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**Tokyo - Shizuoka 2011**

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**The 12th Conference  
of  
the Asian Ombudsman Association**

# **CONFERENCE REPORT**

**05 – 08 December 2011  
JAPAN**





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**Tokyo - Shizuoka 2011**

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**The 12th Conference  
of  
the Asian Ombudsman Association**

***Challenges for the Ombudsman  
in  
a Changing Socio-Economic Environment***



The 12th Conference of **Asian Ombudsman Association**  
 Tokyo - Shizuoka 2011  
**第12回 アジア・オンブズマン協会会議**



<<5 December, 2011 in Tokyo >>

**Opening Ceremony and Welcome Reception**



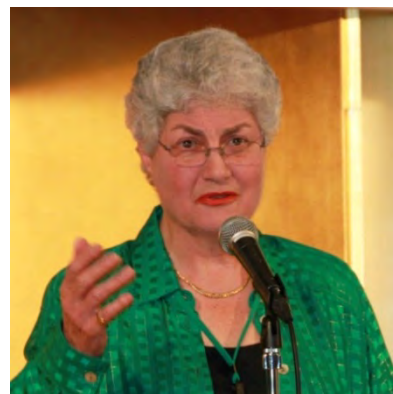
Mr. Ryo Shuhama  
 Vice-Minister for Internal  
 Affairs & Communications  
 read a Welcome Address on  
 behalf of Minister,  
 Mr. Tatsuo Kawabata



Opening Address  
 by Mr. Hideo Arai  
 Ombudsman of Japan



Responsory Address by  
 Ms. Conchita C. Morales  
 Vice President of AOA/ Philippines



Congratulatory Address by  
 Ms. Beverley A. Wakem  
 President of IOI/ New Zealand  
 IOI: International Ombudsman Institute



Mr. Javed Sadiq Malik  
 Former President of AOA  
 Pakistan



Dr. Wataru Omori  
 Chairman of AGRPC  
 Japan  
 AGRPC: Administrative Grievance Resolution  
 Promotion Council



Mr. Noboru Tani  
 President of NFACA  
 Japan  
 NFACA: National Federation of Administrative  
 Counselors' Associations



<<6 December, 2011 in Shizuoka >>

## Opening of Shizuoka Session & Keynote Speech

Challenges for the Ombudsman in a Changing Socio-Economic Environment



Keynote Speeches were introduced by Mr. Susumu Kamimura, Deputy Ombudsman of Japan (left), and presented by Ms. B.A. Wakem, New Zealand (below left) and Ms. C.C.Morales, Philippines (right).



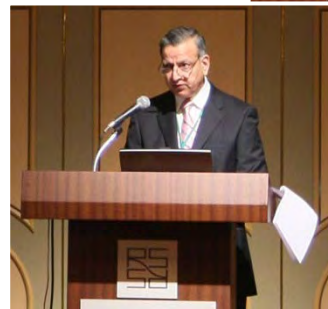
<< 6 December, 2011 in Shizuoka >>

### Plenary Session 1

The Ombudsman's Cross-Generational Challenges Arising from a Changing Demographic Structure

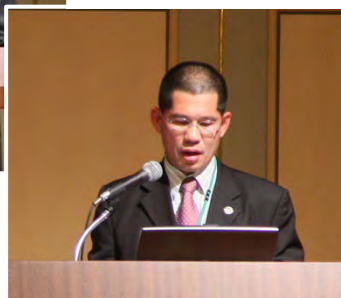


(left to right): Dr. Weng Wah Tam (Chair: Malaysia), Interpreter, Prof. Masahiro Horie (Japan), Dr. Gholamhossain Bolandian (Iran), Dr. Muhammad Shoaib Suddle (Pakistan)



### Plenary Session 2

The Fundamental Right of Citizens Pertaining to Access to Information



(left to right): Ms. C.C. Morales (Chair: Philippines), Dr. Máté Szabó (Hungary), Mr. Justice Narendra Kishore Mehrotra (Uttar Pradesh, India), Mr. Man Chong Fong (Macao), Mr. Alan N. Lai (Hong Kong)



<<6 December, 2011 in Shizuoka>>

## Japan Session

Administrative Counseling in the Great East Japan Earthquake



(left to right): Mr. N. Tani (Chair), Mr. Isao Sato (Administrative Counselor), Mr. Toru Sasaki (Staff of MIC)

## Reception in Shizuoka



Dr. Heita Kawakatsu  
Governor of Shizuoka Prefecture



Mr. Hiroyasu Kurihara  
Mayor of Numazu City



Prof. Hiromitsu Kataoka  
Chairman of the Japan Association  
for Ombudsman Studies



<<7 December, 2011 in Shizuoka >>

### Plenary Session 3

Improvement in the Advocacy and Outreach Strategy in Protecting the Vulnerable Segments of the Society



(left to right): Mr. A. N. Lai (Chair: Hong Kong),  
Mr. Lankanatha A. Tissa Ekanayake (Srilanka),  
Ms. C. C. Morales (Philippines), Ms. Youngran Kim  
(Korea)



### Plenary Session 4

The Role of Ombudsman in Decentralization, Out Sourcing and Public Private Partnerships

(upper left to right): Ms. Y. Kim (Chair:  
Korea), Dr. Nagatomo Yamaoka  
(Japan), Prof. Cheselden George V.  
Carmona (Philippines), Mr. Danang  
Girindawardana (Indonesia)



<<7 December, 2011 in Shizuoka >>

## Plenary Session 5

Identifying People's Concerns from Daily Flow of Complaints and Contribute to Systemic Improvements



(left to right): Ms. Alice Tai (Chair: Hong Kong), Dr. W. W. Tam (Malaysia), Mrs. Panit Nitithanprapas (Thailand), Mr. Huawei Zhang (China)



(left to right): Mr. Nguyen Duc Hanh (Vietnam), Prof. Elmira Suleymanova (Azerbaijan), Mr. Tursunbek Akun (Kyrgyz)

## Concluding Remarks



Mr. J. S. Malik (Pakistan)



Group photo of the Ombudsmen

<<8 December, 2011 in Shizuoka >>

## The 12th AOA General Assembly & Closing Ceremony



(upper left to right): Mr. Khawaja M. Naeem, Executive Secretary of AOA Secretariat (Pakistan), Mr. A. N. Lai, Secretary of AOA (Hong Kong), Ms. C. C. Morales, Vice-President of AOA (Chair: Philippines)



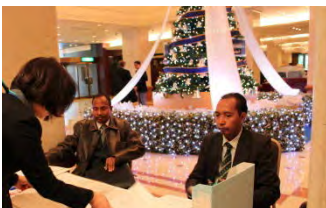
(right) Dr. G. Bolandian (Iran) made an address as the host of next AOA Conference



Newly elected Board of Directors



## Conference Scene





## Conference Scene



Mr. Tatsuo Kawabata, Minister for MIC welcomed the 13th Board of Directors Meeting at MIC Building on 5 December, 2011



Courtesy call to the Prime Minister's Office on 6 December, 2011: Board of Directors were welcomed by Mr. Hiroyuki Nagahama, Deputy Chief Cabinet Secretary





## Conference Scene



Spouse Program:  
Cultural experience at  
Numazu Villa Park of the  
Imperial Families



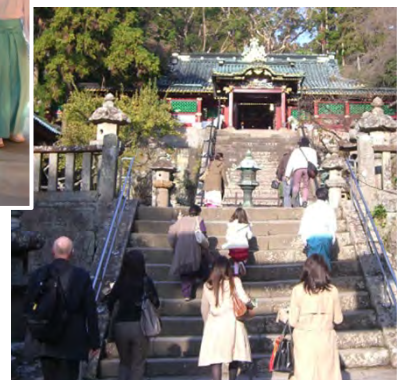
'Early Morning'  
Fish Market Tour  
to Numazu Port



Spouse Program : Tour to  
Tokaido Hiroshige Art  
Museum (left)& Kuno-zan  
Toshogu Shrine (right)



Farewell to Numazu Riverside  
Hotel and its Staff



## Summary

The year 2011 will be especially recorded in the history of Japan as the year of the Great East Japan Earthquake and the resultant tsunami of March 11, which caused such widespread and extensive damage to the northern part of the country. Due to this disaster, the 12th Asian Ombudsman Association (AOA) Conference originally planned for May 2011 had to be postponed, but thanks to the cooperation of honorable members of the AOA, the Conference was eventually successfully held in Tokyo and Shizuoka from 5th to 8th December, 2011.

10 years ago, Japan hosted the 6th AOA Conference and all programs were conducted in the capital city of Tokyo. For the 2011 Conference, we initiated an attempt to stage it not only in the urban area but also in the countryside, so that foreign participants could deepen their understanding of Japan. We drew up a program of events commencing in Tokyo then transferring by the Shinkansen 'Bullet Train' to the eastern part of Shizuoka Prefecture, at the foot of Mt. Fuji.

The Conference was honored to have as its head Ms. C. C. Morales, Vice President of AOA and Ombudsman of the Philippines, complemented by Ms. B.A.Wakem, President of the International Ombudsman Institute and Chief Ombudsman of New Zealand as keynote speaker. More than 60 other Ombudsmen and their staff from 19 countries and areas of Asia and other parts of the world participated. It was one of the largest-scale AOA Conferences, with in total 170 Japanese participants, including Ombudsmen from local government, academics and researchers, and administrative counselors from all over Japan.

Throughout the Asian region we adhere to the common recognition that we face a number of socio-economic challenges, including a rapidly-changing demographic structure, the global financial crisis and large-scale natural disasters, such as have recently struck New Zealand, Thailand, Iran, Japan and other countries. Under the main theme "Challenges for the Ombudsman in a Changing Socio-Economic Environment" and 5 sub-themes, "the Ombudsman's Cross-Generational Challenges Arising from a Changing Demographic Structure", "The Fundamental Rights of Citizens Pertaining to Access to Information", "Improvement in the Advocacy and Outreach Strategy in Protecting the Vulnerable Segments of the Society", "the Role of Ombudsman in Decentralization, Out Sourcing and Public Private Partnerships" and "Identifying People's Concerns from Daily Flow of Complaints and Contributing to Systemic Improvements". In these 5 sessions, to our great pleasure as hosts, there were lively discussions including Question and Answer sessions which sometimes ended up behind schedule.

Between the programmed sessions, we invited an administrative counselor and an MIC staff from the Tohoku area to preside over a special session entitled “Administrative Counseling in the Great East Japan Earthquake” who described their activity as ombudsmen in the affected areas under very critical circumstances. Conference participants were deeply impressed by their great efforts to assist their fellow-citizens during this time of disaster.

Japan’s Administrative Counselors System is a very unique type of Ombudsman system in which private citizens commissioned by the Minister for Internal Affairs and Communications receive peoples’ complaints and requests, and work to bring resolution with the help of government agencies. 2011 was the 50th anniversary of this unique system, and Conference participants took the opportunity of gaining insight into it.

At the end of the program, the General Assembly of AOA was held and elected a new board of directors who will lead the AOA forward over the next 4 years.

Thus we present to you the 12th AOA Conference Report which includes valuable presentations from honorable ombudsmen colleagues and we sincerely hope it will contribute to the development of the Ombudsman institution.

Finally, we would like to extend our warm appreciation to all those who have participated, both from overseas and from our own country Japan, who have helped make this conference such a success. In addition, our thanks go to all who have assisted us, including the AOA Board of Directors, the Secretariat of AOA, Shizuoka Prefecture, Numazu City and their citizens, Eastern Shizuoka Convention Bureau, Izunokuni-city Tourist Association, the Japan Association for Ombudsman Studies, ombudsmen from local government, the administrative counselors and their Associations, Central Japan Railway Co., Keio Plaza Hotel Tokyo, Numazu Riverside Hotel and Ministries and Agencies including Japan Tourism Agency.

The 12th AOA Conference Secretariat  
Tokyo, Japan  
March, 2012

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# Welcome Address

for

the 12th Conference of AOA





**Mr. Yoshihiko Noda**  
**Prime Minister, JAPAN**

On the occasion of the opening of the 12th Conference of the Asian Ombudsman Association, I would like to extend a very warm welcome to all honorable Ombudsmen of Asian nations gathered here today. I know that each of you is deeply dedicated to improving governance in your country and working very hard to assist your citizens. It gives me great pleasure therefore to be delivering this welcome address to you, as your host for this 12th meeting of the AOA, taking place here in Japan.

In this ancient region of the world which is remarkable for its innovation, you are responsible for the watching on the social system which promotes progress whilst preserving human dignity. It is highly important work. I am sure you all have knowledge and experience you wish to share with your counterparts from other countries and intend to work in close cooperation with each other, and I sincerely hope that the results of this contact within the Asian community will be of service to world development generally.

As you know, on 11th March this year Japan suffered the worst earthquake on record. Since that day, we have received words of encouragement and generous assistance from numerous countries including those represented here today, as well as from international organizations, nongovernmental organizations and the like. I would like to take this opportunity to express our heartfelt gratitude for all this support extended to us in our time of need.

Also, while you are with us, I do hope you will take note of the great efforts our country is making to recover from this calamity, through close cooperation between government and the citizens. We fully intend to respond to all the expressions of friendship so kindly extended by you which have aided our recovery.

In closing, I hope this conference will provide you with an opportunity to get know each other better and to consolidate bonds of friendship and mutual trust. Thank you very much.

## Welcome Address



**Mr. Tatsuo Kawabata**  
**Minister for Internal Affairs and**  
**Communications, JAPAN**

On behalf of my Ministry, may I heartily welcome all representatives from the participating nations and regions to the 12th Conference of the Asian Ombudsman Association, being hosted this year by Japan.

The Asian Ombudsman Association has been pursuing its activities with vigor for more than 15 years now, ever since the first Conference was held in Islamabad in 1996. In recent years, the AOA has supported research and study projects on the Ombudsman system in each Asian country, earning it the privileged position of being the online “center of information” for our movement. It is the second time Japan has hosted the Conference, the last being the 6th Conference in 2001, and we are honored to be able to add a new page to the Association’s history.

Coincidentally, the Administrative Counselor System, which plays an important role in remedying complaints regarding Japanese administration, celebrates its 50th anniversary this year. As you are already aware, the Japanese Administrative Counselor System is unique throughout the world. It is made up of civilian volunteers commissioned by the Ministry for Internal Affairs and Communication and provides a countrywide consultation service for the purpose of resolving complaints and receiving requests from the public regarding the various organs of the national administration.

I very much hope this Conference will deepen mutual understanding of the initiatives and approaches to problems being implemented in each of the participating nations and regions, plus their special characteristics, which demonstrate how the ombudsman service functions in that area, and I trust it will greatly contribute to the development of each participant’s own future activity.

In closing, I would like to take the opportunity to express our gratitude for the immensely kind assistance Japan received from all around the world when we were struck by the Great East Japan Earthquake in March this year. Thank you.





**Dr. Heita Kawakatsu**  
Governor,  
Shizuoka Prefecture, JAPAN

Nothing gives me more pleasure than to be able to welcome delegates from so many Asian countries and from all over Japan to the 12th Conference of the Asian Ombudsman Association being held this year here in Shizuoka, Japan.

Shizuoka Prefecture is located in the centre of Japan and enjoys a mild climate and a great variety of the graceful landscapes characteristic of Japan, including in particular our national symbol, Mount Fuji, the Minami-Alps mountain range to the north and the richly-varied coastline of Suruga Bay to the south. I do hope Conference participants will take advantage of this opportunity to visit scenic places in Shizuoka and to enjoy our abundant natural cuisine!

