating to licensees but also those lodged by the consumers against the gas distribution companies. Accordingly, OGRA raised the issue that complaints by the consumers against the Gas Companies should henceforth be exclusively dealt with by it under its Complaint Resolution Procedure notified vide SRO 876(7)2003. In view of this, it was felt that there could be the following options for the disposal of complaints pending before the Wafaqi Mohtasib and the entertainment of fresh complaints in future:

- (i) To transfer all complaints pending investigation in the office of the Wafaqi Mohtasib, alongwith the record, to "OGRA" and re-direct all future complaints to it.
- (ii) To investigate and dispose of the existing complaints registered and pending with the Wafaqi Mohtasib as before in terms of P.O. 1 of 1983 and the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations 2003.
- (iii) To maintain the status quo i.e. the Wafaqi Mohtasib to continue disposal of all pending complaints and registration of fresh complaints until such time as "OGRA" has instituted an administrative mechanism in each of the Provinces/Regions for the purpose after which all fresh complaints be entertained by it leaving the Wafaqi Mohtasib to dispose of only the pendency.

15. The balance of convenience, in the context of the interest of the complainants lay in option (iii) as this obviated the possibility of any disruption in the adjudication of a rather large number of pending complaints as well as a substantial number of fresh cases registered on monthly basis. This was so as although the laws, rules and regulations relating to resolution of complaints by OGRA were in place, the actual infrastructure in terms of personnel and their availability at the Provincial/Regional Offices was lacking. Such a procedure was also adopted in the case of tax related complaints till the Office of the Tax Ombudsman became fully functional to deal with them.

16. The OGRA intimated that as of March 2005, their organisational arrangements for the institution and disposal of complaints by members of the general public against the Gas Companies in respect of provision of services were now in place and they were fully equipped to handle them. Accordingly, the Wafaqi Mohtasib's Office stopped entertaining fresh complaints against the Gas Distribution Companies after 15.3.2005. The complaints already registered, however, continued to be investigated and adjudicated until the pendency was wiped off.

17. While complaints against the Gas companies on account of provision of services were entrusted to OGRA as of 15th March, 2005, the jurisdiction of this Office over OGRA, as an agency of the Federal Government, and falling within the definition of an 'Agency' contained in Article 2(1) of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, was retained. Consequently, complaints of maladministration against OGRA itself in the discharge of its functions of complaint-handling were held to be within the jurisdiction of this Office and were to be entertained and processed by it.

18. Despite the appearance of public notices in the press to the effect that complaints against Gas Companies would be handled by OGRA after 15.3.2005, this Office continued to receive a large number of complaints from consumers. They were advised to approach OGRA. However, a majority of them invariably reverted to ask particulars of the OGRA office to be approached. Therefore, OGRA were requested to furnish a list showing names and designation of the offices/officers all over the country handling such complaints and their jurisdiction along with their addresses, telephone/fax numbers, e-mail address etc so as to guide the complainants. They informed vide letter dated 11.11.2005 that in order to process and dispose of the complaints emanating from consumers, a comprehensive Complaint Resolution System under the Complaint Resolution Procedure Regulations, 2003 had been put in place. Complaints are received in the office of Registrar, OGRA, Islamabad. Complaints can also be filed via e-mail. The establishment of Regional Offices is also under consideration. The officers of OGRA are holding hearings regularly at Islamabad and, if required, at Provincial Headquarters. In addition, consumers are informed from time to time, through print media, about the procedure for filing a complaint and similar information is also available at the Authority's website.

19. Despite the arrangements made by OGRA for the handling of complaints, the feedback of this Office is that, being centralised at Islamabad, considerable inconvenience is being faced by the consumers in this regard. It would be in the fitness of things and in the interest of the general public if OGRA were to make permanent arrangements on an institutional basis for the registration and adjudication of all such complaints in each of the Provincial headquarter towns in addition to Islamabad, which is already covered.

20. During the course of the year the question arose of the jurisdiction of the Office of the Wafaqi Mohtasib over OGRA as an 'agency' in terms of the definition contained in Article 2(1) of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, in the context of 'mal-administration' as defined therein. This came about when a complaint was received by this Office from Maulvi Nabi Baksh of Taunsa Sharif alleging undue delay by OGRA in taking a decision on his complaint against excessive billing submitted to it. Since the allegation made fell within the definition of 'mal-administration' as laid down in Article 2(2)(ii) of Establishment of the Office of Wafaqi Mohtasib(Ombudsman) Order, 1983, the complaint was registered on 22.7.2005 as Reg.H/5923/2005 and, in exercise of the powers vested in the Wafaqi Mohtasib by Article 9(2) and (9) *ibid*, the Authority on 19.8.2005 was called upon to furnish its comments. Through its report dated 16.9.2005, the Authority, *inter alia*, raised the issue of jurisdiction of the Wafaqi Mohtasib in investigating the said complaint. For this, reliance was placed on the provisions of sections 6, 10, 11, 12 and 13 of the Oil and Gas Regulatory Authority Ordinance, 2002 and thereby concluding that the Authority has the legal powers to deal with such complaints. It was also maintained that section 43 *ibid* conferred these powers on the Authority to the exclusion of all other laws of the country.

21. Since this stance of the Authority involved important legal consequences, its viewpoint was given due consideration. It transpired that the contention of the Authority about having full powers under sections 6, 10, 11, 12 and 13 of the OGRA Ordinance, 2002, to deal with complaints about the regulated activities of gas distribution companies and individuals was well founded and stood duly recognized by the Wafaqi Mohtasib Secretariat through the mutually agreed arrangements made effective from 15th March, 2005.

22. As regards the interpretation placed by the Authority on the provisions of section 43 of the OGRA Ordinance, 2002 to the effect of granting total exemption to the Authority from the operation of all other laws of the country, it was felt that this was not tenable in law. It was consequently held that the jurisdiction of the Wafaqi Mohtasib remains undisputed in respects of investigation of complaints alleging any act of 'mal-administration' as defined in Article 2(2) (ii) of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 committed by any "Agency", as defined in Article

2(1) *ibid.* The above mentioned Complaint No. Reg. H/5923/2005 was disposed of accordingly through Findings dated 31.12.2005.

23. In view of the importance of the issue, the complete text of the Findings dated 31st December, 2005 in Complaint No. Reg.H/5923/2005 is placed at Annex-VII.

WAPDA — Electricity Distribution Companies

24. Since the establishment of the Office of the Wafaqi Mohtasib in 1983 it has been investigating the complaints of consumers about electricity matters. This was primarily on account of the fact that Wapda fell within the definition of an “Agency” as laid down in Article 2 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, and that there was no other statutory body or arrangements for specifically attending to such complaints under any other law. This position, however, changed with the coming into force of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, and especially in view of the following provisions contained therein:-

- (i) section 3 providing for the establishment of the National Electric Power Regulatory Authority (NEPRA);
- (ii) section 21 authorizing NEPRA to grant licences for distribution of electric power, lay down an eligibility criteria for supply of electricity to applicants, and lay down performance standards for distribution and transmission of electric power including safety, health and environmental protection;
- (iii) section 31 authorizing NEPRA to determine and prescribe procedures and standards for determination, modification or revision of rates, charges, etc;
- (iv) section 38 directing each Provincial Government to establish an Office of Inspection to enforce compliance with the instructions of Distribution Companies regarding metering, billing, electricity consumption charges and decision of cases of theft of energy and determining disputes relating to metering, billing and collection of tariff;
- (v) section 39 enabling an aggrieved person including a Provincial Government to file a written complaint with NEPRA against a licensee for contravention of any provision of the said Act or any order, regulation, licence or instructions made or issued thereunder.

25. The issue of handling of such complaints was, therefore, considered in consultation with NEPRA in the year 2004. The on ground position of avenues of resolving consumer complaints was also reviewed. The NEPRA formally confirmed that such complaints would be first handled at the level of distribution companies. In case of any violation of laid down instructions both consumers and distribution companies can seek enforcement of these instructions from the Provincial Offices of Inspection (Electric Inspectors of the Provincial Governments appointed under the Electricity Act, 1910, were designated as such) under section 38 of the said Act. The Authority reiterated its legal right to entertain complaints from any interested person, including a Provincial Government, in terms of section 39 of the said Act. This view has been prompted by the decision of the President on a representation in terms of Article 32 of P.O. 1 of 1983 in Complaint No. Reg. H/12721/2002 decided on 31st August, 2004 in which it has been held that:

“The supply of electric power is regulated under the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997. All questions relating to the Agency’s obligations to supply electric power to the complainants and their (complainants) right to get supply are determinable under the above Act, and if the Agency (FESCO) is failing in its obligation the matter is exclusively determinable by the National Electric Power Regulatory Authority (NEPRA) under section 39 of the Act. Accordingly, the President has been pleased to set aside the Wafaqi Mohtasib’s findings/recommendation dated 19.11.2003 in Complaint No. H/12721/02. The Wafaqi Mohtasib may refer the complaint to the NEPRA for decision.”

This position has further been consistently re-affirmed by the decisions of the President in Complaint Numbers Reg.H/7874/02 and Reg.L/3810/02 dated 27th and 28th May, 2005 respectively, Complaint No. F/83/2003 dated 10th January, 2005 and Complaint No. L/3499/04 dated 26th December, 2005.

26. Consequent to the above mutual consultation and the decisions of the President, the Wafaqi Mohtasib Secretariat informed the Authority in February, 2005 of its proposal to discontinue accepting fresh complaints with effect 15.3.2005, while the complaints under process will be dealt with to their finalisation. This proposal was implemented by issuing necessary instructions dated 26.2.2005 to all the officers of the Secretariat under intimation to Chairman, NEPRA and intimating the general public through a press release on 8.3.2005.

27. On receipt of this intimation, the Authority sought clarification from this Secretariat about its assumption that while Provincial Offices of Inspection and NEPRA would attend to matters within the provisions of sections 38 and 39 of the said Act, the

issues other than these falling within the purview of P.O. No.1 of 1983 would continue to be handled by the Wafaqi Mohtasib's Secretariat. Necessary clarification affirming the above position was issued on 8th April, 2005 to all officers of this Secretariat with intimation to Chairman, NEPRA. These arrangements are being adhered to strictly.

28. While the entrusting of complaints by consumers against Wapda and its distribution companies to OGRA as envisaged by the law on the subject has, on the one hand, reduced the workload of the Mohtasib's Office by more than fifty per cent, on the other hand the feedback received on the working of the new arrangements reveals that the consumers, particularly the small consumers, are facing considerable inconvenience on account of the following: (i) the Electric Inspectors who have been designated as the Provincial Offices of Inspection charge one per cent of the amount of the impugned electricity bills from the complainants as examination fees of the Government; (ii) fifty per cent of the amount of the impugned electricity bills are required to be deposited with the utility company concerned by the complainants before examination of their complaints; and (iii) insistence by the Electric Inspectors on the engagement of legal counsel by the complainants to pursue cases in contradistinction to the practice of the Wafaqi Mohtasib's Office where the pleading of a case by a counsel is expressly prohibited.

29. The factors listed in the foregoing paragraph have compelled the complainants to voice their grievance on this account in the print media and also to this Office as these have led to considerable financial strain on their limited resources. Something to remedy the situation would need to be done and the issue seriously examined by both NEPRA and the Provincial Governments, under whose jurisdiction the Offices of the Electric Inspectors operate.

Appointment of the Insurance Ombudsman

30. The insurance business until the year 2000 was regulated in terms of the Insurance Act, 1938. This Act has been replaced by the Insurance Ordinance, 2000 which provides for the establishment of the Institution of Insurance Ombudsman through its sections 125 to 134. Some of the salient features of the sections are as follows:

- i) The appointment of the Insurance Ombudsman is to be made by the Federal Government. He has to be a person with unimpeachable insurance or legal credentials and should not be a share holder of any Insurance Company [section 125(1) and(2)];
- ii) The appointments in the Secretariat will be made in consultation with the Commission and the cost of the Secretariat will be shared

by the insurance companies in such proportions as may be determined by the Commission. (section 126).

- iii) He may on the complaint by an aggrieved person undertake investigation against any insurance company on the basis of any allegation of maladministration as defined in section 127.
- iv) The Insurance Ombudsman is obliged to entertain cases referred to him by any court of law (section 128);
- v) An aggrieved person may file an appeal against the 'Findings' and 'Recommendations' of the Insurance Ombudsman within 30 days to the Securities and Exchange Commission of Pakistan.[Section 130(2)];
- vi) Where the Insurance Ombudsman finds that either an insurer has failed to comply with the Insurance Ordinance 2000 or has failed to act in good faith or acted in such a manner as to bring the insurance industry in disrepute, he shall make a report on the matter to the Commission(section 133);
- vii) The Insurance Ombudsman is required to submit to the Federal Government on or before 31st March an annual report relating to the review of the activities of his office during the preceding year (section 134).

31. The Insurance Ordinance, 2000, has also provided for the establishment of the Insurance Tribunal as envisaged in sections 121 to 124 without specifying its relationship with the Insurance Ombudsman.

32. No Insurance Ombudsman has been appointed as yet, therefore, the cases in respect of State Life are being handled by the Federal Ombudsman while for the cases of private insurance companies so far there is no forum. However, complaints in respect of these companies are admitted on an informal basis by the Ombudsman and efforts made to provide relief in consultation with the concerned companies and with their willing cooperation. The Government has, however, realized that the Insurance Ombudsman has to be appointed without further delay and in this regard action has already been initiated. Pending the final orders of appointment of the Insurance Ombudsman, as already noted, the present arrangements for processing complaints relating to insurance by the Office of the Wafaqi Mohtasib are continuing.

33. The following table gives the position of complaints admitted by the Wafaqi Mohtasib during the last four years:

Table 19: State Life Insurance Corporation of Pakistan (SLIC)

Years	2002	2003	2004	2005
Complaints	404	284	216	210

CHAPTER 6

Issue of Complaints relating to 'Service Matters'

The jurisdiction of the Wafaqi Mohtasib is laid down in Article 9 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983. According to clause 2 of Article 9 *ibid*, complaints by or on behalf of a public servant or functionary, concerning a matter relating to the 'agency' in which the complainant is or has been working in respect of any personal grievance relating to his service therein are excluded from the jurisdiction of the Wafaqi Mohtasib. Accordingly complaints relating to the terms and conditions of service, promotion, seniority, disciplinary actions, termination of service, etc. are not entertained being considered as 'service matters' for resolution of which a specific statutory body in the form of the Federal Service Tribunal exists.

2. However, complaints relating to issues involving payment of and grant of pension, provident fund, benevolent fund, group insurance, medical charges usually involve the offices of the Accountant General, District Accounts Office, and Regional Offices of Federal Employees Group Insurance and Benevolent Fund are entertained by this Office as not being 'service matters' as such but relating to 'post-service' benefits in which, more often than not, 'agencies' other than the 'agencies' in which the complainants have worked are also involved. A large number of such complainants were provided relief by adopting this more charitable interpretation of the law.

3. In order to facilitate and ensure uniformity, investigation officers have been provided guidelines vide a circular No. Dy. 1281/SECY/WMS/02 dated 25.6.2002 specifying the issues which are not to be strictly treated as service related matters. These are listed below:-

(a) Post-retirement Issues

- i. Pension;
- ii. Gratuity;
- iii. G.P. Fund;

- iv. C.P. Fund;
- v. Group Insurance;
- vi. Benevolent Fund;
- vii. Travel concessions;
- viii. Medical facilities (to the retired employees);
- ix. Employees Old-age Benefits; and
- x. Denial of admissible perks and privileges.

(b) In-service Issues

- i. Medical reimbursement claims;
- ii. Allotment of accommodation and housing facilities;
- iii. Denial of admissible perks and privileges.
- iv. Delay and discrimination in the grant of various advances such as Motor Car Advance, Motorcycle Advance, House Building Advance and G. P. Fund Advance.
- v. Educational and other benefits for the children of employees.

Table 19: Major Causes of Complaints Received on 'Service Related Matters'

Nature of Grievance	2004		2005	
	Received	Admitted	Received	Admitted
Delay/non-transfer of G. P. Fund account	210	120	197	140
Delay in sanction of EOABI Pension	63	23	9	5
Delay in grant/release/revival of Family Pension	101	58	58	29
Delay in sanction of Pension/G. P. Fund	642	301	534	255
Delay in payment of outstanding Service Dues	260	117	169	63
Stoppage of pension/B.F./G. P. Fund	144	64	80	30
Wrong calculation of Gratuity/Pension	14	7	11	6
Delay in reimbursement of Medical Bills	89	42	65	40
Discrimination in appointments on first recruitment	613	101	401	77
Promotion/Seniority	168	12	138	11
Removal from service	14	0	5	1
Discrimination in grant of Secretariat Allowance	5	2	20	9
Wrong fixation of pay	151	23	108	26
Allotment of plot/agricultural land	135	7	158	36
Allotment of accommodation	402	195	268	146
Miscellaneous	2,945	665	80	3
Total:	71,472	20,844	27,612	10,524

CHAPTER 7

Follow-up of Tasks set for the Office for the Calendar Year 2005 in the Annual Report 2004

The Annual Report 2004, envisaged the following tasks, which were to be followed up in the Year 2005 with a view to bringing about improvements in the working of the Office. The updated position of these tasks is given in the ensuing paragraphs.

Establishment of Management Information System (MIS) in Wafaqi Mohtasib (Ombudsman)'s Secretariat under Access to Justice Programme (AJP)

2. Management Information System helps in processing data in an effective manner and thereby leads to increased efficiency in the functioning of an organization. In order to increase the efficiency in the handling of complaints in this Office, a project for the Establishment of the Management Information System in the Wafaqi Mohtasib's Secretariat, amounting to Rs.18.8206 million, funded under Access to Justice Programme, was reported as pending in the last year's report. The revised cost of the project as approved by the Departmental Development Working Party (DDWP), in its meeting held on 22.12.2005 is now Rs.23,829,526.

3. The major activities of the MIS project are the following:

- Computerization of Complaints;
- Computerization of Decisions Retrieval;
- Computerization of Budget & Accounts;
- Computerization of Personnel Management;
- Computerization of Web Designing and Development; and
- Linkage of all eight Regional Offices with Head Office.

4. The major portion of the project relating to procurement/installation of computer hardware, and System Software has been completed, while the development of Customized Application Software, Web-designing and Hosting, LAN & WAN, and development of tools is in hand by the consultants appointed for the purpose and is expected to be completed by March, 2006.

Construction of the Wafaqi Mohtasib Secretariat's Building at Islamabad

5. In view of the pivotal role played by the Office of the Wafaqi Mohtasib in the context of 'good governance' and its high profile in the general public on this account, the construction of a suitable building as its Headquarter on the prestigious Constitution Avenue of Islamabad was considered appropriate by the Government and, accordingly, plot No. 36 in Sector G-5/1, measuring 7777.77 square yards was allotted by the Capital Development Authority in January 1987. The total cost of this project is about Rs.113.845 million and will be financed by the assistance provided by the Asian Development Bank under its Access to Justice Program (AJP). The work regarding structural designing of the building was almost completed by the Capital Development Authority (CDA), but after the earthquake of October 8, 2005, the Government has decided to revise the building codes in Islamabad. Therefore, further progress on the project has been suspended till finalization of revised building codes and approval by the Cabinet Division.

Wafaqi Mohtasib (Ombudsman)'s Employees (Appointment, Promotion and Transfer) Rules

6. Article 36 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, lays down as follows:-

“Rules: The Mohtasib may, with the approval of the President make rules for carrying out the purposes of the Order”.

7. The draft Wafaqi Mohtasib (Ombudsman)'s Employees (Appointment, Promotion and Transfer) Rules, 2005, are still under consideration of the Ministry of Law, Justice and Human Rights for approval since 5th January, 2005. It is essential that these rules are finalised by the Law Division and approved by the President as early as possible so as to regularise the ad-hoc arrangements under which the Office is presently staffed.

CHAPTER 8

Activities of the International Ombudsman Institute (IOI) and the Asian Ombudsman Association (AOA)

The institution of the Ombudsman throughout the world as an instrument for the redress of the grievances of the public against ‘maladministration’ of government functionaries is increasingly being recognized as an essential institution of ‘good governance’. In this context the need for institutional forums of Ombudsmen to meet on a periodic basis for sharing of views and experiences on mal-administration and how best to cope with it in different socio-economic, cultural and political settings, has led to the formation of the International Ombudsman Institute, based in Canada, and the Asian Ombudsman Association, with headquarters at Islamabad. Pakistan has had the honour of being represented on the Board of Directors of the IOI and being President of the AOA since its inception in 1996. The activities of these forums and Pakistan’s role during 2005 is contained in the following paragraphs.

International Ombudsman Institute (IOI)

2. International Ombudsman Institute (IOI) established in 1978 at Alberta, Canada, is the first institution of its kind which provides a forum to the countries having Ombudsman institutions to get together and discuss views and share experiences to promote the objectives of ‘ombudsmanship’. It is a non-Governmental and non-profitable organization. Its main objectives are to promote the concept and institution of the Ombudsman and to encourage its development throughout the world as well as to encourage and support research in the functioning of the Office world-wide. Today, there are 275 Ombudsman and like institutions working in 129 countries. Out of these 129 are Voting members of the IOI and 40 are listed as Non-Voting members. The Institute is governed by a Board of Directors, which consists of 20 members. The meeting of the

Board of Directors is held every year, while the General Conference is held after every four years.

3. The Board of Directors of the International Ombudsman Institute is as follows:

President:	Mr. William P. Angrick II (Iowa, USA)
Vice President:	Mr. Lethebe Amos Maine (Botswana)
Treasurer:	Mr. David Percy (Alberta University, Canada)
Secretary:	Ms. Alice Yuen Ying Tai (Hong Kong)

Regions:

Africa:	Mr. Lethebe Amos Maine (Botswana)
Asia:	Mr. Song Chul-ho (Korea) (Regional Vice President); Mr. Imtiaz Ahmad Sahibzada (Pakistan); Mr. Cheong U (Macau).
Australasia & Pacific Europe:	Mr. Ila Geno (Papua New Guinea); Dr. Peter Kostelka (Austria) (Regional Vice President); Mr. Matjaž Hanžek (Slovenia); Ms. Ritta-Leena Paunio (Finland).
Latin America & Caribbean:	Dr. Jose Luis Soberanes Fernandez (Mexico) (Regional Vice President); Dr. Hayden Thomas (Antigua & Barbuda).
North America:	Mrs. Pauline Champoux-Lesage (Quebec, Canada)

4. The last Board of Directors' meeting of the International Ombudsman Institute was held in Antigua and Bermuda, West Indies, from 6-10 November, 2005. This, unfortunately, was not attended by the Wafaqi Mohtasib in view of the forthcoming meeting of the Asian Ombudsman Association scheduled for the end of November 2005 for which adequate preparations had to be made in the meantime.

5. During the meeting, Mr. William P. Angrick II, President IOI, in his report, emphasized the following priority tasks for the IOI:

- (a) IOI should strive to become the primary resource centre for governments as they establish new offices.

- (b) The Board should define the direction for its future and work to achieve them.
- (c) The Board should enhance the benefits of membership, amongst other things, by–
 - (i) developing a training programme – training for investigators, frame recommendations, report-writing skills to effect changes etc; and
 - (ii) developing an evaluative protocol as benchmark to measure the adequacy of Ombudsman legislation and performance.

22nd Australasian and Pacific Region’s Conference

6. The 22nd Australasian and Pacific Region’s Conference was held in Wellington, New Zealand from 9-11 February 2005. The Wafaqi Mohtasib was also invited to participate in the Conference in his capacity as the current President of the Asian Ombudsman Association. The theme of the Conference was “The Small Ombudsman Office”. The Wafaqi Mohtasib also addressed the participants of the Conference and apprised them of the objectives, structure, performance and achievements of the Asian Ombudsman Association. He also highlighted the current issues under active consideration of the Association. While emphasizing the need of sharing information, he said:-

“sharing of mutual experiences in respect of the structure and functioning of Ombudsmen institutions in our respective countries is essential for the purpose of continuously improving their performance in the redress of the grievances of the citizens against mal-administration at the hands of public sector agencies and their functionaries. This can only be brought about through regular periodic meetings of Associations such as the APOR and the AOA and other regional Organizations of the kind.”

7. The participants of the Conference were also briefed about the working of the Ombudsman institutions in Pakistan. The complete text of the addressed is at Annex-VIII.

Asian Ombudsman Association (AOA)

8. The Asian Ombudsman Association was founded in Islamabad, Pakistan, in 1996 with Headquarters at Islamabad. The Wafaqi Mohtasib (Ombudsman) Secretariat provides the office space and secretariat services to the Association. The Secretary of the Wafaqi Mohtasib’s Secretariat is ex-officio the Executive Secretary of the Association. The objectives of the charter of the Association are:

- (a) To promote the concepts of Ombudsman-ship and to encourage its development in Asia.

- (b) To develop professionalism in the discharge of the functions of an Ombudsman.
- (c) To encourage and support study and research regarding the institution of Ombudsman.
- (d) To sponsor training and educational programmes for the institutions of Ombudsman in the region.
- (e) To provide scholarships, fellowships, grants and other types of financial support to individuals for study relating to the institution of the Ombudsman.
- (f) To collect, store and disseminate information and research data about the institution of Ombudsman.
- (g) To facilitate exchange of information and experiences among the Ombudsmen in the region.
- (h) To plan, arrange and supervise periodic conferences of the Ombudsmen of the Asian countries/regions.
- (i) To undertake such other matters necessary to further the above objectives of the Association.

As of today, 17 countries are members of the Association. These are: (i) People's Republic of China (ii) Hong Kong (iii) India (iv) Indonesia (v) Islamic Republic of Iran (vi) Japan (vii) Korea (viii) Macao (ix) Malaysia (x) Pakistan (xi) Philippines (xii) Sri Lanka (xiii) Thailand (xiv) Yemen (xv) Azerbaijan (xvi) Socialist Republic of Vietnam (xvii) Kyrgyz Republic.

***Annual Meeting of the Board of Directors of the AOA held on
28th November, 2005 in Hong Kong, SAR, Peoples Republic of China***

9. The meeting of the Board of Directors was held on 28th November, 2005, in Hong Kong. During the Board's meeting fruitful discussions took place and significant decisions were taken on the Agenda items under consideration. One very significant decision related to the selection of topics for research by member countries on different aspects of the functioning of the office of the Ombudsman/like-institution in the member countries. In this context, on the recommendations of the Board, the members selected the following topics:

- (i) Ensuring the independence of the Ombudsman's office (Wafaqi Mohtasib, Pakistan).
- (ii) Administrative arrangements to enhance the independence of Ombudsman Office (Hong Kong, China).

- (iii) Strengthening investigation functions of the Ombudsman and how to make government agencies accept recommendations made by the Ombudsman (Republic of Korea).
- (iv) How can the administrative supervisory institution (Ombudsman) protect the public interests? (People's Republic of China).
- (v) The role of Ombudsman in enhancing the citizens' rights (Islamic Republic of Iran).
- (vi) The Ombudsman-An Aid to Good Governance (Japan).
- (vii) The Ombudsman and integrity of the Government (Macao, China).
- (viii) The role of Ombudsman organization in enhancing good governance and delivery of services of the public sector (Malaysia).

10. The Board in its meeting also considered the proposals on the Agenda item regarding exchange of reports, decisions, findings and articles published in the member countries/regions for benefit of the members. It was decided that the AOA Secretariat will publish a biannual news bulletin focusing on the activities of the members and containing the information they want to share with others. The first issue of the Bulletin will be released by the end of July 2006.

9th Conference of the Asian Ombudsman Association (AOA), held from 28th November to 1st December, 2005, in Hong Kong, China

11. 9th Conference of the Asian Ombudsman Association was held in Hong Kong, China, from 28th November to 1st December, 2005. The main theme of the Conference was "***Evolving Ombudsman Offices***". A brief introduction of the topics identified and explored at the Conference are as follows:-

a. **Relationship with Government and Other Stakeholders**

Independence is a core value of the ombudsman system. This can be translated into institutional functional and personal independence. Of necessity, an Ombudsman must work with and relate to the Government and other stakeholders (e.g. Parliament, the media etc). An Ombudsman's style can impact on his effectiveness. How does this manifest itself in different socio-political and cultural environments? What can we learn from the experiences of other Ombudsmen?

b. **Measuring Effectiveness of Ombudsman Offices**

Who watches the Watchdog? While ombudsman offices are actively engaged in drawing attention to administrative, social and even economic deficiencies, how do they keep themselves in shape? Who monitors them to keep them on their toes?

c. **Promoting Public Awareness**

How do Ombudsman offices publicize their services? Who are the targets for such activities? How is public awareness measured? How is the effect of publicity evaluated?

d. **Freedom of Information (FOI) and Protected Disclosure Legislation**

Government exists to serve their communities. FOI and whistleblowers legislations are enacted in some jurisdiction to enhance public accountability. FOI legislation provides for the public's right to access to information held by public authorities, so that it can be well informed about government services and the basis for policies and decisions that affect individuals and the community as a whole. Whistleblowers legislation goes a step further by protecting disclosure about improper conduct by public officers and public bodies. Some states entrust the Ombudsman with overview or investigative roles. What implications do these seemingly complementary functions have on an Ombudsman's "normal" function of investigating maladministration? Are there obvious pitfalls to avoid for jurisdictions that do not yet have such legislation but wish to go down these routes?

e. **Development of Specialty and Industry Ombudsmen and their Relationship with the Ombudsman**

When first introduced, the concept of Ombudsman was confined to legislative ombudsman offices. With increasing of privatization in public services, mounting pressure for "ombudsman-like" institutions to be replicated in non-traditional areas and the private sector led to the development of "specialty" and "industry" Ombudsmen. Despite the commonality in name, the modus operandi of a Specialty Ombudsman can vary a great deal from their classical counterparts. How has this evolution come about in the different regions? What are some of the key elements of "conflict"?

12. The Conference was divided into six Plenary Sessions. Mr. Imtiaz Ahmad Sahibzada, President of the AOA/Ombudsman of Pakistan, was the Moderator of the Plenary Sessions on the sub-themes '*Relationship with Government and Other Stakeholders*', '*Promoting Public Awareness*', and '*Handling of Complaints from Prisoners*'. Each Plenary Session consisted of a Speaker followed by presentations by two or three panelists.

13. At the inaugural session of the Conference during the address of the President and at his instance a 'two-minute silence' was observed in memory of those thousands of people who recently lost their lives in the devastating earthquake that struck parts of Northern Pakistan and Kashmir on 8th October this year. The President AOA in his opening address, while extending a warm welcome to the delegates of the Conference thanked the concerned member countries and others who had so generously contributed, both in terms of money and technical human assistance, to coping with the disastrous effects of the earthquake and the consequential rehabilitation effort of the Government. Coming to the theme of the Conference he observed that:

“although the characteristics of the Office may, and usually do, differ from country to country, the basic concept remains the same i.e. an independent Office designed to receive, investigate and pursue resolution of complaints by citizens concerning administrative acts or decisions of Government. Whether this is done by arbitration, mediation, conciliation, negotiation or adjudication, the central thrust is always to curb mal-administration. By curbing mal-administration from the discharge of functions and responsibilities by public sector organizations in a cost-effective and expeditious manner and through comparatively simple and uncomplicated procedures, the Office has established itself as perhaps the most important institution of alternate dispute resolution and the redress of individual grievances arising from the interface of the Government and the citizens”.

14. While elaborating and emphasizing the role of the Institution of the Ombudsman, he said;

“Organisations when created are the product of the history and the specific circumstances of each country prevailing at the time. While this is so, an organisation to be relevant and credible has to continuously evolve in keeping with the requirements and needs of a society which is in a state of continuous and rapid change. Although the impetus for this, and the form that it takes, will essentially have to be country-specific, a great deal in this regard can be learnt from the experiences of each other. While the successful models elsewhere cannot be replicated in their entirety in other countries, some of the principles on which they are based and the

procedures in use for discharge of responsibilities, can certainly be adopted and adapted to structure our respective institutions on more efficient and effective lines and thereby cope with the needs dictated by the rapidly changing socio-economic and administrative circumstances of each country. Ombudsmen Offices must constantly evolve and react to changing external trends. How effectively this is done will be a measure of its efficiency and of its continued relevance to the needs of the time.”

15. While concluding his opening address the President acknowledged with great gratitude the excellent work done by Ms. Alice Tai, Ombudsman of Hong Kong and Secretary not only of the Asian Ombudsmen Association but of the International Ombudsmen Institute as well—and of the good work put in by the members of the staff of her organization in making the conference a success. The complete text of the speech is at Annex-IX.

Meeting of the General Assembly

16. The meeting of the General Assembly of the AOA was held on Thursday, 1st December, 2005, which was presided over by Mr. Imtiaz Ahmad Sahibzada, the President. Each member of the General Assembly briefed the participants about the significant activities of its institution during the last one year.

17. The General Assembly passed the following resolutions:

- i. Admission of two new members in the Association i.e. Inspector General of the Government Inspectorate of Vietnam as Full Member, and Ombudsman (Akyikatchy) Institution of the Kyrgyz Republic as Associate Member.
- ii. Change of membership status of the Commissioner for Human Rights of the Republic of Azerbaijan from Full Member to Associate Member.
- iii. Approval of the financial statements of the Asian Ombudsman Association for the period from 25th April, 2004 to 20th November, 2005.
- iv. Delegation of Authority to the Board of Directors to fix venue and dates of the 10th AOA Conference to be held in 2007.
- v. Gratitude to Hong Kong and her Excellency Ms. Alice Tai, Ombudsman, for hosting the 9th Conference of the Asian Ombudsman Association.