Here in Shizuoka Prefecture we put a lot of effort into community planning and building, in accordance with our fundamental principal of Shizuoka being 'Fuji no kuni' or 'Mount Fuji Country', which conveys the idea of an utopian place of physical as well as psychological wellbeing and prosperity. The two concepts which make up the word 'fuji', namely 'fu' meaning abundance, both material and moral, and 'shi' or 'ji' meaning samurai, symbolizing in Japan the spirit of public service, flourish side by side in our community and are the drivers of its activity. We favor so-called 'open prefectural politics' through the arrangement of public-friendly PR activities for our citizens and the generous provision of information on matters of concern to them, as well the provision of plentiful opportunities for public debate. In this way we promote 'administrative transparency' and actively encourage participation by the public in prefectural politics.

For these reasons we regard it as an honor that Shizuoka has been selected to host this AOA Conference in which honorable Ombudsmen from Asian countries are invited to discuss and share ideas for the development of a healthy social system in each of your countries and regions. I most sincerely hope that these discussions will be fruitful and I pray for all participants' further success in your most valuable work.

Lastly I would like to express my appreciation for all those who have devoted time and effort in bringing this Conference in Shizuoka together and I extend my warmest best wishes to all participants gathered here for progress in your most valuable work.



# Message

for

the 12th Conference of AOA





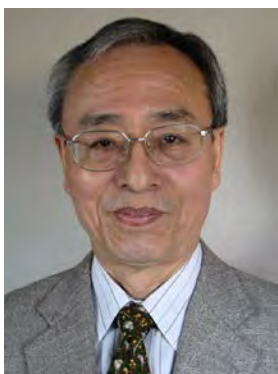
**Mr. Hideo Arai**  
Director-General,  
Administrative Evaluation Bureau,  
Ministry of Internal Affairs and  
Communications (MIC), JAPAN

It gives me great pleasure to host the 12th Conference of the Asian Ombudsman Association, thanks to the support of members of the AOA and I extend a hearty welcome to all participants in this Conference.

We are each of us throughout the region facing a number of socio-economic challenges, such as how to deal with an aging society, how to take effective countermeasures against large-scale natural disasters, such as have recently struck Japan, and so on. In recognition of these issues, at this conference we will be holding 5 sessions under the main theme, "Challenges for the Ombudsman in a Changing Socio-Economic Environment". I sincerely hope all participants will share their experiences, views and ideas on this theme.

In Japan, there are presently some 5,000 administrative counselors who are available for consultation at every citizen's nearest 'grievance resolution' window. This unique system started in 1961 when 882 members of the public were asked for their help in bringing it to reality, since when it has grown exponentially. A total of more than 6.21 million complaints have been received by our administrative counselors over the past 50 years. On the occasion of the recent major earthquake, it should be noted that our administrative counselors performed to great effect in the hardest hit areas. On this occasion therefore, I very much hope Conference participants will take the opportunity of gaining insight into our unique system.

Finally, may I thank members of the AOA for your friendship and cooperation in this regard, and for your kind support and words which encouraged us greatly at the time of the Great East Japan Earthquake.



**Dr. Wataru Omori**  
Chairman, the Administrative Grievance  
Resolution Promotion Council,  
Emeritus Professor, Tokyo University, JAPAN

On the occasion of the 12th Conference we most warmly welcome all of you who have assumed the grave responsibility of being an Ombudsman in each Asian country.

The Administrative Grievance Resolution system of our country is the product of the unique Japanese political and social features. Our system performs an ombudsman-like role through its tripod structure , Administrative Counselors who are volunteer citizens commissioned by the Minister for Internal Affairs and Communications (MIC), the Administrative Grievance Resolution Promotion Council (AGRPC) and the Administrative Evaluation Bureau (AEB).

The AGRPC is an advisory body under the Minister for MIC, composed of seven magisterial experts from non-governmental circles, i.e. Judicial, academic, journalism and so on. In order to expedite solutions for the more difficult issues arising from the grievances received via administrative counseling, our Council has the function and capacity to reflect its own opinion to the mediation carried out by Ministry. Our judgments are based on freely-expressed ideas which derive from common sense and not subject to the restrictions imposed by mazy administrative practice.

Our challenge is how to deal appropriately with complaints and troubles brought by the public administrative services and how to correct governmental inadequacy. I believe everyone gathered here shares this responsibility and occasionally burden of having to make a judgment based only on our own good sense. I am also in that position, therefore I am keenly interested in the knowledge and experience you will contribute in this regard.

I have no doubt that each ombudsman from the various countries and regions will obtain from this year's Conference useful information to take home with you and apply to your activity. I hope that this Conference will strength our ever-lasting friendship and communication. Thank you very much, and have a nice stay in Japan.





**Mr. Noboru Tani**  
**President, the National Federation of**  
**Administrative Counselors' Associations,**  
**JAPAN**

Welcome to Japan, ombudsmen from 25 countries and regions of the AOA. I represent the organization which serves as Japan's Ombudsman system which is made up of 5,000 administrative counselors distributed throughout this country.

Within the larger framework of a society governed by public administration, the voices of each and every citizen in difficulties or feeling trapped in a corner by the system are the principal trigger for the intervention of the ombudsman. I believe that in your countries or regions you are also taking great pains expand your operational base in order to be better able to pick up these cries of distress.

In Japan we administrative counselors, being able to carry on our activity independent of government agencies have been successful in detecting and responding to these voices and distress calls. It is already over half a century since this system was first introduced in our country, nevertheless I consider it very important to make continuous efforts to heed and respond to socio-economic change in the way we go about our activity, so that we continue to remain helpful to the public. I'm very much looking forward to hearing about your own experience in this regard and about other matters at this Conference.

In conclusion, may I express my hopes and wishes for the success of this Conference, for the prosperity of each of your countries and regions, and for the continued development of ombudsman activity in today's world. Thank you.



**Dr. Hiromitsu Kataoka**  
Chairman, the Japan Association for  
Ombudsman Studies/  
Emeritus Professor, Waseda University

Congratulation for the 12<sup>th</sup> Conference of AOA. It is my honor and privilege to speak before the distinguished members of AOA and those concerned.

I am Chairman of the Japan Association for Ombudsman Studies consisting both of practitioners and academicians to make a joint research and inquire into the future of the Japanese Ombudsman system.

Tenshin Okakura, a pioneer of fine art in Meiji Era declared that Asia was the one, the site of whose monument in Izura washed by the Tsunami following the Great Earthquake of Eastern Japan is under reconstruction. Meanwhile, ex-premier and the founder of Waseda University Shigenobu Ohkuma told bolder that the World had been already one, in that the waves of Eastern and of Western civilizations had traveled around the globe in different directions to meet and being gotten intermingled, about a hundred years ago.

For example, all of us believe that the Ombudsman system comes from Sweden, some scholars trace its immediate origin to Russia, but more remote origin either to Islamic World or to China.

We have learn a lot from the Western civilization, to be sure. But it has had a bias of emphasis upon goals since Machavelli and of result-orientations since Thatcher and Reagan, and pursued the cost-benefit efficiency, or value for money.

On the other hand, Mahatma Gandhi of India used to urge us to act rightly irrespective of the results, and to consider the means first, and then follows an end. He took this idea from a Hindu scripture. Recently Professor Ho of Lingnan University of Hong Kong points out that happiness is in general more successfully pursued by action based on general rules, than by measuring the consequence of each action.

The result orientation leads to a causal responsibility. But if a caused result is irreversible, there is no way to take a responsibility. Therefor an enough care must be taken both before and during action to infuse ethics and morality.

Of course, we can not manage to support the population on the earth without a result-oriented development accompanying a causal responsibility. But its deadlock has been already apparent. We need badly te merger of the Western and Eastern way of thinking.

An initiative must come from Asia, Especially from you Asian Ombudsmen standing for human dignity. Thank you very much, and have a nice stay here in Numazu.



Ms. Conchita Carpio Morales  
Vice President,  
Asian Ombudsman Association (AOA)/  
Ombudsman, PHILIPPINES

With utmost delight, I greet and welcome the participants to the 12th Conference of the Asian Ombudsman Association (AOA).

I am humbled by the AOA's act of warmly welcoming a "*Benjamin* of the Association" who, by happenstance of two successions,<sup>1</sup> has to assume the functions of an interim President for the remaining period of the current term. Allow me then to join you and march beside you as we move to end the cycle of impunity, engender a culture of integrity, and cut off the remaining tentacles of this social plague called corruption.

The view is settled that corruption is universally morally reprehensible. I could not think of a country that holds corruption as a *mores*. No state encounters a clash between law and morality. It is in capitalizing on the strength of this concurrence that the vital support of the private sector, regardless of beliefs and persuasions, could be tapped. The unanimity of the underlying ethical position is an impetus to our **combat** against corruption through prosecution, **crusade** against corruption through corruption prevention, and **campaign** against corruption through anti-corruption promotion.

As the year 2012 draws near, it is fitting that the AOA gathers fellow workers for good governance to a Conference that will explore "challenges for the Ombudsman in a changing socio-economic environment." The theme, which shall be amplified by five relevant sub-themes, is both timely and timeless. Indeed, challenges await us as soon as we conclude this Conference and return to our respective areas of work. Meantime, let us equip ourselves with sufficient armor through capacity-building throughout the duration of the Conference.

It has been said that if governance is what governments do,<sup>2</sup> then good governance is what good governments do.<sup>3</sup> The task that lies ahead, therefore, is to instill and install good Asian governments.

A handwritten signature in black ink, appearing to read "Conchita Carpio Morales". The signature is fluid and cursive.

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<sup>1</sup> Bye-Laws of the AOA, Par. 7, subpar. (6) in relation to subpar. (9).

<sup>2</sup> *Vide* <<http://en.wikipedia.org/wiki/Governance>> [visited: October 11, 2011].

<sup>3</sup> *Vide* M.G. Quibria, "Does Governance Matter? Yes, No or Maybe: Some Evidence from Developing Asia" 59 *Kyklos* 99-114 (Issue 1, February 2006).

Message



**Ms. Beverley A. Wakem, CBE.**  
**President,**  
**International Ombudsman Institute (IOI)/**  
**Chief Ombudsman, NEW ZEALAND**

I am delighted to join with your host, Hideo ARAI, the Ombudsman of Japan, and the staff of the Ombudsman Office in welcoming you to this important meeting of the Asian Ombudsman Association.

The theme of the Conference is very timely as we face considerable change in the world's social, economic and political environment and try to accommodate the challenges of new technology. All of these affect how we approach the Ombudsman's functions and the expansion of our jurisdiction into the broader field of human rights.

The need for closer co-operation for mutual support, training and professional development among the Ombudsman community has never been stronger. The International Ombudsman Institute is committed to trying to encourage these developments and find ways to enable more and wider dialogue on issues of concern to all of us.

For that reason I am looking forward to learning about the issues which are of concern to all colleagues in the AOA region. I expect that the many and varied presentations on the Conference agenda will greatly stimulate our thinking and offer ways to collaborate on matters of mutual interest.

Warm good wishes for a successful conference!

A handwritten signature in black ink that reads "Beverley A. Wakem". The signature is written in a cursive, flowing style.

# Program and Delegates



# Conference Program

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## 【Day One】 Monday, 5 December 2011 Tokyo

Time	Program	Venue
10:30-15:00	Board of Directors Meeting	No2 Government Bldg.(MIC),Tokyo
17:00-17:50	International Ombudsman Institute Asian Regional Meeting	Keio Plaza Hotel, Tokyo
18:00-19:00	Registration	
18:40-19:20	Board of Directors Meeting	
19:20-20:40	<p>Opening Ceremony</p> <ul style="list-style-type: none"> <li>◆ Opening Address : Mr. Hideo Arai, MIC, Japan</li> <li>◆ Welcome Address : Mr. Tatsuo Kawabata, Minister for Internal Affairs and Communications, Japan (Read by Mr. Ryo Shuhama, Vice-Minister for Internal Affairs and Communications)</li> <li>◆ Responsory Address : Ms. Conchita Carpio Morales, Philippines</li> <li>◆ Congratulatory Address : Ms. Beverley A. Wakem, New Zealand</li> </ul> <p>Welcome Reception Hosted by Minister for Internal Affairs and Communications</p>	

**【Day Two】 Tuesday, 6 December 2011 Tokyo-Shizuoka**

Time	Program	Venue
8:55- 9:10	Courtesy call to the Prime Minister's Office	the Prime Minister's Office
11:00-12:00	Move from Tokyo to Numazu, Shizuoka	—
12:00-13:30	Lunch	Riverside Hotel
14:00-14:40	<p>Opening of Shizuoka Session &amp; Keynote Speech</p> <p><b>Main Theme</b></p> <p>~Challenges for the Ombudsman in a Changing Socio-Economic Environment~</p> <p>◆ Chairperson : Mr. Susumu Kamimura, Japan</p> <p>◆ Keynote Speech :</p> <ul style="list-style-type: none"> <li>○ Ms. Conchita Carpio Morales, Philippines</li> <li>○ Ms. Beverley A. Wakem, New Zealand</li> </ul>	Numazu, Shizuoka
14:50-15:50	<p>Plenary Session 1</p> <p><b>Sub Theme</b></p> <p>~The Ombudsman's Cross-Generational Challenges Arising from a Changing Demographic Structure~</p> <p>◆ Chairperson :</p> <p>Dr. Weng Wah Tam, Malaysia</p> <p>◆ Speaker :</p> <ul style="list-style-type: none"> <li>○ Dr. Muhammad Shoaib Suddle, Pakistan</li> <li>○ Dr. Gholamhossain Bolandian, Iran</li> <li>○ Prof. Masahiro Horie, Japan</li> </ul>	
15:50-16:15	Coffee/Tea Break	
16:15-17:10	<p>Plenary Session 2</p> <p><b>Sub Theme</b></p> <p>~The Fundamental Right of Citizens Pertaining to Access to Information~</p> <p>◆ Chairperson :</p> <p>Ms. Conchita Carpio Morales, Philippines</p> <p>◆ Speaker :</p> <ul style="list-style-type: none"> <li>○ Mr. Alan N. Lai, Hong Kong</li> <li>○ Mr. Man Chong Fong, Macao</li> <li>○ Mr. Justice Narendra Kishore Mehrotra, India</li> <li>○ Dr. Máté Szabó, Hungary</li> </ul>	



**【Day Two】 Tuesday, 6 December 2011 Shizuoka**

Time	Program	Venue
17:20-17:55	Japan Session <b>Theme</b> ~Administrative Counseling in the Great East Japan Earthquake~ ◆ Panelist : ○ Mr. Noboru Tani, Japan ○ Mr. Isao Sato, Japan ○ Mr. Toru Sasaki, Japan	Riverside Hotel Numazu, Shizuoka
19:00-20:45	Reception in Shizuoka	

[Program for Spouse] 14:20-17:20 at Numazu Villa Park of Imperial Families

**【Shizuoka Prefecture & Numazu City】**

Shizuoka Prefecture is located approximately in the center of Japan on the Pacific Coast and is easy access from both east and west parts of Japan. There are rich natural surroundings such as beaches, mountains, and lakes. You can eat fresh fish and enjoy many activities including golf, fishing, sea bathing, and climbing Mt. Fuji. Numazu city is situated in eastern Shizuoka Prefecture. The city is embraced clam Suruga Bay to the south and great Mt. Fuji to the north.



For the spouse program, the half day Japanese cultural experience tour was organized by the people of Numazu. On Wednesday the tour to Ukiyoe Museum and Toshogu Shrine told the participants about long history of Shizuoka.