CHAPTER 9

Select 'Findings' of Calendar Year 2005 Providing Relief to Complainants

COMMERCE DIVISION

State Life Insurance Corporation

(1) *Complaint No. H/10072/2004*
Delay in Payment of Death Claim

Raja Muhammad Anwar stated that his sister Samina Aslam purchased an Insurance Policy from State Life in which his niece, Rabia Aslam was nominee. After his sister's death his niece was paid monthly annuity and later, she also expired. The State Life asked for a succession certificate for payment of Rs.1,45,338/- which was provided. However, instead of making full payment the State Life was making monthly payment.

The State Life informed that the policy issued on 30.4.1995 pertained to child protection plan on the lives of Mrs. Samina Aslam and her daughter, Rabia Aslam with 30.4.2017 as the maturity date. On the death of Samina Aslam the claim of Rabia Aslam was admitted as under:

- (i) Annuity @ Rs.416.00 per month from 1.11.2001 to 30.4.2017.
- (ii) Sum assured and bonuses amounting to Rs.75,450/- payable on maturity date i.e. 30.4.2017.

On the death of Rabia Aslam on 16.3.2003 and receipt of succession certificate annuity was being paid to the legal heirs. The Agency maintained that in accordance with Endorsement 07, on death of the policy holder, payment of the sum assured and bonuses is made on the expiry of the term of policy. In addition a stream of yearly income is payable from the date of death of the policy holder till maturity of the policy. The terms

applicable to the child continued to remain in force for the successors and no lump sum payment could be made immediately.

Examination of evidence established that the state life acted in accordance with the terms of policy and no lump sum payment was committed or due. The complaint was therefore, rejected. It was however, noted that maturity date of 30.4.2017 under the Child Protection Plan and Endorsement 07 was meant to protect the child through grant of monthly annuity and payment of sum assured at the age of majority. The successors being middle aged persons, payment of an annuity till age of majority was not relevant to them. It was accordingly recommended that State Life should review the Child Protection Plan along with Endorsement 07 to cater for such situations.

COMMUNICATION DIVISION

Pakistan Post Office Department

(2) *Complaint No. H/4213/2004* Unjust Deduction From Retirement Benefits

Mr. Mohammad Khurshid served as a clerk in the Pakistan Post Office Department for 30 years. He applied for premature retirement on personal grounds and consequently the Agency issued orders on 10th December 2001 permitting him to retire with effect from 31.12.2002 after availing LPR for 365 days with effect from 1.1.2002. Due to shortage of staff he was asked to continue service by the Agency and he withdrew his request for premature retirement. His retirement orders were accordingly withdrawn by the Agency on 29.12.2001. After some time the complainant again requested for premature retirement and the Agency permitted him to do so with effect from 1.3.2004 after availing LPR for 365 days from 2.3.2003. In the meantime he was promoted from BPS-7 to BPS-9 and he actually continued serving upto 29th February 2004. At the time of retirement the Director Accounts, Pakistan Post Office determined a recovery of Rs.130,000/- from his pension dues on account of emoluments drawn for the period 1st January 2003 to 29th February 2004 on the ground that orders of retirement once issued cannot be changed under rules. The complainant maintained that he actually served the department during this period and had earned his emoluments. He prayed for the intervention of the Wafaqi Mohtasib against the unjustified recovery from his pension.

The Deputy Post Master General, in his report supported the contention of the complainant and quoted the Sindh Service Tribunal Judgment in case No. 2003 TD (service) 401 in which it was observed that "a Government servant is at liberty to withdraw his application for premature retirement before it is made effective". The Director of Accounts, Pakistan Post Office, however, quoted Pension Rules 1966 as well as Esta Code in support of his ruling that a request for premature retirement once

accepted cannot be withdrawn. He, therefore, justified the recovery of Rs.123,127/- made from the complainants pensionary dues.

Investigations in the case established that the complainant had actually served the department and earned his emoluments in the period 1.1.2003 to 29.2.2004. The continuation in service was duly authorised by the Agency and was not due to any fault on the part of the complainant. Keeping in view the principle of *locus poenitentiae*, the action of the Agency to recover the amount of Rs.123,127/- was determined to be unjustified. It was therefore, recommended that the recovered amount be reimbursed/paid to the complainant after deducting the amount received by him as pension for the period.

(3) ***Complaint No. H/4329/2004***
Unjust Stoppage of Children's Allowance

Syed Muhammad Khurshid Ali, resident of Karachi, stated that his son, who was a pensioner of Pakistan Navy died and left a widow with two minor children. The pension was stopped after the widow remarried but the two children were sanctioned an allowance till the age of maturity. The allowance was received regularly from post office, Hadali with his signatures as guardian. The Post Office, however, stopped payments and demanded a guardianship certificate. He requested for intervention of the Wafaqi Mohtasib as no such demand was earlier made by the Post Office.

The matter was taken up with the Director General, Pakistan Post Office whose office informed that the concerned functionaries of the Post Office had been directed to settle the issue and the complainant may take the payment any time. The Director General, Pakistan Post Office was again approached to ensure relief. Payment was confirmed by the Post Office. The complainant gratefully acknowledged the relief which he attributed to the intervention of the Wafaqi Mohtasib.

(4) ***Complaint No. H/8053/2004***
Recovery of Rs.55,916/- on Account of Increases in Army Pension

Mr. Muhammad Ilyas, on retirement from the Pakistan Army in 1989, took up service as Chowkidar in the Punjab Housing and Physical Planning Department where he served till attaining the age of superannuation on 30th May 2004. As he served the Housing and Physical Planning Department for over 15 years he earned a second pension of Rs.981/-per month He was however, asked by the Post Office Department to pay back Rs.55,916/- paid to him over the years on account of increases in Army Pension. He considered the recovery as unfair and requested for intervention of the Wafaqi Mohtasib.

The Post Office Department maintained that the recovery was justified in accordance with rules as the complainant was not entitled to the increases in Army

Pension after re-employment in Civil Service in 1989. It therefore, intended to recover the amount of Rs.55,916/- from the complainant's commutation of the second pension.

After investigation it was concluded that the recovery was indeed due in accordance with the instructions of the Government/Ministry of Defence as such increases in Army Pension were not admissible on re-employment. However, in accordance with Regulation 23(4) of Pension Regulation Volume II (Army) 1999, such recovery could only be effected in installments of one-third of pension. The proposed recovery in lump sum was therefore, held to be unjustified, being in violation of the Pension Regulations. It was accordingly recommended that the amount of Rs.55,916/- should be recovered at the rate of one-third of his army pension instead of lump sum recovery from his pension commutation on account of his civil employment.

It was further recommended that the policy disallowing increases in pension after re-employment on civil side may be reviewed by the Defence Division in consultation with the Ministry of Finance, keeping in view the principles of equity and justice as an individual duly earns his pension on his army service while he takes up civil employment to augment his meagre pension.

(5) *Complaint No. H/8992/04*
Stoppage of Pension and Non-Return of Pension Book

Mr. Hisab Gul from District Mianwali complained against the stoppage of his army pension and retention of his pension book by GPO Mianwali on the plea that an amount of Rs.20,241/- on account of increases in army pension was overpaid to him after he joined WAPDA as security guard in 1986. The complainant contended that the Agency's action was unfair and unjustified. He further informed that he had since deposited Rs.5,000/- as the first installment of the amount to be recovered.

The Director General, Pakistan Post Office admitted that the action was taken on discovering the re-employment of the complainant in WAPDA in accordance with government instructions disallowing increases in pension to re-employed retired army personnel. During the hearing the complainant pleaded with considerable emotion that having earned his pension through selfless service and remained a POW, it was not fair to deprive him of the increases in pension only because he took up employment in WAPDA to augment his meagre income. The Agency on its part maintained that its action was in accordance with rules but it would comply with the GHQ's instructions, since received by them, to recover the overpaid amount at the rate of one-third of the complainant's pension. The pension book of the complainant was returned to him.

The investigation proceeding established that the overpaid amount was due from the complainant. However, in accordance with instructions contained in Pension

Regulation Volume II (Army), 1999, the recovery could only be made at the rate of one-third of the pension. Stoppage of pension and retention of the complainant's pension book, being in violation of rules, was unjustified and amounted to mal-administration. It was further observed that government instructions disallowing increases in pension to retired army personnel who take up employment on the civil side to augment their meagre pension needed to be reviewed. It was, therefore, recommended that:

- (i) Pension admissible to the complainant should be restored and recoveries of the overpaid amount be made @ $1/3^{\text{rd}}$ of the pension; and
- (ii) Copy of the Findings be sent to Secretary, Defence Division with the recommendation that it may, in consultation with the Finance Division review the policy of depriving re-employed army pensioners of increases in pension given from time to time keeping in view the principles of equity and justice.

DEFENCE DIVISION

Cantonment Board

(6) *Complaint No. H/6562/04*

Restoration of Family Pension/Commutated Portion of Pension

Mst. Zeenat Begum, widow of Abdul Majeed an employee of Cantonment Board stated that her husband was medically discharged and granted pension in 1981. Later, on her husband demise, she was sanctioned family pension in February 1995. At the time of retirement her husband had rendered 21 years, 7 months and 27 days service. He had 3 years, 4 months and 2 days earned leave at his credit which was admitted as qualifying service for pension in terms of explanation 1 of Rule 8 (3) (b) of Pakistan Cantonment Servants Rules (PCSR) 1954. Audit authorities objected to the inclusion of the earned leave toward qualifying service in 1988 on the ground that PCSR was amended in 1968 disallowing inclusion of earned leave to make up deficiency in qualifying service. Consequently her family pension had been stopped. She pleaded for restoration of pension and payment of arrears.

The Agency reported that they had restored the commuted portion of pension and also paid arrears of restoration of pension on 2.3.1994. Family pension was being paid regularly along with increases in pension till September 2003. Payment was however, stopped due to audit observation. This would be restored after recovery of Rs. 26,587/- stated to be overpaid.

During investigations it transpired that the audit objection was based on the misunderstanding that PCSR 1954 had been amended in 1968. In fact PCSR was not

amended. The amendment, through which the Pension Rules as applicable to government servants were made applicable to employees of Cantonment Boards, thus disallowing inclusion of earned leave, was actually made in Pakistan Cantonment Servants Pension Regulation 1968 in exercise of powers under Rule 61 of PCSR 1954. Pension Regulations being a subordinate legislation to PCSR 1954, the later could not be amended through any amendment in the Regulations and, consequently the provision in Rule 8 (3) (b) of PCSR 1954 permitting inclusion of earned leave not availed to make up any deficiency in qualifying service remained operative.

Mal-administration of the Agency being established in terms of Article 2(2)(i)(a) of P. O. 1 of 1983, it was recommended that all recoveries made as a result of the audit observation should be refunded to the complainant.

(7) *Complaint No. H/7224/04*
Delay in Finalization of Pension Case

Mr. Muhammad Hanif from Gujranwala complained that he retired from the Cantonment Board after rendering 25 years service but the Agency was delaying his pension on the ground that he was underage by 6 months and 28 days at the time of his enrolment.

The Agency admitted that the pension was not sanctioned because the complainant's age was 17 years, 5 months and 2 days at the time of enrolment against the minimum prescribed age of 18 years. The complainant argued that he had submitted his school leaving certificate to the Agency clearly indicating his age and he could not be blamed for the recruiting Agency's failure to ensure the age limit.

Investigation proceedings established that the action of the Agency was in violation of Establishment Division's O.M. No. 7.2.87-R5 dated 12.8.1993 according to which the age of a candidate was required to be checked at the time of initial appointment and not at a later stage on retirement. These instructions specifically forbid the raising of such an objection at the time or after retirement. The Cantonment Board also failed to grant 80% anticipatory pension to the complainant during the pendency of his pension case thus putting him through avoidable hardship for almost one year. It was noted that this was a second case of similar nature in the Cantonment Board which came to the notice of the Wafaqi Mohtasib.

Mal-administration of the Agency having been established, it was recommended that the complainant be paid full pension in accordance with rules. It was further recommended that the Military Lands and Cantonment Department as well as the MAG/DG Defence Audit should issue directions to all the Cantonment Boards and subordinate offices not to raise such objections and to comply with the Establishment Division instructions quoted above.

GHQ**(8) Complaint No. H/10301/2003****Payment of DSP Fund, Benevolent Fund and Group Insurance**

Mst. Parveen Akhtar, widow of Havildar Mushtaq complained against the failure of the Army authorities (Punjab Regimental Centre) to pay the credit balance in her husband's DSP fund and Benevolent Fund. The PRC initially informed that the balance of DSP fund amounting to Rs.9,612 was paid to the complainant on 27.11.1989. However, later it took the plea that the amount was deposited back in government treasury as the complainant's husband was a deserter. The complainant contested the Agency's contention and maintained that her husband was "declared missing believed dead" since 2.4.1989.

Investigations revealed that the complainant was granted family pension vide PPO No. FPO/F/ord/OR/PRC/04 dated 4.1.2000 and therefore, the Agency's contention that Havildar Mushtaq was a deserter was incorrect. The GHQ was consequently requested to re-investigate the matter. After re-investigation, the Agency confirmed the complainant's contention and informed that the credit balance in the DSP fund of late Havildar Mushtaq along with Benevolent Fund was paid to his widow in May 2004.

EDUCATION DIVISION**Federal Directorate of Education****(9) Complaint No. Reg. H/02518/2005****Issuance of Death Certificate**

Mr. Kashif Anwar complained against non-issuance of death certificates in respect of his parents and a female relative who went missing during a fire incident in Mina while performing Hajj in 1997. Pension dues of his mother, who was a school teacher remained pending for want of her death certificate. He prayed for early issuance of the death certificates by the concerned authorities.

The Ministry of Religious Affairs reported that the Saudi Government had yet to confirm the deaths. However, in response to the complaint the "Death and Disease Cell", Directorate of Hajj, Makkah issued verification certificates indicating that the above mentioned pilgrims were understood to have died in the fire at Mina during 1997 Hajj.

The complainant thanked the Wafaqi Mohtasib for helping him in obtaining the certificate after nine years. He further requested for help in obtaining the pension dues of her mother, compensation for death of the three pilgrims from the Saudi Government and refund of their return fare.

As the complainant's original grievance regarding issuance of death certificates stood redressed the case was closed with the advice to take up his fresh requests with the concerned Agencies in the first place before approaching the Wafaqi Mohtasib.

ALLAMA IQBAL OPEN UNIVERSITY (AIOU)

**(10) Complaint No. H/11770/03
Refusal to Grant Admission in Course (919) BCS**

Ms. Mehar Un Nisa from Saidqabad had complained against the Allama Iqbal Open university (AIOU) for their failure in dispatching her BCS result (in which she was declared as failed) in time to enable her to obtain admission in the next course. She had further requested for compensation for having to travel to Bahawalpur Regional Office and AIOU Headquarters, Islamabad a number of times along with her father to obtain the result as well as to seek admission in the next course, code 919, (which was refused). After investigation, mal-administration of the Agency was established as it failed to dispatch the result of the complainant before the closing date of fresh admission which was 6.10.2003. Interim recommendations were issued in which the complainant was asked to submit documentary evidence of the costs incurred by her in support of her compensation claim in terms of Article 22 of P.O. 1 of 1983.

On receipt of the complainant's reply the university was asked to show cause as to why compensation should not be granted to the complainant as follows:

- (i) Rs. 5310/- on account of three trips from Saidaqabad to Islamabad.
- (ii) Rs. 6160/- on account of eight trips from Saidaqabad to Bahawalpur.

The Agency claimed that result of BCS Special Chance (Autumn 2002 Semester) were declared on 25.8.2003 and communicated to the complainant on the same date. Later the complainant telephonically asked for the result again which was dispatched before the date of closure of admission. The Agency admitted that the complainant visited Islamabad in connection with her result but visits to Regional Office Bahawalpur were irrelevant as that office had nothing to do with her result.

During the investigation, the Agency failed to produce any evidence in support of their claim of having dispatched the result to the complainant on 25.8.2003 or in response to any telephone call later. On the contrary, it was established that the result was dispatched on 8.10.2003 as clearly visible from the postal stamp on the AIOU envelope which was received by the complainant on 16.10.2003. The fresh admissions were closed on 6.10.2003. Entries on the Special Chance Register indicated that the result of Special Chance of course code 919 had been declared on 30.8.2003, which was issued on

9.9.2003 and dispatched by the university on 8.10.2003. This amounted to mal-administration in terms of Article 2(2) (ii) of P.O. 1 of 1983.

The complainant's request for compensation for three visits to Islamabad in connection with her result and fresh admission was held to be valid and it was recommended that the University should pay the amount of Rs.5,310/- incurred by her on this account. However, her request for compensation for visits to Bahawalpur was not considered justified as these visits were not necessary.

(11) *Complaint No. H/837/2005*
Delay in issuance of CT Certificate

Mr. Muhammad Hanif was allowed admission in CT Certificate by the Allama Iqbal Open University (AIOU) on the basis of his BA degree from the Karachi University. On completion of the course after three years the AIOU refused to issue the CT Certificate on the plea that he did not have FA Certificate and his diploma from the PAF could not be considered equivalent to FA.

Investigations established that the AIOU's requirement for admission to CT Certificate was FA or 3 years diploma after matric. The Karachi University accepted the diploma issued by PAF as equivalent to FA and granted the complainant admission to BA degree. The BA degree was not challenged by the AIOU before granting admission to CT course to the complainant on this basis. The AIOU was therefore, not competent to challenge the BA degree or the equivalence of PAF diploma to FA already granted by the Karachi University. If the University had any reservations it should have raised objections at the time of admission and not after successful completion of the course by the complainant. It was noted that the President, in a similar case had also held that the Agency was not authorised to contest a valid degree awarded by a recognised university.

The Agency's refusal to issue the CT Certificate was, therefore construed as mal-administration and it was recommended that it should be issued to the complainant. The AIOU was also advised to reinforce its admission department for proper processing of testimonials of candidates at the time of admission.

FINANCE DIVISION

(12) *Complaint No. H/9944/2004*
Discrimination in grant of Allowance

Mr. Abdul Razzaq a regular employee in the Prime Minister's Secretariat was declared surplus on 27.12.1999 and later adjusted in the Economic Affairs Division on 22.3.2000. His allowances/facilities, including Prime Ministers. Secretariat allowance,

subsidised utilities and rent free accommodation were discontinued on 1.7.2000 which the complainant felt was unjustified. The Ministry of Finance reported that the allowances/facilities were allowed to continue through a directive of then the Prime Minister, only for those employees of the Prime Minister's Secretariat who were declared surplus in 1994 and 1997. As no directive was available for employees declared surplus in 1999, the complainant was not entitled to such facilities.

Due to obvious discrimination in the treatment of employees declared surplus in 1999 vis-à-vis employees declared surplus earlier, it was recommended that the Ministry of Finance should lay down a uniform policy for all such employees eliminating discrimination.

The Agency requested for reconsideration of the recommendation on the ground that the complainant was not a regular employee of the Prime Ministers Secretariat and was actually working in the complaint cell under the Cabinet Division. Investigations established that the complainant was working in the complaint cell which was earlier in the Prime Minister's Secretariat and later brought under the administrative control of Cabinet Division from where the complainant was declared surplus. It transpired that the cell was still working and almost all staff declared surplus and absorbed else where was in receipt of the facilities enjoyed by them in the Prime Minister's Secretariat. Some staff absorbed in NAB were even getting facilities specific to both Prime Minister's Secretariat as well as NAB.

In view of the above, the Agency's reconsideration petition was rejected and the recommendation for review of the entire policy for eliminating discrimination, upheld.

ZARAI TARQIATI BANK

(13) *Complaint No. H/5589/2004-SM/1790* Wrong Charging of Compound Mark-up

The complainant, Mr. Sultan Mir obtained a tractor and goble loan amounting to Rs. 238,000/- from the Zarai Traqiati Bank Ltd (ZTBL) on 20.3.1994. The repayment schedule given to the complainant indicated 20 installments starting form 7.7.1995 and ending on 7.1.2005. When only two installments were left he was told to pay an additional amount of Rs. 100,000/- as the last installment on account of a mistake committed by the bank in computation of interest rate.

The ZTBL informed that the additional amount was payable as interest rate was enhanced from 13.5% to 14% on 21.4.1994 as a result of which the half yearly installments due should have increased from the amount of Rs. 20,736/- paid by the complainant. The complainant maintained that he had no objection to the payment of

additional actual amount but the compound mark up demanded by the Agency was unjustified as the mistake in computation was made by the Agency.

The evidence produced in the case revealed that the Agency failed to inform the complainant about the revised schedule of enhanced installments and therefore, the complainant continued to make payments in accordance with the schedule already given to him. The charging of accumulated mark up on the short paid amount was therefore, held to be unjustified. It was accordingly recommended that only the short paid installment be recovered without demanding accumulated mark up.

(14) ***Complaint No. K/00965/2004 (SB-326)***
**Unjust Embargo on Purchasing Insurance Policies by
 Employees from their GPF.**

Mirza Babar, Sr. Area Manager SLIC, complained against the refusal of Zarai Taraqiati Bank Ltd (ZTBL) to entertain the proposal of his organization for providing life insurance to the employees of ZTBL through their provident fund accounts.

Investigations revealed that the ZTBL had declined the proposal on the basis of a circular dated 20.12.1987 issued by the Finance Division, withdrawing permission for financing insurance policies through GPF accounts. It was noted that the circular was not applicable to autonomous bodies and it was the right of the employees to purchase insurance policies out of the GPF which was their own money.

It was therefore, recommended that the proposal submitted by the complainant should be allowed and the employees of ZTBL, if they so desired, should not be stopped from purchasing and funding the policies out of their G.P. Fund accounts.

Habib Bank Ltd.

(15) ***Complaint No. P/4070/2004***
Fraudulent Drawal of Money

Mr. Zahid Rehman of Zaida Swabi complained against the refusal of Habib Bank Ltd, Swabi to encash a cheque against a deposit of Rs. 90,000/- made by him on 31st July 2004 under deposit slip No. 1858794 duly signed by the cashier of the bank.

The Regional Manager of the Bank explained that the deposit slip was not got countersigned by the cashier who also failed to record it in the relevant register. A case of defalcation of an amount of Rs. 13,57,515/- had been registered by the Agency against the cashier who was also alleged to be involved in an earlier dacoity in the Bank. The

case against the cashier for embezzlement being sub-judice, no payment could be made to the complainant.

From the documents and evidence produced, it was established that the complainant was not a party to the case in the court. Even if the cashier was convicted it would not resolve the issue regarding refund of the complainant's deposit. The cashier being an employee of the Bank was authorised to receive deposits. The complainant possessed a valid deposit receipt issued by the cashier as admitted by the Bank. He was not concerned with the internal procedures of the Bank regarding entry of the deposits in the Bank's books. It was the Bank's responsibility to ensure that proper discipline was maintained and procedures followed to ensure safety of the depositor's money.

In view of the above, it was concluded that the complainant could not be deprived of his claim on the basis of a failure on the part of the Bank's employee to follow the prescribed procedure and his case could not be linked with the outcome of the trial of the cashier. It was therefore, recommended that the amount of Rs.90,000/- deposited by the complainant in the Bank against a receipt issued to him, be paid.

FOOD, AGRICULTURE AND LIVE STOCK DIVISION

PARC

(16) *Complaint No. Reg. H/3121/2004*

Failure to give benefit of the promotion of her late husband to BPS-20

Mst Karam Khatoon, widow of Mohammad Shafi, Senior Director (Finance and Accounts) in Pakistan Agricultural Research Council (PARC) complained against the Agency's refusal to allow the benefit of promotion to BPS-20 to her late husband with effect from 9th March 2000 for purposes of payment of family pension and other dues.

The Agency reported that late Mohammad Shafi was given current charge of the post of Senior Director (F&A) in BPS-20 for three months which expired on 9.6.1996. He proceeded on deputation to National Telecommunication Corporation (NTC) on 12.5.1998 for three years. His deputation period was extended by PARC without consulting the Establishment Division or Ministry of Food and Agriculture. The Selection Board in its meeting held in March 2000 recommended his promotion to the post of Senior Director (F&A), BPS-20 subject to his repatriation to PARC. The recommendation was approved by the then Minister for Food and Agriculture on 3.4.2000. Mr. Shafi however, expired on 5.7.2001 while on deputation and his promotion could not be actualised. The Agency further maintained that in accordance with FR 17 a government servant could only draw the pay and allowance of a post after he assumes charge of the same.

Investigations revealed that clause 11 of PARC (service) Regulations, 1984, permitted the competent authority to relax the conditions of promotion in suitable cases as "it may deem fit". The Minister for Food and Agriculture, vide his u.o. note No. F-2-35/2002-ARW dated 20th June 2002, approved the D.S.B recommendation regarding promotion of late Mohammad Shafi to the post of Senior Director (F&A) BPS-20 w.e.f. 9.3.2000, relaxing the condition of his repatriation and assumption of charge as he was holding the charge of the post before proceeding on deputation. The Minister's approval was based on the recommendation of Chairman PARC dated 30.4.2002 in which he recommended anti-dated promotion of late Mr. Shafi with effect from 9.3.2000. Consequently office order dated 9th July 2002 was issued by PARC notifying the appointment by promotion of late Mr. Shafi with effect from 9.3.2000 in relaxation of the condition regarding repatriation and assumption of charge. The Agency's assertion that the relaxation granted by the Minister was based on a wrong presumption that late Mr. Shafi was holding the charge of the promotion post prior to his deputation was not considered valid as it was never pointed out to the Minister by Chairman PARC or Secretary Ministry of Food and Agriculture while making the recommendation or subsequently while issuing the office order dated 9th July 2002. It was further noted that F.R 17 also empowered the competent authority to relax the condition of charge assumption under certain conditions.

The PARC's stance of disowning its own office order dated 9th July 2002 amounted to mal-administration and it was consequently recommended that the widow be paid arrears of pay on account of her late husbands promotion with effect from 9th March 2000, besides family pension on the basis of his notional last pay drawn in BPS-20.

HEALTH DIVISION

(17) *Complaint No. H/5485/2005* Reimbursement of Medical Claim

Mrs. Jamila Begum, a Charge Nurse in Children Hospital PIMS complained against the Agency's refusal to reimburse cost of medicines/tests incurred by her for treatment of Hepatitis C. The treating doctor had duly verified the claim and certified that the treatment was given as an outdoor patient to avoid occupation of a hospital bed for a long duration.

The Agency maintained that in accordance with para 10 of Finance Division's O.M. No. 1/7/Imp.II/87 dated 1.7.1987, Medical Allowance was allowed to employees in BPS 1 to 15 instead of re-imburement of cost of medicines as outdoor patients. However, the facility of free indoor treatment was admissible. The complainant, therefore, could not be permitted re-imburement of cost of medicines. It, however,

agreed to reimburse cost of a test conducted from Agha Khan Hospital, Karachi, as the facility was not available in PIMS.

It was noted that the Federal Services Medical Attendance Rules, 1990, which were framed after the aforementioned O.M. of the Finance Division, do not make any distinction between gazetted or non-gazetted employees in different grades while permitting re-imbusement of cost of medicines/test. The earlier administrative orders could not therefore, over rule the subsequent rules. The authorised medical attendant had duly verified the complainant's claim and also gave reasons for not treating her as an indoor patient. Moreover, the meagre allowance given to the low paid employees could not possibly cover the highly expensive treatment for Hepatitis C. It was further noted that injections/medicines were being provided to some out door patients in BPS 1-15 at the pleasure of the hospital authorities.

The Agency's rejection of the reimbursement claim having been held to be in violation rules, unreasonable and inequitable, it was recommended that the verified claim be reimbursed.

HEALTH DIVISION/ COMMERCE DIVISION

(18) *Complaint No. Reg. H/3893/2005* Delay in Re-imbusement of Medical Charges

Mr. Muhammad Riaz Khan, a retired section officer of the Ministry of Commerce submitted medical re-imbusement claim amounting to Rs. 7,629.68 to the Ministry of Commerce on 11th November 2002. The Ministry of Commerce forwarded the same to the Ministry of Health for approval. The Ministry of Health returned the bill to the Ministry of Commerce after three months (on 26.3.2003) with some irrelevant observations relating to entitlement of the officer for treatment in a private ward and reasons for claiming diet charges. The officer had neither claimed any expenditure for treatment in a private ward nor for any diet charges. The observations were never conveyed to the complainant and the Ministry of Commerce lost the re-imbusement claim after having diarised it. After three years the complainant was asked to provide a photocopy of the claim along with an affidavit that he would not make a claim again if the original was found later. The affidavit was taken from the complainant although the Ministry of Commerce was responsible for losing the original claim.

The investigation proceedings established gross negligence, incompetence, inefficiency and lack of apathy on the part of both Health and Commerce Divisions and it was recommend that the complainant's re-imbusement claim be paid within a period of thirty days.

INTERIOR DIVISION**ICT (Administration)****(19) *Complaint No. Reg. H/5808/2003*
Failure to Take Action Against Poultry Farms**

Mr. Tajur Rehaman, a resident of Al-Hadi Town, Islamabad complained against the ICT administration for not taking adequate remedial action against some poultry farms which were allegedly causing water and atmospheric pollution in the area.

The ICT administration acknowledged the problem and reported that the matter was taken up with the District Health Officer to submit a challan against the poultry farm owners under the relevant sections of PPC besides asking the Pakistan Environmental Protection Agency (PEPA) to take action under Section 16 of the Environmental Protection Act 1997.

During the hearing it transpired that the Assistant Commissioner had taken action under section 269 of the PPC by imposing a meagre fine of Rs.500/- on the poultry farm owners.

Examination of the record revealed that separate enquiries conducted by PEPA and the AC conclusively established that the poultry farms were indeed a source of considerable atmospheric and water pollution which needed to be checked before assuming catastrophic proportions. The meagre fine of Rs.500/- imposed on the owners was neither adequate for the redressal of the complainant's grievance nor a solution to the problem.

In view of the inadequate response of the Agency to the problem, mal-administration was established and it was recommended that a discrete enquiry/further study should be conducted by ICT and PEPA to gauge the extent and seriousness of the environmental threat by all such poultry farms in the jurisdiction of the Agency and remedial measures should be taken under the relevant provisions of the Environmental Protection Act 1997 besides other applicable laws.

**(20) *Complaint No. Reg. H/9518/2003*
Non-Return of Car Documents by ASI**

Mir Qasim Khan complained that he sold his taxi car and the new owner approached the police station for verification that it was not stolen property. The car, along with its registration, complainant's ID card and a stamp paper was impounded by

ASI Shahbaz Qamar, the enquiry officer. The car was subsequently returned to the new owner without documents. The complainant prayed for return of these documents.

The Agency, finding ASI Shahbaz Qamar guilty of misconduct, awarded him a minor punishment of withholding of increment for one year. The documents were however, not returned. ASI Shahbaz Qamar denied having retained any documents.

The investigation proceedings established that the Agency violated the law governing seizure of property as laid down in Section 550 and sub-section (2) of CRPC. In accordance with these sections, the seizing officer, was required to prepare a list of the property seized. No property could be detained without its inclusion in the seizure list and the seizure had to be reported to the incharge of the police station. The Agency's official failed to prepare any seizure list or report the matter to the officer incharge of the police station.

Arbitrary seizure of property was therefore, established and it was recommended that the documents lost in custody of the police should be got reissued by the Agency at its own cost and delivered to the complainant. It was further recommended that the Agency should periodically review cases of impounded property to ensure that the law governing such seizure is strictly followed and citizens are not left to the whims of delinquent officials.

Capital Development Authority (CDA)

(21) *Complaint No. H/6783/04* Delay in Handing Over Possession of Allotted Plot and Provision of Basic Facilities

Mr. Muhammad Javed and other co-allottees of plot No.12, Food and Grain Market Sector F-11/2 complained that ever since allotment of the plot in 1992 through open auction its possession was not given by the CDA. Meanwhile construction cost had gone up 400% in twelve years while the CDA was charging Annual Ground Rent (AGR) along with delayed construction penalty which was not justified.

The CDA reported that possession could not be taken over and development could not be started as the sector was fully occupied by locals and Afghan refugees. As regards charging of AGR and delayed construction penalty, it claimed that it was in accordance with the conditions mentioned in the allotment letter. The complainant maintained the AGR was on account of land use. When the CDA failed to hand over possession of the plot, it was not entitled to AGR or delayed construction charges.

It was established that the plot was allotted to the complainants in 1992 after payment of Rs.2,915,551/- in open action. The complainants had been paying AGR to

CDA in spite of the fact that the CDA could neither hand over its possession nor start development work since its allotment. It was noted that the allotment letter dated 15.4.1992 did not mention any effective date of commencement of the 99 years lease. As the AGR was for use of the land, it could only become due from the date of handing over possession of the plot. Similarly no delayed construction charges could become due without handing over possession of the plot as the complainants could not be blamed for the delay.

The Agency's inefficiency and delay in starting the development work and handing over possession of the plot to the complainants, having been established, it was recommended that the CDA should not charge AGR and delayed construction charges till the plot was handed over to the complainants to enable them to start construction. It was further recommended that the CDA should launch proper efforts in consultation with the Ministry of Interior to take over possession of the sector from the illegal occupants.

(22) *Complaint No. H/3250/2005*
Demand of Reserve Price for Regularisation of Plot

Mr. Muhammad Tahir Chaudhary, the complainant, purchased a plot in Model Village Chak Shahzad from one Hukam Dad, the allottee for a sum of Rs.500,000/- in 1995. It was transferred in the name of the complainant after completion of all formalities by the C.D.A. The CDA approved the building plan of the house on the plot. On the complainant's application dated 12.3.2004 for completion certificate the CDA discovered that the original allottee had obtained the allotment of the plot in 1980 fraudulently without even paying the price of plot. The CDA demanded an amount of Rs.421,000/- from the complainant to regularise the transfer of the plot which was considered by him as unjustified.

The facts of the case clearly established that the CDA failed to protect the interest of the Authority by allotting a plot to a non-entitled person. The price of the plot paid by the allottee was also pocketed by CDA's employees and fictitious entries were made in the books of account. The CDA failed to discover the fraudulent transaction for 22 years and failed to initiate any action against the allottee or its own employees to recover the loss.

Mal-administration on account of neglect and incompetency of the Agency being established, it was recommended that the demand of Rs.421,000/- from the complainant should be withdrawn and completion certificate be issued as per rules. It was further recommended that CDA should review its policy of demanding such dues from purchasers in similar cases and institute measures to recover its losses from the allottees or their legal heirs.

INFORMATION TECHNOLOGY & TELECOMMUNICATION DIVISION**Pakistan Telecommunication Authority (PTA)****(23) Complaint No. H/2347/2003
Non-Refund of Security Amount**

Mr. Pervaiz Akhtar had a PCO connection under agreement with M/S Teletone Northern Engineering Corporation (Pvt) Ltd, which he returned and demanded refund of security. The company agreed to refund Rs.25000/- against the security amount of Rs.32,000/- which he accepted. He was, however, returned only Rs.10,000/- through a cheque which was also returned by the bank as there was no balance in the company's account. He lodged a complaint with the Pakistan Telecommunication Authority (PTA) at its Regional Office Peshawar, which imposed a fine of Rs.100,000/- on the Company with the direction to redress the complainant's grievance. However, he did not receive any refund. He prayed for action against the Company.

The PTA maintained that it had granted a license to the Private Company to establish, maintain and operate card pay phones. It could only regulate matters falling within the provisions of the license. The complainant entered into a private contract with the Company to which PTA was not a party. Consequently it had no jurisdiction to interfere in the private contract between the parties. It had therefore, set aside the fine imposed by Regional Director of its Peshawar Office on the Company as it was without jurisdiction or lawful authority. The PTA concluded that the complainant should seek remedy through a court of competent jurisdiction for breach of contract.

Investigations established that the PTA had no legal authority to enforce the terms of agreement between the private companies and PCO holders. No mal-administration was established. It was, however, noted that there was a need to empower the PTA to take cognizance of such complaints between their licensees and franchise holders on the analogy of other regulatory authorities like NEPRA and OGRA. It was accordingly recommended that the PTA should evolve a dispute resolution mechanism and if necessary, make recommendations to the government for making appropriate amendments in their law and rules.

PTCL**(24) Complaint No. H/3344/2003
Unjustified Recovery Notice**

Mr. Ghulam Hyder stated that he closed his business in 1989 and made a written request to the Revenue Office, PTCL for closure of two telephone connections installed at his premises. After 13 years he was billed an amount of Rs.268,770/- for the two

connections. He claimed that the arrears were fake as the telephone stood closed in 1989. He suspected that the connections may have been misused by the Revenue Office. He prayed for intervention by the Wafaqi Mohtasib.

The Agency claimed that the complainant did not follow the prescribed procedure for closure of the telephones which required a clearance certificate verifying all payments and an application to the Divisional Engineer. It was further stated that no record regarding the complainant's application for closure of the telephones, reasons for not disconnecting the phones after default in payment till 1992 when the phones were finally disconnected and break up of the arrears was available. The Agency also failed to provide any evidence of dispatch of bills to the complainant after 1989 and reasons for initiating recovery proceedings after 9 years of actual disconnection.

It was noted that the Agency was claiming the payment of arrears after 13 years while it did not possess any evidence to prove their genuineness. The complainant on the other hand produced evidence of his written application to the Agency for closure of the telephones received by the Revenue Officer under his signature and stamp on 5.12.1989. It was for the Revenue Officer to initiate further action for closure of the phones.

In view of the above negligence, inefficiency and violation of rules on the part of the Agency was established for which the complainant could not be penalised. It was, therefore, recommended that the arrears amount debited to the complainant should be withdrawn and an inquiry held by the Agency to fix responsibility for the lapses on the part of its functionaries.

(25) ***Complaint No. H/00074/20005***
Wrong Billing

Haji Tariq Ali Khan, President Islahi Committee filed a complaint on behalf of one Shaukat Hayat alleging bogus calls billed by the PTCL in the months of October and November 2004. Non-payment of the bills for these months resulted in disconnection of his telephone.

The Agency informed that the complaint was considered by the Divisional Vigilance Committee on 20.12.2004 and rejected on the ground that secret code barring facility was provided to him on 5.3.2002 when the phone was installed and therefore, it could not be misused. The complainant maintained that the code was allotted after making the complaint in January 2005 and since then no bogus calls were charged. It was noted that 720 calls were made from the complainant's number in October and November 2004 to just two mobile numbers to some persons in Attock and D. I. Khan whom the complainant did not recognise. Quite a large number of the calls were of exceptionally long duration ranging from one to two hours. It was inconceivable that the complainant

could have misused his own telephone to that extent. Some of the calls were made late at night. Both the persons called also had land line numbers and it was not necessary for the complainant to make long duration calls to mobile numbers which was an expensive proposition.

From the above, it was concluded that the complainant could not have made the calls to the above mentioned mobile numbers. It was, therefore, recommended that the calls to the two mobile numbers be deleted from the complainant's bills for October and November 2004 and his connection restored without reconnection charges.

(26) *Complaint No. H/450/2005*
Delay in Provision of Telephone Connection

Hafiz Muhammad Hassan applied for a new telephone connection on 25.6.1998. However, no connection was provided to him till May 2005.

The PTCL reported that the DP nearest to the complainant's house was fully loaded and a connection could only be provided after extension of the network. The complainant refuting the Agency's claim, provided a list of six customers who applied later than him and were granted connections. He alleged that two of them were PTCL employees while the remaining four paid bribes to the functionaries of the Agency. On being confronted with the complainant's allegation the Agency reported that a new connection was provided to the complainant on 23.5.2005 from another D.P.

The above facts established that the Agency provided incorrect information to the Wafaqi Mohtasib when it claimed that no connection could be provided till extension of net work in the area. Moreover, it violated its seniority policy by providing connection to other applicants who applied later than the complainant.

Although the Agency had redressed the grievance of the complainant on the intervention of the Wafaqi Mohtasib and the complainant could not provide any evidence regarding his allegation of payment of bribes, yet in the interest of good governance, it was recommended that the Agency should investigate for disciplinary action against the functionaries who failed to provide the connection to the complainant for seven years in spite of it being technically feasible. Similar action was also recommended against the functionaries found responsible for providing incorrect information to the Wafaqi Mohtasib.

LABOUR AND MANPOWER DIVISION**Employees Old Age Benefit Institution****(27) *Complaint No. H/3796/2002*
Grant of Old Age Pension**

Ch. Muhammad Yousaf stated that he worked for 39 years in various industrial organisations in Pakistan and AJK. His last employer, Raja Autos, Mirpur AJK, forwarded his case to EOBI, Jhelum for payment of old age pension on 9.4.2001 which was not being processed. He prayed for intervention of the Wafaqi Mohtasib.

The EOBI informed that the complainant's case was hit by the decision announced in June 2001 by the Supreme Court of AJK that EOBI could not function in the AJK territory. The complainant's case could also not be settled on the basis of his service in Pakistan as there was an apprehension of violation of the AJK Supreme Court decision. It was noted that the AJK Council Secretariat was a party to the case and it was for the Kashmir Affairs Division and the AJK Council to adopt the required legislative/administrative steps for resolving the genuine problem of the concerned workers.

It was accordingly recommended that Kashmir Affairs Division should make efforts for early resolution of the problem. The complainant was also advised to approach the Mohtasib, AJK for getting the matter expedited.

**(28) *Complaint No. P/393/2004*
Request for Restoration of Gas Supply**

Mr. Iftikhar Ali Shah complained against the SNGPL for refusing to supply gas to him at house No. E-20 in Government Irrigation Colony, Warsak, Peshawar, allotted to him on 24.2.2004, on account of arrears of Rs.17,280/- outstanding against the previous occupant of the house. The complainant contended that it was the Agency's responsibility to recover the amount from the previous occupant.

The Agency informed that the gas supply was disconnected in April 2001 because of non-payment of bills. As the contract for gas supply was with the Executive Engineer (Irrigation), the Agency argued that it could only be restored after payment of arrears by the Executive Engineer.

On examination of clause 22 of SNGPL Sales Manual it transpired that the Agency had decided to supply gas to all residents of government/semi-government residential colonies on the basis of individual meters and transmission, distribution,

maintenance and collection of revenue was their responsibility. The contract therefore, stood amended to the extent that it was the Agency's responsibility to collect revenue from each consumer. The Agency could not produce any rule or regulation whereby the liability was attached to the premises and not the consumer. On the contrary, the President had held in many cases that arrears pertaining to an occupant of a premises cannot be recovered from a subsequent occupant.

In view of the above, it was recommended that the Agency should grant gas connection to the complainant immediately.

PETROLEUM & NATURAL RESOURCES DIVISION

Sui Northern Gas Pipelines Ltd (SNGPL)

(29) *Complaint No. H/707/2003* Deduction of Excessive Gas Charges

Mr. Abdul Rehman, UDC in the Pakistan Railways Carriage Factory, Islamabad along with a number of other lower level employees, complained that they were living in only single/double room quarters but were being charged for Sui Gas by their organization at the rate of Rs.6.31 per unit. The complainants further alleged that the senior and junior staff quarters were being billed directly by SNGPL at the rate of Rs.2.25 per unit while they were being discriminated against in spite of being less paid employees.

The Pakistan Carriage Factory clarified that the senior and junior staff quarters were metered and billed directly by SNGPL while there was a bulk supply arrangement with SNGPL for supply of gas to 510 lower employees' quarters. An amount of Rs.2,045,410/- was paid by the Carriage Factory to SNGPL for the bulk supply in the year 2002 while the recovery from employees was only Rs.1,983,356/- indicating a loss of Rs.62,054/-. The Agency further informed that it had requested to SNGPL to take over the lower staff quarters for direct supply.

On taking up the issue with the SNGPL by this office it transpired that the bulk supply arrangement was operative since 1996 and the distribution network for the lower staff quarters was being maintained by the Carriage Factory. The SNGPL apprehended that the distribution system may have deteriorated due to lack of proper maintenance, resulting in gas leakages and consequently its impact in the form of higher bills was being passed on to the consumer. The SNGPL offered to lay and maintain its own gas distribution network for these quarters on payment of 100% cost of the works by the Carriage Factory.

The investigation led to the conclusion that the lower employees of the Carriage Factory had to pay higher rates for gas consumption and the Agency incurred a loss because of gas leakage attributable to poor maintenance by the Agency for which it had no expertise. An immediate decrease in the gas rates was not feasible as it would increase the Agency's losses. It was therefore, recommended that:

- (i) the Railways Carriage Factory, Islamabad should pay the amount required for laying the supply network for direct gas supply to the SNGPL; and
- (ii) the SNGPL should complete the work on priority basis.

PAKISTAN RAILWAY

(30) *Complaint No. H/865/2005*

Unfair Charging of Interest on Amounts of Commutation, Pension and GP Fund Balance, to be Refunded to the Agency on Re-instatement.

Mr. Abdul Sattar, Constable in Pakistan Railways was compulsorily retired in the year 2000 on account of disciplinary proceedings. He was re-instated in the year 2003 on Appeal to the competent authority. He complained that an amount of Rs.383,750/- was being recovered from him at the rate of one-third of his salary by his parent department on account of commutation of pension plus interest, pension w.e.f. 1/2001 to 30.11.2003 plus interest and GP Fund balance withdrawn by him on being compulsorily retired plus interest on G.P. Fund. The complainant quoted CSR 511 and 512 according to which on re-employment after obtaining compensation gratuity an employee may either retain his gratuity in which case his former service would not be counted for future pension or refund it at the rate of one third of his salary to count his former service. The complainant maintained that charging of interest on the amounts to be refunded was unfair.

During the investigation proceedings, the Agency maintained that charging of interest was in order and also quoted Rule 34(5) of Pakistan Railways GP Fund Rules 1964 according to which if a GP Fund advance was subsequently disallowed, it had to be refunded with interest. It was noted that CSR 511 and 512 envisaged refund of pensionary benefits on reinstatement to enable an employee to get the benefits of continuity of service. However, these Rules did not mention charging of any interest which was accordingly unjustified. Moreover, the GP Fund balance paid to the complainant at the time of his compulsory retirement was not an "advance disallowed subsequently" and consequently Rule 34(5) of Pakistan Railways GP Fund Rules was not applicable to the case.

Mal-administration having been established, it was recommended that the Agency should recover only the principal amounts of pension commutation, pension and GP Fund drawn by the complainant at the time of his compulsory retirement at the rate of one third of his pay, excluding the interest charges.

(31) ***Complaint No. H/3705/2005***
Non-Grant of Increase in Pension

Mr. Fazal Hussain, the complainant, retired as a Shunter from Pakistan Railways on 30th June 1989. His 50% commuted Pension, amounting to Rs.888.23 was restored in accordance with government instructions after 15 years with effect from 1st July 2004. The government announced a 16% increase in pension with effect from 1.7.2004. The complainant contended that the 16% increase should have been allowed to him on his full pension after the restoration of the commuted portion on 1.7.2004 instead of the increase given by the Agency on his pension being drawn on 30.6.2004.

The Agency maintained that the increase in pension on 1.7.2004 was on the basis of pension being drawn on 30.6.2004 and therefore, the increase was correctly calculated on the pension being drawn by the complainant on this date. On examining the Ministry of Finance O.M. No. F-4(1) Reg. 6/2004 dated 2nd July 2004, the interpretation of the Agency was upheld and the complaint rejected. The Ministry of Finance was, however, advised to examine such unique cases to determine as to whether the increase in pension should be allowed on restoration of commuted portion as on 1st July of the year.

(32) ***Complaint No. H/10810/2003***
Non-Grant of Family Pension

Miss Feroz Khatoon, sister of late Khizar Hayat, a retired employee of Pakistan Railways, complained that the Agency declined her request for family pension on the plea that she was over 21 years of age. The Agency pleaded that in accordance with Ministry of Finance letter No. 1(13)-Reg. 6/83 dated 23.10.1983, surviving unmarried sisters of the diseased employee who were over 21 years of age were not entitled to family pension. It was noted that the Agency's action was in accordance with these instructions. No mal-administration having been established, the complaint was rejected.

It was however, noted that the Punjab Civil Services Pension Rules 1963 did not place any age restriction on surviving unmarried sisters of their deceased employees for entitlement of family pension. There being a disparity in the Rules governing Federal and Provincial government servants, the Ministry of Finance was advised to review the policy regarding grant of family pension to surviving unmarried sisters of the deceased employee over 21 years of age.

The Ministry of Finance, after initially conveying some reservations at lower level, which were rejected, reviewed their policy and issued revised instructions vide their office Memorandum No. F.2(2)-Reg. 6/96-X dated 24th February 2005, removing the restriction of 21 years of age on unmarried sisters of deceased employees for entitlement of family pension. The Wafaqi Mohtasib's Office, was, therefore, instrumental in removing a disparity which was a cause of discrimination and injustice to families of Federal Government Servants.

WATER & POWER DIVISION

Peshawar Electricity Supply Company (PESCO)

(33) ***Complaint No. P/3911/2004***
Excessive Billing

Syed Zahid Ali Shah, a domestic consumer of PESCO alleged over billing without meter reading. He further protested against the monthly TV fee of Rs.25 charged in each of his bills an account of two electricity meters installed in the house. He pointed out that he had only one TV set while he was being charged for two, which was unjustified.

During investigations it was established that the complainant was being billed almost in accordance with the meter readings. Payment for TV set was in accordance with WAPDA's policy of charging Rs.25 to all consumers with electricity consumption of 100 units or above. Exceptions could be made on representation for a consumer to the Agency.

As no mal-administration of the Agency was established, the complaint was rejected with the advice to the complainant to make a representation to the competent authority in PESCO to establish his claim of possessing only one TV set.

It was however, observed that such discretionary authority to functionaries of the Agency could lead to various malpractices. WAPDA was therefore, advised to evolve a mechanism for recovery of TV fee only from those consumers who possess a TV set because taxing a citizen without any basis was not justified.

(34) ***Complaint No. P/1035/2005***
Unjustified Fine

Mr. Habib-ur-Rehman, the complainant, who was a commercial consumer of PESCO, purchased the premises adjacent to his own, from one Hanif Khan. On his application, PESCO removed the old electricity meter in the name of Hanif Khan from

the purchased premises on 28.7.2000. Later, on 6.9.2000 the Agency served a detection bill amounting to Rs. 9,283/- in the name of Hanif Khan and threatened the complainant that the meter in his name in the adjacent building would be disconnected if he failed to pay the amount. He requested for cancellation of the detection bill.

The Agency maintained that the seals of the meter were found tampered with and therefore, the consumer was charged the detection bill for the period 3/2000 to 8/2000 which was debited to the consumers account.

It was held that supply of electricity was arranged through a formal contract between the consumer and the Agency and therefore, only the contracting person could be made liable to pay the outstanding dues. The President has also held in a number of cases that such liability could only be attached with the contracting person and not the premises. Moreover, in the instant case, the detection bill being in the name of the previous owner, the complainant was not the aggrieved person.

It was accordingly recommended that the complainant was not liable to pay the outstanding arrears of the previous owner of the premises and the Agency could not disconnect his power supply.

**(35) Complaint No. P/3125/2004
Unjust Fine**

Mr. Aurangzeb complained against PESCO for charging a penalty of Rs.15,408/- in August 2004 on his domestic electricity supply.

The Agency clarified that twelve consumers, with separate meters were supplied electricity from one transformer. A check meter installed at the transformer indicated that the individual meters were recording less consumption of electricity. The difference of 31046 units between the check meter and the twelve meters readings for a period of 15 months was divided on the twelve meters in which the complainant's share came to 4254 units. The complainant was, therefore, charged 4254 units on account of theft of electricity.

Investigations established that the Agency failed to determine the mode of theft of electricity, the prescribed procedure for serving and charging a detection bill was not followed, the complainant was charged a detection bill for 15 months instead of the prescribed three months and analysis of his electricity consumption prior to and after the charging of the bill did not support the Agency's contention regarding illegal abstraction of energy.

As the Agency's action was established to be contrary to law and its prescribed instructions, besides being arbitrary, it was recommended that the detection bill charged to the complainant should be withdrawn.

Islamabad Electricity Supply Company (IESCO)

(36) *Complaint No. Reg. H/4809/2005* Delay in payment of Retirement Dues

Mr. Ghulam Sabir, a supervisor in IESCO who retired on medical grounds on 12.4.2002, complained against the inordinate delay in payment of his pension. He pleaded for intervention of the Wafaqi Mohtasib as he was unable to bear expenses on his own treatment, treatment of a retarded son as well as education of his children.

Investigations established that two audit paras relating to the year 1996-97 were pending against the complainant. The Agency claimed that they could not process the case in view of an Office Order dated 20.4.1999 which forbids processing of pension cases until all pending audit paras were cleared. It was noted that in accordance with para 7(ii) of the Agency's Pension Rules 1977 all inquiries were to be completed within one year of an employee's retirement failing which full pension had to be sanctioned. The administrative instructions dated 20.4.1999 were therefore, held to be in violation of the Agency's Pension Rules. The Agency's action also established its inefficiency in failing to verify an audit para relating to 1996-97 even by the year 2005. It was noted that the complainant incurred expenditure from his pocket on his repeated visits to the Audit and Agency's Offices for verification of audit paras. As such verification of audit paras was a departmental function, expecting the complainant to bear the expenditure himself was also held to be unjustified besides being morally incorrect as he had no source of income.

Mal-administration of the Agency having been established, it was recommended that:

- (i) the pension case of the complainant be finalised immediately;
- (ii) the Agency's office order dated 20.4.1999, being in conflict with the WAPDA Pension Rules 1977, should be suitably amended or withdrawn; and
- (iii) the expenses incurred by the complainant on account of his visits to the audit/Agencies offices in connection with verification of audit paras be reimbursed in accordance with the relevant TA/DA Rules.

WORKS DIVISION

Estate Office

(37) ***Complaint Nos. H/5038/04, H/8217/04, H/9708/04 and H/1674/04***
Delay in Handing Over Possession of Allotted House

Mr. Muhammad Khalil, Mr. Tariq Javed, Malik Saeed and Mr. Muhammad Riaz-ud-din complained against the failure of the Estate Office, Islamabad in handing over possession of the houses allotted to them, which were under illegal occupation of police officials.

The Estate Office admitted illegal occupation of the quarters by police officials but expressed its inability to get them vacated in spite of taking up the matter with Police Headquarters and the Senate's Standing Committee on Housing and Works. The Agency further stated that there were many other quarters under illegal occupation of police employees. One of the complainants, Mr. Muhammad Khalil informed that he tried to take possession of his allotted quarter from an occupant policeman who criminally assaulted him. The Aabpara police station refused even to register an FIR. The ICT police reported that eviction orders had been issued and disciplinary action against the defaulter constable was in process.

Mal-administration of the Estate Office and Ministry of Housing and Works was established in failing to obtain possession of the illegally occupied quarters. Mal-administration of the ICT police was also established for its failure to enforce discipline in its ranks. It was therefore, recommended that:

- (a) the Estate Office should issue eviction notice to the illegal occupants and seek police help for their forcible eviction;
- (b) the ICT police should render the requisite help to the Estate Office and also ensure that such trespassing was not repeated in future by its employees;
- (c) after eviction of the illegal occupant, the quarter should be handed over to the allottees, and
- (d) the Estate Office, in consultation with the Interior Division should take appropriate steps against illegal occupation of government property and ensure prompt remedial action.

(38) *Complaint No. H/5491/04*
Failure to Accede to Request for Transfer of House

Mrs. Imtiaz Ahmad, an employee of Airport Security Force in BS-17 complained against the Estate Office for its failure to transfer to her House No. D-82, street 65, sector G-6/4 which stood allotted to her husband who retired on 31.10.2002.

The Estate Office took the plea that Pakistan Allocation Rules (PAR) 1993 under which allotted houses could be transferred to serving heirs were repealed and replaced with Accommodation Allocation Rules (AAR) 2002 with effect from 30.10.2002. The new rules applicable to the complainant did not contain the provision regarding transfer of house to legal heirs. The AAR 2002 was, however amended on 4.8.2004 to permit such transfer of houses. The Law Division was consulted in a similar case and it held that the benefit could only be extended to government servants who retired six months prior to the promulgation of the amendment on 4.8.2004. In other cases the Agency could take action under Rule 29A of AAR 2002 which empowers the government to relax the rules in hardship cases. The Works Division informed that there were 50-60 such cases.

The documents and evidence recorded in the case established that the complainant was entitled to transfer of the house in her name under Rule 16(4) of PAR 1993. However, the new Rules AAR 2002, were promulgated on 30.10.2002. When her husband retired on the very next day i.e. 31.10.2002, she stood deprived of the facility. It was, therefore, a fit case for relaxation under Rule 29A of AAR 2002 as a hardship case.

In view of the above it was recommended that the complainant should be allotted house No. 82, street No. 65, Sector G-6/4 Islamabad after obtaining orders of the competent authority under Rule 29A as a hardship case. It was further recommended that other similar cases should also be dealt with accordingly.

(39) *Complaint No. H/7862/2004*
Unjustified Rejection of Petition Regarding Extension in the Retention Period of Hired House

Mr. Muhammad Yaqub, a CBR employee, complained against the Housing and Works Division for rejecting his application for extension in the retention period of his self-hired house at Lahore while he was posted in Gujranwala.

It transpired that the Works Division had earlier allowed him to retain the house for one year, from 26.5.2003 to 25.6.2004 after his transfer to Gujranwala. On his application for extending the period further, permission was declined on the ground that rule 15(4) (a) of Accommodation Allocation Rules 2002, permitting such retention of house was applicable only if an employee was transferred from one specified station to

another where an Estate Office existed. The Works Division further contended that as the function of hiring houses had been decentralised, the complainant should approach his parent department.

It was noted that the rule quoted above permitted government servants to retain their existing accommodation on posting to "out station" to an eligible department provided no accommodation was allotted to them at the new station and the employee did not claim any House Rent Allowance (HRA). The complainant, was not allotted any accommodation at Gujrawala and he did not claim any HRA. The AAR 2002 did not define "out station" as specified stations where Estate Offices existed and the clarification of "out station" issued by the Works Division amounted to amending the provision without lawful authority. Moreover, as the complainant had already been allowed to retain the accommodation for one year under the same rule, withholding of permission to extend the period further was held to be unjustified. It was further noted that the lease agreement of the house was valid till 5.5.2006 and it was the Works Divisions responsibility to pay rent.

It was accordingly recommended that the Works Division should grant permission for further retention of the house in the light of the existing provision in the AAR 2002 and pay rent till the expiry of the lease agreement.

(40) ***Complaint No. L/3232/2004***

Non-Refund of Deducted Amount on Account of House Rent

Mr. Allah Rakha complained against the failure of the Estate Office to refund the House Rent deducted at the rate of 5% from his salary in the period 1.12.2000 to 6.4.2004, in spite of the fact that his self-hired house was de-hired and no government accommodation was provided to him in this period.

The Estate Office admitted that an amount of Rs.9,754 was deducted from the complainant's salary during the aforementioned period and he was entitled to its refund. The Estate Office was, however, unable to do so as there was no Head of Account for refund of house rent deducted from the salary of government servants.

It was noted that the complainant and other similarly aggrieved government servants could not be denied their legitimate claim for refund on the plea that there was no Head of Account for this purpose. It was therefore, recommended that the Ministry of Housing and Works should immediately create a Head of Account for re-imburement of house rent in such cases and then process the case of the complainant for refund of the amount deducted from his salary during the period when no government accommodation was in his possession.

(41) ***Complaint No. H/634/2005***
Non-payment of Rent

Rana Muhamamd Afzal complained that the Estate Office, Lahore failed to pay rent of his hired house No. E-1191/5-A, Nishat Colony Lahore Cantt since 31.5.2004. The Estate Office, Lahore admitted the non-payment of rent due to a shortfall of funds amounting to Rs.110 million as compared to demand. Rent of about 1000 hired houses was stated to be outstanding.

Investigations revealed that the Estate Office did not have any prescribed criteria for payment of rent. Rents were generally paid to owners after considerable personal efforts through a system of pick and choose. This situation was a source of a number of allegations of mal-practices in the Estate Office.

In view of the above, while recommending the payment of arrears of rent to the complainant on receipt of funds, the Ministry of Housing and Works was advised to formulate an objective and transparent policy for disbursement of rent to owners of hired accommodation without making any exceptions.

CHAPTER 10

Some Important Policy Decisions of the President on Representations

Evacuee Trust Property Board

No. 785/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 13th June, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 01.08.2004 in Complaint No. H/07640/2004 [Mr. Abdul Haque Kazee Vs. Evacuee Trust Property Board].

I am directed to refer to your representation No. nil, dated 4.9.2004, on the above subject and to say that the President has been pleased to pass the following order:—

2. The complainant made complaint to the Wafaqi Mohtasib that the Agency (Evacuee Trust Property Board) was not paying him T.A/DA unjustifiably. The Wafaqi Mohtasib has closed investigation of the complaint on the ground that the complainant was not taking interest in pursuing his complaint.
3. The complainant has made representation against the Mohtasib's decision. The Mohtasib's decision closing the investigation is procedural order and the President does not interfere in procedural orders. Also, the complainant's complaint cannot be entertained by the Wafaqi Mohtasib in view of the provisions of Article 9(2) of the Establishment of the Office of Wafaqi Mohtasib Order 1983.
4. Accordingly, the President has been pleased to reject the representation of the complainant.

Terminal Benefits

No. 471/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 08.04.2004 in Complaint No. H/00371/2004 [Mr. Muhammad Sharif vs. HBL].

I am directed to refer to your representation number nil, dated 5.5.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant is a retired employee of the Habib Bank. His complaint is that the Government has increased pension of its retired employees but the Bank has not. The plea does not raise question of mal-administration. The Wafaqi Mohtasib has rightly rejected the complaint.
3. Accordingly, the President has been pleased to reject the representation of the complainant.

Post Office

No. 2542004-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 12th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 30.12.2003 in Complaint No. K/3422/2000 (F-3151) [Mr. Mehmood Alam vs. Pakistan Post Office].

I am directed to refer to your representation number nil, dated 17.2.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. In his representation the complainant does not explain how the Agency's decision and the findings of the Mohtasib are not correct on any point of law or fact. Only paid service is counted to calculate the pension. This is the rule and has not been violated in the complainant's case. No ground to interfere with the Mohtasib's decision.
3. Accordingly, the President has been pleased to reject the representation of the complainant.

Housing & Works

No. 446/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 1st March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 05.04.2004 in Complaint No. H/9226/2003 [Mr. Abdul Rahman Waseem vs. Pakistan Housing Authority].

I am directed to refer to your representation U.O. No. 5(15)/2004-Works, dated 10.5.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. In identical previously decided cases (Complaint No. H/1312/2002, 887/03 and 4323/03 Mr. Nazeer Hussain Khan v. PHA and Complaint No. 7691/2000/972) it has been decided that allottee has the option to rescind the agreement and ask for the return of his money with interest or continue the agreement and pay the revised cost. The fact that since the Agency (Pakistan Housing Authority) had fixed the price with the approval of the Cabinet it could increase the same only with the approval of the Cabinet does not provide any cause of action to the complainant. It is a matter between the Agency and the Cabinet or responsible Minister.

3. Accordingly, the President has been pleased to accept the representation of the Agency and set aside the Mohtasib's recommendation dated 5.4.2004 in Complaint No. H/9226/03. Nothing said in this order shall debar the complainant to rescind the agreement and claim refund of his money with profit.

No. 426/2004-WM(Law-I)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 24th February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 10.03.2004 in Complaint No. L/654/2003 [Mr. Abdul Wasey Malik vs. CBR/Sales Tax & Central Excise].

I am directed to refer to your representation U.O. No. 7(31)/92-ACE-III, dated 8.4.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency (CBR) rented a building from the complainant in 1992. In September 2002 the Agency informed the complainant that it intended to vacate the building by the end of December 2002. On 14.1.2003 the Agency informed the complainant that it would

like to keep the building for one month more and vacate it by the end of January 2003. According to the Agency it vacated the building on 3.2.2003 and informed the complainant. On 10.3.2003 the complainant made complaint to the Mohtasib. He contended that the Agency's contention that it has vacated the building is not correct and prayed that the Agency be directed to hand over the vacant possession of the building in first class condition as per terms and conditions of the tenancy, and to continue paying future rent from 3.2.2003 till the delivery of possession through execution of handing/taking over documents. The Mohtasib has found that the complainant was informed either on 7.2.2003 (by visit of Mr. Munir Hussain, Deputy Superintendent) or on 14.2.2003 that the Agency has vacated the building. The complainant was required to take possession of the building on the receipt of the said information and could subsequently claim repair charges from the Agency, if any. Accordingly, the Mohtasib has recommended that the Agency should pay rent of February 2003 to the complainant. The Mohtasib has also directed the Agency to pay Rs. 128,300 to the complainant as repair charges for the damage suffered by the building by the Agency during its occupation by the Agency.

3. The Agency has made representation against the Mohtasib's recommendation. The complainant was asked to file his comments on the representation but he has not availed the opportunity.

4. The matter raised in the complaint does not relate to public law duty of the Agency (the functions required to be exercised by the Agency under the law under which it has been established). The dispute related to a pure private law matter and such matters can be decided by legal fora after hearing evidence. The estimate of the cost of repairs does not show whether the repairs are relatable to the damage done by the Agency or are normal which the landlord is supposed to carry out. All these questions are determinable by legal fora after hearing evidence. The Mohtasib's findings can not be sustained.

5. Accordingly, the President has been pleased to accept the representation of the Agency and, set aside the Mohtasib's recommendation 10.3.2004 in complaint No. L/654/2003. Nothing said in this order or the Mohtasib's findings shall prejudice the parties' case if the complainant would choose to approach the legal fora.

No. 678 7 626/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 25.06.2004 in Complaint No. H/9136/2003 & H/3208/2004 [Mr. Muhammad Akram Khan and Dr. Javed Iqbal vs. Works Division/Estate Office].

I am directed to refer to your representation number nil, dated 28.6.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. On 14.3.2001 the Estate Office rented a portion of the house of the complainant, a Government servant. It was agreed that out of the demanded rent of Rs.11,000, Rs.8,625 will be paid by the Estate Office and the differential shall be paid by Mian Mahmood Ali, a Government servant, for whose occupation the house was rented. Mian Mahmood Ali vacated the house in the first week of October 2001. On 16.10.2001 the house was allotted to Dr. Javed Iqbal who undertook in writing to pay the differential. But, he did not keep the promise. The owner complained to the Wafaqi Mohtasib that since the Estate Office had allotted the house to Dr. Javed therefore it is responsible to pay the demanded rent. The Estate Office stated that Dr. Javed had agreed to pay the differential but was not keeping the promise although he has been reminded again and again. In April 2004 the Estate Office gave notice to Dr. Javed to vacate the house if he was not willing to pay the agreed differential. Dr. Javed also made complaint to the Wafaqi Mohtasib that the Estate Office was unnecessarily harassing him. He also stated that the owner is living in Govt. accommodation which is illegal in view of the provisions of rule 3(5) of the Accommodation Allocation Rules 2002. The Mohtasib's pertinent findings are: (i) the Estate Office allotted the house to Dr. Javed after obtaining written undertaking from him that he will pay the differential of rent; (ii) Dr. Javed has not paid the differential to the owner/Estate Office which is violation of written undertaking and as such misconduct for which he is liable to disciplinary action under the rules; (iii) since neither Dr. Javed is willing to pay the differential nor the owner is ready to extend the lease which has expired, the house cannot remain at the disposal of the Estate Office for continuing the present allotment or making future allotment; (iv) the owner is not entitled to retain Government accommodation in view of the provisions of rule 3(5) of the 2002 Rule. Estate Office should have asked him to vacate the Govt. accommodation within 6 months of the enforcement of the Rules. The Mohtasib has recommended:—

- a. The house of the owner should be de-hired with immediate effect and its possession handed over to him in accordance with rule 11 of A.A.R. 2002. Alternatively it should be allotted to him on self-hiring basis in compliance with rule 3(5) of AAR 2002.
- b. The owner is entitled to receive the difference of rent from the allottee who lived in the house and who had given the Undertaking, [Rule 8(5) AAR 2002]. It was the allottee's obligation to find out the exact liability on account of difference of rent before accepting the allotment. The Environment Division should, therefore, ask Dr. Javed Iqbal to honour his written Undertaking and pay the difference of rent as demanded by the owner to him failing which recovery of the amount should be made from his salary and he should also be proceeded against for misconduct under Removal from Service (Special Powers) Ordinance, 2000.