**【Day Three】 Wednesday, 7 December 2011 Shizuoka**

Time	Program	Venue
5:45-7:30	Fish Market Tour	Numazu Fish Market
9:30-10:20	Plenary Session 3 <u>Sub Theme</u> ~ Improvement in the Advocacy and Outreach Strategy in Protecting the Vulnerable Segments of the Society ~ ◆ Chairperson : Mr. Alan N. Lai, Hong Kong ◆ Speaker : ○ Ms. Youngran Kim, Korea ○ Ms. Conchita Carpio Morales, Philippines ○ Mr. L. A. Tissa Ekanayake, Sri Lanka	Riverside Hotel Numazu, Shizuoka
10:20-10:40	Coffee/Tea Break	
10:40-12:05	Plenary Session 4 <u>Sub Theme</u> ~The Role of Ombudsman in Decentralization, Out Sourcing and Public Private Partnerships ~ ◆ Chairperson : Ms. Youngran Kim, Korea ◆ Speaker : ○ Mr. Danang Girindrawardana, Indonesia ○ Prof. Cheselden George Vida Carmona, Philippines ○ Dr. Nagatomo Yamaoka, Japan	
12:10-13:30	Lunch Hosted by President, the National Federation of Administrative Counselors' Associations	

[Program for Spouse] 9:10-17:00 Tokaido Hiroshige Art Museum, Kuno-zan Toshogu Shrine etc.

**【Day Three】 Wednesday, 7 December 2011 Shizuoka**

Time	Program	Venue
14:00-16:20	<p>Plenary Session 5</p> <p><b>Sub Theme</b></p> <p>~Identifying People's Concerns from Daily Flow of Complaints and Contribute to Systemic Improvements~</p> <p>◆ Chairperson : Ms. Alice Tai, Honorable Member &amp; Former Secretary, AOA/ Former Ombudsman, Hong Kong</p> <p>◆ Speech :</p> <ul style="list-style-type: none"> <li>○ Mr. Huawei Zhang, China</li> <li>○ Mrs. Panit Nitithanprapas, Thailand</li> <li>○ Dr. Weng Wah Tam, Malaysia</li> <li>○ Mr. Nguyen Duc Hanh, Vietnam</li> <li>○ Prof. Elmira Suleymanova, Azerbaijan</li> <li>○ Mr. Tursunbek Akun, Kyrgyz</li> </ul> <p>(15:00-15:20 Coffee/Tea Break)</p>	Riverside Hotel Numazu, Shizuoka
16:25-16:45	<p>Concluding Remarks</p> <p>Mr. Javed Sadiq Malik, Honorable Member &amp; Former President, AOA/ Former Federal Ombudsman, Pakistan</p>	
18:30-20:50	Dinner	Sanyo-so Izunokuni, Shizuoka

**【Day Four】 Thursday, 8 December 2011 Shizuoka-Tokyo**

Time	Program	Venue
5:45-7:30	Fish Market Tour	Numazu Fish Market
9:00-10:30	General Assembly of the AOA  Closing Ceremony  ◆ Address : ○ Mr. Hideo Arai, Japan ○ Dr. Gholamhossain Bolandian, Iran Host country of the next AOA Conference	Riverside Hotel Numazu, Shizuoka
10:30-11:00	Newly Elected Board of Directors Meeting	
12:30-13:30	Lunch	Gotemba Kogen Hotel, Shizuoka
13:45-17:30	Excursion (Social Program)  • Higashi-Fuji Technical Center of Toyota Motor Corporation • Kanto Auto Works, Ltd.	—
17:30-19:00	Move from Shizuoka to Tokyo	—

**【Excursion to Toyota Higashi-Fuji Technical Center and Kanto Auto Works】**

Toyota Motor Corporation is a multinational automobile maker in Japan. It employs about 317,000 people, and has a lot of branches and factories worldwide. Toyota views the realization of a society that places utmost importance on traffic safety and mobility as one of its top management priorities and holds it to its core guiding principle of



supplying safe products. Higashi-Fuji Technical Center makes researches safety technology to live its idea. There are various safety technologies such as the driving simulator, the collision test center and so on.

Kanto Auto Works, Ltd. has been established partnership with Toyota Motor Corporation. It assembles bodies for various vehicles.

## List of Delegates

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### ○ Full Members and Associate Members of AOA

#### ***AZERBAIJAN***

Name	Title
Prof. Elmira Suleymanova	Commissioner for Human Rights

#### ***CHINA***

Mr. Huawei Zhang	Commissioner (Vice Ministerial Level), Ministry of Supervision
Mr. Aijun Ren	Deputy Director-General, Inspection Touring Office, Ministry of Supervision
Ms. Jianping Liu	Division Director, Government Integrity Research Center, Ministry of Supervision
Mr. Weiguo Sun	Division Director, Inspection Touring Office, Ministry of Supervision
Ms. Nan Wang	Project Officer, Foreign Affairs Department, Ministry of Supervision

#### ***HONG KONG***

Mr. Alan N. Lai	Ombudsman
Mr. Tony Ma	Assistant Ombudsman
Mr. Bruce Leung	Chief Investigation Officer, Office of the Ombudsman
Ms. Kathleen Chan	Senior Manager, Office of the Ombudsman

List of Delegates

**INDIA, Uttar Pradesh**

Mr. Justice Narendra Kishore Mehrotra	Provincial Ombudsman (Lokayukta), Uttar Pradesh
Mrs. Manju Mehrotra	(accompanying person)

**INDONESIA**

Mr. Danang Girindrawardana	Chief Ombudsman
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**IRAN**

Dr. Gholamhossain Bolandian	Deputy for Planning and Resource Management, General Inspection Organization
Mr. Mansour Aghamohammadi	Official, General Inspection Organization
Mr. Manouchehr Khani	Official, General Inspection Organization

**KOREA**

Ms. Youngran Kim	Chairperson, Anti-Corruption & Civil Rights Commission
Mr. Hoyoon Hwang	Director, Anti-Corruption & Civil Rights Commission
Mr. Woochul Lee	Deputy Director, Anti-Corruption & Civil Rights Commission
Ms. Dahee Chung	Staff, Anti-Corruption & Civil Rights Commission

**KYRGYZ**

Mr. Tursunbek Akun	Ombudsman (Akyikatchy)
Mr. Temirbaev Ertur	Head Specialist of International Department, Office of the Akyikatchy(Ombudsman)
Mrs. Zhapar Kyzy Gulmira	(accompanying person)

**MACAO**

Mr. Man Chong Fong	Commissioner, Commission Against Corruption
Mr. Kun Hong Kuan	Deputy Commissioner, Commission Against Corruption
Mr. Vai Keong Sam	Chief of Cabinet of the Commissioner, Commission Against Corruption
Mr. Pak Ian Fong	Advisor, Commission Against Corruption
Mr. Luís Manuel Rolo	Legal Advisor, Commission Against Corruption

**MALAYSIA**

Dr. Weng Wah Tam	Director-General, Public Complaints Bureau
Ms. Rowenna Lantung Entang	Official, Public Complaints Bureau
Ms. Bernadette A. Tam	(accompanying person)

**PAKISTAN, Federal**

Mr. Khawaja Muhammad Naeem	Executive Secretary, Asian Ombudsman Association/ Wafaqi Mohtasib(Ombudsman)'s Secretariat
Mr. Abdur Rauf Khan	Administrator, Asian Ombudsman Association/ Wafaqi Mohtasib(Ombudsman)'s Secretariat
Mrs. Roohi Fatima	(accompanying person)

**PAKISTAN, Federal Insurance**

Mr. Azhar Ali Farooqi	Federal Insurance Ombudsman,
Mrs. Samina Azhar	(accompanying person)

**PAKISTAN, Sindh**

Mr. Nazir Ahmed Qidwai	Regional Director, Office of the Ombudsman of Sindh
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List of Delegates

***PAKISTAN, Federal Tax***

Dr. Muhammad Shoaib Suddle	Federal Tax Ombudsman
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***PHILIPPINES***

Ms. Conchita Carpio Morales	Ombudsman
Ms. Leilanie Bernadette Cruz Cabras	Assistant Ombudsman

***SRI LANKA***

Mr. Lankanatha Ashanka Tissa Ekanayake	Parliamentary Commissioner for Administration
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***THAILAND***

Mrs. Panit Nitithanprapas	Chief Ombudsman
Prof. Siracha Charoenpanij	Ombudsman
Mr. Chalernsak Chantaratim	Secretary-General, Office of the Ombudsman
Mr. Raksagecha Chaechai	Director of the Ombudsman Studies Centre and Acting Deputy Secretary-General, Office of the Ombudsman
Ms. Wannaporn Namsatian	Official, Office of the Ombudsman
Mrs. Arunsri Charoenpanij	(accompanying person)

***VIETNAM***

Mr. Nguyen Duc Hanh	Deputy Inspector General, Government Inspectorate
Mr. Nguyen Duc Hai	Deputy Director, Government Inspectorate
Ms. Nguyen Thu Trang	Inspector, Department for International Cooperation, Government Inspectorate



**○ Honorable Member of AOA**

Mr. Javed Sadiq Malik	Former President, Asian Ombudsman Association/ Former Federal Ombudsman, Pakistan
Ms. Alice Tai	Former Secretary, Asian Ombudsman Association/ Former Ombudsman, Hong Kong

**○ Observer**

***EAST TIMOR***

Dr. Sebastiao Dias Ximenes	Provedor (Ombudsman), Provedoria for Human Rights and Justice
Mr. Rui Pereira dos Santos	Deputy Provedor, Provedoria for Human Rights and Justice
Mr. Ambrosio Graciano Soares	Official, Provedoria for Human Rights and Justice

***HUNGARY***

Dr. Máté Szabó	Parliamentary Commissioner for Civil Rights
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***NEW ZEALAND***

Ms. Beverley A. Wakem	President, International Ombudsman Institute/ Chief Ombudsman
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***PHILIPPINES***

Dr. Cheselden George Vida Carmona	Professor, Ateneo De Manila University
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***TURKEY***

Mr. Feridun Onsav	Ombudsman
Mr. Zeki Gursel	Director, Office of the Ombudsman

## ○ JAPAN (Host Country)

### ***Speaker***

Prof. Masahiro Horie	Vice President and Professor, National Graduate Institute for Policy Studies/ Former Vice-Minister for Policy Coordination, MIC
Dr. Nagatomo Yamaoka	Emeritus Professor, Nihon University/ Administrative Counselor

### ***Guest***

Dr. Heita Kawakatsu	Governor, Shizuoka Prefecture
Mr. Hiroyasu Kurihara	Mayor, Numazu City
Dr. Hiromitsu Kataoka	Chairman of the Japan Association for Ombudsman Studies/ Emeritus Professor, Waseda University

### ***The Administrative Grievance Resolution Promotion Council***

Dr. Wataru Omori	Chairman, the Administrative Grievance Resolution Promotion Council/ Emeritus Professor, Tokyo University
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### ***Administrative Counselor***

Mr. Noboru Tani	President, The National Federation of Administrative Counselors' Associations
Mr. Isao Sato	Administrative Counselor (Iwate Prefecture)

### ***Administrative Evaluation Bureau, MIC***

Mr. Hideo Arai	Director-General, Administrative Evaluation Bureau, MIC
Mr. Susumu Kamimura	Deputy Director-General, Administrative Evaluation Bureau, MIC
Mr. Suguru Shiraiwa	Director, Administrative Counseling Division, Administrative Evaluation Bureau, MIC

# Keynote Speech

## Main Theme

### Challenges for the Ombudsman in a Changing Socio-Economic Environment

Mr. Susumu Kamimura . . . . .	31
Deputy Director-General, Administrative Evaluation Bureau, MIC, JAPAN	
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Vice President, Asian Ombudsman Association/ Ombudsman, PHILIPPINES	
Ms. Beverley A. Wakem . . . . .	36
President, International Ombudsman Institute/ Chief Ombudsman, NEW ZEALAND	



**Introduction of Keynote Speakers  
to the 12th Conference  
of the Asian Ombudsman Association**



**Mr. Susumu Kamimura**  
Deputy Director-General  
Administrative Evaluation Bureau  
Ministry of Internal Affairs and Communications  
JAPAN

Ms. Conchita Carpio Morales, Acting President of the Asian Ombudsman Association

Ms. Beverley A. Wakem, President of the International Ombudsman Institute

Board of Directors and Fellow Members of the Asian Ombudsman Association,

Honorable Ombudsmen and Distinguished Participants,

Ladies and Gentlemen,

It gives me great pleasure to be with you this afternoon at the opening of the Shizuoka Session of the 12th Conference of the Asian Ombudsman Association. On behalf of the Japanese Ombudsman, may I extend a very warm welcome to all participants in this Conference.

We were most grateful earlier this year that all of you supported our re-scheduling of the Conference which unfortunately had to be postponed due to the Earthquake which struck Japan on 11th March.

And we would like to say thank you to our colleagues in Asia, who sent words of sympathy and encouragement to us. We will never forget your friendship at this very critical time.

The Asian region can be said to be one of the most dynamic and also most attractive areas of the world. Among the achievements of Asian nations which have caught the attention of the wider world we could list dramatic economic growth, a vigorously expanding population and advanced technological development, set alongside the unique and appealing nature and culture of our region.

On the other hand, it could be said that these seemingly positive factors have posed problems, in rendering Asian people vulnerable to sudden and sometimes drastic change. Anyone browsing articles about Asian countries on website homepages will come across often-repeated topics such as “an aging population” and “changing lifestyles in a rapidly-growing economy”. These issues present

## Keynote Speech

challenges to the region's governments who must try to relieve, or prevent, the frictions and tensions generated by failure to adapt to rapid change. Today's governments, whatever system they operate in, need to keep a very close watch on the everyday lives of their citizens in order to be able to fulfill their mandate of care and diffuse problems before they arise.

In our experience, governments seldom perform impeccably in the actions taken in fulfillment of these desirable aims. In many cases, there will be complaints and protests on the part of persons or parties who feel they have been treated unfairly.

Enter the Ombudsman!

Which brings me to the main theme of this conference, "Challenges for the Ombudsman in a Changing Socio-Economic Environment".

The meeting of the Board of Directors held last year in Manila arrived at this overall theme following discussion under the chairmanship of Mr. Malik, our President at that time. Mr Malik has been invited here as our Special Guest at this Conference. Building on the achievements of the previous Conference in Thailand in 2009, the Board came up with the following sub-themes for this new conference:

- Cross-generational challenges facing the Ombudsman, arising from a changing demographic structure;
- Fundamental rights of citizens pertaining to access to information;
- Improving advocacy and outreach strategies to protect vulnerable segments of society;
- The role of the Ombudsman in decentralization, out-sourcing and public private partnership;
- Identifying people's concerns from the daily flow of complaints, and contributing to systemic improvements.

The themes we are going to discuss are very timely in the circumstances to which I have referred. Big natural disasters, which many member countries have also experienced in recent years, can of themselves trigger socio-economic changes. It is my hope that this Conference will provide plenty of opportunity for us to exchange useful views, ideas and experience which will influence our future activity as well as our present work. The targets of Ombudsman activity can be defined as including not only protection of people from maladministration or violation of their rights in present time now, but also as contributing to 'good governance' for the future.

Before introducing our keynote speakers, I'd like to make a brief introduction to this city, Numazu in Shizuoka. This Conference has come together thanks to the especial help of the people of Numazu

City and Shizuoka Prefecture, so on everyone's behalf gathered here today I would like to express our heartfelt appreciation to them for hosting us so comfortably and efficiently.

Numazu City is located in the eastern part of Shizuoka prefecture, at the foot of Mt. Fuji and benefits from the special mountain's beautiful spring water. It enjoys a mild climate and abundance of delicious food products issuing from the surrounding fertile farmland and the ocean. Being a medium-sized Japanese city it differs greatly in character and atmosphere both from the world-famous, gigantic megalopolis of Tokyo and the historic city of Kyoto, further south. Yet as such Numazu has its own charms, so I hope participants in this conference regard this as an opportunity to experience part of the 'real Japan'.

Ladies and Gentlemen, at this point it is my honor to invite Ms. Conchita Carpio Morales, the Acting President of Asian Ombudsman Association, and Ms. Beverley Wakem, the President of International Ombudsman Institute to deliver the Keynote speeches at this Conference.

Thank you very much.



## **CHALLENGES FOR THE OMBUDSMAN IN A CHANGING SOCIO-ECONOMIC ENVIRONMENT**



**Ms. Conchita Carpio Morales**  
Vice President of Asian Ombudsman Association  
Ombudsman, PHILIPPINES

Good day to my esteemed colleagues in the public sector, ladies and gentlemen.

Welcome to the 12th Conference of the Asian Ombudsman Association! Let me express, on behalf of the delegates, our profound thanks and congratulations to our colleagues from Tokyo, Japan and the Secretariat for the warm hospitality and reception. I am pleased to inform you that the proposed AOA Core Principles of Ombudsmanship was discussed last year during the AOA Regional Meeting held in the Philippines with technical assistance from the Asian Development Bank.

The past year saw the region beset with natural calamities, from inundations to earthquakes and tsunamis. We are still reeling from their consequences. Because we live in a global village, we also feel, in varying degrees, the effects of the American economic depression, the European financial crisis and the political unrest in Africa and the Middle East.

Hence, the theme for this year - “Challenges for the Ombudsman in a Changing Socio-Economic Environment” - could not have been a better choice. The core principles that bind us together – clarity of mandate, independence, accountability, accessibility and effectiveness – are all directed towards improved public service delivery. Public administration that is transparent and accountable is crucial in responding adequately to calamities. Good management of resources and provision of services impact greatly on the number of lives saved and property damage mitigated.

The ombudsman is in a strategic position to ensure that the world’s limited natural resources are marshaled under a responsive and sustainable stewardship. Instead of just being reactive, the ombudsman must assume a more proactive role in safeguarding the distribution of resources and provision of basic necessities and quality services to the public by observing the highest degree of accountability and transparency.

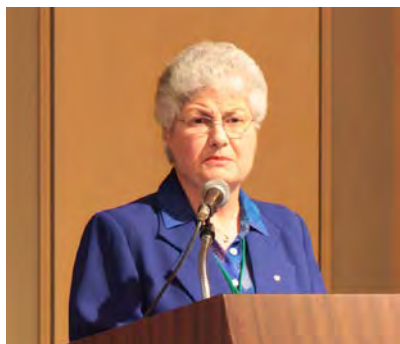
The challenges to keep abreast with technology and apply it in the discharge of our functions, especially in improving our service delivery either in public assistance or investigation, become imperative, as enemies of accountability use technology advancement to perpetuate violations of public trust.

Now, more than ever, we need good governance to respond effectively to any disaster, whether natural or manmade, and to enable countries to bounce back from any debilitating effects. The AOA annual conference has always been a much-valued platform for sharing knowledge and best practices which contribute to the robustness and resiliency of its members to address whatever challenges it may confront.

I trust that the sessions will enrich and equip us with useful information we can apply when we go back to our respective countries.

I wish everyone a very productive conference ahead of us. Konnichiwa.

## CHALLENGES FOR THE OMBUDSMAN IN A CHANGING SOCIO-ECONOMIC ENVIRONMENT



Ms. Beverley A. Wakem, CBE.  
President of the International Ombudsman Institute  
Chief Ombudsman, NEW ZEALAND

### Introduction

As the title of this Conference suggests, Ombudsmen are not immune from the changes taking place in the societies within which we operate.

Worldwide, there are major changes confronting Ombudsmen in the social, political, and economic environments within which we work. There are increasing challenges to our mandate or potential limitations on our powers or the breadth of our jurisdiction. There is the challenge of technology, specifically as we grapple with the need to balance the State's need to generate and hold records, increasingly in digital form, about individual citizens, and the right of those individuals to challenge information that is held and used in decisions that relate to them, or impact on them. The challenge of maintaining confidentiality in the face of increasing demands for openness and transparency.

And in most countries there is a growing demand for Ombudsman services and in many places the Ombudsman is increasingly required to take on additional jurisdictions especially in the field of human rights.

The current global financial crisis demands austerity in public spending and as the pressures come on the State Sector to cut budgets and trim service, the Ombudsman is faced with a rising demand for redress of service delivery failures and little or no additional resources to meet this need.

A few months ago, I canvassed IOI members about the specific challenges facing them in the next 3 – 5 years. As well as the ones I've just mentioned, were:

- How to maintain the independence of the office in this climate of change
- How to create a climate of responsiveness in agencies so they get it right first time.

- Raising the capacity and capability of staff and meeting the competition for skilled staff
- How to deal with the erosion of the Ombudsman role due to the proliferation of industry and other bodies claiming “ombudsman” status
- The need to ensure that the Ombudsman institution remains and credible and relevant recourse for our respective citizens
- Maintaining oversight of bodies delivering public services but which are, increasingly, being partially or wholly privatised.
- Managing multiple jurisdictions
- Responding to the needs of an ageing population and
- Managing risk

This is by no means an exhaustive list. It is however reflective of the major issues which face us and which we must meet if we are to remain relevant and effective in our primary role of ensuring administrative justice and procedural fairness, mediating the relationship between the governing and the governed and encouraging trust in government by ensuring that public bodies operate fairly and transparently and are fit for purpose.

That the role of Ombudsman in this challenging environment also requires us to be more proactive and have the courage of our convictions to defend our findings in the face of increasingly conservative government responses and increasingly vehement right wing opinions about what constitutes justice – particularly in respect of some of the most vulnerable in our society – means this isn’t a job for the faint hearted. If it ever was!

Nelson Mandela has said “I learned that courage was not the absence of fear, but the triumph over it. The brave man is not he who does not feel afraid, but he who conquers that fear.”

At the British and Irish Ombudsman’s Association Conference earlier this year two presentations (on recent challenges to the Ombudsman’s recommendations in the UK and Ireland in the Equitable Life case and the “Lost At Sea” case) illustrate the point.

The first was a long running saga around fair and transparent payments to policy holders where there had been an absolute failure to observe due process and where regulations were plainly ill founded. The government’s initial response was to reject the report. The Ombudsman challenged that publically, and through the political process, and indicated she was prepared to call the relevant Ministry to account in a public hearing as to the reasons for the refusal which were not at all clear to her or to the public. The Government finally accepted the broad thrust of the recommendations but not to the extent envisaged.

## Keynote Speech

In Ireland, the “Lost At Sea” case involved a one off and time bound compensation scheme for the owners of vessels which had sunk. The complainant’s application was rejected as out of time and not meeting all the eligibility criteria. The Ombudsman’s investigation found that the design of the Scheme was contrary to fair and sound administration, it had not been adequately advertised, there were poor record keeping practices leading up to the sign off of the scheme which resulted in an inability to track the process of changes to the Scheme.

The Ombudsman recommended compensation for the complainant because these deficiencies had militated against a successful application. The recommendation was rejected.

Following the Ombudsman’s further and public argument about the justice of this and the way in which debate in the Parliament had been stifled, and considerable support for her position in political and media comment, the new Coalition government has proposed to strengthen the relationship between the Ombudsman and the Parliament with the creation of an “Investigations, Oversight and Petitions Committee” which would be responsible for receiving and debating her annual and special reports and for ensuring her criticisms and recommendations are acted on.

It has always been the hallmark of the Ombudsman that they are independent and forthright in defence of good governance.

In some places to do so can be dangerous - if not perhaps life threatening, then providing an opportunity for attempts to limit the Ombudsman’s role and powers. We need to be vigilant and mutually supportive in the face of these threats and support our colleagues when they “Speak Truth to Power”. That is the value of the various associations of Ombudsmen such as the AOA where we can share experience on best practice and how to navigate our way through the challenges inherent in the role. That is why the IOI is making serious efforts to strengthen its regional members, and to reach out to other Ombudsman associations and link with them in support of our mutual objectives.

At the IOI’s recent Board meeting in Zambia we were delighted to have as observers members of the Executive of AOMA and then to formally discuss with them the creation of a Memorandum of Understanding which would offer options for a closer future relationship.

### **Remaining Relevant**

The biggest challenge for all of us is to remain relevant and responsive and to manage our constrained resources to best effect. That has certainly been foremost in my mind in managing my own office. We have focussed on improving the effectiveness and efficiency of our service and the quality and consistency of our analysis.

Why should we care about efficiency and effectiveness. First of all because we are accountable to our stakeholders. As a Parliamentary Ombudsman I am accountable to Parliament for the performance of the office. While our accountability requirements may differ between country and state, we all have them. Among other things, I am required by the New Zealand Public Finance Act to provide information on our future operating intentions, including:

- the specific impacts, outcomes and objectives we seek to achieve or contribute to;
- how we intend to perform our functions and conduct our operations to achieve those impacts, outcomes and objectives effectively and within a changeable operating environment; and
- the main measures and standards we will use to assess our performance and the cost-effectiveness of our interventions.

Secondly, we are responsible for ensuring proper administration in the agencies we oversight, and we therefore have a responsibility to model good administrative behaviour – including standards of efficiency and effectiveness. We would not be credible otherwise.

Finally, we are spending taxpayers’ – or stakeholders’ – money – and we are obliged to them to perform the best that we can and to keep them informed of our performance. As Ombudsmen, we simply won’t last long if we are not demonstrating an ongoing commitment to doing things better.

### **Drivers of efficiency and effectiveness**

There are also internal and external drivers requiring increased efficiency and effectiveness, some of which we will all be facing, and some of which are particular to my office.

First, is the **increasing demand for services**. I know the New Zealand Office of the Ombudsmen is not alone in experiencing a significant increase in work over the last few years. We had and 11.5% increase last year in complaints and requests for assistance as compared with the previous year. We are not expecting that trend to reverse any time soon.

The matters we’re being asked to adjudicate on are becoming increasingly complex. The only way we can manage this situation without a significant fiscal injection (which realistically we are unlikely to receive) is to try and extract more and better efficiencies.

Second, there is the **current economic environment**. Things are tight, and will remain so for the foreseeable future. The agencies we oversight will be required to do more with the same or fewer resources; to improve efficiency and redirect resources to the frontline. At the same time, members of

## Keynote Speech

the public who are struggling to cope in straightened financial circumstances will become increasingly reliant on government services and support. They have high expectations about the level of service they are entitled to receive, and if those expectations are not met they are likely to complain. This is probably a factor in the increased demand for Ombudsmen services, and can be expected to elevate complaint levels in the short to medium term.

Our Chief Justice noted that paying attentive care to the small matters and the ordinary citizens needs, and doing that effectively, will provide social “glue” in times of stress.

Effective and efficient Ombudsmen oversight in these circumstances becomes critical, yet at the same time our interventions must be practical, relevant and proportionate.

Third – and this is specific to my office – we have been and are facing a “free and frank” appraisal of our operations in the **freedom of information jurisdiction**. This began with a paper by law lecturer and media commentator, Stephen Price and a research project and book published by Nicola White (appropriately called “Free and Frank”), and continues with a review of New Zealand’s official information legislation by the Law Commission.

The issues raised in public submissions to the Law Commission were no surprise to us really – submitters wanted clearer guidelines or examples about recurring requests, relying more on precedent or explicit presumptions about release or withholding as opposed to a case by case approach; they complained about the time taken to investigate requests; they thought our guidance notes added complexity but not clarity.

Fourth, surveys of our stakeholders and complainants reveal some additional shortcomings. Whilst they said some very nice things about our professionalism, competence and independence, the survey also revealed some uncomfortable truths. Complainants and agencies were concerned about the length of time investigations took. They felt our communications with them could be clearer and easier to understand. It was also apparent that we weren’t reaching all segments of the population – the majority of complainants surveyed being male, European, and over 40 years of age.

We were also receiving **feedback from our auditors** that our performance information focused too much on our “activities”, without identifying why we were doing those activities – our outcomes – and demonstrating how those activities contributed to the achievement of our outcomes. This is basic stuff in a “*managing for outcomes*” world, but we needed to start from scratch.

Fifthly, we are promoting a review of the Ombudsman Act to bring it up to date with modern practice.

Finally, I believed that we needed to reposition the Office to better match the needs of complainants, reflect the reality of modern agency structure and practice within a greatly altered State Sector, and bring modern management practice, quality assurance and consistency of decision making into the office. The latter has involved establishing clearer lines of devolved decision making and accountability, and developing a much needed research and professional development capability to future proof the office and better support for the Ombudsmen in their work and decision making. Following from this is a strengthened capacity and capability to actively assist the agencies we oversight to “put it right” in the first place, more effectively.

### **Measuring Effectiveness**

We have all developed various measures to differing degrees of effect, such as the number of cases closed; time taken to close cases; and number of recommendations made and actioned. We report against these measures. We benchmark our performance against that of other Ombudsman offices in our region and undertake internal reviews and, as I have already mentioned, we undertake complainant and agency surveys.

However, there are some inherent difficulties in measuring Ombudsman effectiveness. Many of an Ombudsman’s achievements come through the action of others, and not always at an Ombudsman’s explicit direction. As a result of an Ombudsman’s intervention an agency and complainant may settle a concern directly. One Ombudsman investigation may lead to a process improvement that affects numerous individuals who may otherwise have had a legitimate complaint. The fact that individuals can access free and independent complaint resolution mechanisms may also help avoid the escalation of costs associated with protracted disputes. But how do we measure those savings?

Mary Rowe, Ombudsman and Adjunct Professor of Negotiation and Conflict Management at the MIT Sloan School of Management has some ideas for communicating Ombudsman effectiveness that may be helpful, for instance:

- Effective tracking of complaints to identify emerging problems and potential solutions so the office becomes known for providing helpful “heads up” and support to agencies
- Inclusion in general climate surveys to test knowledge, use and value of Ombudsman organisations; and
- Publically reporting the five or six most serious problems and issues in the past year: cases that resulted in significant outcomes or achievement of efficiencies can go some way to demonstrating the cost-effectiveness of Ombudsman interventions.



### **Back to basics**

I said earlier that we had received some criticism regarding our performance framework. Without a cohesive performance framework it was difficult to demonstrate to everyone's satisfaction that we were operating efficiently and effectively.

So we got back to basics and thought about:

- what we have to do;
- what we want to do; and
- why we have or want to do it. And importantly
- was our structure and management relationships appropriate for an enhanced future

We identified an overarching outcome of enhanced public trust and confidence in a fair, responsive and accountable government, and six intermediate outcomes. Four of these intermediate outcomes reflect what we *have* to do under our statutory jurisdictions – the Ombudsmen Act, the official information legislation, the Protected Disclosures Act, and the Crimes of Torture Act. Two of them reflect what we *want* to do, in terms of freeing up capacity to make some proactive, systemic improvements to state sector capability in administrative, decision-making and complaints-handling processes, and improving public awareness of, and access to, Ombudsman services. We also identified some strategic priorities for the short-medium term, including:

- improving work practices to deliver faster, better and more consistent responses to complaints, and identifying measures to streamline complaints handling and investigation processes;
- developing ways of better communicating key Ombudsmen decisions and settled principles so that agencies and requesters know the “rules” and can predict how they might apply in particular circumstances; and
- promoting greater openness and proactive disclosure of official information where appropriate to reduce the administrative burden and transaction costs of reacting to individual requests for similar information.