- c. The Estate Office should allot an accommodation of Dr. Javed Iqbal's entitlement to him according to his seniority in GWL. If he arranges a house for hiring under rule 8 of AAR 2002 then he should be allowed hiring after he has vacated the present house and fulfilled the obligation under the written Undertaking read with Rule 11 of AAR 2002.
3. Both the owner and Dr. Javed have made representations against the Mohtasib's recommendations.
4. The owner contends that since his house stands hired with the Estate Office therefore rule (3)5 of the 2002 Rules do not apply to him. Dr. Javed contends that since there was no condition for payment of the differential in the allotment letter he was not liable to pay the same. He explains the validity of the undertaking to pay the differential: "any document got signed in routine by the Estate Office in contravention of these terms and conditions [allotment letter] has no value in the eye of law and as such is liable to be ignored".
5. So far as the representation of the owner is concerned, it must be accepted. The question regarding illegality of the owner's occupation of Govt. accommodation was raised by Dr. Javed. It was not relevant to decide the owner's claim to receive, or to support Dr. Javed's denial to pay, the differential. It was raised by Dr. Javed only to unnerve the owner. It appears that in the finding regarding the application of rule 3(5) the implication of its proviso has not been examined. Accordingly, the Mohtasib's recommendation (a) is set aside. The Estate Office shall however examine whether or not the owner can retain Govt. accommodation by applying all parts of rule 3(5) of the Rules, and proceed accordingly.
6. So far as the representation of the Dr. Javed is concerned, it must be rejected. The law relating to signed documents is that as a general rule, person is bound by his signature to a document whether he reads it or not. But, certain limited exceptions have been established to this rule. They are: (i) the executant could not read the deed and it had been incorrectly read over to him; (ii) the executant was permanently or temporarily unable through no fault of his own to have without explanation any real understanding of the purport of the document, whether that be from defective education, illness or innate capacity; (iii) the executant is senile, of very low intelligence or ignorant of the language in which the document is expressed.
7. Dr. Javed's conduct does not seem to have been of a gentleman. However, no final finding in that regard is recorded so that his case in the disciplinary proceedings is not prejudiced wherein he may show that he was not bound by his undertaking because his case falls within one of the enumerated exception to the doctrine of *non est factum*: it is not my deed.

8. Accordingly, the President has been pleased to accept the owner's representation and set aside the Mohtasib's recommendation (a) subject to the recorded observation, and reject the representation of Dr. Javed Iqbal.

9. A copy of this order alongwith copy of the Mohtasib's findings shall be forwarded to the Establishment Division for the implementation of the Mohtasib's recommendation (b) so far as it relates to that Division.

No. 25/2005-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 1st July, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 25.11.2004 in Complaint No. K/01031/2004 [Mst. Jehan Begum vs. Estate Office, Karachi].

I am directed to refer to your representation No. nil, dated nil, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant has no right to continue occupying the quarter. The official residences are meant for officials. Non-official person cannot occupy it or retain its occupation.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 540/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 19.05.2004 in Complaint No. K/01566/2003 [Mr. Abdul Sattar Soomro vs. Estate Office].

I am directed to refer to your representation No. EPB-P(1159)/Estt.78, dated 10.6.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The landlord of the flat in the complainant's occupation is getting more than what the Agency (M/o Housing & Works) is paying to him. The differential of the two is paid by the complainant. The complainant's grievance is that keeping in view the covered area and other amenities of the flat the Agency should (as per rules) pay more to the landlord. Obviously, if the Agency would pay more (if under the rules it should pay more) the

differential would narrow down. There are no findings that what the Agency is paying to the landlord is the same which it should pay under the rules, and, under the rules, nothing more can be paid. The Agency's stand that since the landlord is happy with the existing assessment it cannot consider re-assessment is not in accord with law. The rule of law envisages that the Agency shall neither pay more nor pay less than what is legal. If to pay more would be illegal to pay less would be equally illegal. The matter needs reconsideration.

3. Accordingly, the President has been pleased to direct the Mohtasib to reconsider the matter. The Mohtasib shall determine correct rent of the flat which the Agency should pay under the rules.

No. 505/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 19.04.2004 in Complaint No. L/181/2003 [Khawaja Muhammad Naseem vs. HBFC].

I am directed to refer to your representation No. HBFC/HOK/ED(OPS&MKG)/2004, dated 31.5.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Wafaqi Mohtasib's recommendation is based on the letter of the Town Officer, TMA Shalamar Town, through which he has informed the complainant that "since the plot is located within the Pakistan Railways' land the TMA has no jurisdiction in the matter and the opinion of the Legal Adviser of the Lahore Zonal Office of the Agency (HBFC). However, the Head Office of the Agency seems to be under the advice that no person can erect or re-erect a building without the permission of the concerned local authority. The advice that since the complainant's plot is located within the Pakistan Railways' land therefore the relevant Local Government has no jurisdiction in the matter appears to be over simplified. Lands situated within the area of a local body whether vesting in the Federal Government or the Provincial Government or local authority or any person is subject to the jurisdiction of local authorities. It does not matter that the land vests in the Federal Government, the Provincial Government or a private person. The land vesting in a Federal Government Department is not a separate island within the area of local government (see *Pakistan v. Province of the Punjab* PLD 1975 S.C. 37). The rule that the municipal building by-laws/regulations do not apply to the Federal or Provincial Governments does not extend to private individual who intends to build a private house

on the land obtained from Federal or Provincial Government. The matter needs reconsideration.

3. Accordingly, the President has been pleased to direct the Mohtasib to reconsider the matter after inviting comments from the Provincial Local Government Department.

National Bank of Pakistan

No. 448/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 24th February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 29.03.2004 in Complaint No. M/821/2003 [Mr. Abdul Khaliq vs. NBP].

I am directed to refer to your representation number nil, dated 7.5.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's case is that he tendered Rs. 80,000 at the deposit counter of the Agency (NBP). The official at the counter received the money, issued him stamped receipt and made entry in his pass book. The official however, neither entered the receipt in official books nor paid the money into official till. If what the complainant says is correct the official has defrauded him (complainant) as well as the Agency. The complainant has direct remedy against the official to whom he paid the money. The Agency may only be vicariously liable to pay the money. If it is proved that the complainant actually paid the money to the official, the official was acting within the scope of his employment, the complainant was not negligent in paying money to the official or was not that conniving with the official defrauded the Agency. All such questions can be determined by court of law after hearing evidence in which the official and the Agency are the defendants. The complainant's complaint was considered by the Agency and rejected. The role of the Wafaqi Mohtasib is to identify mal-administration. When the complainant's case has been considered by the Agency there should be no question of mal-administration. The office of the Mohtasib is not a substitute for ordinary courts and tribunals to decide controversial questions of law and facts.

3. Accordingly, the President has been pleased to accept the representation of the Agency. Nothing said in the Mohtasib's findings or this order shall prejudice the parties' case in case the complainant would choose to approach the legal forum.

Capital Development Authority (CDA)

No. 47/2003-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 31st March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 03.12.2002 in Complaint No. H/03384/2002 [Mr. Sohail Akhter Sheikh vs. CDA].

I am directed to refer to your representation No. CDA/EA-I&R/CS-293/2001/266, dated 17.1.2003, on the above subject and to say that the President has been pleased to pass the following order:—

2. In 1993, Mr. Sohail Akhtar Sheikh, the complainant, bought plot No. 293, M.V. Chak Shahzad, Islamabad from Mst. Nazar Begum who claimed title in the plot as an allottee from the Agency (CDA). The Agency transferred the plot to the complainant on 8.1.1994. The complainant constructed house on the plot and the Agency issued completion certificate to the complainant on 25.5.1995. In 1999-2000 it came to light to the Agency that certain persons have got certain allotments fraudulently from the Agency. The Agency constituted a Committee to scrutinize such allotments. The Committee found that allotment in favour of Mst. Nazar Begum was not regular but the complainant was a bona fide purchaser for value without notice of the defect in the transferor's title. Accordingly, the Committee decided that the complainant may be accepted as rightful transferee if he pays the differential of the reserved price of the plot and the concessional price deposited by Mst. Nazar Begum, and asked him to pay Rs. 140,400/-. The complainant complained to the Wafaqi Mohtasib that the Agency's demand was unauthorised and amounted to mal-administration. The Mohtasib has recommended that the complainant should not be charged the differential of the prices.
3. The Agency has made representation against the Mohtasib's findings.
4. The Agency has accepted the complainant as bona fide purchaser for value without notice of any defect in Mst. Nazar Begum's title. The Agency's claim is restricted to compensation i.e. to recover differential between the reserved price and the concessional price of the plot. It is obvious that the Agency's claim for compensation is against Mst. Nazar Begum and not against the complainant. It has transferred the plot to the complainant, accepted him as owner and issued him completion certificate. It ought not raise any issue of title against the complainant.
5. Accordingly, the President has been pleased to reject the representation of the Agency. Nothing contained in this order or the Mohtasib's findings/recommendations shall prejudice the Agency's right to sue Mst. Nazar Begum for compensation.

No. 544/2003-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 2nd April, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 24.6.2003 in Complaint No. H/12966/2002 [Mr. Musaddiq Masood vs. CDA].

I am directed to refer to your representation No. CDA-27(4)(111)(11148)-Coord/2002/4478, dated 31.7.2003, on the above subject and to say that the President has been pleased to pass the following order:-

2. In 1996, the complainant purchased plot No. 1279 situated in Sector G-11/1, Islamabad from one Faisal Baig. His complaint is that the Agency (CDA) is not transferring the plot in his name inspite of the fact that he has complied with all codal formalities. The Agency contends that the plot was allotted to Mr. Baig who wa evicted from his house acquired for the development of the National Capital at Islamabad but it has come to light that some fake cases of claims have been included in the list of evictees (review award dated 11.2.1990) and until the matter is cleared transfer cannot be made in the name of the complainant. The Mohtasib's findings and recommendations are:-

Findings:

- The plot No. 1279, Sector G-11/2 was allotted to Mr. Faisal Baig S/o Mohammad Aurangzeb on 6.12.1995 as rehabilitation benefit against his BUP acquired from village Badia Qadir Bakhsh in 'review award dated 28.5.89'.
- Plot was purchased from allottee by Mr. Akhtar Khan on 22.5.1997 the date on which the transfer application was admitted by CDA in favour of the complainant.
- CDA came to know in 1999 that some fake cases of allotment of plots had been passed in Review Award and the matter was referred to NAB for investigation in 2000-2001.
- CDA is waiting for NAB decision.
- Simultaneously Wafaqi Mohtasib decided a case No. Reg.H/7693/2001 in which the allotment was purported to be fraudulent allotment that he could not be penalized unless it is proved that he had committed some offence.

- The application for transfer was submitted by the seller and admitted by CDA in favour of the complainant on 22.5.1997.
- CDA did not take any action on transfer application for a period of 2 years and delayed the matter without sufficient cause or any cause at all. The matter of controversy of allotments came up in 1999 and issuing of transfer letters was stopped.
- It is a case of mal-administration in that the action in CDA's office was delayed for a period of almost 2 years. CDA's directive and Member (Administration)'s remarks for not issuing transfer letter do not affect the purchaser who has nothing to do with the review award. It cannot be seen if NAB would be able to find the complainant guilty of any offence.

Recommendations:

In view of the above it is recommended that the complainant's request for transfer of plot in his name, approval of his construction plan and approval of the plot should be granted to him. In case he is blamed for any offence as result of NAB or CDA investigations he can always be held accountable for that. He may however not be allowed further transfer of this plot till a final decision by the competent authority.

3. The Agency has made representation against the Mohtasib's recommendations.
4. There is no allegation that the inclusion of Mr. Baig's name in the review award dated 11.2.1990 was in fact unauthorised. The matter cannot be left in an indecisive state for ever. The Mohtasib's recommendations are quite apt and fair in the facts and circumstances of the case. They adequately protect the Agency's rights. They must be sustained.
5. Accordingly, the President has been pleased to reject the representation of the Agency.
6. Mr. Musaddiq Maqsood's complaint (No. H/12966/02) has been decided by the Wafaqi Mohtasib conjointly with the complaint of Mr. Akhtar Khan (complaint No. H/11148/02). The Agency's representation against the Mohtasib's recommendations in complaint of Akhtar Khan has been rejected. For the same reasons and subject to the same observations the representation of the Agency ought to be rejected.
7. Accordingly, the President has also been pleased to reject the representation of the Agency in the case of Mr. Musaddiq Masood.

No. 545/2003-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 2nd April, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 24.6.2003 in Complaint No. H/11148/2002 [Mr. Akhtar Khan vs. CDA].

I am directed to refer to your representation No. CDA-27(4)(111)(11148)-Coord/2002/4478, dated 31.7.2003, on the above subject and to say that the President has been pleased to pass the following order:-

2. In 1996, the complainant purchased plot No. 1279 situated in Sector G-11/1, Islamabad from one Faisal Baig. His complaint is that the Agency (CDA) is not transferring the plot in his name inspite of the fact that he has complied with all codal formalities. The Agency contends that the plot was allotted to Mr. Baig who was evicted from his house acquired for the development of the National Capital at Islamabad but it has come to light that some fake cases of claims have been included in the list of evictees (review award dated 11.2.1990) and until the matter is cleared transfer cannot be made in the name of the complainant. The Mohtasib's findings and recommendations are:-

Findings:

- The plot No. 1279, Sector G-11/2 was allotted to Mr. Faisal Baig S/o Mohammad Aurangzeb on 6.12.1995 as rehabilitation benefit against his BUP acquired from village Badia Qadir Bakhsh in 'review award dated 28.5.89'.
- Plot was purchased from allottee by Mr. Akhtar Khan on 22.5.1997 the date on which the transfer application was admitted by CDA in favour of the complainant.
- CDA came to know in 1999 that some fake cases of allotment of plots had been passed in Review Award and the matter was referred to NAB for investigation in 2000-2001.
- CDA is waiting for NAB decision.
- Simultaneously Wafaqi Mohtasib decided a case No. Reg.H/7693/2001 in which the allotment was purported to be fraudulent allotment that he could not be penalized unless it is proved that he had committed some offence.

- The application for transfer was submitted by the seller and admitted by CDA in favour of the complainant on 22.5.1997.
- CDA did not take any action on transfer application for a period of 2 years and delayed the matter without sufficient cause or any cause at all. The matter of controversy of allotments came up in 1999 and issuing of transfer letters was stopped.
- It is a case of mal-administration in that the action in CDA's office was delayed for a period of almost 2 years. CDA's directive and Member (Administration)'s remarks for not issuing transfer letter do not affect the purchaser who has nothing to do with the review award. It cannot be seen if NAB would be able to find the complainant guilty of any offence.

Recommendations:

In view of the above it is recommended that the complainant's request for transfer of plot in his name, approval of his construction plan and approval of the plot should be granted to him. In case he is blamed for any offence as result of NAB or CDA investigations he can always be held accountable for that. He may however not be allowed further transfer of this plot till a final decision by the competent authority.

3. The Agency has made representation against the Mohtasib's recommendations.
4. There is no allegation that the inclusion of Mr. Baig's name in the review award dated 11.2.1990 was in fact unauthorised. The matter cannot be left in an indecisive state for ever. The Mohtasib's recommendations are quite apt and fair in the facts and circumstances of the case. They adequately protect the Agency's rights. They must be sustained.
5. Accordingly, the President has been pleased to reject the representation of the Agency.
6. Mr. Musaddiq Maqsood's complaint (No. H/12966/02) has been decided by the Wafaqi Mohtasib conjointly with the complaint of Mr. Akhtar Khan (complaint No. H/11148/02). The Agency's representation against the Mohtasib's recommendations in complaint of Akhtar Khan has been rejected. For the same reasons and subject to the same observations the representation of the Agency ought to be rejected.
7. Accordingly, the President has also been pleased to reject the representation of the Agency in the case of Mr. Musaddiq Masood.

Procedural Matters

No. F.240/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 28th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 05.01.2004 in Complaint No. H/6258/2002 [Mr. Muhammad Iqbal vs. WAPDA/MEPCO].

I am directed to refer to your representation number nil, dated 10.2.2004, on the above subject and to say that the President has been pleased to pass the following order:–

2. The complainant made complaint on 10.6.2002. The cause of action arose to the complainant in 6/2000. The Mohtasib has declined to investigate the complaint on the ground that it has not been made within three months of the day on which the complainant first had the notice of the matter alleged in the complaint as envisaged by Article 10(3) of P.O. 1 of 1983. The complainant does not explain how the Mohtasib's decision on part of limitation is not correct. Also, where the Mohtasib does not accept a complaint for investigation not made within time his discretion is not interfered by the President.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 368/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 28th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 01.03.2004 in Complaint No. L/1993/2003 [Mr. Arif Pervaiz on behalf Mr. Sainik Khan vs. WAPDA/IESCO].

I am directed to refer to your representation number nil, dated nil, on the above subject and to say that the President has been pleased to pass the following order:–

2. Where a complaint is dismissed by the Wafaqi Mohtasib for non-prosecution proper remedy for the complainant is to seek restoration of the dismissed complaint and not to make fresh complaint. The Mohtasib has rightly rejected fresh complaint. Also, the Mohtasib's order is procedural order and no representation lies against such an order.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

Benevolent Funds

No. 60/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 14th February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 30.6.2003 in Complaint No. H/3452/2002 & F/140/2001 [Mr. Altaf Hussain Hali vs. FEBF].

I am directed to refer to your representation number nil, dated 8.1.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The employee (the complainant's wife) retired from service on 20.4.1984. The law relating to benevolent grants (The Federal Employees Benevolent Fund and Group Insurance Act 1969) was amended in 1988. One view was that the 1969 Act as amended by the 1988 amendment applies only to that case where the employee was in service when the amendment was made. There was however another view that all employees including grantees would benefit from the 1988 amendment. The legislature intervened in the matter and clarified the position through Act No. 13 of 1996. The 1996 Act specifically provides that it shall take effect from 4.9.1988 (when the 1988 amendment was made). The legislature has the power to make law to take effect prospectively or retrospectively. On a similar case (complaint No. 1/6351/95) the President has been pleased to decide (vide order No. 8(519)/PS/Legal/2000 dated 03.1.2001) that the 1988 amendment applies only to those cases where the employee was in service when the amendment was made. The said decision has the support of the Supreme Court decision in Board of Trustees of Federal Employees Benevolent and Group Insurance Fund v Nazir Ahmad Shah 1996 SCMR 1073.

3. The Agency's (Federal Employees Benevolent Fund) view that the employee and after her death the complainant is not entitled to the grant is unexceptional.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

General

No. 865/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 26th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 04.09.2004 in Complaint No. H/3334/04 [Mst. Intiaz Bibi vs. Pakistan Railways].

I am directed to refer to your representation No. nil, dated nil, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's husband misappropriated public money. The Agency (Pak Railways) took two steps. One, a criminal case was filed against him and two, he was proceeded against departmentally. In departmental proceedings he was removed from service on 5.4.1981. On 25.4.1992 he was however, acquitted by the criminal court. The Wafaqi Mohtasib has found that after the issuance of the court order the departmental order for removal from service automatically became infructuous therefore the Agency was bound to give him arrears for the period from 5.4.1981 to 25.4.1992, and has recommended (i) pay arrears of her husband's suspension period; (ii) pay arrears of pay and allowances for the period 05.04.1981 to 25.4.1992 in the light of court's order, by treating him on duty; (iii) pay family pension to the widow of the deceased employee as he served the Agency for more than ten years.
3. The Agency has made representation against the Mohtasib's recommendations. The complainant has also filed comments on the representation.
4. The Wafaqi Mohtasib's findings that on the issuance of the court's order dated 25.4.1992, the departmental order removing the employee from service automatically became infructuous is clearly against law. Departmental disciplinary proceedings and the criminal proceedings are two separate streams each flowing on its own course (2004 SCMR 540 & 2004 SCMR 1472 may be referred). The departmental decision dated 5.4.1981 by which he was removed from service remained unaffected with his acquittal from criminal charge by the criminal court. The Mohtasib's decision cannot be maintained.
5. Accordingly, the President has been pleased to accept the representation of the Agency and, set aside the Mohtasib's recommendation dated 4.9.2004 in complaint No. H/3334/04.

No. 769/2001-Law(WM)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 28th May, 2002

Subject: Representation against the decision of the Wafaqi Mohtasib in Complaint No. H/8303/2000.

I am directed to refer to your representation dated 15.12.2001, on the above subject and to say that the President vide his order dated 20.5.2002 has been pleased to reject the representation of the complainant, that the matter alleged in the complaint pertains to enforcement of contractual obligations of the parties, and for the adjudication of such matters the proper forum is court of law and not the office of the Wafaqi Mohtasib.

No. 584/2004-Rep.WM(Law-I)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 12th April, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 11.05.2004 in Complaint No. K/0725/2003 [Mr. Hafeez ur Rehman vs. KESC].

I am directed to refer to your representation No. Law/WM/Rep/2956, dated 4.7.2005, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Wafaqi Mohtasib's findings/recommendations were received by the Agency (KESC) on 3.6.2004. Thus representation could be filed on or before 3.7.2004. This representation received in the President's Secretariat on 7.7.2004 is time-barred. Also, the Agency has charged the complainant on load factor on the ground that certain discrepancies were found in the physical condition of his meter. There is no allegation that the meter was not recording correct consumption when it was inspected at site. The consumer is liable to pay for the amount of the energy registered by the meter. He can be required to pay on load factor only if it is shown that the meter had ceased to be correct in recording the consumption or had been reversed. There is no such allegation. The Mohtasib's recommendation must be sustained.

3. Accordingly, the President has been pleased to reject the representation of the Agency.

No. DY.818/2004-Rep.WM(Law)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 9th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 20.04.2004 in Complaint No. P/2297/2003 [Mr. Khan Zaman vs. WAPDA/PESCO].

I am directed to refer to your representation number nil, dated 3.8.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency (PESCO) has charged the complainant for the period from 3 to 5/2004 on the ground that on inspection it found that the complainant was stealing energy through tampered seals. The Wafaqi Mohtasib has rejected the complaint because the complainant's consumption increased after the change of the meter.
3. There is no allegation that the meter was not recording correct consumption when it was inspected. The allegation that the complainant was stealing energy through tampered seals is vague.
3. Accordingly, the President has been pleased to direct the Agency to withdraw the charge.

No.642/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 24th February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 04.05.2004 in Complaint No. H/8753/2003 [Mst. Shehnaz Akhtar vs. SLIC].

I am directed to refer to your representation number nil, dated 14.6.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. It appears to be an established position that premiums were not paid to the Agency (SLIC) within time. In her representation the representationist does not contest the position. She prays for the payment of the bonus on account of her difficult circumstances. The President cannot direct the Agency to pay the amount which is not due to the complainant.
3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 459/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 1st March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 16.03.2004 in Complaint No. L/2050/2001 [Mr. Muhammad Yousuf vs. WAPDA/MEPCO].

I am directed to refer to your representation number nil, dated nil, on the above subject and to say that the President has been pleased to pass the following order:-

2. Neither the Wafaqi Mohtasib's findings nor the Agency's (MEPCO) comments on the complaint identify the reasons to justify late effectuation of the E.R.O. (issued on 21.8.1996 and said to have been effectuated on 10.3.1997). There is no explanation regarding the use of electricity by the complainant during the period from 21.8.1996 to 10.3.1997. The matter was settled by the SDO's letter dated 22.9.1998. There was no reason for the Agency to re-open the settled matter. It has been observed that operational wing of the Agency does not examine audit objection on merits. The law is that departmental audit observation does not bind third persons. Audit objection only points out infirmity of a decision which requires re-examination. On the receipt of the audit objection the Agency was required to examine its merits with reference to all attending facts such as when the meter and other material were received in the store; and what was meter reading during the disputed period.

3. Accordingly, the President has been pleased to accept the representation of the complainant and direct the Agency to withdraw the charge.

No. 551/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 1st March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 19.05.2004 in Complaint No. H/11052/2003 [Mrs. Zil-e-Huma vs. NADRA].

I am directed to refer to your representation number nil, dated nil, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Wafaqi Mohtasib is not substitute for law courts. To award compensation for misfeasance in public office is the jurisdiction of law court. The complainant may consider seeking remedy from court.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 110/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 24th February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 10.11.2003 in Complaint No. K/02666/2002/ (IA-750) [Mr. Sheheryar Shakeel vs. FIA].

I am directed to refer to your representation number nil, dated 13.1.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency's (FIA) relevant rule provides that the candidate for post should be high not less than 5 feet 6 inches. The Agency has refused to consider the complainant on the ground that he is 5'-5". The complainant does not contest that the Agency's measurement of his height is wrong. He has not appended to the complaint/representation medical certificate to show that in fact he is 5'-6". The Agency cannot straight away relax the requirement of height. The requirement may be relaxed by the appointing authority on the recommendation of the Department Selection Committee and with the approval of the Federal Government and only in the case of highly experienced person. Besides that the authority's power to initiate the case for relaxation is discretionary and the authority cannot be compelled to exercise if it does not want to exercise. The complainant does not claim to be an exceptional personal. The Mohtasib decision must be sustained.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 2012004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 1st April, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 07.01.2004 in Complaint No. II/1472/2001 [Mst. Zarda Begum vs. CDA].

I am directed to refer to your representation No. CDA/DLR/DD(Land)/Pindori/04/695, dated 21.2.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. Mr. Zar Gul's built up property measuring 705 feet in village Pindori was acquired by the Agency (CDA) in 1977. Originally, no award of compensation was made

in his favour. But on his appeal compensation was awarded and paid in 1984. In 1999, he applied for the allotment of a residential plot. The Agency has declined to accept his application on the ground that under its applicable policy (of 1996), he was not entitled to allotment of the plot. Mr. Zar Gul died. In 2001, his widow Mst. Zarda Begum complained to the Wafaqi Mohtasib against the Agency's refusal to allot her/husband residential plot. The Mohtasib found that the Agency's has allotted residential plots to certain persons whose cases were similar to that of Mr. Zar Gul. According to the Mohtasib the Agency gave discriminatory treatment to the complainant. Accordingly, vide his findings/recommendations dated 1.9.2001, the Mohtasib recommended that the complainant should be allotted a residential plot by the Agency in Margalla Town or in any other sector. The Agency gave reasons to the Mohtasib for which it was unable to comply with his recommendations. The Mohtasib has revised his recommendations vide his decision dated 7.1.2004.

3. The Agency has made representation against the revised recommendations. The complainant has furnished his comments on the representation.

4. The complainant contends that the Agency's representation is time-barred. The record shows that the Mohtasib's revised recommendations were received by the Agency on 22.2.2004. The representation received by the Law Division on 21.2.2004 is thus within time.

5. The Wafaqi Mohtasib treated the Agency's reasons for non-compliance of recommendations as review petition and expressed the view that since they were not given within the time in which the Agency was required to report compliance it (review petition) was time barred. But, notwithstanding the above view he proceeded to re-examine the case and ultimately revised his findings/recommendations. The Mohtasib's view that the Agency's request for review cannot be entertained because it was not made within the time in which it was required to report compliance cannot be sustained in view of the President's decision in complaint No. L/163/02(Imp)/3910. The President has decided that Agency can give reasons and the Mohtasib can consider for non-compliance at any time before reference has been made to the President under article 12 of P.O. 1 of 1983. In this case however, since the Mohtasib has revised his recommendations the limitation point has lost importance.

6. The Wafaqi Mohtasib's recommendations are based on the findings that the Agency has allotted residential plots to certain persons whose cases were similar to that of Mr. Zar Gul. The Mohtasib's findings do not explain why Mr. Zar Gul did not apply for the allotment of the plot within reasonable time. Compensation was made to him in 1984. He applied for the allotment of the plot in 1999. There were various reasons for which many Islamabad evictees were not interested in living in Islamabad and getting residential plot. The whole problem is high rising of the prices of land in Islamabad. Ordinarily, the Wafaqi Mohtasib is not authorized to accept complaint for investigation which is not made within three months of the date on which the cause of action arose to

the complainant. The Wafaqi Mohtasib has not identified the special circumstances which justified acceptance of the complainant's complaint made in 2001 relating to the matter which arose in 1984. The Mohtasib's findings do not identify mal-administration in the context of correct application of Agency's rehabilitation scheme. If in certain sporadic cases allotments of plots were made in violation of the scheme they could not be the precedent of standard practice to be followed for implementation of the scheme. No proper case for mal-administration is made out. The Wafaqi Mohtasib's recommendations cannot be sustained.

7. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's recommendations dated 7.1.2004 in complaint No. H/1472/01.

No. 741/2003-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 30th March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 31.12.2002 in Complaint No. H/06010/2002 [Mr. Abid Saleem, M/s Ocean Air International, Ibid. vs. CDA].

I am directed to refer to your representation No. CDA/DEM-41(157)/IM/87/4957, dated 25.8.2003, on the above subject and to say that the President has been pleased to pass the following order:-

2. Certain allottees of industrial plots including the complainant (M/s Ocean Air International) applied to the Agency (CDA) for change of trade. The applications were submitted by the Agency to the Agency's Board in its meeting held on 8.8.2000. The Board allowed three applications. The allowed applications did not include that of the complainant. The Agency however by its letter dated 30.10.2000 informed the complainant that its application has been allowed subject to payment of:

(1) Change of trade fee @ Rs.25/ PSY-	Rs. 83,333/25
(2) Penalty @ Rs.50/- per square year-	Rs. 1,66,666/50
(3) Annual Ground Rent & Delayed Charges-	Rs. 11,880/00
Total:	Rs. 2,61,879/75

3. The complainant was advised to pay the above amount within 30 days from the date of the issue of letter otherwise the offer shall automatically stand withdrawn. The complainant made payment within the stipulated period, and the Agency vide its letter dated 13.12.2000 approved the change of trade. Later the Agency noticed that the

complainant's application had not been approved and the letter dated 30.10.2000 had been issued under mistake. Accordingly, on 29.1.2001 the letters dated 30.10.2000 and 13.12.2000 were withdrawn and cancelled. The firm position that has also emerged from the Wafaqi Mohtasib's findings is that the Agency's letters dated 30.10.2000 and 13.12.2000 were unauthorized and were based on mistake of fact. The complainant's application was granted on 10.10.2001 subject to payment of fee and penalty for unauthorised use at the rates approved on 8.8.2000. Accordingly, vide letter dated 11.12.2001 the Agency advised the complainant to pay:-

(1)	AGR: from 8.3.2001 to 7.3.2002 (1 year)	Rs.	5,000/-
	Area: 3333.33 sq. yards		
	Rate: Rs. 1.50 per sq. yard		
	AGR: Rs.5000/- per annum.		
(2)	D/charges on AGR @ Rs.17.71% per annum	Rs.	738/-
	from 8.3.2001 to 7.1.2002		
(3)	Change of trade fee @ Rs.50/- per sq. yard.	Rs.	1,66,666/-
(4)	Fine due to operating trade prior to approval:	Rs.	3,33,333/-
	Total:	Rs.	<u>5,05,737/50</u>

And, after giving credit of Rs. 261,879/75 which had been paid in pursuance of the demand made in letter 30.10.2000 the complainant was advised to pay Rs.343,857/785 net within 30 days of the letter (11.12.2001) to enable the Agency to confirm the change of trade. The complainant made complaint to the Wafaqi Mohtasib. The complainant's complaint in substance is that the Agency's decision to enhance the rates of fee change of trade and penalty for unauthorised use was not justified or illegal.

4. The Mohtasib's pertinent findings are:

- (a) The Agency's letters date 30.10.2000 and 30.12.2000 were unauthorised and based on mistake of fact.
- (b) The complainant is entitled to change of trade on payment of the fee and penalty approved on 8.8.2000.
- (c) The Agency is liable to pay interest on the amount the complainant paid under letter 30.10.2000.
- (d) The interest that shall be paid to the complainant under (c) above may be recovered from the Agency's officials who were responsible to issue the letter dated 30.10.2000.

5. The Agency has made representation against the Mohtasib's findings/recommendations (c) and (d). The complainant has filed written comments on the representation.