This was a significant shift in mind-set for my office. Historically, we were reluctant to do anything other than what we were specifically charged to do by Parliament – that meant waiting for something to go wrong before doing anything about it. We were reluctant to undertake public awareness-related activities because we did not want to be seen to be ‘touting for business’, yet we cannot hope to be effective if we are not reaching the diversity of communities that make up New Zealand society.

We were also reluctant to give people the ‘answers’, even in a general sense, in case we were conflicted if the matter ultimately came to us for determination.

What we have realised is that if we don’t fill the gap, someone else will, and we are not sure that we would like what they might fill it with.

In the Ombudsmen Act context, we are without statutory timeframes for responses to Ombudsman requirements. So whether Ombudsmen’s requirements should be time-bound is one issue we would propose to consider in any review of the legislation. In any event, we must get better at identifying when delays are due to agency inaction and consider publicly reporting that information as an incentive for timely compliance

### **Closing remarks**

In the end, continued confidence in the Ombudsman’s office rests on having clearly articulated outcomes, supported by a “fit for purpose” structure; a demonstrably high level of trust and integrity between the office and those it deals with; capable and competent staff, transparent and robust processes; impartiality and fairness; confidentiality; and a credible review process.

The role of the Ombudsman in both the private and public sector is vital to a well functioning democracy, and to the maintenance of high standards of conduct in government and business. The economic and social health of our countries depend on all our institutions functioning as well as they can and dealing in a principled way with their consumers. Our role is to ensure that they do, and that role is more important in this changing climate than ever before.

I look forward over the course of this Conference to hearing how you are meeting the challenge.



# Plenary Session 1

## Sub Theme

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## The Ombudsman's Cross-Generational Challenges Arising from a Changing Demographic Structure



Dr. Muhammad Shoaib Suddle  
Federal Tax Ombudsman  
PAKISTAN

### **Introduction**

- ▶ Generations Today
- ▶ Demographic Profiles: Asian Region
- ▶ Generations: Core Values
- ▶ Generations: Attributes
  - ▶ Attitudes about government
  - ▶ Attitudes about authority
  - ▶ Attitudes about communication
- ▶ Age Discrimination:  
Findings of European Social Survey
- ▶ Varying Response Amongst Different Generational Tiers  
for the Ombudsman
- ▶ Building a Cross Generational Ombudsman Institution

## Generations Today

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- ▶ Traditionalists: 65 and over
  - ▶ Baby Boomers: 45 to 64
  - ▶ Generation X: 30 to 44
  - ▶ Millennials: 10 to 29
- 

## Demographic Profiles: Asian Region

Country	Generation			
	Tradition- alists	Baby Boomers	Generation X	Millennials
Azerbaijan	6.40	20.80	21.42	35.88
China	8.90	24.52	24.43	30.84
Japan	23.10	27.00	20.72	20.39
Hong Kong	13.50	33.74	23.10	22.20
India	5.50	16.67	21.55	36.50
Indonesia	6.10	18.14	22.74	34.86
Iran	5.00	14.88	23.06	40.73
Korea	11.40	27.35	24.77	27.20
Kyrgyz Republic	5.30	16.48	18.82	39.15

### Demographic Profiles: Asian Regions

Country	Generation			
	Tradition- alists	Baby Boomers	Generation X	Millennials
Macao	8.20	26.42	25.54	30.00
Malaysia	5.00	18.09	21.68	35.00
Pakistan	4.20	12.44	17.71	42.11
Philippines	4.30	13.88	19.37	38.72
Sri Lanka	7.90	21.29	22.14	31.44
Thailand	9.20	23.53	24.41	30.00
Uzbekistan	4.70	16.28	20.71	41.21
Vietnam	5.50	17.78	22.39	37.36



### Generations: Core Values

Traditionalists	Baby Boomers	Generation X	Millennials
Don't challenge authority	Question authority	Are practical, believe in earning trust	Tolerant and realistic
Support law and order	Challenge the old order	Are independent in their thinking	Challenge status quo, but are street smart
Respect government	Are anti-government	Are cynical about government	Believe in doing their civic duty
Follow rules	Believe in making a difference	Are realistic in their approach to life	Are highly innovative
Believe in collective good	Support equal rights and equality of opportunity	Believe in work/life balance	Trust in professionalism





### Generations: Attributes

Traditionalists	Baby Boomers	Generation X	Millennials
Believe in doing more with less	Want value for money	Are result-oriented	Believe in competency, not title
Respect hierarchy	Support leadership by consensus	Strong sense of entitlement	'Sky is the limit' approach
Follow rules	Question rules	Skeptical of institutions	Think globally
Are patient and understanding	Like the Big Picture approach	Are blunt and informal	Are polite and street smart
Prefer personal and formal interaction	Prefer to communicate in person	Are technology savvy	Digital Generation

### Attitudes about government

Traditionalists	Baby Boomers	Generation X	Millennials
Believe in government, reluctant to complain	Critical of government actions and policies	Are disinterested and disillusioned by government institutions	Believe in seeking meaningful civic engagement
Reassure others that their complaints would be solved	Believe in citizen action and advocacy for results	Likely to avail government services	Are skeptical of growing bureaucracies
Their approach to problem-solving not aggressive	Indifferent to interact with the government	Believe in self empowerment; want to correct their mistakes	Open-minded and less rigid, yet highly individualistic
Believe in self sacrifice for common good	Believe in social justice	Not attached to career ladder	Use moral suasion as an effective tool

### Attitudes about authority

Traditionalists	Baby Boomers	Generation X	Millennials
Value institutional hierarchy	Challenge the rules but still play the game	Respect earned, not a given	Believe in competence, not seniority or title
Believe respecting those with authority, address them by their titles	Do not hesitate going to higher management, if not properly attended	Emphasis on results, address by first name	Emphasis on collaborative group work
Respect authority and institutions	Are mindful that their complaint is handled at appropriate level	More casual and relaxed	Are polite to gain respect from authority



### Attitudes about communication

Traditionalists	Baby Boomers	Generation X	Millennials
Formal written communication (letters and memos)	Prefer direct, personal communication, but do use technology	Prefer internet communication	Emails, social media, online complaint forms
Not conversant with modern online applications	Mindful of building rapport, better adept at using technology	Focus on efficient, direct communication	24/7 communications
May allow more time for intake and follow-up	May act as advocate for others	Less is more! Leave me alone!	Open and comfortable with sharing everything



### **Age Discrimination: Findings of European Social Survey**

- ▶ Carried out in 28 countries in 2009
- ▶ Results (for Britain):
  - ▶ 2 out of 5 Britons opined that they were ignored or patronized because of ageist views
  - ▶ 64% thought that age discrimination is a very serious or quite serious problem
  - ▶ 41% were of the view that people aged 70 or over contributed little to the economy
  - ▶ 36% opined that such people were a burden on healthcare services



### **Varying Response Amongst Different Generational Tiers for the Ombudsman**

- ▶ Traditionalists are likely to accord more respect to the Ombudsman institution
- ▶ Boomers and Generation X fully support the Ombudsman institution; they are likely to be more responsive to people's problems
- ▶ Millennials may feel skeptic about the Ombudsman institution, yet they may seek more meaningful engagement with the institution
- ▶ Using preferred modes of communication, the staff at the Ombudsman's offices can interact more positively and meaningfully with their clients



## **Building a Cross Generational Ombudsman Institution**

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- ▶ Every generation possesses useful traits, conflicts within, and poses a challenge to new concepts, ideas and thoughts
  - ▶ Old concepts, infrastructures and mechanisms need to be replaced and developed quickly, according to the latest technological developments
  - ▶ Ombudsman staff to reflect cross generational sensitivities
  - ▶ Training in the fields of information technology, and modern Ombudsman concepts, including cross generational issues
- 



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**THANK YOU**

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## The Ombudsman's Cross-Generational Challenges Arising from a Changing Demographic Structure



Dr. Gholamhossain Bolandian  
Deputy for Planning and Resource Management  
General Inspection Organization  
IRAN

In the Name God the Merciful the Compassionate

Mr. President,

Distinguish Colleagues

Ladies and Gentlemen,

Firstly, on behalf of my country, the Islamic Republic of Iran, I wish to express my deep pleasure to attend this valuable gathering organized to defend the human rights in its various dimensions.

The main spirit behind ombudsmen organizations implies exercise of supervision for protecting the rights granted to every person by the Almighty God on equal basis; and this is one of the sublime teachings stipulated in all divine religions and holy books.

Bearing in mind the fact that it is the Almighty God who exercises the ultimate supervision on the world for protecting the rights of all human beings all those governments that disregard rights of human beings in order to maintain their rule and interests are actually standing against the will of the Almighty, deliberately or non-deliberately swimming against the divine stream that honors the human rights.

Knowing that all those who, in the course of history, intended to defy the “divine will” have been doomed to fail we need to lay emphasis that those great powers who, just for their own ill-intentions and illegitimate interests, intend to use the question of the human rights as a leverage against their political opponents by manipulation of the existing global structures will face similar destiny.

Under current rather changeable social and economic climates, ombudsmen are facing unique challenges; the challenges which have been unprecedented at least in the previous century given the today's available communication technologies and tools.

Now all human beings are involved in the global institutionalized social and economic developments. The present era may by no means be compared with any juncture in the past in view of the existing

integration and march of millions of people towards a common objective that is removal of the unreal barriers dividing individuals; the barriers which unrightfully established in the course of centuries.

For dismantling the said barriers and obstacles to the global integration the present gathering is needed to make every effort towards and tackle all the impediments to materialization of all human rights, including the rights to enjoy freedom and independence. We need to do our best to realize and protect the people's beliefs and causes disregarded under false pretexts as well. As one of our most critical and important responsibilities it is also necessary for us to protect and preserve the natural process of all these positive developments.

Ladies and Gentlemen,

One of the major challenges facing the ombudsmen that I wish to further elaborate on is the demographic changes transpired in the course of generations. Emergence of any new subject, although at first glance may seem like a challenge but it may be turned into an opportunity if its nature and root and all its related aspects are properly identified and investigated and efficient and proper strategies adopted and managed accordingly.

Cross-generation differences have led to emergence of new factors and elements affecting the ombudsmen responsibilities which due to their complexity may not be dealt with by adopting a passive approach. Therefore a responsible and far-reaching ombudsman is needed to better deal with the issues and problems under the current circumstances.

According to Article 174 of the Constitution of the Islamic Republic of Iran the "the General Inspection Organization" was established in order to supervise performance of the public and government executive organizations and extend the required recommendations and intellectual assistance accordingly.

Iran, as one of the countries with youngest population in the world, has aptly identified and understood the issue of the Cross-generation differences. Now we are prepared to use this historic opportunity. Out of the 75 million Iranian population 38 millions are men and 37 millions are women. The Iranian female and male populations below 30 years old include respectively %58.2 and %58.5 of the total population.

With the purpose of supporting the rights of the Iranian population, in addition to the mechanisms provided in the Constitution and other positive laws, a number of measures have already been adopted by the General Inspection Organization which includes the following:

- 1- Implementation of the program for involving the volunteer inspectors and supervisors in the relevant activities with the purpose of utilizing knowledge, experiences and expertise of inspectors from different generations; through this program the General Inspection

Organization could facilitate cooperation among individuals from different generations and assist identification of the problems they are grappling with.

- 2- Establishment of a national supervisory dashboard in favor of restoration of the people's rights against government and public organization.
- 3- Establishment of the Young Consultants Group and exercise supervision over and assessment of their performance in more than 70 bodies and organizations, affiliated to the government and NGOs, and accordingly provision of the required ground for further involvement of the young population in depicting future of their country and actualizing their rights in due process.
- 4- Establishment of the electronic national on-line service (web) for collecting and investigating the complaints and having easy access to the relevant processes, the follow ups and outcome in the cyber space in current year has facilitated communication between the General Inspection Organization and 36937 of its service users (15710 notifications and 20687 complaints) and promoted the procedures for receiving the information on the relevant rights and identifying and removing the problems to this end.
- 5- Establishment of the center for Assessing Bureaucratic Integrity and Accountability of the System vis-à-vis the service users and evaluation of public satisfaction; by establishment of this center the General Inspection Organization has succeeded in producing valuable outcome for introducing strategies conducive to making ombudsman related decisions at macro level by administration of national and regional opinion polls.
- 6- At international level: making the suggestion for establishment of the Asian Ombudsman Association Cultural Group in Iran and its Permanent Cultural and Training Secretariat; this Secretariat will be responsible to identify cultural and social methods and ways for better management of Cross-generation changes and rapid social developments at international level with the aim of turning the challenges facing the ombudsmen into golden opportunities in favor of restoration of the people's rights.
- 7- Active involvement of the General Inspection Organization in the relevant international events and the present meeting and embarking on bilateral and multilateral cooperation; making effective suggestions and recommendations given the valuable and successful experiences of the Government of the Islamic Republic of Iran in the last 32 years based on the sublime religious values of the Iranian population.

In conclusion I wish to thank you for your attention and patience and pray to the Almighty God for every success of the newly elected members of the board of directors.

I would like also to announce readiness of my country for extending its full cooperation for actualizing the objectives of the present gathering as well as our preparedness for hosting the next meeting in Tehran which will provide a valuable opportunity for you, distinguished participants, to get further familiarized with ombudsman achievements in Iran.

Thank you



## Change of Population Structure of Japan and Roles of Administrative Counselors



Prof. Masahiro Horie  
Vice President  
National Graduate Institute for Policy Studies  
JAPAN

1. Change of Population Structure of Japan
2. Effects of Changes of Population and Response to Changes and Effects
3. Administrative Systems and Public Services for the Aged (Elderly)
4. Administrative Counseling System in Japan
5. Roles of Administrative Counselors in the Ultra Aged Society

**1. Change of Population Structure of Japan (1)**

(1) Population Pyramid of Japan in 2010 : not a pyramid but an electric rice cooker

(2) Change of Population Pyramid

1950 Bell →1975 Tree →2005 Rice Cooker →2025 →2050 Basket

(3) Japan as the Most Aged (Ultra Aged) and the Most Rapidly Aged Country

(year)	1950	1970	1995	2005	2010	2030	2055
65 and over	4.9%	7.1	14.6	20.2	23.1	31.8	40.5
(75 and over)	(1.3)	(2.1)	(5.7)	(9.1)	(11.2)		
15~64	59.7	69.0	69.5	66.1	63.7	58.5	51.1
0~14	35.4	23.9	16.0	13.8	13.2	9.7	8.4
(Total Population)	83.2million	103.7	125.6	127.8	128.1	115.2	89.9

World Average Ageing Ratio : 5.2% (1950) 7.3% (2005) 16.2% (2050)

Years for the Ageing Ratio to increase from 7% to 14%:

Japan : 24 years (1970~1994)

France : 115 years, Sweden : 85 years, UK : 47 years, Germany : 40 years

\*Ageing Society = Ageing Ratio : from higher than 7% to 14 %

Aged Society = Ageing Ratio : from higher than 14% to 21%

Ultra Aged Society = Ageing Ratio : higher than 21%

**1. Change of Population Structure of Japan (2)**

(4) Change of Life Expectancy

(year)	1955	1985	1995	2005	2009	2015	2025	2035	2045	2055
F	67.75	80.48	82.85	85.52	86.44	87.08	88.19	89.06	89.77	90.34
M	63.60	74.78	76.38	78.56	79.59	80.22	81.39	82.31	83.05	83.67

(5) Change of Fertility Rate

year	1947	1948	1949	1950	1952	1960	1970	1980	1990	2000	2005	2010
rate	4.54	4.4	4.32	3.65	2.98	2	2.13	1.75	1.54	1.36	1.26	1.39

\*First Baby Boom : 1947~1949 New Babies : 8.057 million in 3 years

Second Baby Boom : 1971~1974 New Babies : 8.162 million in 4 years

(6) Ageing of Japan as a Model for other Asian Countries

Asian countries and regions with low fertility rate are likely to take the similar course of ageing as Japan.

Total Fertility Rate for 2005~2010 and Ageing Rate in 2010

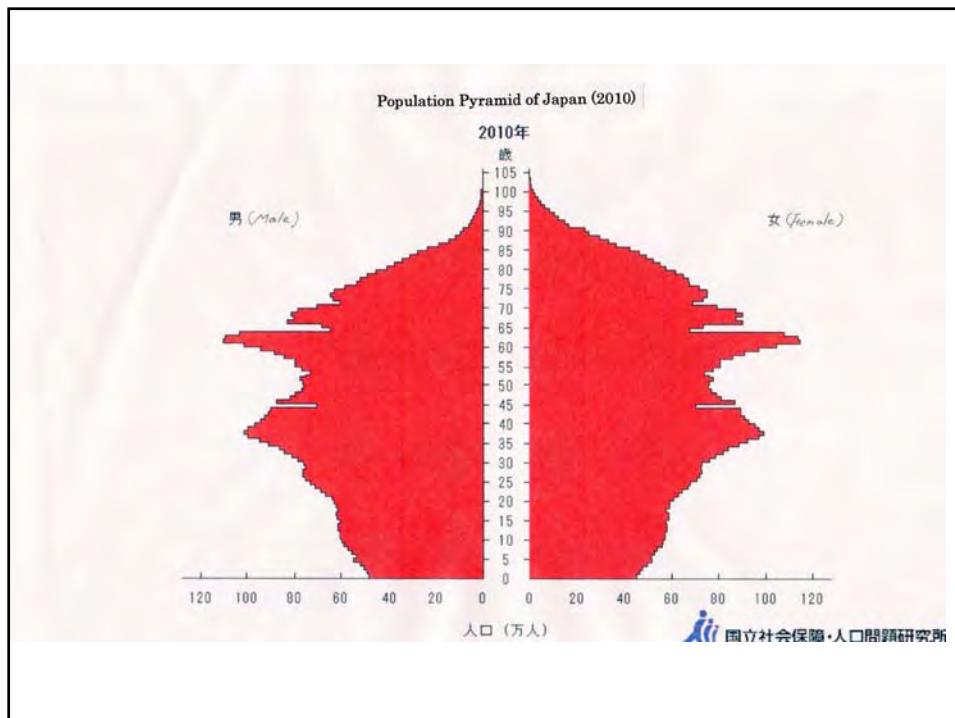
Korea	1.3	11.1
China	1.6	8.2
Hong Kong	1.0	12.7
Taiwan	1.2	
Singapore	1.3	9.0
Thailand	1.6	

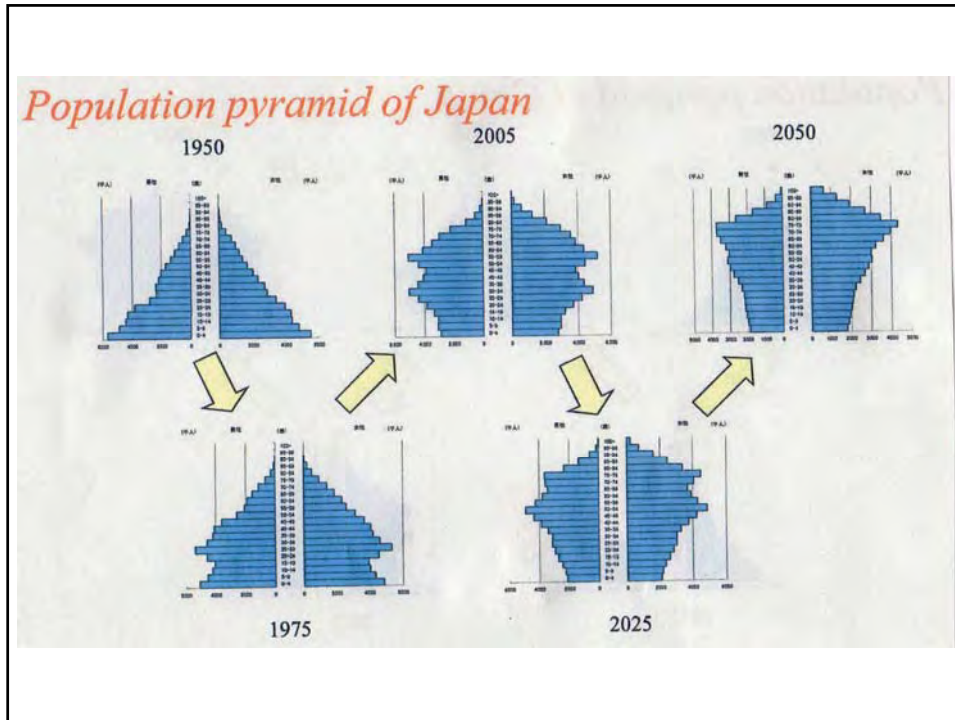
1. Change of Population Structure of Japan (3)

(7) Change of Household (Family) Structure

(year)	1980	1990	2000	2005	2009
Household with 65 or older person (ratio to all households)	24.0%	26.9	34.4	39.4	41.9
Household composed of three generations	50.1*	39.5	26.5	21.3	17.5
Household composed of parent(s) and unmarried child(ren)	10.5*	11.8	14.5	16.2	18.5
Household composed of a couple only	16.2*	21.4	27.1	29.2	29.8
Household composed of a single person	10.7*	14.9	19.7	22.0	23.0

\* ratio to all households with 65 or older person





### The 21st century is a century of the prosperity of Asia.

**Real GDP Growth Rate (%)**

	1980-90	1990-2000	2000-2010	2010-16
Japan	4.6	1.2	0.7	1.5
NIES				
Korea	9.7	6.5	4.1	4.2
Taiwan	7.6	6.2	3.9	5.1
Hongkong	6.7	3.9	4.0	4.4
Singapore	7.7	7.2	5.6	4.4
China	9.3	10.4	10.5	9.5
ASEAN4				
Thailand	7.9	4.4	4.3	4.6
Malaysia	6.0	7.1	4.6	5.1
Indonesia	5.5	4.0	5.2	6.7
Philippines	1.7	3.0	4.7	5.0
Vietnam	5.9	7.6	7.3	7.1
India	5.8	5.6	7.5	8.1
World	5.8	4.0	0.5	-0.9

Source: IMF, *World Economic Outlook*, April 2011

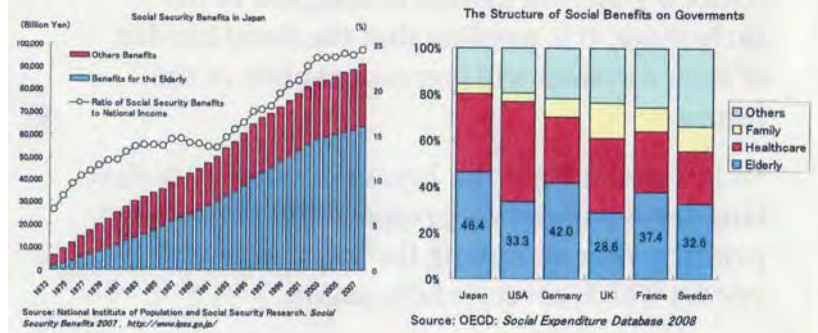
### But... Rapid Changes of Asian Demographic Situation

**Total Fertility Rate and Ratio of Ageing in East Asia (%)**

	Total Fertility Rate		Ageing Ratio (65+)	
	1985-1990	2005-10	2010	2025
Japan	1.7	1.3	22.7	29.3
NIES				
Korea	1.6	1.3	11.1	19.6
Taiwan	1.7	1.2	-	-
Hongkong	1.4	1.0	12.7	21.8
Singapore	1.7	1.3	9.0	19.5
China	2.6	1.6	8.2	14.0
ASEAN4				
Thailand	2.3	1.6	8.9	15.0
Malaysia	3.6	2.7	4.8	8.6
Indonesia	3.4	2.2	5.6	8.6
Philippines	4.5	3.3	3.6	5.8
Vietnam	4.0	1.9	6.0	10.2
India	4.1	2.7	4.6	7.3
World	3.4	2.5	7.6	10.5

Source: UN, *World Population Prospects, the 2010 Revision*

## A huge burden of population ageing in Japan



Figures and tables of *Population pyramid of Japan* , *The 21<sup>st</sup> century is a century of the prosperity of Asia* , *But --- Rapid Changes of Asian Demographic Situation* , and *A huge burden of population ageing in Japan* are cited from “Ageing Asia: Impacts on economy and society” (May 2011) of Keiichiro Oizumi.

### 2. Effects of Changes of Population and Response to Changes and Effects

- (1) Change of the size of population and population structure of a country causes considerable social and economic effects on every aspect of the country and people's lives.
- (2) Problems and Challenges to Individuals, especially to the Aged People (Elderly)
  - They are concerned about
    - Healthy, Worthwhile and Vital Life
    - Housing
    - Daily Life Assistance and Care
    - Medical Care
    - Asset and Property Management
    - Inheritance
    - Miscellaneous
- (3) Individuals must adjust their lives to changes.
  - But the society and government must play big roles to respond to the changes and effects.
    - Self-help (Do it yourself !)
    - Mutual help
    - Public help
  - The financial condition affects the content and extent of public help.
  - The concept of “new public” is emphasized in Japan by the current DPJ government.

**3. Administrative Systems and Public Services for the Aged (Elderly)**

- (1) Various administrative systems have been introduced to help the aged.  
Existing systems are frequently amended. New systems will be added if necessary.
- (2) Various public services are provided by the government to help the aged directly or indirectly.  
National systems are often implemented by local governments.  
Local governments can provide public services by their own initiatives in response to their specific needs.  
Ex. Housing (such as housing with care services for the aged)
  - Public pension
  - Public health and medical care (supported by the government insurance)
  - Daily life care ("long term care" supported by the government care insurance)
  - Livelihood assistance (cash payment)
  - Barrier - free public facilities
  - Legal affairs consultation (not limited to the aged)
- (3) These administrative systems are often complicated and not easy for the aged to understand.  
Qualifications, eligibility and procedure may not be clear to them.  
They may not obtain the expected public services and benefits.
- (4) The aged, especially those who are living alone, often need assistance to get public services and to get out of troubles such as deceptive telephone calls, domestic violence, etc.

**4. Administrative Counseling System in Japan**

- (1) Various Counseling Systems at the National and Local Government Level
    - General and Comprehensive Counseling System  
Ex. Administrative Counseling System by MIC
    - Specialized Counseling System for Limited Coverage  
Ex. Welfare Services Counseling System
  - (2) Administrative Counseling and Administrative Counselors  
(Independent third party watch-dog in the National Government)
    - Administrative Evaluation Bureau (former Administrative Inspection Bureau) (MIC)
    - Regional and District Administrative Evaluation Offices (with offices in each prefecture)
    - Administrative Grievance Resolution Promotion Council (at the Head Office of MIC and Regional Administrative Evaluation Bureaus)
  - (Counselors)
    - Administrative Counselors
      - selected from among local residents who have social confidence and passion
      - commissioned by the Minister of MIC to deal with citizen's complaints in an area in a municipality assigned to each counselor
      - work with Regional Administrative Evaluation Bureaus and District Offices
- |   |
|---|
| 4928 Counselors (as of FY2011) = Male 3253 + Female 1675                    |
| age     30 ~39   40 ~49   50 ~59   60 ~64   65 ~69   70 ~74   75 ~79   80 ~ |
| persons   10        47       409     1392    1516     970     474     110   |

5. Roles of Administrative Counselors in the Ultra Aged Society (1)

- (1) Administrative Counselors are expected to play an important role in the Ultra Aged Society.  
They are independent third party counselors who are familiar to local residents. Especially for those who do not want to have a direct contact with government offices against which they have complaints, administrative counselors are highly respected and reliable people near by.
- (2) Administrative Counselors must be good listeners and interpreters.  
Complaints or cases of counseling may come from the aged people themselves, or their family members, or others who have no family relationship with the aged in question.  
The aged people may be satisfied with just being listened to.  
There may be complicated cases, however, involving the possible conflict of interest among those concerned. Counselors must interpret the cases correctly.
- (3) Proactive counseling activities by Administrative Counselors may be necessary.  
In the ultra aged society where the aged people do not necessarily speak out loudly their complaints, there may be unspoken cases of negligence, injustice or unfair treatment even by their family members or "care-takers."  
Especially for the aged people living alone, proactive counseling activities will be effective.
- (4) For Administrative Counselors to play expected roles effectively, they must be provided with sufficient up-dated data and information about the relevant administrative systems and public services for the aged people. Seminars and training programs will be effective.

5. Roles of Administrative Counselors in the Ultra Aged Society (2)

- (5) Counseling activities jointly organized with other counselors with specialized jurisdiction are efficient and effective.  
Complainants are not necessarily aware which counselor is to deal with their cases. In the ultra aged society, it is likely that there are more cases like this.
- (6) Administrative Counselors are authorized by law and encouraged to submit their opinions to the MIC Minister for the improvement of government administration.  
In the rapidly changing ageing society or aged society, there occur many cases that existing administrative systems, public services and their implementation do not fit in the real world.  
  
(Recent case proposed by an Administrative Counselor)  
Expansion of the eligibility to receive the unpaid pension of a dead person  
-Current system (two requirements)
  - spouse of a dead person or a relative of a dead person within the second degree of relationship by blood (such as child, parent, grandchild, brother or sister)(and)
  - a person who lived together with the dead at the time of the death-Proposal
  - expand the eligibility to include a person of the third degree relationship such as nephew or niece
  - abolish the requirement of living together in the same livelihood



Contributed paper

**The Ombudsman's Cross-Generational challenges  
arising from a changing demographic Structure  
- Indian Experience-**

**Mr. Justice Prakash Prabhakar Naolekar  
Provincial Ombudsman (Lokayukt)  
Madhya Pradesh, INDIA**

Change is the part of life. It is linked with the desires and dreams of every human being. Desire to be different, desire to achieve something new, desire to create and contribute and thereby desire to be recognized and to be respected. Such desires are the spirit of human being and motivating factors. These desires are always changing and resulting in challenges at various dimensions of the society be that social, political, administrative, economical and behavioral. Every change poses challenge to the respective society in a given situations and times. Success and failure of efforts of the societies whether locally, regionally, nationally and internationally are again linked with challenges of different kinds needing solutions entirely different in verities. Challenges to society, polity, economy and administration are addressed with different prescriptions because they are different in different society at different point of time. There can not be uniform solution for all the problems for all the time to come. That is why it is said 'one size will not fit to all. It may, therefore, be emphasized that all the time human beings are engaged in managing changes and its challenges in accordance with their perceptions and need. Common desire of every human being is to live in peace, prosperity and happiness. To achieve this, their efforts to construct the systems and sub systems which can produce desired result. This is on going process.