6. Neither the Mohtasib has found the rates of fee and penalty approved by the Agency on 8.8.2000 to be illegal nor the Agency's representation relates to them. The complainant's comments hardly touch the points raised in the representation. His case is that the Agency was not justified to enhance the rates of fee and penalty but such a plea could be raised in representation (which he did not make) and not in the comments on the Agency's representation. The position is firm that the Agency's letter 30.10.2000 and 13.12.2000 were unauthorised and based on mistake of fact. The law is an offer or acceptance of offer based on mistake of fact is void (section 20 of the Contract Act 1872). Thus, the said letters did not confer any right on the complainant. So far as the recommendation relating to payment of interest on the amount paid by the complainant to the Agency under mistake of fact is concerned it may be relevant to point out that the complainant had never asked for the refund of the amount and/or interest thereon. It is true that the person to whom any money has been paid by mistake must repay or return it (section 72 of the Contract Act 1872) but there is no rule that he must also pay interest on the money. When it is clear that the letters dated 30.10.2000 and 13.12.2000 were product of mistake the question of proceedings against the officials should not arise. The human beings have been, and shall continue, committing mistakes. The Mohtasib's observation: "whether there were any *mala fide* or not cannot be ascertained at this stage" hardly justified the recommendation that "the amount thus paid may be recovered from the delinquent officials". Also, the recommendation that the Agency shall pay interest to the complainant and the recommendation that the amount thus paid may be recovered from the delinquent officials are incongruous in as much as the former is based on the Agency's unjust enrichment i.e. gaining by retaining money belonging to the complainant, but the officials did not make any gain. Thus if the Agency would pay to the complainant and recover the paid amount from the officials it would not disgorge wrongful gain and would remain unjustly enriched.

7. The Agency has contended that the complainant has not paid fee/penalty in pursuance of its letter dated 11.12.2001. The complainant in its comments has not contested the position. The grant of the complainant's application was subject to payment of fee and penalty etc. The change of use becomes authorised only from the date when the payment of fee etc. is made. If it is correct (as it seems to be) that till to-day the complainant has not made payment of the fee etc. it means that till today the changed use is unauthorised for which the Agency will be justified to charge penalty etc. The Mohtasib's findings cannot be sustained.

8. Accordingly, the President has been pleased to accept the representation of the Agency and set aside the Mohtasib's recommendations/findings dated 31.12.2002 in complaint No. H/06010/02.

No. 742/2004-Law(WM)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 26th Oct., 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 18.05.2004 in Complaint No. F/960/2002 [Mr. M. Waris vs. WAPDA/FESCO].

I am directed to refer to your representation No. 1336, dated 17.07.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. According to the Agency (PESCO) there were two meters at the complainant's premises. An industrial meter to register the energy supplied for running the tube well and a light meter to register the energy supplied for light. The Agency could not bill the consumption registered by light meter for the reason that due to mistake light meter could not be entered in its billing department. The error was detected in 2000 and the Agency constituted an inquiry committee to look into the matter. The inquiry committee found that the consumer had been using electricity through the light meter but remained unbilled on account of non-entry of the meter in the billing department. When the Agency demanded the charge the complainant complained to the Wafaqi Mohtasib. The Mohtasib has recommended that the charge should be withdrawn.

3. The Agency has made representation against the Mohtasib's recommendation. The complainant has furnished comments on the representation.

4. The Wafaqi Mohtasib's recommendation cannot be sustained for the reason that his findings do not identify maladministration rather have all the earmarks of an appellate order. The Mohtasib's role is to identify maladministration which commutes some mischievous such as delay, inattention, corrupt motives etc. and not to provide appeal against agency's decision given after due consideration of the matter. Where the Agency decides a matter after due consideration of the matter its decision cannot be questioned on the ground of maladministration. The Agency constituted a committee to examine if the complainant has been using the electricity which remained unbilled. The committee found that the complainant has been using the electricity. The amount of energy supplied was duly registered by the meter and noted by the meter reader. It however remained unbilled due to non-entry of the meter in the billing department. These were findings of facts. There is no allegation of any bias or corrupt motive against members of the enquiry committee.

5. Accordingly, the President has been pleased to accept the representation of the Agency and set aside the Mohtasib's recommendation dated 18.5.2004 in Complaint No. F/960/2002.

No. 656, 753, 754/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 31st March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 15.11.2003 in Complaint No. H/6554/2003 [Ms. Mah-i-Laqa Rafiq vs. Ministry of Housing and Works].

I am directed to refer to your representation No. I/21-FSC/EIV, dated 5.8.2004, on the above subject and to say that the President has been pleased to pass the following order:—

2. The complainant complained to the Wafaqi Mohtasib against the Agency's (M/o Housing and Works) action whereby government accommodation (Family Suite No. 4-07108 FSC, Gulshan-e-Jinnah Complex, Islamabad) provided to her since 1998 was cancelled in July 2003. Vide findings dated 15.11.2003 the Mohtasib found that the Agency was guilty of mal-administration and recommended (i) The Secretary, Ministry of Housing and Works should issue a letter of regrets to the complainant for having been maltreated by its officers; (ii) The DS(E) and SO(E-IV) should be proceeded against under Efficiency and Discipline Rules 1973 for misconduct; and (iii) The JS Works should be proceeded against administratively for playing a collaborative role on motivated recommendations of his subordinates, and required the Agency to implement the recommendations or give reasons for their non-compliance. The Agency gave reasons for non-compliance of the recommendations. The Wafaqi Mohtasib considered the reasons for non-compliance but being not satisfied with them rejected them on 29.6.2004.

3. The Agency as well as Mr. Abid Bashir, Dy. Secretary (E) and Syed Iftikhar Hussain Naqvi S.O(E-IV) have made representation against the Mohtasib findings/decision.

4. The Agency contends that the Mohtasib has erred in law to ask the same officer to examine the reasons for non-compliance who investigated the complaint. The Agency's contention is flawed. The Agency's reasons for non-compliance is not appeal. They are in the nature of review. It is an accepted rule of practice and procedure that review is considered by the same officer who made the original order (otherwise review will become appeal).

5. The various grounds on which the findings are based remain uncontested. The various grounds on which cancellation of allotment is supported do not appear to be consistent with the Agency's practice. Thus the Mohtasib's findings ought to be sustained.

6. Accordingly, the President has been pleased to reject the representation of the Agency as well as of Mr. Abid Bashir Dy. Secretary (E) and Syed Iftikhar Hussain Naqvi S.O(E-IV).

No. 232/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 1st March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 17.12.2003 in Complaint No. L/1829/2003 [Mr. Muhammad Afzal vs. WAPDA/LESCO].

I am directed to refer to your representation No. 2151-53, dated 24.2.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency (LESCO) inspected the complainant's meter on 6.11.1995 and found it 30% slow. It charged 30% further of the consumption for one month. The slow meter could not be replaced before 11/1996. The Agency has charged slowness for 12/1995 to 11/1996. The Wafaqi Mohtasib has recommended that charge should be withdrawn. The recommendation follows the finding that normal time for such transactions, under the law, is three years. The Agency failed to plead any special circumstances not permitting it to act in time or any legal provisions giving it the authority to make recovery from the complainant after six years. The action of the Agency is, therefore, not tenable under the law.

3. The Agency has made representation against the Mohtasib's recommendation.

4. The Mohtasib's findings have all the earmarks of a decision of court of law. His proper role is to identify mal-administration. He is not substitute for courts or tribunals. Where the decision of the Agency is based on relevant ground it cannot be questioned on the ground of mal-administration. If the complainant's meter had, in fact been slow the complainant should not have any grievance to pay for the energy consumed but not measured. The Mohtasib's recommendation cannot be sustained.

3. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's recommendation dated 17.12.2003 in complaint No. L/1829/03.

No. DY. 302/2004-Rep-WM(Law)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 7th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 17.02.2004 in Complaint No. H/418/2003 [Mst. Mumtaz Fazil vs. WAPDA/IESCO].

I am directed to refer to your representation No. CEM/ADMN/6-05/3503-09, dated 19.3.2004, on the above subject and to say that the President of Pakistan has been pleased to pass the following order:-

2. The Agency (WAPDA) had provided official accommodation at Mangla to its employee Ch. Muhammad Fazil. He retired from the Agency's service on 14.10.1992, but continued living in the Agency's accommodation till 31.10.1997. He is reported to have died on 20.10.1998. Rs. 5560.65 are payable by Ch. Fazil for the use and occupation of the Agency's accommodation for the period from 6.5.1995 to 31.10.1997. The Agency has decided to recover the said amount from the pension payable to Ch. Fazil's family. The Mohtasib forming the opinion that the Agency's decision to recover the amount from the pension is without legal authority has recommended that no deduction shall be made from the pension and any amount deducted from the pension should be refunded.

3. The Agency has made representation against the findings/recommendation of the Mohtasib.

4. The Mohtasib's recommendation is based on the finding that the Agency's Pension Rules 1977 do not allow any deduction from pension after expiry of one year from the employee's date of retirement. In the context of the nature of the Agency's claim reference to the 1977 Rules is out of place. The 1977 Rules refer to any amount recoverable from the employee which relates to his service in the Agency. The amount the Agency intends to recover has nothing to do with Ch. Fazil's service in the Agency. It is the rent/compensation for the use and occupation of the Agency's property by a non-employee. The Mohtasib's recommendation cannot be sustained.

3. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's recommendation dated 17.2.2004 in complaint No. H/418/2003.

No. DY. 772/2004-Rep-WM(Law)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 9th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 06.08.2004 in Complaint No. H/5223/2002 [Mr. Yousaf vs. ZTBL].

I am directed to refer to your representation No. I&C/WM-11(2647)/2004/1732, dated 22.9.2004, on the above subject and to say that the President of Pakistan has been pleased to pass the following order:-

2. The complainant's complaint is that his father had obtained loan from the Agency (ZTBL). The father died subsequently. On 8.12.2001 the Agency issued "clearance certificate" that loan has been completely re-paid. On the basis of the certificate the land was redeemed but subsequently the Agency started demanding further money. The

Agency's case is that father had obtained three loans. Two have been repaid and the demanded amount relates to third loan which is alive. The Wafaqi Mohtasib has found that the redemption letter was issued by the concerned MCO (an official of the Agency) unauthorisedly and has recommended that the Agency should absolve the complainant from the outstanding liability and recover the same from the MCO concerned, besides taking strict disciplinary action against him.

3. The Agency has made representation against the Mohtasib's findings. The complainant was called upon to file comments on the representation but he has not availed the opportunity.

4. The Mohtasib's recommendation cannot be sustained. There is no rule that even an unauthorised clearance certificate issued by the Agency would absolve the loanee from payment of loan. Unauthorised release letter or such letter issued under mistake does not wipe liability.

5. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's recommendation dated 6.8.2004 in complaint No. H/5223/2002.

Pakistan Railways

No. 961/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 28th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 30.08.2004 in Complaint No. H/397/2004 [Mr. Muhammad Yaseen vs. Pakistan Railway].

I am directed to refer to your representation No. nil, dated nil, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency (Pakistan Railways) booked a parcel for the complainant from Karachi to Jhang. According to the Agency during the journey the van in which the parcel was placed caught fire and the goods placed in the van including the complainant's parcel were destroyed by fire. The Wafaqi Mohtasib has rejected the complaint on the ground that the incident of fire by which the complainant's goods were destroyed, was beyond the Agency's control and in such cases the Agency was not liable to pay the damages. The complainant contends that the van which caught the fire was the one in which there was a generator and the Agency was negligent in putting his parcel in that van. The questions raised by the complainant are controversial questions of facts. They cannot properly be

determined by under the proceedings under the Mohtasib's Order 1983. Such cases need decision by law court.

3. Accordingly, the President has been pleased to reject the representation of the complainant. If he would approach the court nothing said in the Mohtasib's findings shall bind him.

National Savings

No. 594/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 9th April, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 05.03.2004 in Complaint No. K/00294/2003 [Mr. M. Anwar Khan vs. National Savings].

I am directed to refer to your representation No. U.O. 29(1)DM/2004-464, dated 28.3.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency (National Savings) has clarified that employees of the companies owned by the Government are eligible to invest in the Pensioners Benefit Account. It is an admitted position that the complainant retired from a company owned by the Government. Privatization of the company from where the complainant retired should affect his status. Nomenclature of any statute does not control its meanings. What a statute means is to be read in its substantive part. Where there is any inconsistency between the nomenclature and substantive part of the statute the former will give way to the latter. Thus, the Pensioner's Benefit Account Rules 2003 will apply to retired employee whether he received pensionary benefits in lump sum or is getting periodical payments (wholly or in addition to a one time payment).

3. Accordingly, the President has been pleased to reject the representation of the Agency.

Dependants Quota

No. 888/2004-Law(W.M)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 16th July, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 07.10.2004 in Complaint No. H/1159/04, No. H/11921/03, H/5242/04, No. H/3251/04, No. H/5619/04 and No. H/468/04 [Mst. Zaheer Khela vs. CBR].

I am directed to refer to your representation C. No. 21(2)Admn/2004-(M.IV), dated 12.11.2004, on the above subject and to say that the President has been pleased to pass the following order:—

2. Five persons each claiming to be an heir of a person in government service (various offices subordinate to the CBR) who died during service complained to the Wafaqi Mohtasib that contrary to the Federal Government's policy which provides that where a person in government service dies during service his one child/surviving spouse shall be appointed to a post on contract the competent authorities (various authorities subordinate to the CBR) were not appointing them to post. The Wafaqi Mohtasib has found that the relevant policy provides that where a person in government service dies during service his one child/spouse shall be appointed to a post on contract and for that appointment the Prime Minister may authorise that the child/spouse may be appointed without advertising the vacancy, and has recommended that the CBR shall forward the case of each complainant to the Prime Minister for waiver of advertisement of the vacancy.

3. The CBR has made representation against the Mohtasib's recommendation. It contends that the Mohtasib's recommendation cannot be implemented for two reasons. One, there is no vacant post against which the complainant may be appointed and, two, where there is a vacancy under the Government decision it is required to be filled by appointing a person in the surplus pool. There is no finding that the relevant policy provides that a child/spouse of a person who dies during service shall be appointed even if there is no vacant post. Similarly, there is no finding that the policy overrides the government decision under which any vacancy is required to be filled by appointing a person in the surplus pool. The Mohtasib's recommendation cannot be implemented instantly. It appears to be qualified what the relevant authority would decide to fill a post from open market through open advertisement it shall consider the complainant's case as recommended by the Mohtasib.

3. Accordingly, the President has been pleased to approve paras 2 & 3 above.

Ministry of Health

No. 941/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 14th April, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 19.10.2004 in Complaint No. H/10450/2002 [Mr. Shahid Hamid vs. POFs Board, Wah Cantt].

I am directed to refer to your representation number nil, dated 15.11.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's request for reimbursement of medical expenses cannot be accepted for two reasons. One, under the Establishment of the Office Wafaqi Mohtasib Order 1983 the Mohtasib or the President does not provide appeal against departmental decision. The role of the Mohtasib is only to identify mal-administration which connotes some misbehaviour such as bias, discrimination, or corrupt motive by the department. No such thing is alleged. Two, Article 9(2) of the Establishment of the Office of Wafaqi Mohtasib Order 1983 provides that the Wafaqi Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to his service therein, and the matter raised by the complainant in the complaint relates to his service in the Agency (POFs).
3. Accordingly, the President has been pleased to reject the representation of the complainant.

Employees Old Age Benefits

No. 1016/2003-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 17th August, 2004

Subject: Representation under Article 32 of P.O. 1 of 1983 against the findings of the Wafaqi Mohtasib dated 25.08.2003 in Complaint No. K/2127/02.

I am directed to refer to your representation No. Nil, dated 28.10.2003, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant contends that contrary to law the Agency (Employees Old Age Benefits Institution) is not giving him pension. After investigating the complaint the Mohtasib has found that the complainant is not entitled to pension. The complainant has

failed to show that he is entitled to pension. Further, the adjudicating authority established under the EOBI Act 1976 has also decided the matter against the complainant. Statutory authorities decision cannot be contested before the Wafaqi Mohtasib and in the representation under Article 32 of the P.O. 1 of 1983.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 394/2004-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 10th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 22.02.2004 in Complaint No. H/420/2003 [Mr. Muhammad Nawaz Khan vs. EOBI].

I am directed to refer to your representation number nil, dated 19.3.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. In his representation the complainant does not contest the ground on which the Mohtasib's decision is based. Law does not allow pension for the period beyond six months of the date of application. No decision can be made against law.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

Banks

No. 660/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 28th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 09.06.2004 in Complaint No. K/1398/02 [Mr. Sheikh Umer Draz vs. PLI].

I am directed to refer to your representation No. nil, dated 24.7.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant contends that he had paid the premiums for 1998 to 2001 at the proper office of the Agency (Postal Life Insurance). The receipt of each premium was duly acknowledged by the relevant postmaster on his PR book. The Agency concedes that

the amounts paid by certain persons including the complainant were misappropriated by the postmaster. There is no allegation that the complainant had, in any manner, contributed towards the misappropriation of his money by the Agency's servant. The Agency is vicariously liable for the acts of his servant. This aspect of the complainant has not been examined. If it is proved that the complainant tendered the money to the postmaster and obtained proper receipt therefore it must be presumed that the Agency had received the money with all consequences.

3. Accordingly, the President has been pleased to remand the matter to the Mohtasib for decision afresh in the light of the observations in para 2 above.

No. 664/2004-Rep.WM(Law-I)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 12th April, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 22.06.2004 in Complaint No. L/463/2003 [Mst. Razia Begum vs. HBFC].

I am directed to refer to your representation No. HBFC/HIK/ED(Ops&Mkg)2004/1/2758, dated 28.7.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. In 1980 the complainant's husband obtained loan from the Agency (HBFC). He had been paying the instalments till his death on 30.1.1994. In 2002 the Agency asked the complainant to pay about Rs.38,000 (different figures are quoted in the findings) as final payment. She paid the amount. Later when the complainant asked the Agency to redeem the property the Agency demanded further amount of Rs.39,560. The Agency's case is that there was calculation mistake in demanding only Rs.38,000. The Mohtasib has recommended that the Agency should withdraw the demand of further amount. The recommendation follows the findings: "The Agency is guilty of mal-administration under Article 2(2) of P.O. No. 1 of 1983 in as much as it is claiming additional rental amount after the lapse of 19 years for the construction of first floor (second story) ground floor which was not even included while sanctioning of the loan and calculating its instalment. The Agency is not justified in including the first floor rental at this belated stage when the complaint has already settled the loan."

3. The Agency has made representation against the Mohtasib's recommendation. The complainant has filed written comments.

4. The Mohtasib's finding does not touch the crucial issue i.e. whether the demand of further amount was on merits justified or not. If the amount is due to the Agency and it could not demand earlier by mistake the lapse of any period is totally irrelevant during

the subsistence of partnership. Further mistake does not effect limitation (Article 96 of 22nd Schedule to the Limitation Act). The Mohtasib's recommendation cannot be sustained.

3. Accordingly, the President has been pleased to direct the Mohtasib to re-examine the case if the further amount is, on merits, due or not.

No. 663/2004-Rep.WM(Law-I)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 14th March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 06.07.2004 in Complaint No. H/7836/2003 [Mr. Muhammad Ibrahim Umrani vs. SME Bank].

I am directed to refer to your representation No. HD-04/F.2-288/608, dated 21.7.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant is an ex-employee of the Agency (SME Bank). The Agency has withheld certain amount from the amount payable by it to the complainant as service dues because he (complainant) was found responsible for wrong verification/disbursement of certain loan cases. On the complainant's complaint the Wafaqi Mohtasib has directed the agency to refund the retained amount to the complainant. The recommendation follows the findings: "The above leaves only one issue i.e. whether the retention of Rs.118,760 out of the VSS benefits is legally justified. Loan No. 109-E was sanctioned and disbursed during the incumbency of the complainant while loan No. 144-E was processed and sanctioned during his period but was disbursed later. However, there is a procedure for recovery of loans and there is procedure for action against the erring officials. In the instant case, the Bank instead of proceeding to recover the outstanding balances including institution of court cases against the two borrowers and their guarantors (if any) found it easy to retain the amount out of the VSS benefits. No amount out of the VSS benefits can be retained without recourse to legal/departmental action against the alleged official under relevant rules/regulations. In the absence of such proceedings, the Bank has committed an act of mal-administration by retaining the amount of Rs.118,760 out of the VSS benefits.

3. The Agency has made representation against the Mohtasib's recommendation.

4. Article 9(2) of the Establishment of the Office of Wafaqi Mohtasib Order 1983 provides that the Wafaqi Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the Agency in which he is, or has been, working in respect of any personal grievance relating

to his service therein. The matter raised in the complaint relates to personal grievance of the complainant in respect of his service in the Agency. The Mohtasib should not have investigated the complaint. Also where a person has the cause to sue another person for recovery of any sum he can retain any money that is payable by him to the other to claim set off, if he is sued. There is no rule that the first person must pay the sum payable by him and then sue for recovery of the sum recoverable by him. The question is who may approach the legal fora. In this case the complainant, if the matter is not settled otherwise.

5. Accordingly, the President has been pleased to accept representation of the Agency and set aside the Mohtasib's recommendations/findings dated 6.7.2004 in complaint No. H/7836/2003.

No. 382/2004-Rep.WM(Law-I)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 14th March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 05.03.2004 in Complaint No. H/03705/2003-SM-1302 [Mr. Muhammad Sharif vs. NBP].

I am directed to refer to your representation number nil, dated 10.4.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The facts alleged in the complaint are that on 5.7.2000 the complainant tendered Rs.250,000 at the deposit counter of Subzi Mandi Branch, Hyderabad of the Agency (NBP) for depositing in his account. The cashier received the money and issued the prescribed deposit receipt. Later it became evident that the cashier, neither credited the amount in the complainant's account nor deposited the money into the Agency's till. The Wafaqi Mohtasib has recommended that:

- (a) The Agency should refund the amount of Rs.250,000 to the complainant forthwith, without waiting for the recovery of the entire defrauded amount from the delinquent officials.
- (b) The Agency should lodge proper F.I.R./case against the delinquent officials under the relevant law for committing serious acts of misappropriation of public money.
- (c) The Agency should also take disciplinary action against the Manager, NBP, SITE Branch, Hyderabad, who tried to obtain dismissal orders for the present complaint on the basis of a false and frivolous statement/letter of withdrawal of complaint purported to have been signed by the complainant.

3. The Agency has made representation against the Mohtasib's recommendation.
4. In its representation the Agency does not say that the amount was not tendered at deposit counter of the bank or that the deposit receipt issued to the complainant was unauthorized. When a depositor deposits money in a bank in the prescribed manner the bank is responsible for the money so deposited. In fact the representation does not seriously contest recommendations (a) & (b). They therefore ought to be maintained. Recommendation (c), however, cannot be affirmed as it is not based on any evidence. There is no finding that the complainant did not sign his statement dated 12.2.2002 by which he agreed to withdraw his complaint made to the Agency. The complaint referred to in his statement was the complaint made to the Agency and not to the Mohtasib. In fact no complaint was pending with the Mohtasib on 12.2.2002.
4. Accordingly, the President has been pleased to affirm the Wafaqi Mohtasib's recommendations (a) & (b) and to set aside recommendation (c) dated 5.3.2004 in complaint No. H/03705/2003-SM-1302.
5. Nothing said in the Mohtasib's findings or this order shall prejudice the Bank's right to recover its loss from its employees.

No. 728/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 05.03.2004 in Complaint No. K/00869/2002 [Mr. Maqsood Ahmad vs. SBFC/SME Bank Ltd.].

I am directed to refer to your representation No. nil, dated 20.8.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant obtained loan from the Agency (SME Bank). He seeks remission of loan on account of his poverty. Loan cannot be remitted on that ground.
3. Accordingly, the President has been pleased to reject the representation of the complainant. Nothing said in this order or the Mohtasib's decision shall however debar the Agency to give the complainant any relief to which he may be entitled under general policy of the Agency.

No. 388/2004-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 10th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 05.03.2004 in Complaint No. K/01141/2002-SM-1460 [Mr. Ghulam Rasool Memon vs. SME Bank].

I am directed to refer to your representation number nil, dated 8.4.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant does not show how the Agency's (SME Bank) decision or that of the Mohtasib's is wrong. His prayer in the representation is based on his poverty or inability to repay the loan. On these grounds the Agency's decision cannot be contested.
3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 76/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 24th February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 15.11.2003 in Complaint No. H/11411/2001 [Syed Hamid Ullah vs. SME Bank].

I am directed to refer to your representation number nil, dated 17.12.2003, on the above subject and to say that the President has been pleased to pass the following order:-

2. Section 128 of the Contract Act 1872 provides that the liability of the surety is co-extensive with that of the principal debtor. The Agency's (SME Bank) failure to investigate the genuineness of the debtor's proposed enterprise does not, in any manner, absolve him (the debtor) and the surety of his co-extensive liability to re-pay the money. Since the complainant's liability is co-extensive with the debtor he cannot complain regarding the Agency's failure or laxity to recover the debt from the principal debtor.
3. Accordingly, the President has been pleased to reject the representation of the complainant.

Pension

No. 341/2004-Rep(WM)Law
 Government of Pakistan
 Law, Justice and Human Rights Division
 Islamabad, the 10th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 19.02.2004 in Complaint No. K/00445/2003-SM-1225 [Ms. Fatima Begum vs. PTCL].

I am directed to refer to your representation number nil, dated 21.3.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. When the employee's wife (the complainant's mother) died in 1995 right to receive family pension did not survive to the employee's un-married daughter who was more than 21 years old (the complainant). The 1997 decision does not apply retrospectively in the sense to revive a right which did not exist when it (decision) was made. There is no allegation that some others whose cases are similar to that of the complainant have been granted pension but she has been deprived. The Mohtasib's decision is according to law and practice.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 842/2004-Rep.WM-Law
 Government of Pakistan
 Law, Justice and Human Rights Division
 Islamabad, the 5th July, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 01.06.2004 in Complaint No. P/1656/2003 [Mr. Aslam Jan vs. AGPR, Peshawar].

I am directed to refer to your representation No. nil, dated 4.10.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant assumes that the interest is paid on G. P. Fund deposits is the bank rate interest the government pays for the use of the depositor's money. This is not the case. What the government pays on G. P. Fund deposits is much more than the bank interest rate and is paid as special grant to the employee, and the grant is restricted to the prescribed amount. Any amount the employee would deposit in excess of the prescribed rate would be a voluntary deposit and no interest/profit becomes payable by the deposit taken on voluntary deposits. Also, the matter raised in the complaint cannot be decided under the Wafaqi Mohtasib Order 1983 (Article 9(2) of the P.O. 1 of 1983).

3. Accordingly, the President has been pleased to reject the representation of the complainant.

Sui Northern Gas Pipelines Ltd.

No. 637/2004-Rep-WM(Law-I)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 14th March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 01.08.2003 in Complaint No. L/1035/2002 [Mr. Muhammad Imran Butt vs. SNGPL].

I am directed to refer to your representation number nil, dated 5.7.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's meter was replaced on 17.8.2001. The old meter was tested. The testing shop found the following discrepancies in the meter "Index seals found tampered". Meter checked from inside, "Outlet port found damaged/tampered by cutting its sides". On the basis of the above report the Agency (SNGPL) charged the complainant for 183 days on the basis of his highest consumption. The Mohtasib has recommended that the charge should be withdrawn because the complainant's registered consumption of charge period is higher than the consumption registered by new meter.

3. The Agency has made representation against the Mohtasib's recommendation.

4. There is no finding that the test report was wrong. The Agency's decision is based on relevant ground and relevant evidence and where the Agency's decision is based on relevant evidence there shall be no question of mal-administration.

3. Accordingly, the President has been pleased to accept the representation of the Agency and set aside the Mohtasib's recommendation dated 19.5.2004 in complaint No. L/01035/02.

No. 507/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 8th March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 14.04.2004 in Complaint No. L/07799/2002 [Mr. Muhammad Munir vs. SNGPL].

I am directed to refer to your representation GMBI-42(1068), dated 28.5.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's meter was replaced on 16.9.2000. The replaced meter was examined by the Centre Meter Shop of the Agency (SNGPL). The Shop found that index seals of the meter had been tampered and, inside the meter, a hole had been drilled in the outlet port. On the basis of the Shop's report the Agency has charged the complainant on highest consumption for six month plus the cost of the tampered meter.

3. The Wafaqi Mohtasib has recommended that the charge should be withdrawn and cancelled. The recommendation follows the finding that the complainant's consumption after the change of meter was marginally higher but not sufficient enough to establish the allegation of pilferage of gas through tampering with the meter.

4. The Agency has made representation against the Mohtasib recommendation. The complainant was called upon to offer comments on the representation but he has not availed the opportunity.

5. The Mohtasib's finding does not touch the pertinent ground on which the Agency has made the charge. There is no finding that the Shop's report is false. The charge is based on relevant evidence and a decision made on relevant evidence cannot be questioned on the ground of mal-administration. The Mohtasib's recommendation cannot be sustained.

3. Accordingly, the President has been pleased to accept the representation of the Agency and set aside the recommendations/findings dated 14.6.2003 in complaint No. L/07799/2001.

No. 714/2004-Law(WM)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 24th Oct., 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 09.06.2004 in Complaint No. P/3181/2002 [Mr. M. Ibrar vs. SNGPL].

I am directed to refer to your representation No. nil, dated 10.08.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's gas meter was replaced on 4.4.2002. The Central Metering Shop tested the removed meter and reported that index seals of the meter were broken. The Agency (SNGPL) charged the complainant for 12 months (4/2001 to 3/2002) on previous consumption basis. The Wafaqi Mohtasib has rejected the complaint on the ground that the complainant's consumption during the detection period is less by 12% than that of pre-detection period. The complainant has made representation against the

Mohtasib's decision. In his representation the complainant does not explain why his consumption during detection period was less by 42% than that of pre-detection period. Thus the ground on which the Mohtasib has made the decision remains uncontested. There is thus no ground to interfere with the Mohtasib's decision.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 291/2005- Law(WM)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 26th Oct., 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 14.04.2004 in Complaint No. L/2769/2003 [Mr. Khawaja Ijaz Ahmad vs. SNGPL].

I am directed to refer to your representation No. GMBI-42(418), dated 27.04.2005, on the above subject and to say that the President has been pleased to pass the following order:-

2. Deputy Chief Billing Officer of the Agency (SNGPL) in his comments dated 18.10.2003 on the complaint stated: "The consumer/complainant applied for advance payment plan on 26.2.2003 for opting 3 years. The same was confirmed by us and the consumer was advised to deposit Rs.35,000 as per Agency's existing policy..." Thus, it was a negotiated contract by which the company agreed to give 22% rebate. The Agency does not explain why it confirmed the complainant's application for advance payment for opting three years if it had changed its policy. If it was a mistake the Agency should have returned the deposit to the complainant immediately after the discovery of the mistake. It had no power to change the terms of the contract unilaterally. The Deputy Chief Billing Officer's letter dated June 2003 addressed to the GM (Data Processing) Head Office Lahore shows that the changed policy was conveyed to the billing department only on 17.3.2003. The Agency did not react appropriately to guard the rights of the consumers from whom it had accepted advance payments for three years. This depicts its ineptitude in the discharge of its duties. There is no ground to interfere with the Mohtasib's recommendation.

3. Accordingly, the President has been pleased to reject the representation of the Agency. Agency shall give 22% rebate to all consumers from whom it received payments for three years.

No. 413/2004-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 10th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 13.03.2004 in Complaint No. F/321/2003 & H/6439/2003 [Mst. Amtul Hafeez vs. SNGPL].

I am directed to refer to your representation number nil, dated nil, on the above subject and to say that the President has been pleased to pass the following order:-

2. Although the figures of the complainant's gas meter represented cubic meters but the Agency's (SNGPL) billing section took them as cubic feet. It appears that it was a sheer mistake on the part of the Agency. The mistake continued from 1997 to 2003. The complainant's case is that the Agency's claim relating to the period beyond 3 years is time-barred. The ground is not well-founded. Article 96 of the First Schedule to the Limitation Act 1908 provides that for relief on the ground of mistake period of limitation shall be three years and the time from which period shall begin to run shall be when the mistake becomes known to the plaintiff. Thus the Agency's claim founded on the mistake, as is obvious, discovered in 2003 is within time. The Agency in its comments on the representation has offered to recover the amount based on mistake in 30 equal monthly instalments. The offer meets the ends of justice.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No.640/2004-Rep.WM(Law-I)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 12th April, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 03.06.2004 in Complaint No. H/10535/2003 [Mr. Khalid Masood Akram vs. SNGPL].

I am directed to refer to your representation No. H/10535/03, dated 7.7.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency (SNGPL) started supplying gas to Mr. Muhammad Sarwar from 30.8.2001. The first regular bill for Rs.28,668 for the period from 8/2001 was issued in April 2002. The bill was not paid. Rs.14,000 in two tranches (each of Rs.7000/-) were however paid in May and October, 2002. In March, April, May and September, 2003 the

consumer was billed to Rs.42225.19, Rs.278820.16, Rs.30602.16, and Rs.33804.47 respectively. Each bill conformed to the meter reading. The Wafaqi Mohtasib has recommended that the Agency should charge the complainant on the basis of gas consumption on 3 HM3 and 1.5 HM3 per month for winter and summer months respectively for the disputed period from September, 2001 to March 2002, March, April and September, 2003. The above recommendation follows the finding that except in the said months the consumption of gas remained quite normal i.e. mostly around 0.5 MH3.

3. The Wafaqi Mohtasib's findings are not based on any scientific analysis. The relevant question was whether the bills conformed to the consumption registered by the meter or not. If they did conform the consumer was liable to pay for the amount of gas registered by the meter unless it is proved that the meter had ceased to be correct. The Wafaqi Mohtasib had not found that during the above months the meter had ceased to be correct. There is no rule that if during any period the consumption increases the consumer is required only to pay on average consumption basis. The Wafaqi Mohtasib's findings cannot be sustained.

4. The Agency has agreed to supply the gas to Mr. Mohammad Sarwar. The complaint to the Wafaqi Mohtasib was not made by Mr. Sarwar but by Mr. Khalid Masood Akram. Prima facie the complainant had no locus standi to make the complaint. Only an aggrieved person can make a complaint to the Wafaqi Mohtasib, and in the case of grievance regarding wrong billing only the person to whom the Agency has agreed to supply the gas can be treated as an aggrieved person. The standing (locus standi) and jurisdiction are very important matters in the context of good governance, under rule of law.

3. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's recommendation dated 3.6.2004 in complaint No. H/10535/2003.

No. 519/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 10.03.2004 in Complaint No. L/2981/2003 [Mr. Miraj Din vs. SNGPL].

I am directed to refer to your representation No. GMB-1-42(1148), dated 1.6.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency's (SNGPL) case is that since the complainant uses the gas for commercial purpose it (Agency) has agreed to supply for domestic purpose therefore he is liable to pay for the gas at commercial rate. The complainant's case is that he is not

running an eatery at his house. He prepares some food at home and sells in the market (The complainant's statement before the investigating officer – para 5 of the Mohtasib's findings dated 10.3.2004 refers). In view of the complainant's statement what the Mohtasib was required to decide was: whether the use of the gas as in the manner stated by the complainant was commercial or domestic and not to draw inference from the consumption data whether the gas was being consumed for domestic purpose or for commercial purpose. There are many people in cities who prepare food at home and sell in bazaars. Whether for the purposes of charge the use of the gas by such people should be treated as commercial or domestic is a policy matter. If it is treated as domestic the facility is likely to be misused but if it is treated as commercial it may provide the Agency's officials an opportunity to intrude into the houses of the people thus violating the sanctity of home or unnecessary questioning of the vendors of home-made things in bazaar. The whole problem is tucked in the policy that gas supplied for domestic purposes and commercial purposes is charged at different rates – low rate for domestic and high rate for commercial. It may be possible for the Agency to consider the problem and to devise its some equitable solution. But, since when a facility is provided to someone he is required to avail it in strict compliance of the conditions of the facility until a new workable policy is devised by the Agency is entitled to charge the complainant at commercial rates.

3. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's findings/recommendation dated 10.03.2004 in complaint No. L/2981/2003. The Agency shall consider the matter at its policy making level within three months of the receipt of this order.

No. 878/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 26th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 06.11.2003 in Complaint No. L/02085/02 [Mr. M. Ilyas vs. SNGPL].

I am directed to refer to your representation No. nil, dated 9.10.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's meter was replaced on 10.11.2001. The removed meter was inspected by the Agency's meter shop. The shop reported:

- i. Index seals found loose.
- ii. Meter not registering gas flow due to tampered/damaged counter assembly driving dog.

On the basis of the above report the Agency (SNGPL) has charged the complainant for 183 days at his previous highest daily rate of consumption and 40% of the cost of meter. The Mohtasib has recommended that the charge shall be withdrawn. The recommendation follows the finding that the consumption before the change of meter was higher than that of the corresponding period of the previous year. The Agency has made representation against the Mohtasib's recommendation. The consumption data shows that during Sept., Oct., and Nov. 2001 the meter did not register any consumption. The Mohtasib's decision does not show how the complainant shall be charged for said months. The rate worked out by the Agency appears to be appropriate. The work sheet however shows that in addition to the amount of gas worked on the basis of highest consumption 40% further has been added as penalty. There is no support for that.

3. Accordingly, the President has been pleased to set aside the Mohtasib's recommendation dated 06.11.2003 in complaint No. L/02085/02 subject to the condition that the cost of 40% penalty (14.786 hm³) shall be excluded from the charge.

No. 612/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 08.06.2004 in Complaint No. K/1577/03 [Mr. Bashir Ahmed vs. SSGC].

I am directed to refer to your representation No. LS/Legal/04, dated 22.7.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency (SSGCL) has charged the complainant for the period from 1/2001 to 12/2003 @ of 49 MCF per month. This is an estimated charge. There is no evidence that the meter was not registering correct consumption. The only allegation that the meter's index seal was missing proves nothing. The Agency concedes that it can supply gas to the occupier of premises. If so why it asked the complainant to produce NOC from the landlord of disconnected the complainant's supply at the request of landlord? It is obvious that the Agency treated the complainant wrongfully as well as unfairly. The Mohtasib's findings/recommendations must be sustained.

3. Accordingly, the President has been pleased to reject the representation of the Agency. The Agency shall withdraw from its suit against the complainant immediately. The Mohtasib shall monitor the implementation of this order as well as his recommendations.

No. 952/2004-Rep.WM-Law
 Government of Pakistan
 Law, Justice and Human Rights Division
 Islamabad, the 16th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 13.03.2004 in Complaint No. L/01545/2003 [Mr. Asad Nazir vs. SNGPL Lahore].

I am directed to refer to your representation No. 4MBI-42(786), dated 11.11.2004, on the above subject and to say that the President has been pleased to pass the following order:—

2. For March and April 2003 the Agency (SNGPL) has charged the complainant at higher rates on the ground that the complainant had unauthorisedly enhanced the pressure of gas (from 2 Psi to 6 Psi). The Wafaqi Mohtasib has recommended that the charge which is based on the meter reader's report should be withdrawn. The Agency contends that the pressure of the complainant's supply was checked by its engineering department on 12.03.2003 and the department noted that the complainant was using gas at enhanced pressure of 6 Psi. The Agency neither produced the engineering department's report before the Mohtasib nor has enclosed with the representation.

3. Accordingly, the President has been pleased to reject the representation of the Agency.

No. 650/2004-Rep.WM(Law-I)
 Government of Pakistan
 Law, Justice and Human Rights Division
 Islamabad, the 14th March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 27.5.2004 in Complaint No. L/5624/2002 [Mr. Muhammad Nazir vs. SNGPL].

I am directed to refer to your representation GMBI-42(1457), dated 14.7.2004, on the above subject and to say that the President has been pleased to pass the following order:—

2. The complainant's meter was replaced on 20.8.2002. The old meter was tested. The meter shop reported: Counter twist title seals found loose/tampered. Meter and counter checked from inside Wear and tear of ports noticed. On the basis of the report the Agency has charged the complainant for 183 days on the basis of the complainant highest

consumption. The Mohtasib has recommended that the charge should be withdrawn. The recommendation follows the pertinent findings:

- The report does not suggest that the ports of the meter had been tampered.
 - Meter reading card does not indicate abnormality.
 - The consumption pattern is fluctuating but the complainant's business depends on order.
3. The Agency has made representation against the Mohtasib's recommendation.
 4. The Agency does not contest the Mohtasib's most crucial finding that the meter shop's report does not indicate that the meter had been tampered with. The Mohtasib's recommendation must be sustained.
 5. Accordingly, the President has been pleased to reject the representation of the Agency.

No. 641/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 8th March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 8.11.2003 in Complaint No. H/13331/2002 [Mr. Tahir Ali vs. SNGPL].

I am directed to refer to your representation IDB(WM)-2468, dated 2.7.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency's (SNGPL) case is that billing to the complainant remained suspended from April 1998 to June 2000 due to some computer problem. The Agency detected the error in July 2000 and restarted billing. The bill for the July also included bills for April 1998 to June 2000. The complainant's case is that although he did not receive computerised bills during the period from April 1998 to June 2000, but every month he used to obtain manual bill from the Agency and paid the same. The complainant does not have the copies of the paid bills. The complainant produced three manually prepared paid bills but none related to his account number. The Mohtasib has recommended that amount of the bills from April 1998 to June 2000 shall be deleted. In the Wafaqi Mohtasib's opinion the complainant paid the bills but the amount has been embezzled.
3. The Agency has made representation against the Mohtasib's findings. Comments on the representation have been filed.

4. The Mohtasib's opinion that the complainant paid the bills but the amount has been embezzled cannot be accepted. The bills are not received by the Agency. They are paid in the banks. The complainant does not have copies of the paid bills. The Agency's accounts regularly kept in the course of business do not show that the bills were issued or paid. The Mohtasib's reasoning that if the Agency was not receiving the bills why it did not disconnected the supply ignores the fact that since the computer was not preparing and issuing bills there was no record which could show that the complainant was not paying the bills and was the defaulter. The Mohtasib's findings thus, cannot be sustained.

5. Accordingly, the President has been pleased to set aside the Mohtasib's finding/recommendation dated 8.11.2003 (reaffirmed on 3.6.2004) in complaint No. H/13331/2002. However, since the Agency could not collect the bills for the period from April 1998 – June 2000 on account of its own error it will be unjust and harsh for the Agency to require the complainant to pay the accumulated bills in one step. In a number of cases, the President has decided that where the Agency could not collect bills on account of its mistake or error the arrears should be recovered in easy instalments. The total period during which the Agency could not bill the complainant is 26 months. Thus, it would be appropriate that the bills for the said 26 months are collected in 26 monthly instalments i.e. one instalment with each future current bill, if the amount has not already been recovered.

State Life Insurance Corporation

No. 586/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 18.05.2004 in Complaint No. H/03927/2002 [Mst. Majeedan vs. SLIC].

I am directed to refer to your representation No. PHS/PO/WM/REP/3927/2002, dated 13.7.2004, on the above subject and to say that the President has been pleased to pass the following order:–

2. The assured obtained life policy on 31.12.1996. He died on 27.10.2000. The Agency has avoided the contract on the ground of non-disclosure of true state of health by the assured in the proposal of insurance. The Wafaqi Mohtasib has recommended that the Agency should pay the claim. The recommendation follows the findings: "For repudiation of the death claim, the Agency has relied upon he alleged mis-statement of material facts about health. This situation is covered by section 45 of the Insurance Act, 1938. The Agency lost sight of the fact that the policy in question had run for more than

two years and for exercise of option to repudiate the death claim, it is under a legal obligation to prove the element of fraud on the part of the late policy holder. The Agency has failed to do that. This omission, therefore, does not provide any legal right to the Agency to repudiate the death claim.”

3. The Agency has made representation against the Mohtasib’s recommendation.

4. The only evidence on which the Agency has based its decision of avoiding the contract is the medical certificate dated 24.2.2001 issued by Dr. Fatima Ghafoor, Medical Officer, Sheikh Zayed Hospital Rahimyar Khan. The information the certificate contains is that the assured was treated in the Hospital from 29.8.2000 to 5.9.2000 and was diagnosed suffering from heart disease. The certificate says that the duration of ailment was almost 5 years. The Agency’s reliance on the above certificate to avoid the contract is totally wrong. The Agency could avoid the contract on the proof of two facts. One, that at the time the assured made the proposal he actually suffered from the ailment which was material and two, that at that time the assured knew that he was suffering from the ailment. The contract cannot be avoided even though the assured was actually suffering from the disease if he did not know that he suffered. The assured might be suffering from heart ailment for the last 5 years but there is no evidence that at the time he proposed policy he knew that he was suffering from such disease. The hospital record pertaining to the assured’s treatment from 29.8.2000 to 5.9.2000 too, does not indicate that the duration of his disease that had afflicted him was 5 years old and also that he knew that fact since the start of the affliction. The instances are not lacking where a person goes to a doctor with indigestion complaint. The doctor asks him since when he has had the problem. He tells him that it is for the last two years. The tests however show that he has stomach cancer since about two years. Here the person actually suffered from stomach cancer. But, he did not know that his morbidity was on account of cancer. If at any time before he was told that he suffers from cancer he gives negative answer to the question whether he suffers from cancer the contract cannot be avoided on the ground of non-disclosure because only one element (actual disease) was present and the second element (the assured knowledge) was not present. The Mohtasib’s recommendation, must be sustained.

5. Accordingly, the President has been pleased to reject the representation of the Agency. The Agency shall also pay liquidated damages to the claimant under section 118 of the Insurance Ordinance 2002.

No. 563/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 26.05.2004 in Complaint No. M/72//2002 [Ms. Suriya Begum vs. SLIC].

I am directed to refer to your representation No. PHS/PO/WM/REP/72/2002, dated 2.7.2004, on the above subject and to say that the President has been pleased to pass the following order:—

2. The assured obtained the life policy on 20.12.1998. He died on 22.3.2001. The Agency (SLIC) has repudiated claim under the policy on that ground that the assured was drug abuser at the time when he made proposal for insurance but he did not disclose the fact. The Wafaqi Mohtasib has recommended that the claim should be paid.
3. The Agency has made representation on ground that the Mohtasib's recommendation.
4. The record shows that the assured was attended in Government Hospital for Psychiatric Diseases, Lahore from 30.11.2000 to 1.01.2001. The diagnosis was: "Substance induced Psychosis". The duration of ailment as per post history given by the patient was 1-1/2 year. There is no evidence that the assured was actually treated for the ailment at any time before submitting the proposal. Post history of ailment given by the patient or those accompanying him being only a matter of opinion cannot be relied upon without objective evidence of the ailment. There is no such evidence. The Mohtasib has rightly evaluated the matter. His recommendation must be sustained.
5. Accordingly, the President has been pleased to reject the representation of the Agency. The Agency shall also pay liquidated damages to the claimant under section 118 of the Insurance Ordinance 2000.

No. DY.558/2004-Rep-WM(Law)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 9th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 26.05.2004 in Complaint No. H/12996/2002 [Ms. Faiz Begum vs. SLIC].

I am directed to refer to your representation No. PHS/PO/WM/REP/12996/2002, dated 30.6.2004, on the above subject and to say that the President has been pleased to pass the following order:—

2. The complainant's husband obtained life policy from the Agency (SLIC) on 23.12.1993. He was not regular in paying premiums. It lapses/became paid up thrice but revived. Last revival was on 2.11.2000. The assured died on 24.12.2001. The Agency has decided to pay the paid up value of the policy alongwith refund of the premium received on and after revival of policy and not the full claim on the ground that the assured did not disclose true state of his health in his proposal for revival of policy. The Agency supports its decision by the medical certificates. The Wafaqi Mohtasib has recommended that the Agency should pay the claim. The Mohtasib's recommendations are based on the findings: "A careful examination of this certificate transpires that this was neither issued by any hospital nor any clinic even Government or private because it is not on a proper letter pad and only bears the signatures of WMO Seyal Medical Centre, Multan. Therefore, this is her personal statement of general nature. No documentary proof of medical history or copies of prescription of medicines have been produced. A general statement about the deceased and non specific mention of the period is not an evidence strong enough to entitle the Agency to repudiate the death claim. The evidence relied upon by the Agency is nothing more than a hear say and does not constitute legal ground enabling the Agency to repudiate the death claim. The policy continued for almost 8 years and was revived on 28.10.2000. A subsequent recourse is an after thought of digging and tracing the documents to shift the onus of proof to the deceased who is no more alive altogether appears illogical and unjustified. This, action of the Agency does not have the support of law and amounts to mal-administration on its part."

3. The Agency has made representation against the Mohtasib's recommendation. The complainant was called upon to file comments on the representation but she has not availed the opportunity.

4. The role of the Mohtasib is to identify mal-administration. He is neither a substitute for courts nor provides appeal against agency's unfavourable decision on merits. Where the Agency's decision is based on relevant ground based on relevant evidence the Mohtasib cannot raise the question of maladministration. The grounds on which the Mohtasib has rejected the medical evidence relied upon by the Agency have no legal basis. The Mohtasib's decision cannot be sustained.

5. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's recommendation dated 26.5.2004 in complaint No. H/12996/2002. Nothing said in the Mohtasib's findings or this order shall prejudice the parties' case before the legal forum.

No. 837/2003-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 5th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against the findings of the Wafaqi Mohtasib dated 25.07.2003 in Complaint No. L/1557/2002 [Mst. Nishat Anjum vs. SLIC].

I am directed to refer to your representation No. PHS/PO/WM/REP/1557/2002, dated 17.09.2003, on the above subject and to say that the President has been pleased to pass the following order:—

2. The assured purchased life policy on 31.12.1993. He died on 23.1.2000. The Agency (SLIC) has avoided the contract on the ground that in the proposal for the purchase of the policy the assured did not give correct information regarding true state of his health. The evidence relied upon by the Agency is record of three hospitals (Shalimar Hospital, Mayo Hospital and Punjab Institute of Cardiology) pertaining to year 1999 and 2000 which shows that the assured stated that he was diabetic for the last 21/22 years. The Mohtasib has recommended that the Agency was not justified to repudiate contract on the basis of the medical record relating to the year 1990/2000 because the policy was purchased in 1993.

3. The Agency has made representation against the Mohtasib's recommendation. The complainant was called upon to furnish her comments on the representation but she has not availed the opportunity.

4. The information contained in the hospital record not only pertains to the period when the assured was admitted to the hospital but it contains admission of the assured that he suffered from diabetes during the pre-insurance period. The decision of the Agency is thus based on relevant ground and relevant evidence. And, where the decision of the Agency is based on relevant ground supported by relevant evidence it can not be questioned on ground of mal-administration. The Mohtasib's recommendation thus cannot be maintained.

5. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's recommendation dated 25.7.2003 in complaint No. L/1557/2002. The Agency shall however, repay the premiums received from the assured alongwith the bonus, if any. If the complainant would like to approach the legal forum nothing said in the Mohtasib's findings and this order shall prejudice the parties' case.

No. 286/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 23rd February, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 26.08.2003 in Complaint No. K/2744/2002 [Mst. Azra Aftab vs. SLIC].

I am directed to refer to your representation number nil, dated nil, on the above subject and to say that the President has been pleased to pass the following order:—

2. The assured obtained life policy on 16.05.2000. He died on 5.2.2002. The Agency (SLIC) has avoided the contract on the grounds that the assured gave false information regarding his state of health and occupation. The Wafaqi Mohtasib has rejected the complaint. The complainant concedes that her husband suffered from the disease not disclosed in the proposal but she contends that since he did not die on account of that disease therefore non-disclosure was not material. This view cannot be accepted. The Mohtasib has rightly rejected the complaint.

3. Accordingly, the President has been pleased to reject the representation of the complainant. Nothing said in the Mohtasib's findings or this order shall prejudice the complainant's case if she would choose to litigate for the claim before legal forum.

No. 133/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 1st March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 11.12.2003 in Complaint No. L/1277/2003 [Mst. Bashiran Bibi vs. SLIC].

I am directed to refer to your representation No. PHS.PO/WM/REP/1277/2003, dated 21.01.2004, on the above subject and to say that the President has been pleased to pass the following order:—

2. Mr. Muhammad Jamil Asghar purchased life policy from the Agency (SLIC) on 31.12.1998. He died on 02.3.2002. The Agency has avoided the contract on the ground that when the assured submitted proposal for insurance he suffered from diabetes but he did not disclose the ailment in the proposal. In support of its decision of avoidance of contract the Agency relies on hospital record. The Wafaqi Mohtasib has recommended that the Agency should pay the claim. The recommendation follows the findings that the

perusal of record indicates that at the time of commencement of the policy in the year, 1998, no deliberate mis-statement had been made by the complainant with fraudulent purposes. Under Section 80 of the Insurance Ordinance, 2000, the Agency cannot call such statement in question after two years from commencement of the policy, which was also authenticated by the Medical Officer of the Agency.

3. The Agency has made representation against the Mohtasib's recommendation. The complainant has filed written comments on the representation.

4. An issue was debated before the Mohtasib whether the assured died of the disease he failed to disclose in his proposal for insurance or due to some other cause. This issue was not relevant. Where the assured fails to disclose true state of his health in the proposal for insurance the insurer can avoid the contract any time whether the assured is alive or dead. The cause of death is not relevant to determine the issue whether avoidance of contract is authorised or not. It appears that the Mohtasib has not properly appreciated the distinction between the Agency's rights to avoid the contract within two years of the commencement of the policy and after the expiry of two years from such commencement. The universal rule is that the insurer has the right to avoid the contract if he finds that answer of any question asked from the assured in the proposal is false or untrue. Whether such question has any bearing on the contract or not is immaterial. Reference to the following passage in the Colinvaus's Law of Insurance (7th Edition 1997) is pertinent: "Insurance companies put upon applicants for life insurance the responsibility of disclosing the true state of their health or that of the life assured by asking them questions in the proposal on this matter, and by giving the assured's answers to them the force of warranties by means of a declaration in the proposal and a reference to it in the policy. By the employment of such a scheme the assured is made responsible for the absolute truth of his answers, irrespective of their materiality; if they are not true, they will afford the insurers a ground for repudiating liability on the policy, even though he gave them innocently". Some countries have, however limited the insurer's that right. In Pakistan the limitation is contained in section 80 of the Insurance Ordinance 2000 (previously section 45 of the Insurance Act, 1938). Section 80 *ibid*, so far as material, provides that no policy of life insurance shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or reference, or friend of the policy holder, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose. What section 80 *ibid* provides is that in the case of life insurance after the expiry of the period of two years from the commencement of the policy the insurer shall not have the right to avoid the contract for the reason that the assured's any answer in any report or statement

was inaccurate or false where the question and its untrue or false answer related to a material matter and the suppressed fact was also known to the assured. If Mr. Asghar suffered from diabetes as alleged by the Agency he (assured) was required to disclose. The expiry of two years did not take away the Agency's right to repudiate claim under the policy. The role of the Mohtasib is to identify mal-administration. He is not a substitute for courts. Where the Agency's claim is based on relevant ground supported by relevant evidence its decision cannot be questioned on ground of mal-administration. The issues raised before, and decided by, the Mohtasib relate to the area reserved for law courts. The Mohtasib's recommendation/findings cannot be sustained.

5. Accordingly, the President has been pleased to accept the Agency's representation, and set aside the Mohtasib's recommendation 11.12.2003 in complaint No. L/1277/03. The Agency shall refund the premium (excluding the amount paid to the broker etc.) to the complainant. Nothing said in the Mohtasib's finding or this order shall, however, prejudice the parties' case in case the complainant approaches law court.

Pakistan Telecommunication Company Ltd.

No. 391/2004-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 10th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 26.02.2004 in Complaint No. H/14489/2000 [Mr. Hussaini vs. PTCL].

I am directed to refer to your representation number nil, dated 7.4.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant had obtained the service. He is liable to pay the charges. The Agency's (PTCL) right to disconnect the service on account of non-payment of bill does not create any right in the subscriber not to pay for the use of the service during the period the Agency could have disconnected it. The Agency's right is unilateral. The Mohtasib has rightly rejected the complaint.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 299/2004-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 10th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 18.12.2003 in Complaint No. P/692/2002 [Qazi Amir Shah vs. PTCL].

I am directed to refer to your representation number nil, dated 10.3.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's assumption that SAF Games Quiz programme calls were believed to be free is not supported by evidence. There is no ground to interfere with the Wafaqi Mohtasib's findings.
3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 873/2003-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 5th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 02.08.2003 in Complaint No. H/2526/2001 [Mr. Sajjan Bhutto of. M/s Star Cable T.V. Network vs. WAPDA/LESCO

I am directed to refer to your representation number nil, dated 27.9.2003, on the above subject and to say that the President has been pleased to pass the following order:-

2. The colony where the complainant intends to provide cable television service is private property. A licence issued by the PTA does not authorise the licensee to enter private property. For providing the service in private property the licensee requires the owner's permission. The Mohtasib's recommendation cannot be sustained.
3. Accordingly, the President has been pleased to set aside the Mohtasib's recommendation dated 2.8.2003 in complaint No. H/2526/2001.

No. DY.569/2004-Rep-WM(Law)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 9th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 22.05.2004 in Complaint No. L/4476/2002 [Mr. Qasim Yar Tiwana vs. PTCL].

I am directed to refer to your representation number nil, dated 29.6.2004, on the above subject and to say that the President of Pakistan has been pleased to pass the following order:-

2. Telephone No. 6650694 was installed in the name of the owner of the premises which he/she allowed the tenant to use. Thus he/she is liable to pay all charges in respect thereof. Other two telephones connections i.e. 6669946 and 6672289 were obtained by the tenant in his own name. The provision of telephone connectivity is personal contract between the provider and the user of the service. Except where the landlord has specially warranted to pay the charges of the service provided to his tenant, no liability in respect thereof shifts to the landlord. The Agency's (PTCL) contention that the complainant is liable to pay at least Rs.30,000 which he/she retained as security for paying utility bills is misconceived. Telephone service is not included in utilities. Utilities are water, electricity and gas. The Mohtasib's decision must be sustained.
3. Accordingly, the President has been pleased to reject the representation of the Agency.

No. 778/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 9th March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 23.07.2004 in Complaint No. H/7109/2003 [Maryam Qayyum vs. PTCL].

I am directed to refer to your representation number nil, dated 16.09.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. This may be one of the cases where both the complainant as well as the Agency (PTCL) is innocent. The complainant is innocent in the sense that she did not make calls for which she has been billed. The Agency is innocent in the sense that it provided the service at call and if it is directed not to receive the charges it would suffer loss. In such cases the rule is that he who could prevent injury or loss to other shall bear the loss. The

complainant could prevent misuse of her telephone by using code bar facility. She failed in that regard. Thus, she cannot avoid responsibility. The Mohtasib's approach to the matter is correct.

3. Accordingly, the President has been pleased to reject the representation of the complainant.

No. 55/2004-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 3rd January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against the findings of the Wafaqi Mohtasib dated 16.11.2003 in Complaint No. L/1039/2002 [Mrs. Attiqa Usman vs. PTCL].

I am directed to refer to your representation number nil, dated 20.02.2002, on the above subject and to say that the President has been pleased to pass the following order:-

“The complainant's husband subscribed the Agency's (PTCL) telephone service. He died on 4.8.1994. A sum of Rs.20,205 is payable by the subscriber to the Agency. The Agency has required the complainant to pay the subscription charges. On the complainant's complaint the Mohtasib has formed the opinion that the complainant is not liable to pay the subscription her husband owed to the Agency. The Mohtasib has based his finding on the meanings assigned to the subscriber in the Agency's letter dated 14.11.2001.

2. The Agency has made representation against the Mohtasib's finding.

3. The Agency contends that its claim against the complainant is in respect of her husband's liability as heir of the subscriber. She is not a third person and her liability is not on account of being owner of the premises where service was provided to her husband as referred to in the Agency's letter dated 14.11.2001. The Agency's contention appears to be indefensible. All that the Agency's letter dated 14.11.2001 says is that the person liable to pay telephone charges shall be the person who subscribed the service whether an individual, a partnership, etc., and not the owner of the premises where the service is provided. The letter cannot be read to mean that the subscriber's liability regarding payment of subscription shall not devolve on his successors.

4. Accordingly, the President has been pleased to accept the representation of the Agency, and set aside the Mohtasib's findings dated 16.11.2003 in complaint No. L/1039/2002.

No. 322/2005-Law(WM)
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 24th October, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 28.03.2005 in Complaint No. P/3298/2004 [Qazi Ahmed Shah vs. PTCL].

I am directed to refer to your representation No. nil, dated 27.04.2005, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant's complaint has been rejected for the reasons that he failed to guard against misuse of his telephone by not applying code barring facility. He says nothing about that. He may be innocent that his telephone was misused by someone out the Agency (PTCL) is also innocent that its system was used through the complainant's telephone. In such matters the governing principle is that whosoever one of two innocent persons must suffer by the acts of a third, he who enabled such person to occasion the loss must sustain it. In this case the complainant enabled the call maker(s) to occasion the loss. Thus, he must sustain it.
3. Accordingly, the President has been pleased to reject the representation of the complainant in complaint No. P/3298/04.

No. 541/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 1st March, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 24.04.2004 in Complaint No. L/4429/2002 [Mr. Amer Raheel vs. PTCL].

I am directed to refer to your representation number nil, dated 15.6.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The Agency (PTCL) has disconnected the complainant's telephone on the ground that his father and mother are the Agency's defaulter in respect of their three telephones (already disconnected) obtained in the same premises. The Wafaqi Mohtasib has found that the Agency cannot disconnect son's telephone on account of parents' default.

3. The Agency has made representation against the Mohtasib's findings. The complainant was called upon to file comments on the representation but he has not availed the opportunity.

4. In its comments the Agency stated that the complainant had obtained telephone connection on the basis of an unreal tenancy allegedly obtained from his mother in respect of the premises where his parents had defaulted. The complainant did not contest this allegation. The Agency's allegation remains uncontested. If the very basis on which the complainant succeeded to obtain telephone connectivity in the house of his parents was fake and unreal the Agency was quite justified to avoid the contract of providing the connectivity. It is not a case which raises the question: Whether the Agency can or cannot disconnect the telephone of the tenant if the landlord, or of the landlord if the tenant, makes default in payment of bills for the telephone obtained in the same premises.

5. Accordingly, the President has been pleased to accept the Agency's representation, and set aside the Mohtasib's recommendation 24.4.2004 in complaint No. L/4429/02.

National Electric Power Regulatory Authority

No. 132/2004-Rep(WM)Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 10th January, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 16.12.2003 in Complaint No. F/83/2003 [M/s. Tayyab Textile Mills Pvt. vs. WAPDA/FESCO].

I am directed to refer to your representation No. 20612, dated 28.1.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. M/s Tayyab Textile Mills Ltd. Are getting supply of electric power from the Agency (FESCO) through the line financed by them (dedicated line). They want supply from the line for their sister company (Sarfaraz Textile Mills) but the Agency has declined to give the supply. Their complaint is that the Agency's decision is unjust and amounts to mal-administration. Their other complaint is that the Agency is unlawfully planning to supply power from their dedicated line to M/s Iqbal Rice Mills. The Mohtasib has found that the conductor of the dedicated line has a capacity to carry 660 AMPS which is equal to 11317 KW. The requirement of all the 3 units of the complainant would come to a total of 268 AMPS which would be equal of 4750 KW. The Iqbal Rice Mills has been getting its supply initially from Raza Feeder. If the Agency upgrades, the Raza

Feeder at relatively a very small cost, the additional requirement of M/s Iqbal Rice Mills can very easily be met from the feeder. The length of the independent dedicated feeder is more than 12 KM. The problem of low voltage can very easily be solved by installation of 2 x 450 KYAR capacitors. On the above findings the Mohtasib has recommended that:

- (i) the complainant be provided connection to its sister concern M/s Sarfraz Textiles Mills from its independent dedicated feeder;
- (ii) the demand notice No. 4330 dated 27.6.2003 should be withdrawn/cancelled;
- (iii) a fresh demand note covering cost etc of connection from the independent/dedicated Feeder should be prepared/issued to the complainant;
- (iv) M/s Iqbal Rice Mills should be provided energy from the Raza Feeder and Raza Feeder should be upgraded if required; and

3. It is an established rule of law and the Mohtasib does not provide appeal against the Agency's decision. His role is to identify mal-administration which connotes some misbehaviour such as delay, inattention, ineptitude, bias, corrupt motive etc. A bona fide decision does not amount to mal-administration even if it be wrong. The matter raised in the complaint pertains to supply of electric power which is regulated by the Regulation, Transmission and Distribution of Electric Power Act, 1997 and any complaint with regard to the supply of electric power is determinable by the NEPRA (the Authority) under section 39 of the Act 1997. It is appropriate that the matter raised in the complaint is referred to and decided by the Authority.

4. Accordingly, the President has been pleased to direct the Mohtasib to transfer the complaint to the authority for consideration and decision. The Authority may require the parties to fulfil its codal formalities such as payment of fee etc., if any. Also, nothing contained in the Mohtasib's findings/recommendation shall prejudice the parties' case before the Authority. The Agency shall not, however, act contrary to the Mohtasib's recommendation until the Authority has taken cognisance of the matter. The Authority may, after it has taken cognisance of the complaint, make such ad interim order as it may, keeping in view the facts and circumstances of the case, deem appropriate.

No. 852/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 28th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 13.09.2003 in Complaint No. L/3810/02/4059 [Mr. Muhammad Ibrahim vs. WAPDA/LESCO].

I am directed to refer to your representation No. nil, dated 15.10.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. The complainant contends that he has been discriminated against by the Agency (LESCO) in not supplying electric power to him. Such complaints are determinable by the National Electric Power Regulatory Authority under section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997. The complainant is advised to send his complaint to the National Electric Power Regulatory Authority, Islamabad.

3. Accordingly, the President has been pleased to approve para 2.

No. 940/2004-Rep.WM-Law
Government of Pakistan
Law, Justice and Human Rights Division
Islamabad, the 27th May, 2005

Subject: Representation under Article 32 of P.O. 1 of 1983 against findings of the Wafaqi Mohtasib (Ombudsman) dated 14.10.2004 in Complaint No. H/7874/02 [Mr. Abdul Hameed vs. WAPDA/IESCO].

I am directed to refer to your representation No. nil, dated 8.11.2004, on the above subject and to say that the President has been pleased to pass the following order:-

2. By its contents and nature the grievance expressed in the complaint is determinable by the NEPRA under section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997. The complainant is advised to make complaint to National Electric Power Regulatory Authority, Islamabad.

3. Accordingly, the President has been pleased to approve para 2.

CHAPTER 11

Letters of Thanks

In quite a few cases, on provision of relief, the complainants take the trouble of acknowledging it through letters of expression of their gratitude to the Office of the Wafaqi Mohtasib. Reproduced below, in extenso, and exactly as they were penned, are some such letters.

CHAPTER 12

Conclusion: The Issue of Jurisdiction of the Wafaqi Mohtasib

The performance of the Office of the Wafaqi Mohtasib over the four-year period (2002 to 2005) has been satisfactory in terms of: (i) institution and disposal of complaints; (ii) the restriction of the number of pending complaints to just those registered in the current and preceding calendar years; (iii) the progressive reduction of the number of pending complaints, both in absolute and percentage terms; (iv) reduction in the time profile of decided complaints; (v) the reduction in the number of annual representations to the President under Article 32 of P.O. 1 of 1983 as a percentage of the decided cases during the year; and (vi) the increase in the number of such representations rejected by the President.

2. Despite the achievements referred to in the foregoing paragraph the issue of the curtailment of the jurisdiction of the Wafaqi Mohtasib's Office as a consequence of certain developments needs to be highlighted.