Constructed institutions to help and faster their desires are again of different natures, compositions, objectives and purposes and supposed to function in a consistently changing environment. The most dominant factor which is under constraint change in the history of human being, is the changing nature of human being. Human nature is changing under the influence of various factors therefore, their expectations, hopes and aspirations are also changing. For example, take the nature, concept and concern of 'state' as an institution to facilitate and fulfill human expectations has changed differently for different reasons. It has changed from laissez far estate to welfare state to administrative state and now to contracting state. With conceptual changes of the state its objectives, functions and processes are also changed. Why changes all the times? It is, inter-alia, because of changing demographic structure. We are aware of every innovations and creativity in any area of the life of the society be that scientific, technological, educational, humanitarian, political and economical have its impact on the

management of the affairs of its societies. The purpose of this paper is to highlight certain areas of concern viz; Governance Issues, issues relating to public sector ethics and problems posed by prevalent corruption. In most of the societies less or more either developed or developing and in this context, what role ombudsman is expected to play. My presentation, ladies and gentleman, is primarily influenced by the Indian experience but important aspects of international concerns have also been emphasised.

## **II. Concern for good Governance:**

The term governance refers to the manner in which government discharges its responsibility; is the government effective, are its operations transparent, is it accountable and does it conform to internationally accepted good practices. Governance is simply about organising collective action including management of the common affairs of the community in partnership of public and private, individuals and institutions with common goal. It is a continuous process through which conflicting interests are being accommodated and co-operative action are taken. In the institutional sense it require establishing of institutions and its sub systems that permit, prescribe, prohibit, praise and punish, certain action as well as resolve conflicts or disputes.

Concern for good governance, in a sense, may not be considered entirely new because it has always been there since the evolution of collective living and concern for others. To achieve it, various methods were tried in the past. In this sense, as mentioned earlier, concern for good governance is a on going project. However, the previous three decades since 1980 have witness a renewed, more vigorous demand, which has taken form of the movement for good / better governance. This involves the questioning of mission of governance and its instrumentalities; questioning of objectives, process and so on. Therefore, the demand for change against the established way of governance is the manifestation of the new order in which steering rather than rowing, empowering rather than serving, earning rather than spending, preventing rather than curing inter-alia, are being emphasised. What is being emphasised consistently is the need of efficiency, economy, effectiveness, equity and ethics in the functioning of the government. In addition the need of the making government responsible, accountable, transparent, participative, rational, fair, cost effective, caring and creative, inter-alia, are being advocated in view of the specific requirement at national, regional and local levels. Alongwith these advocacy, the prescription advanced are for bringing market processes in the functioning of the government and also promoting managerialism and provide space and encouragement to the organisations of civil society. Finally, what we need today is not mere governance but ETHICAL GOVERNANCE i.e. effective, transparent, honest, independent, capable, accountable, and leadership.

Impact of change on the way of government have been analysed as the expression of a turning point in paradigm of public administartion from a "classical weberian" to a "post bureaucratic model". Under

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this model of governance, generally speaking, public services has strongly been argued to be replaced by, as it mentioned earlier, " managerialism" . Thrust is required to be given on customer driven, market oriented, result-directed, strategic and anticipatory way of governance. The new way of governance is often termed as New Public Management, which emphasises, inter-alia, on the following:

- reduction of bureaucratic hierarchies;
- Down sizing or right sizing of public services;
- identifications of the costs of inputs and outputs;
- use of contracts for the provision of public services;
- increase of provider competition;
- benchmarking and measuring performance;
- the increase of consumers powers;
- simplification of rules/regulations;
- promoter of rule of law value;
- mission driven;
- transparent;
- accountable;
- responsive; and
- service oriented etc.

It may also be highlighted that the NPM leads to the fragmentation and decentralisation of ministerial structures into smaller agencies and the empowerment of lower echelon employees, a deregulated government. Finally, what the good governance involved is not less but differently structured, empowered, accountable, transparent and corruption free government. The impact of these suggested changes as a part of good government package on the state and its instrumentalities are generally perceived as favorable to privatization, profit motive, deregulation and contracting out resulting in the smaller state, hollowing of state, down-sizing, right-sizing, renewal and re-inventing government.

It may further be added that the IMF has recognised the important role of good governance in influencing economic performance. Poor governance and wide spread corruption cut into government revenues and lead to wasteful spending, thereby weakening the macroeconomic position of a country. Governments are supposed to be prepared to challenge vested interest and root out corruption. They need to foster transparency in management of public funds and in the legal and regulatory frame works, and must establish competent and impartial court of law, trust worthy law enforcement agency and better trained, properly paid civil servants and judges. The global consensus on the importance of good governance can be effective only on the basis of the increased willingness and commitment of authorities to foster a transparent and accountable system of government at the national level. Let it be as it may.

### **III. Public Sector Ethics:**

In a scenario of government by contract there is considerable potential for conflicts of interest to arise in public service contracting, particularly in sensitive areas. In private sector, there is no duty of independence or impartiality and primary consideration is to shareholders, not the public. There is also the question of the effect of private sector contributions to politicians and political parties which might compromise the neutrality of those employed in public services. (hawala is the one example). The issue of independence, impartiality and neutrality were the once which led to the establishment of civil service. They will occupy the central place at the end of the day.

Public servants have a special relationship with the law. We know that certain legal constraints are imposed upon public servants which do not normally apply to others. Some public servants are engaged in the process of advising on legislation and in doing so are obliged to take a number of considerations into account which affect the commonweal. It would be instructive in this context to read the following:

"There are ..... other areas of ethical concern... the discretion civil servants have in implementing the law. when of-course laws, regulations and others cannot cover every variations in circumstances---- There cannot be appeal against every decision depending on a civil servant's discretionary judgment, so taking proper care over decisions of this kind and balancing the interests of the individual against the national interest are an important part of any civil service ethics."

It may also be mentioned that we cannot simply apply private sector techniques in the public sector since the public will not accept error or falling from grace. In public sector each individual and each decision counts. If in reality public services are the special land then it is obvious that peculiar consideration should apply to civil services.

It has been argued in United States that public power always carries ethical responsibilities. This responsibility includes supplying necessary information accurately and completely to the citizen and also include treating every member of the public with courtesy, attentiveness and respect. Civil servants must be accessible to all, regardless of social or economic status; free from bias, discrimination and unnecessary red tap; properly resourced and consistently maintained; delivered efficiently and effectively to a high standard and free of corruption, patronage and conflict of interest. There are special duties in relation to the exercise of discretion since government employment often provides access to sensitive information about public and private persons and activities. Those exercising discretion in such circumstances must do so with the utmost care.

This should finally be emphasised that while considering reforms for civil service, it may clearly be recognised that ethics of business management cannot be imported for civil service performance. The private sector is not, and cannot be, independent. It exists to create a financial profit from the service it provides. It has to be partial to its shareholders. The public services, on the other hand, has to be impartial and is not in the business of profit making *per se*. Therefore, one of the challenging issues on the agenda of civil services reforms is to harmonise opposing dimensions of the public service and the business administration ethics. The critical distinction between the sectors has been, and will continue to be, their relationship to the power of the sovereign. Government institutions are agent of the sovereign and function under public law. Private institutions are not agent of sovereign and function under private law. This distinction is critical and provides the theoretical foundation of public administration as well as civil service reforms.

In recent years the media have devoted considerable attention to corruption in the public sector, while citizens have begun to speak out more boldly against unethical behaviour by public officials. The perceived lack of integrity in government and the administration has in some instances contributed to declining voter confidence in state institutions and those working in them. Consequently, managing ethics in the public sector has become a great challenge to governments around the globe. Governments have responded to the problem in many ways, including highly focused campaigns to fight corruption, evaluation of the rules applying to public officials, and the adoption of the service charters and codes of conduct. The OECD's work on public sector ethics contributes to the global battles against corruption by addressing the "demand side" of the corruption equation. Through this approach, corruption is recognised as not simply an individual criminal action, but rather the result of systematic failure and management problem reflected in weak public institutions. In a changing scenario public servants are also assuming new functions and responsibilities due to devolution and greater managerial discretion, increased commercialisation of the public sector, evolving accountability arrangements, and a changing relationship between the public and private sectors, including the "revolving door" in employment. In short, they are having to adopt new ways of carrying out the business of government. To perform these in conformity with the demand of public sector ethics the OECD's recommendations are as follows<sup>1</sup>:

- (1) Ethical standards for public service should be clear;
- (2) Ethical standards should be reflected in the legal framework;
- (3) Ethical guidance should be available to public servants;
- (4) Public servants should know their rights and obligations when exposing wrongdoing;
- (5) Political commitment to ethics should reinforce the ethical conduct of public servants;
- (6) The decision-making process should be transparent and open to scrutiny;
- (7) There should be clear guidelines for interaction between the public and private sector;

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<sup>1</sup> For details on the above points see "Responding to the Challenges of Corruption" Publication No. 63, Rome/Milan, 2000. PP 168-170.

- (8) Managers should demonstrate and promote ethical conduct;
- (9) Management policies, procedures and practices should promote ethical conduct;
- (10) Public service conditions and management of human resources should promote ethical conduct;
- (11) Adequate accountability mechanisms should be in place within the public service;
- (12) Appropriate procedures and sanctions should exist to address misconduct.

#### **IV. Concern for Corruption**

Corruption is ancient and modern. History is replete with cases of bribery and nepotism but the academic study of corruption is primarily a late twentieth century phenomenon. While historians have recorded the details of individuals scandals, the dominant perspective has been one which sees corruption as a deviant and probably transitory activity. Individual scoundrels and scandals attracted attention and lent colour to otherwise mundane accounts of economic and political history. At the same time, the rise and fall of political machines in the USA and the elimination of rotten boroughs the other forms of electoral malpractice in the UK also attracted critical attention. The supposition was that corruption, like adolescence, is a phase which countries go through before they reach maturity. Thus corruption was either linked to the demonization of particular individuals or seen as a particular stage or point on the path to modernity.

Corruption may be thought of as the abuse of authority or trust for private benefit, and is a temptation indulged in not only by public officials but also by those in positions of trust or authority in private enterprise or non-profit organisations. While corruption undoubtedly will persist to some extent, regardless of the success in improving governance, poor governance creates greater incentives and possibilities for corruption. Toughening the legal strictures against, the punishment for, corruption is important, but it is even more critical that states tackle the underlying governance problems that may encourage corruption.

Corruption has become global in its scope and impact and however it may be categorised, corruption has become an increasing threat to the fabric of global society. Therefore, as with drug trafficking, pollution, international terrorism and other serious crime, the fight against corruption requires international co-operation.

Although the problem of corruption is global, many action to combat it have to be taken at the national level. Effective action can only be taken if there is a clear sense of national ownership of anti-corruption a strategies underpinned by a culture which is in-tolerant of corruption. More and wider information, education, empowerment of people and strong political leadership committed to effective action are all essential to create and sustain such a culture. Fewer discretionary power in

administration, greater reliance on diversity and wider scope for private initiative, a free press and adequately paid public servants appointed by merit, democratic processes in political parties and supremacy of the rule of law, are important factors that serve to promote good governance and reduce corruption.

## **V. National actions**

Under the overriding policy of zero tolerance, specific measures are required to prevent corruption, enforce laws against it and mobilise public support. These are, the essential elements of a coherent national strategy to achieve good governance and combat corruption. A general approach to the formulation of such strategy is to recognise the realities and importance of national circumstances and therefore the need for governments to develop their own national good governance and anticorruption strategy which should identify clear objectives, effective instruments, realistic timetables and credible implementation and monitoring mechanisms.

National strategies must encompass both the public and private sectors. Corruption in the private sector can be as corrosive to economic performance as public sector corruption, given that public sector corruption typically involves actors from the private sector. To establish a national culture opposed to corruption will require high standards of behaviour from all sections of society but especially from political leaders.

There will be a need for effective national campaigns against corruption with support from the highest levels of government and a high level of co-ordination in the implementation of the strategy. Hence, an important first step in developing national strategies is for the political leadership to recognise that corruption in both the public and private sectors has heavy economic and political costs and that, no matter how deeply embedded it is, it is possible to adopt effective measures against it, provided there is sufficient political will.

### **The main building blocks of the strategy**

Although the content of the strategy will vary depending on national circumstances. There are three main building blocks for an effective strategy in the fight against corruption, namely prevention, resolute enforcement and the involvement of civil society.

Prevention should address underlying causes of corruption, particularly those arising from failures of public policy and weaknesses in political and administrative institutions. Economic policy reform to reduce rent-seeking opportunities; civil service reform to improve the effectiveness and probity of the



public service; reforms in tax policy and administration; tightening of controls over public expenditure; and reforms in the political system are all important ingredients of a prevention strategy. An important contribution to the prevention strategy can be made by strengthening transparency in economic management through:

- full disclosure and examination of government finances, especially by parliamentary scrutiny;
- strengthening of parliamentary public accounts committees;
- the use of open competitive bidding for government contracts;
- publication of full information on the reports of government auditors and evaluations of development projects;
- media access to information on government finances;
- full disclosure of assets by government leaders and their families;
- placing international financial agreements before the legislature, including arms procurement, and establishing clear guidelines for fiscal discipline; and
- establishment of mechanisms for public exposure and transparency in economic management where the above do not occur.

**Prevention** should concentrate not only on the behaviour of the holders of offices of trust, but also aim to affect the behaviour of those who offer bribes. A code of practice for private business should spell out what is a corrupt practice and what is legitimate business promotion. Acceptable practices in relation to business sponsorship of public activities, such as sports and social events, and to the employment of public officials as consultants or in other capacities, while in office and after retirement, need to be spelt out. As with all regulations, prevention is more likely to be achieved if lawful behaviour is widely accepted as the norm.

**Enforcement** involves firm action against corrupt behaviour at all levels. Effective enforcement is dependent upon the competence and honesty of investigators, prosecutors and the judiciary, it is therefore vital to allocate adequate resources to ensure the probity of these agents, The law should apply with equality and impartiality in every respect and in access to legal remedies. Any ambiguities in laws and regulations that create incentives for corrupt behaviour should be removed.

**Mobilisation** of popular support through the involvement of civil society and popular opinion is important in changing public perceptions and values, as well as in exerting pressure on governments at both national and local levels to take the necessary action to prepare and implement anticorruption programmes. Perhaps the greatest potential force for reforms to combat corruption stems from public disapproval of corruption and the burdens it places on citizens. Popular pressures can therefore challenge vested interests and ensure accountability for the management of public resources.

Popular opinion can be activated and galvanised through the educational impact of the media and through the activities of NGOs. In this respect, the commitment of governments to freedom of

expression and association is a critical factor in creating conditions which are conducive to improving governance and eliminating corruption. However, in situations where the media itself may be corrupt or susceptible to corruption, adherence to the highest standards of integrity in journalism should be promoted

The holders of public offices should always remember that the exercise of public powers always carries with it a responsibility of exercising that power transparently, justly, reasonably, fairly and constitutionally. The Council of Ministers are jointly and severally responsible to the legislature. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department. Therefore, they are indictable for their conduct or omission, or misconduct or misappropriation. Their responsibility is not only to the legislature as a part of traditional Constitutional doctrine of Ministerial responsibility but also to the public for the acts or conducts in the performance of public duties.

The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of the public duties. The public duties always carries a responsibility of public interest, public purpose and public good. The holder of a public office is said to have misused or abused his/her position when he exercised the public power for personal gain and greed as distinguished from public interest and public good. The improper exercise of public power may result when he has done something which ought not to have been done. In a democracy governed by the rule of law, the most elementary qualification needed for a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also manifest to possess the same. This holds true, also for all those who are the repository of public powers. I wish to present Capt. Satish Sharma and Smt. Shiela Kaul cases, decided by the Supreme Court of India.