3. From its inception in 1983 the jurisdiction of the Office extended to complaints of 'mal-administration' against all 'Agencies' of the Federal Government. Over the years this has progressively been curtailed on account of: (i) the establishment of offices of 'Specialty Ombudsmen' through legislation; (ii) by legislation relating to certain Agencies of the Federal Government in terms of which 'Authorities' to exclusively hear complaints against them have been established; and (iii) the privatisation policy of the Federal Government under which its public sector agencies, on total privatisation or disinvestment of management shares, revert to the private sector and, therefore, get to be excluded from the definition of an 'Agency' as contained in P.O. 1 of 1983 and consequentially from the jurisdiction of the Wafaqi Mohtasib.

4. The ‘Specialty Ombudsmen’ are: (i) the Federal Tax Ombudsman in respect of complaints relating to matters of taxation; (ii) the Banking Ombudsman in respect of complaints against all banks, whether in the private or the public sector; and (iii) the Insurance Ombudsman for complaints against insurance companies whether in the private or public sector.

5. In terms of the ‘Authorities’ referred to in paragraph 2(ii) above these are: (a) the Oil and Gas Regulatory Authority (OGRA) established in terms of the Oil and Gas Regulatory Authority Ordinance, 2002 (Ordinance XVII of 2002); (b) the National Electric Power Regulatory Authority (NEPRA) established under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997); and (c) the Pakistan Electronic Media Regulatory Authority (PEMRA) established under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002.

6. Under the privatisation policy of the Government a number of public sector organisations have already been privatised while such other major entities as Pakistan Steel Mills Corporation, the Karachi Electric Supply Corporation and the Pakistan Telecommunication Corporation are on the anvil. While the complaints against the Karachi Electric Supply Corporation have already been entrusted to NEPRA, as discussed earlier in this Report, the privatisation of the Steel Mills and the PTCL would further affect the number of complaints eligible for registration with the Wafaqi Mohtasib. In this context it is essential to underscore the importance of the creation of a statutory body under some legislation for adjudicating the complaints of aggrieved citizens against these organisations before the hand-over to the private sector is effected as otherwise the citizens would be left with no forum to approach other than the law courts.

7. The establishment of ‘Specialty Ombudsmen’ and ‘Specialised Authorities’ to take care of the complaints of consumers and clientele against mal-administration in their respective fields is in accordance with the world-wide trend of increasing specialisation and cannot be taken exception to. However, it is necessary to flag the issue that the jurisdiction of the Office of the Wafaqi Mohtasib in the context of its existing capacity and expertise, built-up over the years, of handling thousands of complaints annually, would need to be subjected to a critical review by the Government so as to bring within its purview the entertainment of complaints against organisations against which the private citizens have at the moment no recourse to seek redress of grievances other than the courts of law which, of necessity, is a time-consuming and costly process.

Annexes

Annex-I

Regulation 23(1) of Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003

“23. Completion of Investigation— (1) The investigation of a complaint shall, with the approval of the Mohtasib, be closed when it is found that—

- (a) the Agency alleged to have committed mal-administration does not specifically fall within the jurisdiction of the Mohtasib; or
- (b) the Agency is not at fault as a particular procedure has to be adopted or formalities have to be followed by the complainant for redress of his grievance(s); or
- (c) the complainant fails to furnish the necessary information or supply relevant documents, or does not respond despite reminders, or fails to attend hearings despite notices and it is not possible to decide the complaint on the basis of the available record; or
- (d) the relief had already been provided before the complaint was lodged and the complainant confirms the redress of his grievance(s); or
- (e) the complainant was entitled to relief, or partial relief, and the Agency has accorded this after the complaint was lodged; or
- (f) the Agency during the hearing of the complaint or its processing undertakes to provide the relief sought; or
- (g) the complainant is satisfied with the report submitted by the Agency or does not wish to pursue the case any further or withdraws the complaint; or
- (h) the complainant and the representative of the Agency mutually agree on the redress of the grievance(s) through consent findings; or
- (i) the subject matter of the complaint does not fall within the purview of P.O. No. 1 of 1983; or
- (j) the subject matter of the complaint was, or has become, *sub-judice* before a court of competent jurisdiction; or

- (k) the complaint concerns matters relating to the Agency in which the complainant is or has been working and the grievance relates to his service therein; or
- (l) the complaint is time barred as it was made more than three months from the day on which the complainant first came to know of the matter and there are no special circumstances to condone the delay; or
- (m) the complaint is premature as the cause of action has not yet arisen; or
- (n) the complaint does not disclose any cause of action to justify investigation; or
- (o) the subject matter of the complaint is the same as that already disposed of by earlier findings; or
- (p) the original findings in respect of which the implementation petition has been moved have already been implemented; or the reconsideration petition filed by the Agency under Article 11(2) is pending consideration by this Office; or the Agency has, under Article 32, made a representation to the President.
- (q) the complaint involves examination of witnesses, detailed interpretation of laws, rules, regulations or different clauses of contracts and their inter-se relationship for which the proper forum is a court of competent jurisdiction and not this Office; or
- (r) the facts of the case are disputed by the parties and to establish the correct position requires a detailed examination of both documentary and oral evidence, and its assessment for which the proper forum is a court of competent jurisdiction and not this Office; or
- (s) the subject matter of the complaint has already been adjudicated by a Court, Tribunal or a Board of competent jurisdiction.
- (t) the complaint is not accompanied by WMS Form "A" or a solemn affirmation prescribed by regulation 3(4).
- (u) the original findings, in respect of which the implementation petition has been moved, have been set aside by the President in accepting the representation of the Agency under Article 32.
- (v) the complaint has been made by a person who is not an aggrieved person;

- (w) the complaint is anonymous or pseudonymous.
- (x) the Agency is not at fault as the redress of the grievance of the complainant by it has to follow an action to be taken by another Agency to which a Reference for the purpose has been made;
- (y) a re-consideration petition filed after the expiry of the time-frame indicated in the findings for implementation of the recommendations, or intimation of reasons for not doing so, in terms of Regulation 11(2) of P.O. 1 of 1983, and there are no special circumstances to condone the delay, shall be closed as being time-barred.
- (z) it warrants closure for a valid reason not covered by any of the preceding clauses.”

Annex-II**WAFAQI MOHTASIB (OMBUDSMAN)'S SECRETARIAT****CLOSURE FINDINGS**

Complaint No: _____

Date of Registration: _____

Name & Address of the Complainant: _____

Name of the Agency: _____

Brief Subject: _____

Name of the Investigating Officer: _____

TEXT

Note: This should include the essence of the complaint, the prayer of the complainant, response of the Agency, wherever required, and the grounds for closure of the complaint which, in the case of want of jurisdiction, should be with reference to the relevant Article of P.O. No. 1 of 1983, i.e. Article 2(1), Article 9(1)(a)(b)(c), Article 9(2), Article 10(2) and (3) and to the relevant provision of Regulation 24(1) of the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003. The concluding paragraph should relate to soliciting the approval of the Honourable Wafaqi Mohtasib to close further investigation into the complaint.

{Signature of Investigating Officer}

Date:

Station:

Annex-III**WAFAQI MOHTASIB (OMBUDSMAN)'S SECRETARIAT****F I N D I N G S**

1. Complaint Number: _____
2. Date of Registration: _____
3. Name & Address of the Complainant: _____

4. Name of the Agency Complained Against: _____
5. Name of the Investigating Officer: _____
- 6.* Subject of Complaint: _____

THE COMPLAINT

This part should specifically contain the grievance of the complainant and the relief sought. All what the complainant has said should not be recorded. Only a gist of the main points should be reflected. This may be done either in running form or in numbered sub-paragraphs, the objective being to bring out the facts clearly and succinctly. Any law, regulation, rule or instruction, if specifically mentioned by the complainant, should be indicated. The specific relief sought by the complainant should be recorded in his language. If, however, the relief sought is couched in general terms, then its most accurate meaning and intent should be noted.

* If a non-Implementation petition mention as such in front of this.

REPORT OF THE AGENCY

If the Agency/Department confirms all or some facts stated by the complainant then only say that it 'confirms' such and such facts. If it, however, refutes any of these facts or brings to light new facts, then these should be listed separately. In addition if it refers to a specific law, rule, regulation or instruction on which it wants to rely in support of its contention, then this must be noted clearly.

COMPLAINANT'S REJOINDER

Complainants tend to be repetitive in their rejoinders. Therefore, only the new points, if any, may be recorded. If there are no new points then it would suffice to say that "the complainant has nothing to add to his complaint" or "the complainant has reiterated the position indicated in his complaint."

POINTS AT ISSUE

At this stage it is important that the points which need to be examined in the light of the complainant's stand and the response of the Agency/Department should be listed. These are points of fact and law which must be resolved to accept the version of one or the other party, in whole or in part, and to be able to arrive at the Findings and, flowing from them, the Recommendations. These points of fact and law should, preferably, be listed very briefly, in the form of sub-paragraphs, and kept in mind when conducting the hearing(s) and subsequently when recording the Findings / Recommendations.

HEARING PROCEEDINGS

The purpose of hearing(s) is to enable the Investigating Officer to clear his doubts in respect of points at issue which remain un-resolved through correspondence and to enable the parties to reach an agreement, if possible. Mutual agreement or undertaking given by the parties should be recorded and signed by them. Each party should be allowed to say whatever it wants to but irrelevant details may be tactfully discouraged. At the end of the hearing the versions of both parties must be recorded in their presence to ensure that all points made by each have been recorded to their satisfaction. No law point or fact claimed on the basis of documentary evidence should be accepted without the relevant document being produced by the party which wants to rely on it.

FINDINGS

Findings should be based on and flow from an analysis of the facts of the case in the light of law, rules, regulations and instructions applicable to it and related to the pleadings of the complainant and the stand taken by the Agency. They should be brief and

to the point and couched in moderate language. Facts arrived at and points relating to law, regulations, rules and instructions admitted as applicable must be clearly recorded to show the correct position in the circumstances of the case.

RECOMMENDATIONS FOR IMPLEMENTATION

If “mal-administration” is established, the applicable portion of Article 2(2)(i) or (ii) of President’s Order No. 1 of 1983, should be referred to so as to indicate its nature. The recommended relief to the Complainant should be clearly and un-ambiguously specified. If no “mal-administration” is established the complaint should be rejected and the case closed. However, recommendations of a general nature, if warranted by the circumstances of the case, may be recorded. The concluding paragraph, where relief has been recommended, should always be to the effect of requiring the Agency to implement the recommendations within a specific time period or to inform the Wafaqi Mohtasib of its reasons for non-compliance in terms of Article-11(2) of the President’s Order No. 1 of 1983.

Wafaqi Mohtasib (Onbudsman)

Dated:_____

Annex-IV**WAFAQI MOHTASIB (OMBUDSMAN)'S SECRETARIAT****REVISED FINDINGS**

- i No. of Original Complaint : _____
- ii Date of Registration : _____
- iii Name and Address of the Complainant : _____
- iv Name of the Agency : _____
- v Name and Designation of the Investigating Officer : _____
- vi Subject of the Original Complaint : _____
- vii Date of Findings in Original Complaint : _____
- viii Date of Registration of Reconsideration Petition by the Agency : _____
- ix Name & Designation of the Investigating Officer, if different from (v) : _____

GIST OF ORIGINAL FINDINGS / RECOMMENDATIONS

This portion should, as the title indicates, contain a gist of the Findings in the original complaint and the Recommendations for Implementation flowing therefrom.

REASONS FOR RECONSIDERATION

2. Under this should be indicated, in clear and concise terms, the reasons advanced by the Agency for not complying with the recommendations and desiring an alteration, modification, amendment or recall of the original recommendations. Only new points of

facts or law raised by the Agency to be given. Where indicated by the Agency, the extent of the alteration, modification or amendment should be clearly spelled out.

RESPONSE OF THE COMPLAINANT

3. Where the reconsideration petition is filed on the basis of an order (findings) made on a complaint, an opportunity of being heard must be afforded to the complainant under Article 11(2-A) as laid down in Head Office Circular No. HWM(01) (Hearing Notice Complainant) dated 27.11.2002 with which the prescribed format for the purpose was circulated. It must be ensured that the requirement of a notice to the complainant as required under Regulation 26(1) of the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003 in the prescribed format is complied with and an opportunity provided to the complainant for putting in his response before the hearing proceedings are undertaken. The response of the complainant, if provided in writing, should be clearly and concisely indicated without necessarily repeating it verbatim.

POINTS AT ISSUE

4. The point(s) at issue should be “case specific” and not “generic” and must relate to whether the reasons advanced by the Agency for not complying with the recommendations, warrant any alteration, modification, amendment or recall of the original recommendations and, if so, to what extent?

HEARING PROCEEDINGS

5. This para should contain the gist of the pleadings of both parties in the hearings, relating to their respective stands and should, as far as possible, be confined to the points or issues raised in the reconsideration petition and, wherever provided, the written response of the complainant.

REVISED FINDINGS

6. These should be limited to the position emerging on the points at issue from the reconsideration petition, the response in writing, if any, of the complainant and the substance of the hearing proceedings, and specifically indicate the extent to which, if any, the original findings need to be, altered, modified, amended or recalled. If no ground has been established for any change in or recall of the original findings, they should be upheld, the reconsideration petition rejected and the Agency asked to implement them within the originally indicated time frame to commence from the date of receipt of copy of the revised findings. If the original findings are to be changed or recalled the conclusion as such should be mentioned here leaving the exact nature and specifics of the final recommendations to be indicated under the next caption.

FINAL RECOMMENDATIONS FOR IMPLEMENTATION

7. These should flow from the findings and be indicated in specific, clear and unambiguous terms for implementation by the Agency within a specified time frame. The concluding part should specify that in case the Agency continues to be aggrieved by these final recommendations it may, if it so desires, prefer a representation to the President under Article 32 of P.O. No. 1 of 1983, within thirty days of the receipt of a copy of the final recommendations.

Wafaqi Mohtasib (Ombudsman)

Dated: _____

Annex-V**WAFAQI MOHTASIB (OMBUDSMAN)'S SECRETARIAT ISLAMABAD****RECTIFIED FINDINGS**

- | | | | |
|------|---|---|-------|
| i | <i>No. of original Complaint</i> | : | _____ |
| ii | <i>Date of Registration</i> | : | _____ |
| iii | <i>Name and Address of the Complainant</i> | : | _____ |
| iv | <i>Name of the Agency complained against</i> | : | _____ |
| v | <i>Name and Designation of the Investigating Officer</i> | : | _____ |
| vi | <i>Subject of the Original Complaint</i> | : | _____ |
| vii | <i>Date of Findings in original complaint</i> | : | _____ |
| viii | <i>Date of Supplementary Complaint</i> | : | _____ |
| ix | <i>Name & Designation of the Investigating Officer, if different from (v)</i> | : | _____ |

**THE ERROR(S), MISTAKE(S) MISREPRESENTATION
REQUIRING RECTIFICATION**

This part should briefly mention the typographical errors, mistakes or misrepresentation requiring correction and rectification with reasons.

COMMENTS OF COMPLAINANT OR AGENCY (IF NEEDED)

Such comments may not be needed in every case and, therefore, should be called for only when required on account of the likely impact of the correction or rectification on the earlier Findings and Recommendations.

HEARING PROCEEDINGS

Hearing should be held only where deemed appropriate, otherwise the matter should be considered on the basis of the record.

RECTIFIED FINDINGS

The position should be assessed to determine whether correction or rectification of error(s), mistake(s) or misrepresentation is warranted and, if so, its likely impact on the earlier Findings and Recommendations in the original complaint.

ORDERS /RECOMMENDATIONS FOR RECTIFICATION OF EARLIER FINDINGS

Where the Findings indicate that only correction of errors and mistakes in factual data is required, this may be directed to be done.

Where, however, on the basis of the required correction of the factual data, it is proposed to consequentially modify the original Findings in respect of the “Recommendations for Implementation”, this should be in the form of recommending the rectification of the earlier “Recommendations”, to the indicated extent.

Wafaqi Mohtasib (Ombudsman)

Dated _____

Annex–VI**Executive Summary of the Study on the Procedures for
Reimbursement of Expenses Incurred by
Retired Government Servants on Account of
Hospitalization and Medicines****Executive Summary*****Introduction***

The Federal Government Employees and their families are entitled to free medical treatment under the Federal Services Medical Attendance Rules (FSMAR) 1990. There have been considerable number of complaints, especially from retired government servants regarding the cumbersome and time consuming procedures prescribed by the Health Division for re-imburement of expenses incurred on hospitalization and medicines. The retired government servants, because of their meagre resources and old age could ill afford the expenses involved and effort required in moving between various organizations of the government for getting the formalities completed. Taking *suo moto* notice of the predicament of these retired employees, who are one of the most vulnerable segments of the society, a study was instituted to examine the existing rules, procedures and practices to make them more efficient both for the government and the employees.

Discrepancies/ Problems relating to Rules, Instructions and Procedures

2. The examination and analysis of the existing rules, procedures and practices governing the re-imburement of medical expenses revealed the following discrepancies/problems/anomalies:

- (i) The Federal Services Medical Attendance Rules (FSMAR) 1990, included Military hospitals and hospitals run by autonomous organizations in the definition of authorized hospitals for free treatment. However, in practice such hospitals did not provide the facility.
- (ii) The FSMAR 1990 permitted re-imburement of medical expenses to employees in grades 1-15 while instructions of the Ministry of Finance disallowed the facility for outdoor treatment and prescribed a Medical Allowance.
- (iii) The Medical Allowance for grades 1-15 was inadequate to meet the expenses incurred on certain chronic/ life endangering diseases.

- (iv) Budget provision for re-imburement of medical expenses of retired government servants was woefully inadequate.
- (v) Centralization of verification/ approval of medical re-imburement claims in the Health Division led to considerable delays.
- (vi) Medicines were not available in some federal government hospitals even for patients in ITC/CCU/Wards.
- (vii) There was no prescribed criteria for local purchase of medicines for entitled outdoor patients. Some times local purchase is resorted to for non-entitled patients while entitled patients were refused. The extent of local purchase also varies from hospital to hospital.
- (viii) There is no exclusive hospital for treatment of federal government servants. All such hospitals treat both entitled and non-entitled patients and available medicines are provided to both. This results in extra strain on the hospital resources as well as unmanageable pressure on the doctors.
- (ix) Medicines are prescribed for extremely short durations even for chronic diseases resulting in frequent re-imburement claims and visits to the hospital.
- (x) Guidelines prescribed by the Health Division, laying down procedures for re-imburement are cumbersome, time consuming and not in accordance with the spirit of FSMAR 1990.
- (xi) There are no uniform procedures for verification of claims in the hospitals who have prescribed their own procedures which are unnecessarily lengthy. (Pakistan Institute of Medical Sciences requires signatures of five doctors/ pharmacists/ officials).
- (xii) There is considerable inefficiency in handling of claims in the Administrative Divisions/ Health Division and the AGPR leading to avoidable delays.
- (xiii) Action is not taken against government servants/prescribing doctors found involved in preferring/verifying bogus re-imburement claims.

Short term Recommendations

- (i) The FSMAR 1990 should be amended to remove “Military Hospitals” from the definition of government hospitals. However, these hospitals should continue to remain as referral hospitals for the purpose of reimbursement of medical expenses.

- (ii) All hospitals run by Federal Government autonomous bodies should be instructed to provide free indoor/outdoor treatment to retired government employees (without a reference letter) except for provision of medicines which should be reimbursable on production of re-imburement proforma verified by a designated doctor of the hospital. An amendment to this effect be made in the FSMAR 1990.
- (iii) The FSMAR 1990 should be amended to exclude serving employees in grades 1-15 for entitlement of free outdoor treatment, excluding certain specified diseases/ medicines.
- (iv) In case of chronic diseases requiring expensive treatment/ medicines, employees in grades 1-15 should be allowed re-imburement of cost of such treatment/ medicines. The Ministry of Health should prepare and notify a list of such diseases/treatments. A corresponding amendment should also be made in the FSMAR 1990.
- (v) Total budget provision for re-imburement of medical expenses of retired federal government employees should atleast be calculated on the basis of the monthly medical allowance sanctioned for employees in grades 1-15, by the Ministry of Finance.
- (vi) Budget provision of Federal Government Hospitals for Medicines/ Supplies should be suitably increased keeping in view the number of facilities provided and patients attended.
- (vii) As cost of medicines has no relevance to the verification process of re-imburement claims, instead of putting an upper limit of Rs.30,000/- per annum on the sanctioning authority of individual Ministries/Divisions for verification of such claims, the function should be completely decentralized to the respective Ministries/Divisions. The Health Division can, however, clearly prescribe the verification requirements of such claims in pursuance of its regulatory function.
- (viii) Federal government hospitals should be instructed by the Health Division to provide all medicines/medical supplies to indoor patients as well as those in the ITC/CCU/ICU through the hospital stocks or through local purchase. No such patient should be required to purchase medicines/ medical supplies and prefer a re-imburement claim.
- (ix) All federal government hospitals should be permitted local purchase of medicines upto 20% of the medicines budget which should be provided to entitled patients in case of non-availability of medicines in the hospital stocks. Preference in this regard should be given to retired

government servants. At least 70% of the local purchase budget should be earmarked for the retired government servants. The Health Division should issue instructions to all federal government hospitals accordingly. Detailed record of all local purchases made along with identification of the patients, should be maintained. There should be no local purchase for non-entitled patients. Discretionary authority for local purchase should be curtailed.

- (x) In the absence of any exclusive hospital for the treatment of federal government servants the Health Division and the federal government hospitals need to lay down detailed procedures for provision of medical treatment to entitled and non-entitled patients. Separate colour coded prescription chits could be used for entitled and non-entitled patients. There should also be separate pharmacies for entitled and non-entitled patients. The pharmacy for non-entitled patients should provide medicines for common ailments only. The hospital should notify a formulary of medicines to be provided to non-entitled patients.
- (xi) In case of diseases requiring long term treatment where efficacy of prescribed medicines has been established, authorized medical attendants should be permitted to prescribe medicines for longer periods exceeding 15 days.
- (xii) As rule 3(2) of FSMAR 1990 requires a medical certificate only from the authorized medical attendant for re-imburement of claims, the Health Division's instructions for countersignatures of heads of hospitals on the claim proformas should be amended to exclude this requirement. The verification process should be decentralized to the respective heads of departments within the hospitals in case of prescription written by medical officers or other lower level doctors.
- (xiii) The verification process in PIMS and the FGSH should not require any counter-signatures of the Pharmacist/Chief Pharmacist or any other designated doctor after the pharmacy certifies with a "not in store" stamp that the prescribed medicines are not available. The verification of the respective heads of departments should suffice for admissibility of claim. A flow chart of the proposed re-imburement procedure is at Annex XIII.
- (xiv) The administrative division of the government servant and the Health Division should issue a proper receipt on receipt of a claim. Record of all received claims along with latest position regarding their processing should be maintained separately for each government servant.

- (xv) Time limits of not more than 7 days should be prescribed for processing re-imburement claims in the administrative division. Similar time limits may be prescribed for processing the claim in the Health Division and the AGPR.
- (xvi) Objections if any, raised on the claims should be conveyed immediately to the government servant with the approval of the next higher authority. Any delays on this account should entail an explanation of the concerned official.
- (xvii) On detection of a bogus claim during the process of verification, action under the efficiency and discipline rules should invariably be initiated not only against the government servant but also against the prescribing doctor. In such cases retired government servants may be debarred from the facility of free medical treatment for a period of one year. Instructions to this effect may be issued by the Health Division besides making necessary amendments in the FSMAR 1990.
- (xviii) Reimbursement cheques should be dispatched by the administrative division/ Health Division directly to the concerned government servant through Registered Post or Courier Service.

Long term Recommendations

In order to resolve the problems encountered in the provision of free medical treatment to government servants on a permanent basis the following recommendations are made:

- (i) One existing federal government hospital should exclusively be designated for treatment of Federal Government Servants at Islamabad where the bulk of Federal Government Servants are located. In the case of Provincial Capitals the Health Ministry should examine the feasibility of establishing small hospitals in each city meant exclusively for Federal Government Servants. Meanwhile, the existing Federal Government Medical Centres, where ever existing should be exclusively reserved for Federal Government Servants. No non-entitled patients should be allowed treatment in such hospitals/medical centres.
- (ii) In the hospitals designated for treatment of federal government servants all medicines/ supplies should be provided through the hospital stocks or through local purchase.
- (iii) After designation of hospitals for exclusive treatment of Federal Government Servants, re-imburement of medical claims may be

confined to places where there are no federal government hospitals so designated or for treatment allowed from hospitals other than the designated federal government hospitals/Medical Centres.

- (iv) At places where there are no federal government hospitals/dispensaries, the federal government may make direct arrangements with provincial government hospitals for providing free medical treatment to retired federal government servants.

Annex-VII**Findings in Complaint No. Reg.H/5923/05 dated 31.12.2005****WAFAQI MOHTASIB (OMBUDSMAN)'S SECRETARIAT****F I N D I N G S**

Complaint Number	:	Reg.H/5923/05
Date of Registration	:	22.07.2005
Name and Address of the Complainant	:	Maulvi Nabi Bakhsh S/o Ghulam Qadar R/o Mohallah Sialwala Taunsa Sharif, District Dera Ghazi Khan
Name of the Agency Complained Against	:	OGRA
Name of the Investigating Officer	:	Shaukat Hussain, Federal Secretary (Rtd)/Adviser
Subject of Complaint	:	FAILURE TO TAKE ACTION ON COMPLAINT AGAINST SNGPL

THE COMPLAINT

The complainant, resident of Taunsa Sharif, District D. G.. Khan, has stated that he had a gas connection for his one-room house since long. Sui Northern Gas Pipe Lines Limited sent him bills from March to July, 2004 not exceeding Rs.160/- each month indicating the reading of the meter as sticky. He was served with a bill for the month of March, 2004 showing an adjustment of Rs.11523/- in the total amount of Rs.11790/-. He appealed to the concerned persons in the gas company and later sent them letters also but no action was taken. Ultimately he filed a complaint with OGRA on 10-6-2005 but no action has been taken so far. He has now filed the present complaint against undue delay by OGRA in deciding his case.

REPORT OF THE AGENCY

2. Since the complaint involved failure of the Agency in processing the case, OGRA was requested on 19-8-2005 for a report specifically on the point of the alleged delay. The Agency in its report dated 16-9-2005 raised the issue of jurisdiction in the first place and thereafter indicated reasons for the alleged delay. Details are as follows:

- i) sections 6, 10, 11, 12 and 13 of the Oil & Gas Regulatory Authority Ordinance ,2002 contain the provisions regarding filing of complaints with it by any person against a licensee regarding a regulated activity, taking cognizance of the complaint, passing an order thereon, hearing of appeals by the departmental authorities and power to review its decision. The Agency further maintained that it had the legal powers to deal with such complaints to the exclusion of all other laws. Reliance for this was placed on section 43 of the said Ordinance;
- ii) as for the complainant's grievance it stated that the present complaint was filed on 13-6-2005 a copy thereof was sent to SNGPL on the same day for their comments which were received on 28.6.2005. A copy of the SNGPL's reply was forwarded to the complainant on 4.7.2005 for his comments which have not yet been received. This absence of reply is responsible for the alleged delay in a decision.

COMPLAINANT'S REJOINDER

3. The complainant did not add any information and requested for the restoration of his gas supply connection.

POINTS AT ISSUE

4. The points at issue are as to whether cases involving alleged undue delay in taking a decision by OGRA fall within the jurisdiction of the Office of the Wafaqi Mohtasib and, if so, whether the Agency delayed the processing of the complaint under reference?

HEARING PROCEEDINGS

5. The hearing held on 31.10.05 was attended by the complainant and OGRA was represented by the Registrar and the Senior Law Officer. The Senior Law Officer, OGRA reiterated the contents of the report submitted earlier emphasizing that complaints against OGRA should not be entertained by the Office of Wafaqi Mohtasib as these are outside

its jurisdiction. The Agency's representative handed over a copy of the Establishment Division's letter No.1(3)/97-Dir(R) dated 13.11.2002 regarding the legal status of OGRA stating that it was established under a statute and it was an Organization independent of Government control, exclusively empowered to perform its regulatory functions under the Ordinance. It has the status of an autonomous body.

6. It was explained to them that OGRA was one of the many organizations established by the Federal Government and was covered by the provisions of Article 2(1) of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 and that the exemptions made stand specifically identified therein.

7. As regard the actual complaint, the complainant denied having received the Agency's letter No. OGRA-9(2) C-374/2005, dated 4.7.2005 because of which he could not send his comments on the report. The Agency was advised to provide him a copy of the said letter to enable him to send his comments. The representative of the Agency assured to do that.

FINDINGS

8. There is no second opinion that sections 6, 10, 11, 12 & 13 of the OGRA Ordinance, 2002 vest the Agency with legal powers to entertain complaints about the regulated activity of Gas companies and individuals and same is the position about the powers of appeal and review of decisions by the Authority. It was this legal position which made the basis of issuance of this Office circular No. 5/PS/WMS/2005(Secy) dated 8th April, 2005 as till then, for a variety of reasons, this Office was dealing with complaints even regarding the said regulated activities. The said circular order was neither intended to nor, legally, could it relate to activities of OGRA falling within the definition of mal-administration as laid down in Article 2(2) of the P.O. No.1 of 1983. No delegation or abdication of authority, specifically conferred by law, can take place in favour of another authority merely through administrative instructions. This position is still endorsed by this Office.

9. The difference of opinion has, however, arisen because of the interpretation placed by the Agency on the provisions of section 43 of the said Ordinance. The Agency appears to be of the view that since the title of the said section reads as 'Ordinance to override other laws', therefore, the activities of the Agency remain unfettered by the provisions of any other law in force in the country. The said interpretation has been taken to lead to the conclusion that the Agency is not amenable to any of the provisions of the P.O. No.1 of 1983 and thus totally outside the jurisdiction of the Office of the Wafaqi Mohtasib.

10. The above interpretation of the Agency is against the established principle of law which in general terms means that the Agency has a procedural flexibility of dealing with the matters relating to regulated activities under the said Ordinance but does not, in any way, mean to exclude the Agency from its obligations under the existing legal system of the country. Incidentally, Article 37 of the P.O. No.1 of 1983 also carries similar provisions of P.O. No.1 of 1983 overriding all other laws. Such provisions also exist in many other laws in different statutes of the country.

11. Similarly, the Agency has maintained that since the methodology of resolution of complaints has been provided in different sections of the Ordinance, therefore, it shall be deemed to be working as a judicial tribunal or board. In furtherance of this interpretation, the Agency has maintained that thereby it falls within the parameters of Article 9 of the P.O. No.1 of 1983 and, therefore, outside the jurisdiction of the Office of the Wafaqi Mohtasib. This argument is again not based on sound legal footing. Firstly, the status of a judicial tribunal or board cannot, under law, be assumed and instead it is to be formally conferred by a legislation. This is the case with OGRA. To give an example, such a status has been conferred by section 21(2) of the Evacuee Trust Properties (Management and Disposal) Act, 1975. The said provisions clearly lay down that the proceedings undertaken by the designated functionaries of the Agency shall be deemed to be judicial proceedings. Another case in example is the stand taken by the Chief Election Commission of Pakistan that since the Office of the Chief Election Commission of Pakistan was established under a specific provision of the constitution of Pakistan, therefore, that office was outside the jurisdiction of the Office of the Wafaqi Mohtasib. On this stand the President in case No. 8(751) WMS) PS (Legal)/2001 was pleased to hold on 27th October, 2001 that “.....if a Commission or an Institution created by the constitution is not an Agency because it has not been established, or is controlled by the Federal Government (department of the Federation) there was no need to exclude the Supreme Court etc from the definition of Agency because they too have been created by the constitution of Pakistan....., the Chief Election Commission of Pakistan’s representation on the point is rejected.”

12. Summing up the foregoing legal position of the stand taken by the Agency in the present case, the conclusion that emerges is that the Oil & Gas Regulatory Authority Ordinance, 2002 does not, as interpreted by the Agency, override the provisions of P.O. No.1 of 1983 and, therefore, does not take the Agency outside the jurisdiction of this Office for the purpose of determination of any alleged mal-administration committed by it in terms of the provision of Article 2(2) of P.O. No.1 of 1983. Short of that, the Agency has the full authority for dealing with its regulated activities.

13. Consequent to the above legal position, this Office has the legal authority to determine any element of alleged mal-administration by the Agency. In the present case, the Agency has conceded that the alleged delay took place as the complainant denied

having received its letter No. OGRA-9(2) C-374/2005 dated 4.7.2005. On this, the Agency agreed to provide a copy of the letter to the complainant for offering his comments for further examination of the case in the light of the established facts and the law.

RECOMMENDATIONS FOR IMPLEMENTATION

14. In view of the above examination of the case, the plea of the Agency of being outside the jurisdiction of the Office of the Wafaqi Mohtasib, in the matter of complaints about mal-administration on its part, as defined under Article 2(2) of the P.O. No.1 of 1983, is rejected as being without any legal merits. In view thereof, it is recommended that:-

- i) as agreed by the Agency, a copy of its letter dated 4.7.2005 mentioned in the preceding paragraphs should be supplied to the complainant without any delay, if not already done; and
 - ii) the Agency should take a decision on the complaint within a reasonable time.
15. Compliance should be reported within 60 days of the receipt of a copy of these Findings or reasons for not doing so intimated in terms of article 11(2) of P.O. I of 1983.

(IMTIAZ AHMAD SAHIBZADA)
WAFaqI MOHTASIB (OMBUDSMAN)

Annex-VIII

**Address by Imtiaz Ahmad Sahibzada,
Wafaqi Mohtasib (Ombudsman) of Pakistan
and President of the Asian Ombudsman Association
to the 22nd Australasian and Pacific Region (APOR) Conference,
Wellington, New Zealand, 9-11 February 2005**

Mr. Belgrave, Chief Ombudsman of New Zealand, fellow-Ombudsmen from the Australasian and Pacific Region, distinguished delegates, Ladies and Gentlemen!

It is indeed an honour and a pleasure for me to be here today in this delightful country — known as much for the beauty of its landscape as for the strength of its institutions and the quality of its governance — of which I had read a little when at school and have heard so much thereafter but never, unfortunately, had the opportunity of visiting till now. I am grateful to Mr. Belgrave and the Organizers of this Conference to have made this possible and to have asked me to address this august gathering on the Asian Ombudsman Association, its structure and functioning, the issues that have been addressed or are in the process, and its possible links with the APOR.

2. Ladies and gentlemen! The Asian Ombudsman Association is a response to the ethos and the need of the time. As you very well know currently regional and global Associations of professional institutions have come to be recognized as necessary for the sharing of experience and the fine-tuning of national responses to problems the nature of which, in their essentials, remain almost the same in each country. Whatever differences there are, basically relate to the stage in which each country finds itself on the scale of socio-economic and political development and, of course, its cultural diversity. There is much that can be said for the mutual sharing of experience to structure, and to stream-line the functioning of, institutions on the basis of the ‘best practice’ principle available regionally and world-wide. This is optimized in professional national institutions coming together in regional or global Associations and meeting periodically for discussion on an Agenda of issues which are of concern and relevance to the majority of the Members as such. It is against this background that steps were taken at the instance of Pakistan for the formation of the Asian Ombudsman Association.

3. As a prelude to a discussion of how the AOA came about and its structure and functioning permit me to say a few words on the institution of the Wafaqi Mohtasib (Ombudsman) of Pakistan. Realizing the important role that the institution of the Ombudsman can play in the attainment of ‘good governance’ in a democratic society, the framers of the Constitution of 1973 incorporated a provision therein for legislation on the

subject. It was not, however, until 1983 that the law was promulgated and the institution of the Wafaqi Mohtasib (Ombudsman) of Pakistan was created. Since then it has come up to the expectations of the people and has been able to deal fairly effectively with the problem of 'mal-administration' in the 'Agencies' of the Federal Government by entertaining 783,305 complaints during the twenty-two years of its existence of which 348,803 were decided after detailed investigations and the remainder disposed of *in limine*. Seeing the positive response of the citizens in bringing complaints of mal-administration against the Federal Government to it for resolution, offices of Provincial Ombudsmen were created for Azad Jammu & Kashmir and for each of the four provinces of Pakistan less one, in which a proposal to this effect has been submitted to the Provincial Assembly. Not only have these regional Ombudsmen for complaints against Agencies of the Provincial Governments been established, but the Ombudsman concept has received another boost through the establishment of subject-specific Ombudsman i.e. the Federal Tax Ombudsman for complaints against mal-administration in respect of all tax matters and the Banking Ombudsman, for complaints against matters relating to all banking institutions. In addition a provision in the relevant law has been made for an Insurance Ombudsman though the incumbent has not yet been appointed.

4. Having created successfully functioning institutions of the Ombudsman at the national level, Pakistan sought to promote the concept in the rest of Asia. In 1996, Pakistan convened the First Conference of Asian Ombudsmen and the office-holders of Ombudsman-like institutions from all over the Continent. The main objectives for hosting the moot in which forty delegates from eighteen countries participated, were the promotion of the Ombudsman's concept and discussion on the possibility of setting up of an Asian Ombudsman Association (AOA). Despite the differences of race, religion, culture, forms of government, and stages of socio-economic development, the Conference was crowned with success. The Asian Ombudsman Association (AOA) was unanimously founded on April 16, 1996, in Islamabad, Pakistan with the following objectives—

- To promote the concepts of Ombudsmanship and to encourage its development in Asia.
- To develop professionalism in discharge of the functions as Ombudsman.
- To encourage and support study and research regarding the institution of Ombudsman.
- To sponsor training and educational programmes for the institutions of Ombudsman in the region.

- To provide scholarships, fellowships, grants and other types of financial support to individuals for study relating to the institution of the Ombudsman.
- To collect, store, disseminate information and research data about the institution of Ombudsman.
- To facilitate exchange of information and experiences among the Ombudsman of the region.
- To plan, arrange and supervise periodic conferences of the Ombudsman of the Asian countries/regions.
- To undertake such other matters necessary to further the above objectives of the Association.

5. The Association consists of a General Assembly of all Full Members and a Board of Directors which contains: (a) the President; (b) the Vice President; (c) the Secretary; (d) the Treasurer; and (e) five other members all of whom are required to be Full Members with voting rights. Only Full Members with voting rights who have paid their annual membership fees (US \$1000) and have no other outstanding dues of the AOA are eligible to stand for election and/or nominate candidates for election. The Board is elected for a term of four years and is required to meet at least once every year whereas the General Assembly is required to do so at least once every two years. Meetings of the General Assembly, which consists of all the Full Members, are held by rotation in Member countries and are invariably preceded by Conferences organized by the host country.

6. The Association has four kinds of members i.e. Full Members, Associate Members, Honorary Life Members and Individual Members. Full Members are those who, by whatever designation called, have been appointed or elected according to the Constitution or law of the country and whose role includes the following characteristics:

- to investigate the grievance of any person or body of persons concerning any decision or recommendation made or any act committed or omitted by any administrative authority over which the jurisdiction exists;
- to make recommendations to authorities under the jurisdiction;
- to discharge functions independent of the organisations over which jurisdiction is held; and
- to report to the Head of State, Government or the Legislature the results of activities or on any matter arising from an investigation.

Full Members who participated in the founding of the AOA are referred to as Founding Members. Associate Members are those persons or heads of agencies interested in or involved in Ombudsman-related activities who do not qualify as Full Members (for example, heads of universities, hospitals, prisons and the press etc.) but who may wish to join the Association. Honorary Life Members are those persons who have made outstanding contributions to the Ombudsman ethos or functions on whom the Membership has been conferred by the Board of Directors. Individual Membership can be conferred on those who have shown interest through writings, research or otherwise on the concept of Ombudsmanship and whose membership is expected to advance the objectives of the Association.

7. As of date, there are 13 countries and 20 institutions, which are Full Members of the Association. These are:

- **Republic of Azerbaijan**
(Commissioner for Human Rights)
- **People's Republic of China**
(Ministry of Supervision)
- **Hong Kong, SAR, People's Republic of China**
(Office of the Ombudsman)
- **India, Madhya Pradesh**
(Lokayukt)
- **Indonesia**
(Komisi Ombudsman Nasional)
- **Islamic Republic of Iran**
(General Inspection Organization)
- **Japan**
(Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications)
- **Republic of Korea**
(Office of the Ombudsman)
- **Macao, SAR, People's Republic of China**
(Commissioner Against Corruption)
- **Malaysia**
(Public Complaints Bureau)

- **Pakistan**
 - *Wafaqi Mohtasib (Ombudsman) of Pakistan.*
 - *Provincial Ombudsman, Sindh*
 - *Ombudsman of Azad Jammu & Kashmir*
 - *Provincial Ombudsman, Punjab*
 - *Federal Tax Ombudsman*
 - *Provincial Ombudsman, Balochistan*
- **Philippines**
(Office of the Ombudsman)
- **Sri Lanka**
(Parliamentary Commissioner for Administration)
- **Thailand**
(Office of the Ombudsman)
- **Yemen**
(Central Organization for Control and Auditing)

8. The last election of the Board of Directors was held on 29th August, 2004 at Seoul, Republic of Korea, in the session of the General Assembly. In this election, the following were elected:-

President:	Mr. Imtiaz Ahmad Sahibzada, Wafaqi Mohtasib (Ombudsman), Pakistan.
Vice President:	Mr. Simeon Macelo, National Ombudsman, Philippines.
Secretary:	Ms. TAI Yuen-ying, Alice, Ombudsman, Hong Kong, SAR, People's Republic of China.
Treasurer:	Mr. Cho Young-Hoang, Chief Ombudsman, South Korea.
Members:	Mr. Li Zhilun, Minister, Ministry of Supervision, People's Republic of China. Mr. Justice Niazi, Head, General Inspection Organization, Islamic Republic of Iran.

Mr. Masashi Tamura,
 Director-General, Administrative Evaluation Bureau,
 Ministry of Public Management, Home Affairs,
 Posts & Telecommunications, Japan.

Mr. Cheong U,
 Commissioner Against Corruption, Macau, SAR,
 People's Republic of China.

Mr. Hj. Khalid Bin Hj. Ibrahim,
 Director-General, Public Complaints Bureau,
 Prime Minister's Department, Malaysia.

9. The subjects and issues which were discussed during Board meetings, General Assembly sessions and the Conferences coinciding with these and recommendations made therein are as follows:–

Topics on which Papers were read at the Conferences

- The General functions of the Ombudsman in modern public administration.
- The Ombudsman as a relief of citizens in the construction of a balanced society and environment.
- The Ombudsman as a conflict mediator.
- The Asian Ombudsman: Challenges and Prospects vis-à-vis the region's economic development aiming at a higher well being of populations.
- The Role of Ombudsman in Enhancing the Citizens' Rights.
- The Role of the Government in supervising the proper conduct of affairs and the correct implementation of laws by the administrative organs.
- Complaints to the Ombudsman—their investigation, legal, administrative and social effects.
- Investigation of the cause and effect of administrative grievances and consideration of ways to prevent violation of rules in governmental administrations.
- Fighting against any kind of corruption in government organizations.
- The Ombudsman and the economy.

- The Ombudsman and the political process.
- The Ombudsman and the Bureaucracy.
- The Ombudsman and the Judiciary.
- The Ombudsman and Civil Society.
- International Cooperation and the Asian Ombudsman.
- History and the development of the Asian Ombudsman system.
- Reality and ideal of the Asian Ombudsman.
- Uniqueness and Cooperation of Asian Ombudsman.
- Ombudsman and Promotion of Good Governance and its sub-themes:
 - Ombudsman and integrity of the Government.
 - Role of the Ombudsman in improving administration.
 - Ombudsman and Civilian oversight.
- The Ombudsman and strengthening of civil rights in Asia and its sub-themes:
 - Role of the Ombudsman in safeguarding civil rights.
 - The government-citizen relationship: what do citizen expect from the government? What do citizens expect of the Ombudsman?
 - The Ombudsman and citizen participation.

**Subjects and Issues which were discussed during Board meetings,
General Assembly sessions**

Education

- Providing public enlightenment to create an appropriate culture of supervision and inspection;
- Inserting inspection related subject matters in curricula of different levels of schools;
- Training public servants for law abidance and accountability;
- establishing a training Centre in Asia, after being funded; and
- Granting scholarship to the experts and members of Ombudsman.

Exchange of information

- Establishing Ombudsman data bank in its Secretariat, classifying the information and serving AOA Members;
- Necessitating extensive research to explore an optional process for inspection and supervision;
- Expanding exchange of information and experiences amongst the members to fight against administrative corruption, especially against complex networks; and
- Concluding bilateral/multilateral agreements to exchange the information required by Ombudsman.

Growth of Ombudsmanship

- Escalating public awareness on legal functions and status of Ombudsman through mass media;
- Identifying suitable patterns and strategies to enhance the culture of individual and social supervision;
- The cause and effect of administrative grievances and the ways to prevent violation of rules in governmental administration;
- The role of Ombudsman to safeguard citizens' rights;
- The role of governments to supervise the proper conduct of affairs, the implementation of laws by the administrative organs; and
- Investigation of complaints and its legal, administrative, and social effects.

The Ombudsman and the Economy

- Extension to economic matters of the charter(s) of the Ombudsman in Asian countries.
- Need for greater transparency in decision-making about the economy and governance.
- Establishment of linkages and networking between the Ombudsman offices and the economic agencies.
- The need for the AOA to conduct research on the success stories of the different Ombudsman offices so as to serve as the basis for improvement/policy directions.

The Ombudsman and Politics

- Reinforcing the status of the Ombudsman as the fulcrum to ensure balance in the power structure of the state.
- Maintenance of a high level of moral integrity and sense of probity among personnel of the Ombudsman's office so as to resist political influence and assaults designed to subvert the Ombudsman institution.
- Empowerment of the private sector, like the non-government organizations; the students and youth of the society, through the enlistment of their support in the campaign for good government.
- Enlistment of media support in bringing to bear the force of public opinion upon political attempts to undermine the integrity and independence of the Ombudsman institution.
- Strengthening the moral fibre of the society in general and the government and the component elements thereof.

The Ombudsman and the Judicial System

Need for the Ombudsman and the judiciary to work in tandem towards the promotion of transparency and accountability without infringing on each other's independence. Towards this end each country must adopt its own system of checks and balance between the judiciary and the Ombudsman to ensure that justice is effectively dispensed and that indeed no one is above the law.

Current Issues Addressed by the Association

10. The following are the current issues which are being addressed by the Association:-

Grant of scholarships and financial support to individuals who intend to carry out research/ study in the field of Ombudsmanship in member countries'

The Board of Directors in its annual meeting in 2003, considered a suggestion to establish a scheme to support research studies, with the aim of promoting Ombudsmanship among AOA members and facilitating comparative studies for cross-reference among different Ombudsmen regions. The idea was further explored by a Sub-Committee with regards to the modalities of implementation, financial implications and funding

support for such scheme. It was noted that the time has come for the Association to move forward in helping members to pursue professional excellence in more concrete ways. One way to do so is through sponsoring comparative reviews and research to facilitate the identification of a model Ombudsman institution. The Sub-Committee endorsed the scope for research and categories of research and studies were identified.

- ***Research by Ombudsman Institutions.*** An Ombudsman may have to initiate studies or research that may be case-specific or more generally related to problems within his jurisdiction.
- ***Academic Research.*** Scholars, Researchers, university students majoring in law, politics or public administration and other professionals may be interested to explore Ombudsmanship issues.
- ***Overseas Study and Placement.*** Such type of research/studies provides learning opportunities for Ombudsman's staff to study and reflect on Ombudsmanship issues away from the pressure of work and/or to glean insight from the operation of other Ombudsman offices.
- ***AOA Initiated Project.*** AOA may from time to time commission the research of specific topics of interest to its members. It was observed that there is no need for AOA to wait for establishing a Fund. This objective can be achieved through bilateral cooperation among members. After identifying appropriate research topics, the relevant members could be asked to bear the project costs proportionately, thereby avoiding the need to set up a separate Research Fund. To test the viability of this approach, it was recommended that a research project be sponsored on a pilot basis.

Making the Ombudsman/Ombudsman-like Institutions more independent and autonomous in their working for greater efficiency and credibility

The Board in its annual meeting in 2003, also considered a proposal that for greater efficiency and credibility the institution of the Ombudsman needs to be as administratively and financially independent of the Executive Branch of government as possible in the circumstances of each member country. No doubt that the rules relating to the Ombudsman's authority and organization have a major impact on the Ombudsman's possibilities for performing his or her responsibilities. However, the body which influences financing may also influence the Ombudsman's

operation. In most of the cases, the National Assembly is the decision-making authority on budgetary matters, but in practice, it is the administration which actually exercises a decisive impact on the Ombudsman's activities. It is important that arrangements are ensured to prevent the Ombudsman from entering into any form of dependency on, or being subjected to any influence from those organs of the state which are under purview of the Ombudsman's authority. In order to further explore the idea, each member of the Association was requested to submit a self-contained paper relating to the Financial and Administrative Dispensation under which their respective Organizations are functioning, the extent to which these met the criteria of autonomy and independence, and improvements, if any, proposed to be reflected therein. The responses received from the different members of the AOA on the subject clearly demonstrate that the status and mode of operations of each Ombudsman/Ombudsman-like institution is determined by the objective conditions prevailing in each member country. There are a number of features of each country's/members' Organizations which might not be present in the Organizations of other countries. These could fruitfully be examined by them for possible changes in their administrative/ financial dispensations for greater efficiency and autonomy.

Creating awareness among general public about effectiveness and usefulness of the office of Ombudsman in the society

The Board in its annual meeting also considered a proposal that country specific papers on how awareness of the general public on the functions, powers and jurisdiction of the Ombudsman's Office is brought about, be submitted by the members indicating the existing position and pointing out the improvements/modifications needed, if any. From the responses received from the different member countries/institutions, it was apparent that awareness with regard to the functions, powers and jurisdiction of the Ombudsman's Office or like institution is created through a number of measures, which are the product of their own specific environments. These measures, however, could be studied by members for assistance in the overall task of bringing about greater awareness in the context of the functioning of Ombudsman/ Ombudsman-like institution. During the 8th Conference of the Association, it was unanimously decided to circulate the paper prepared by the Sub-Committee to all the members to benefit from it in the manner they like.

11. As I have already stated at the beginning of this talk, the sharing of mutual experiences in respect of the structure and functioning of Ombudsmen institutions in our

respective countries is essential for the purpose of continuously improving their performance in the redress of the grievances of the citizens against mal-administration at the hands of public sector agencies and their functionaries. This can only be brought about through regular periodic meetings of Associations such as the APOR and the AOA and other regional Organizations of the kind. As to linkages between the two, in so far as the AOA is concerned, this can be brought about by extending invitations to Members of the APOR for attending the Conferences coinciding with the General Assembly sessions by the member countries hosting them. Provided the membership of the APOR is intimated, a formal proposal to this effect will be submitted to the fourth-coming meeting of the Board of Directors of the AOA scheduled in Hong Kong later this year in November.

12. In conclusion let me once again express my immense gratitude to Mr. Belgrave and the Organizers of this Conference first of all for having invited me to attend and address it and, just as importantly, for the excellent arrangements to make our stay so comfortable and memorable. Further, it will be remiss on my part if I were not also to acknowledge, and again with a sense of great gratitude, the response of the delegates who have heard me out with such great patience even though the contents of what I had to say, and the manner in which it was put across, could have been made more interesting.

Annex-IX

**Inaugural Speech of Mr. Imtiaz Ahmad Sahibzada,
President, Asian Ombudsman Association
at the 9th Asian Ombudsman Association Conference
28th November-1st December 2005 at Hong Kong, SAR,
Peoples Republic of China**

Your Excellency Ms. Alice Tai, Ombudsman of Hong Kong, Special Administrative Region, Peoples Republic of China, Members of the Asian Ombudsman Association, distinguished delegates, ladies and gentlemen.

2. At the outset of what I have to say, I should like to request everyone present to observe a two-minute silence in memory of those thousands of people who recently lost their lives in the devastating earthquake that struck parts of Northern Pakistan and Kashmir on 8th October this year.

3. While on the subject let me also express the immense gratitude of the people and the Government of Pakistan to member countries of the international community for their prompt response, both in material and financial terms, for the immediate relief operations and of the pledges of assistance of almost six billion US dollars made for the rehabilitation of the affected areas in the donors Conference held in Islamabad the other day.

4. Reverting to the substance of this address, I wish to acknowledge with great gratitude the decision of Hong Kong to host this 9th Conference of the Asian Ombudsman Association and of giving me this opportunity to say a few words.

Ladies and gentlemen!

5. It is indeed an honour and a pleasure for me to extend a warm welcome to the Members of the Association and the other distinguished delegates present here today. I am grateful to them for making it convenient to attend the proceedings of this Conference in this bustling, vibrant and dynamic city of Hong Kong which is the proud inheritor of the ancient civilization of China and the best that can be found in the Anglo-Saxon traditions of governance and economic enterprise. That it has become one of the more important financial centres of the East is a tribute to its industrious and enterprising people, the systems of governance and administration it has adopted—not the least of which is the Office of its Ombudsman—and the well informed and far-sighted policies of the great Peoples Republic of China. It has emerged as a model of economic growth,

development and good governance, quite a number of aspects of which are worthy of emulation by the developing countries of the Region.

6. Since the last Conference was held at Seoul, Republic of Korea in April, 2004, a number of changes have taken place in the ranks of the Members of the Association. Mr. Justice Niazi, is the new Head of the General Inspection, Islamic Republic of Iran, Mr. Ryoji Fukui has taken over as the Director General, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications, Japan, Mr. Justice Munir A. Sheikh, is now the Federal Tax Ombudsman, Pakistan; Mr. Abdur Rashid Khan, Mr. K. Yousuf Jamal and Mr. Justice Fazaal-ur-Rahman, have been appointed as the Provincial Ombudsmen of the Provinces of the Punjab, Sindh and Baluchistan, respectively, in Pakistan. We wish them a warm welcome to the fraternity and trust that, they will play a significant role in promoting the cause of Ombudsmanship under the auspices of the Asian Ombudsman Association. While welcoming the new incumbents I should like very much to place on record the significant contribution of their predecessors i.e. Mr. Sayyid Ebrahim Raiesee of Iran, Mr. Tamura of Japan, Justices Saleem Akhtar, Sajjad Ahmad Sipra, Haziqul Khairi and Mr. Sikandar Khan of Pakistan, towards the functioning of the Association and of the discharge of their functions within their respective jurisdictions of their home countries.

7. Ladies and Gentlemen! The theme of this year's Conference i.e. "Evolving Ombudsman Office" has been indeed well chosen. With some academicians tracing its roots to the Control Yuan of Ancient China, the Office of the *Tribune* and the *Censors* in Roman times and the Islamic Office of the *Nazar-ul-Mazalim*, the Ombudsman's Office in its present form owes its existence to the Swedish Institution of *Justitieombudsman* which was created in 1809 and assigned the duty of ensuring that the laws and statutes were adhered to and their civil servants fulfilled their obligations. Since then approximately 138 Ombudsman offices located in more than 40 countries have come into existence. This is a glowing tribute to the importance of the Office in the promotion of 'good governance' which is so central an issue for political and socio-economic development and the establishment of a just and equitable society based on the rule of law.

8. Although the characteristics of the Office may, and usually do, differ from country to country, the basic concept remains the same i.e. an independent Office designed to receive, investigate and pursue resolution of complaints by citizens concerning administrative acts or decisions of Government. Whether this is done by arbitration, mediation, conciliation, negotiation or adjudication, the central thrust is always to curb mal-administration. By curbing mal-administration from the discharge of functions and responsibilities by public sector organizations in a cost-effective and expeditious manner and through comparatively simple and uncomplicated procedures, the Office has established itself as perhaps the most important institution of alternate dispute resolution

and the redress of individual grievances arising from the interface of the Government and the citizens.

9. Organisations when created are the product of the history and the specific circumstances of each country prevailing at the time. While this is so, an organisation to be relevant and credible has to continuously evolve in keeping with the requirements and needs of a society which is in a state of continuous and rapid change. Although the impetus for this, and the form that it takes, will essentially have to be country-specific, a great deal in this regard can be learnt from the experiences of each other. While the successful models elsewhere cannot be replicated in their entirety in other countries, some of the principles on which they are based and the procedures in use for discharge of responsibilities, can certainly be adopted and adapted to structure our respective institutions on more efficient and effective lines and thereby cope with the needs dictated by the rapidly changing socio-economic and administrative circumstances of each country. Ombudsmen Offices must constantly evolve and react to changing external trends. How effectively this is done will be a measure of its efficiency and of its continued relevance to the needs of the time.

10. It is in this context that the main theme of the Conference has so aptly been chosen by the dynamic and learned Ombudsman of Hong Kong. For although the traditional model of the Office was a 'generalist' office, with a geographical jurisdiction at the national or sub-national level, meant for redress of the grievances of citizens against agencies and departments of the Government, the principle has, over a period of time, been extended to include within its remit the activities of the private sector as well. Moreover, with the increasing specialisation and differentiation of functions of public administration, the traditional model is gradually evolving on the one hand into different kinds of subject-specific, specialty Ombudsmen Offices (such as Tax, Insurance, Banking, Industry) and on the other is increasing the scope of its functions to embrace issues relating to such areas as investigation of corrupt practices, human rights violations, children and youth, to mention just a few.

11. The sub-themes of the Conference too have a special relevance and significance in this regard. These are i.e. (a) the Relationship of the Ombudsman's Office with Government and other stake holders (b) Measuring Effectiveness of Ombudsman Offices (c) Promoting Public Awareness (d) Freedom of Information (FOI) and Protected Disclosure Legislation (e) Development of Specialty and Industry Ombudsmen and their Relationship with The Ombudsman; and (f) Handling Complaints from Prisoners.

12. The speeches of the lead-speakers on these sub-themes, the views of the panellists and the general discussions that are likely to follow will, I am certain, provide us valuable leads into the core issue of change and evolution of the Ombudsman Office and of the consequential re-orientation and re-structuring of the existing offices and the creation of

new ones, where required, within our respective countries. Of equal importance in this connection, I am sure, will be the informal discussions and views exchanged between delegates during the three or four days of our inter-action and association here in Hong Kong.

13. In conclusion, please allow me on behalf of all the members of the Board and on my own behalf, to acknowledge with great gratitude the excellent work done by Ms. Alice Tai, Ombudsman of Hong Kong—and Secretary not only of the Asian Ombudsmen Association but of the International Ombudsmen Institute as well—and of the good work put in by the members of the staff of her organization for making our stay so comfortable. We are being looked after extremely well and look forward to a memorable stay in this beautiful city.

14. On a personal note as President of the Association let me also profusely thank Ms. Alice Tai for the hard, enthusiastic and extremely professional assistance that she has provided, and always with a smiling face, to the Association as its Secretary during the last four years of my tenure. Since this is the last Conference that I am attending I should also like to place on record my appreciation of the cooperation that I have received from Members of the Association and of the Board of Directors over the past four years. I am confident that the spirit of understanding and tolerance displayed, and cooperation extended to me in the discharge of the business of the Association will continue to be exhibited and extended to my successor. The relationships formally established should continue to be informally maintained and in this regard let me assure you all that my modest house in Islamabad may be considered a second home if circumstance should bring you to Pakistan, which I hope they will.

Thank you.

ROLL OF INVESTIGATING OFFICERS

(As of 31st December 2005)

APPOINTED UNDER ARTICLE 8 of P.O.1. of 1983¹	APPOINTED UNDER ARTICLE 20 of P.O.1. of 1983²
	Headquarters
Mr. Zaheer ud Din Babar, Secretary Mr. M. Amjad Sheikh, Director General Mr. Abdur Rauf, Director	Advisers Brig. Zulfiqar A. Khan (Rtd) - Mr. Naveed Asghar Qureshi Mr. Mohammad Aslam - Mr. Shaukat Hussain Mr. Mohammad Bashir - Mr. Mansoor Ahmad Consultant Brig. (Retd) Ahmed Salim
	Regional Office, Lahore
Mr. Asif Mahmood Malik, Member / Addl. Secretary Mr. G.M. Javed Jah, Director General Mr. Salim Sultan Durrani, Director General Syed Azmat Ali Shah, Director Mrs. Sabiha Hamid, Director	Advisers Mr. Rahatullah Khan Jarral - Syed Fazal Hussain Mr. Shaukat Ali Consultants Mr. Inayat Illahi Malik - Mr. Zafar Sahi Brig. (Retd) Nisar Ali - Brig. Rtd. Shamshad Ali
	Regional Office, Karachi
Mr. Muhammad Salim Butt, Director General	Advisers Mr. Saiyed Ahmed Siddiqui - Mr. Iftikhar A. Khan Consultant Mr. Muhammad Mehboob Alam Mr. Nazir Ahmad Khan Swati
	Regional Office, Peshawar
Mr. Muhammad Arshad Khan, Director General Mr. Saleem Khan, Director	Adviser Mr. Muhammad Amin Consultants Qazi Inayatullah - Mr. Mairaj ud Din Syed Abid Hussain Bukhari - Mr. Muhammad Gulzar Mr. Shaukat Zaman Babar - Mr. Fawad Hanif
	Regional Office, Quetta
Mr. Khaliq uz Zaman Gharsheen, Director	
	Regional Office, Sukkur
Mr. Ghulam Rasool Aahpan, Director General Mr. Ali Murad Chachar, Director	Adviser Mr. Nusratullah Khan Consultant Mr. Anwar Ali Khokhar
	Regional Office, Multan
Mr Pervez Sultan, Director—Mr Saleem Raza Asif, Director	Consultant Mr. Ahmad Bakhsh Bhapa
	Regional Office, Faisalabad
Mr. Qurban Ali, Director General	Adviser Mr. Maqsood Khawaja Consultant Syed Badar-e-Munir
	Regional Office, D.I. Khan
	Consultant Mr. Muhammad Saqib Khan

1. These are persons recruited through the normal process specifically for the Office of the Wafaqi Mohtasib or are on deputation to it from the Federal or Provincial Governments or the Judiciary.
2. These are persons who have been appointed on contracts of a year in terms of Article 20 of P. O. 1 of 1983.

ADDRESSES OF OMBUDSMAN INSTITUTIONS/OFFICES IN PAKISTAN

Headquarters

Wafaqi Mohtasib (Ombudsman)'s Secretariat,
Benevolent Fund Building,
Zero Point, Islamabad.
Phone: 92-51-9201665-8, Fax: 92-51-9210487
Email: wmsfq@isb.paknet.com.pk

Regional Offices

Regional Office, Lahore

State Life Building,
3rd Floor, 15-A, Davis Road, Lahore.
Phone: 92-42-9201017-20, Fax: 92-42-9201021
E-mail: wmsrol@paknet4.ptc.pk

Regional Office, Karachi

4-B, Federal Government Secretariat,
Saddar, Karachi.
Phone: 92-21-9202115, Fax: 92-21-9202121
E-mail: wmsrok@khi.ptc.com.pk

Regional Office, Peshawar,

1st Floor, Benevolent Fund Building,
Peshawar Cantt.
Phone: 92-91-9211574, Fax: 92-91-9211571
E-mail: wafaqi@psh.paknet.com.pk

Regional Office, Quetta,

Barganza Villas, Qaddafi St.,
Link Zarghoon Road, Quetta.
Phone: 92-81-9202679, Fax: 92-81-9202691
E-mail: wmohtsib@qta.paknet.com.pk

Regional Office, Sukkur

38-A, Friends Cooperative Housing Scheme,
Shikarpur Road, Sukkur.
Phone: 92-71-9310007, Fax: 92-71-9310012
E-mail: wmsrok@hyd.paknet.com.pk

Regional Office, Multan

23-G, Shah Rukn-e-Alam Colony,
Near Underpass, Multan.
Phone: 92-61-9220183, Fax: 92-61-9220182
E-mail wmsrom@mul.ptc.com.pk

Regional Office, Faisalabad,

Opp. GOR-II, Akbarabad Chowk
Jail Road, Faisalabad.
Phone: 92-41-9200551,
Fax: 92-41-9200501
E-mail: wms@isd.paknet.com.pk

Regional Office, Dera Ismail Khan,

H. No. 31/4, Quaid-e-Azam Road,
Dera Ismail Khan.
Phone: 92-961-9280095,
Fax: 92-961-9280096
E-mail: wmsrodik@brain.net.pk

Federal Tax Ombudsman

Federal Tax Ombudsman,
State Enterprises Complex,
5-A, Constitution Avenue, Islamabad.
Phone: 92-51-9211382, Fax: 92-51-9205553
E-mail: ftoisb@mail.com

Provincial Ombudsman

Provincial Ombudsman, Punjab,
2-Bank Road, Lahore.
Phone: 9211773, Fax: 9212069

Provincial Ombudsman Sindh,
Shahrah-e-Kamal Ataturk,
Opp: Sindh Secretariat, Karachi
Phone: 92-21-9211026,
Fax: 92-21-9211051.

Provincial Ombudsman,
Block No. 10, Civil Secretariat,
Quetta, Balochistan.

Ombudsman of Azad Jammu & Kashmir,
Mohtasib (Ombudsman)'s Secretariat,
Muzaffarabad.

(Azad Jammu & Kashmir)
Phone: 92-58810-42142,
Fax: 92-58810-39108, 9206288.

HOW TO PUT IN YOUR COMPLAINT?

- You may complain in writing and dispatch your complaint by mail, email or hand-deliver it.
- Write legibly in Urdu or English language a brief description of your complaint. DO NOT forget to attach a copy of your National Identity Card. You must clearly write your mailing address, telephone number and email address if any.
- Your complaint should be based on facts and couched in decent language.
- You must attach the prescribed affidavit with the complaint.
- You will be informed whether your complaint has been admitted for investigation and also the complaint number allotted to your complaint.
- On receipt of a reply from the Agency complained against you will be provided a copy of the same for your rejoinder. On receipt of your rejoinder, if it transpires that the case can be decided without further proceedings, the Wafaqi Mohtasib will finalize the Findings and recommendations for implementation and issue the same with a copy to you and the Agency.
- If it is felt that the parties should be heard in person before making a decision, a hearing will be held in which you will be invited to participate. You must avail yourself of this opportunity to express your viewpoint and produce documentary evidence if any.
- In case a recommendation is made in your favour the Ministry/Division/ attached department will be called upon to provide relief to you within a specified period of time.
- In case it is found that there is no mal-administration in the Agency your complaint will be rejected.
- If you are not satisfied with the Findings of the Wafaqi Mohtasib you may file a representation to the President of Islamic Republic of Pakistan within 30 days of receipt of the Mohtasib's Findings.

WHAT WILL NOT BE ENTERTAINED?

- Complaints filed after three months or more of the cause of grievance, unless the reasons, to the satisfaction of the Wafaqi Mohtasib, for the delay can be advanced.
- Complaints relating to external affairs or dealings of Pakistan with any foreign state or government.
- Complaints relating to or connected with the defence of Pakistan or its armed forces.
- Complaints against non-Federal Agencies.
- Anything, which can be adjudicated through arbitration if so provided in the documents on which you are placing reliance.
- Complaints against private persons or organizations.
- Complaints against Government policy, unless a legal flaw is shown.
- Cases, which are in the courts of law on the date of making a complaint to the Wafaqi Mohtasib or pending adjudication in a Tribunal or Board of Competent jurisdiction.