### **Facts of Capt. Satish Sharma<sup>2</sup> and Smt. Shiela Kaul<sup>3</sup> Cases**

"In Satish Sharma's Reign, Petrol and Patronage Flow Together", this was the news item dated 11-8-1995, on the front page of the Indian Express. Pursuant to this news item Shri H.D.Shourie, Director, Common Cause, filed a Public Interest Litigation before the Supreme Court under Article 32 of the Constitution. In his petition, it was challenged that the allotments of retail outlets for petroleum products (petrol pumps) made by the then Minister of State for Petroleum and Natural Gas, in exercise of the powers of the Union Government in favour of 15 persons had been made arbitrarily and on extraneous considerations. The allottees were related either to politicians or Oil Selection Boards or various officials in the Ministry.

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<sup>2</sup> Common cause, A Registered Society vs Union of India, (1996) 6 SCC 593

<sup>3</sup> Shiv Sagar Tiwari vs Union of India (1996) 6 SCC 558

The Secretary, Ministry of Petroleum and Natural Gas, Government of India, filed an affidavit dated 9-10-1995 pursuant to the order of the Supreme Court dated 11-8-95 which was not satisfactory. The court stated that "without commenting on the affidavit, we direct the Ministry of Petroleum and Natural Gas to file a further and better affidavit within two weeks with reference to the specific instances"<sup>4</sup>. Thereafter the Secretary filed yet another affidavit dated 23-10-1995 . In this affidavit the allotments of petrol pumps were classified" as, (1) Allottees related to politicians; (2) Allottees related to the members of Oil Selection Boards or the members themselves; (3) Allottees who are related to various officials in the Ministry. The Court issued notice to all the 15 persons. Thirteen, out of them filed affidavits justifying the allotments of petrol pumps made to them by Capt. Satish Sharma. The Court also passed an order dated 6-12-1995 directing that "the Minister may if he so desires, file an affidavit in this regard". Capt. Satish Sharma had, however, not chosen to file any affidavit".

The Court after going through the official records in regard to these allotments have noticed that all the 15 allotments were made by the Minister in a Stereotyped manner.

The applications were not officially received by the Ministry. There is no receipt - entry on any of the applications. The applicants seem to have approached the Minister directly. None of the applications have been dealt with in any of the branches of the Ministry. There is nothing on the record to indicate that the Minister kept any criteria in view while making the allotments. There was nothing on the record to show that any other method to invite applications was followed. No guidelines were taken into account while making the allotment. Six of the allottees were related to various officials working with the Minister including Minister's driver, his Private Secretary, Additional Private Secretary and Personal Assistant to the Additional Private Secretary. Two of the allottees were- related to the politicians, Remaining seven allottees were either members of the Oil Selection Boards or their relations. It was observed

"It is obvious that Capt. Satish Sharma was personally interested in making allotment of Petrol Pumps in favour of all these 15 persons. He made allotment in favour of relations of his personal staff under the influence of the staff on wholly extraneous considerations. The allotments to the sons of the Ministers were only to oblige the Ministers. The allotments to the members of the Oil Selection Boards and their/Chairman's relations have been done to influence them and to have favours from them."<sup>5</sup>

All the 15 allotments were held by the Court as "wholly arbitrary, nepotistic and are motivated by extraneous considerations".

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<sup>4</sup> (1996) 6 SCC 530 at 535

<sup>5</sup> I bid. P. 553

Smt. Shiela Kaul, (Shivsagar Tiwari Vs. Union of India)<sup>6</sup> popularly known as Housing Scam Case, came before the Supreme Court under Article 32 of the Constitution as a Public Interest Petition. The Supreme Court directed the CBI to inquire into the matter by its order dated 14-2-1996. The CBI inquired into the matter and submitted 4 interim reports. According to CBI, orders of allotment in respect of the shops/stalls in question were passed by Smt. Shiela Kaul, the then Minister in the Union of India, and all the 6 shops were allotted by her to her own relatives/employees/domestic servants of her family members and family friends. The CBI had also reported that Smt. Kaul had made ten different categories of persons as the basis for deciding allotment but even this categorisation was not adhered to while making allotments<sup>7</sup>.

The Supreme Court in its order dated 19-7-1996 noted that a regular case under sections 120-B, 420, 468/471 IPC and Section 13 (2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988 has been registered against Smt. Shiela Kaul and her Additional Private Secretary Rajan S. Lala and others. Under the direction of the Court Shri Hercharan Jeet Singh, Director of Estates, filed an affidavit, which was taken up for consideration on 6-9-1996. The Director of Estates stated in the affidavit that from 1994 onwards 52 Shops/stalls had been sanctioned by the then Minister of Urban Development, Smt. Shiela Kaul out of which 7 shops were allotted before the approval of the policy of 1994. The Court provided an opportunity to all these persons. A Direction was, therefore, given to the Director to issue individual notices to the 52 persons to be personally present in the Court or be represented through their counsel on 27th September 1996. These allottees were heard.

### **Main questions before the Court**

In both the cases the main question before the Court was whether allottees were selected in accordance with law. In search of the answer to this main and important question the court judge the actions of both Capt. Satish Sharma and Smt. Shiela Kaul from the point of view of the legality as well as procedural propriety. It was clearly mentioned in the CBI report in the matter of allotments of shops /stalls that the "allottees had been selected, not by following the tender system, as required by the policy of 1994, but because of their relationship with the Minister or her personal staff." Therefore, the allotments were wholly arbitrary and speak of misuse of power. In Capt. Satish Sharma's case all the 15 allotments were made in favour of his personal staff<sup>8</sup>, their relations and politicians on wholly extraneous considerations. It was observed by the Court that all these allotments are wholly arbitrary, nepotistic and motivated by extraneous considerations."

In both the cases, yet another important question before the Court was that what is required to be done to undo the wrong and how the wrong doer is to be dealt with within the parameters known to law.

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<sup>6</sup> (1996) 6 SCC 558 and (1996) 6 SCC 599

<sup>7</sup> (1996) 6 SCC 558 at P. 561

<sup>8</sup> 1 bid. P. 562

The Court found the answer to the first part of the second question in ordering the cancellation of the allotments and to the second part of the question, the Court applied the principle of personal accountability and imposed exemplary damages of Rs. 50/- lakhs to Capt. Satish Sharma and Rs. 60/- lakhs to Smt. Shiela Kaul, to be personally paid to the Government Exchequer within nine months by both the Ministers, failing which the amount shall be recoverable as arrears of land revenues.

### **Emerging Principle of Public Law and Implication for Public Accountability.**

#### **(1) State Largesse**

It was emphasised by the Supreme Court in Capt. Satish Sharm's case which was followed in Smt. Shiela Kaul that the Government today, in a welfare state, provides large number of benefits to the citizens, It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases; contracts, quotas and licences etc. Government distributes largesse in various forms. A Minister is the executive head of the department concerned and holds a trust on behalf of the people. At the time of distributing these benefits and state largesses, he has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people. The petrol pumps, gas agencies, shops and stalls are the wealth which the government must distribute in a bonafide manner and in conformity with law.

#### **(2) Discretionary Quota**

In distribution of state largesses, even though discretionary, the discretionary power of the concerned authority must be exercised in accordance with the established procedure/criteria and on relevant considerations and with bonafide intention. The discretion must not be exercised on extraneous considerations, arbitrarily, nepotistically and unfairly. Therefore, the exercise of discretion must be transparent, just, fair and non-arbitrary. It was also observed by the Supreme Court that the non-transparency in the exercise of discretionary power promotes nepotism and arbitrariness. Even while acting within the guidelines, authorities cannot enjoy absolute discretion to pick and choose in arbitrary and discriminatory manner. Absolute discretion is an anathema to the rule of law and therefore, poses danger of serious order to the life, liberty and property of the individuals. It is also a threat to the democratic way of governance and finally to the constitutional democracy and development.

#### **(3) Misfeasance in Public Office**

The abuse of public office by public servant while exercising discretionary power in granting state largesse in an arbitrary, unjust, unfair, and malafide manner would invite personal liability to the wrong doer. The Court applied the principle of Misfeasance in public office as one of the recognised parts of the law of tort for personal liability even to the Minister, who is in a position of a trustee in respect of the public property under his charge and discretion. The Ministers are under legal and moral

responsibility to deal with people's property in just and fair manner, failing which they would be liable for criminal breach of trust.

The Supreme Court in **Lucknow Development Authority Vs. M.K.Gupta**<sup>9</sup>, had approved the concept of "Misfeasance in public office" as a part of the law of tort. The same principle has been relied in these cases and it was observed that "it is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of functions as public servants." Public servants may be liable in damages for malicious, deliberate or injurious wrong doing. If a public servant abuses his office either by an act of omission or commission, and the consequences of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set aside an order on the ground of malafide but you cannot/ hold me personally liable. No public servant can arrogate to himself the power to act in a manner which is arbitrary". The Court in Capt. Satish Sharma Case relied upon the judgment in **Nilabati Behera vs State of Orissa**<sup>10</sup> and also referred to **Rookes Vs Barnardzi**<sup>11</sup> and **AB vs. South West Water services Ltd**<sup>12</sup>. and held that " we are of the view that the legal position that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable" and the same principle was applied with approval in **Shiela Kaul's Case**". In addition CBI was directed by the Court to register cases after investigation against **Capt. Satish Sharma and Smt. Shiela Kaul**, the then Ministers without being influenced by the observations made by the Supreme Court in these cases.

## VI. Role of Obudsman

Institution of Ombudsman is a symbol of democratic government<sup>13</sup> because it adds value to the democratic way of governance. Ombudsman according to Caiden, is an institutionalised public conscience - the essence of what government ought to do; that is to cultivate the well being of the citizen; the preservation of individual liberty and equitable treatment of all citizens by the public bureaucracy. Although the classical ombudsman is of ancient vintage with hallmark characteristics of independence, unimpeded access to information, power to investigate and opportunity to report to the legislature or assembly as opposed to the executive. In the age of human rights, this traditional mandate at the classical ombudsman, however, ostensibly shifted to the explicit promotion of citizens human rights. There must be a public interest defense against an Ombudsman investigation. The office of Ombudsman could be user-friendly and accessible. The task of the Ombudsman is to see, to the best of his ability, that all who hold authority retain a sense of responsibility towards the individual citizen.

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<sup>9</sup> (1994) 1 SCC 243

<sup>10</sup> (1993) 2 SCC 746

<sup>11</sup> 1964 AC 1129

<sup>12</sup> 1993 Q.B. 507

<sup>13</sup> VI International conference of Ombudsman, October 20-24, 1996, Argentina.

The objectives of the Ombudsman are to improve the quality of administration and to provide a mechanism for individuals to obtain redress efficiently and effectively. The office of the Ombudsman originated in Sweden in 1809 and adopted by many countries. New Zealand 1962, Finland 1919, Denmark 1954, Norway 1962, United Kingdom 1967, Canada 1967, Guyana 1965 just to mention a few.

For India, Ombudsman - Lokpal and Lokayuktas means greater accountability of administration and better access for the common man to grievance resolution. It should be seen as a part of the total drive for the defeudalisation of the administrative culture and making it more responsive, responsible, citizens caring and friendly. The institution needs to develop as a flexible friend of public bureaucracy and protection of the rights and interests of the people. The peculiar value of the Ombudsman that it can inquire into systems failure; he should point out tomorrow's standards today. He should recommend changes in administrative practice and even to recommend changes in law and procedures in the interest of promoting Rule of law values.

The 1960s and 70s versions of Ombudsman were primarily directed to remedy injustice caused as the result of maladministration or a 'failure of administration'. It should be remembered that maladministration is having direct implication on quality of governance in any society or system of governance. It should, however, be remembered that the Ombudsman were not courts of law, did not substitute their decisions for those of the Minister or his appointee, but were primarily concerned to ensure that his executive did not behave in a high-handed fashion or without due regard to the sensitivities of citizens. In due course of time many Ombudsman have turned into the advocates of 'good administration' or proper administrative conduct. In recent years, many Ombudsman have begun to vindicate collective or community rights and others to ensure the maintenance of human rights standards and also ensuring environmental protection as a common and collective wealth with a view to ensure sustainable development so that future generation should not have a cause to complain. The Ombudsman is an idea whose time has come and who is proving to be an important adjunct to the array of powers normally associated with the 'rule of law and public accountability'.

## **VII. Concluding Remarks**

It would be an appropriate to say that the institution of Ombudsman is not the *panacea* of all the ills prevailing in the society. However, its important role in view of the cross generational challenges arising from a changing demographic structure cannot be denied. The institution of Ombudsman, like other institutions, is a flexible and adjustable concept intended to accommodate and adjust with the changing situations and circumstances and respond positively to the challenges of change. Ombudsman should not become redundant is the duty of the national government and all the stakeholders including organizations of civil society and people at large. Given the opportunity, the

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institution of Ombudsman will prove to be the important adjunct to the system of governance and contribute to the demand of challenges of changes in a changing demographic structure.

Demographic structural changes coupled with rising consumerism, waxing desire, quality goods and services, value for money, human rights protection and environmental concern etc; are additional factors contributing to challenges of change. It can strengthen democratic values and protect and promote constitutional democracy and its legitimacy. It can innovate and promote code of good administrative practices to promote ethics in public life by reviewing and restating the existing one. Its role in the area of human rights protection and also environmental protection for sustainable development are well recognized in some of jurisdictions. The success of Ombudsman in any society finally depends on the support and willingness of the government, public services, organizations of civil societies and people at large. It was important in the past, is important in the present and its importance will not deminish in the future also.



# Plenary Session 2

## Sub Theme

### The Fundamental Right of Citizens Pertaining to Access to Information

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## Some observations on how to protect the right of citizens pertaining to access to information



Mr. Alan N. Lai  
Ombudsman  
HONG KONG

*“A democracy requires accountability, and accountability requires transparency. ...The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”*

— Barack H Obama<sup>1</sup>

### **I . History**

The first ombudsman appeared in Sweden in 1809. But the oldest piece of freedom of information legislation predated the existence of the ombudsman. Sweden was the first country in the world to legislate more open government through its Freedom of the Press Act in 1766. The present wave of access to information laws began in the second half of the twentieth century. The passage of the Freedom of Information Act in the United States in 1966 was followed by Denmark, Norway, Australia, Canada and New Zealand. According to a study<sup>2</sup> in 2007, access to information legislation, sometimes called “sunshine law”, can be found in more than 85 countries, which include both parliamentary democracies and socialist states. In most jurisdictions, access to information is underpinned by legislation. It may even be enshrined in the constitution. In other jurisdictions, such as Hong Kong, access to information is stipulated administratively in the form of a code.

### **II . Rationale**

In modern democracy, access to information held by public authorities is a fundamental right of the people. It enables the public to be fully informed about government processes and decision making. The existence of an access to information regime replaces discretion of officials with a right of the

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<sup>1</sup> “Memorandum for the Heads of Executive Departments and Agencies – Freedom of Information Act” issued by the Office of the Press Secretary of the White House on 21 January 2009

<sup>2</sup> Staples, William R. (2007) *Encyclopedia of privacy* Westport, Conn. Greenwood Press

public to information without having to justify the application, and reverses the burden of proof. An underlying principle is that public records belong to the people and are held on trust for the people by the government. Access to information works as a check and balance against government decisions and provides the yardstick and standard towards which officials should work. Under an access to information regime, government officials should carefully prepare documents, make recommendations and record decisions, fully expecting them to be released and scrutinised by the public.

That there should be in existence an access to information regime does not mean that all government records should be open to the public. Normally an access to information regime tends to strike a balance between public interest considerations favouring the disclosure of information and public interest considerations favouring the withholding of information.

### **III. Typical features**

In determining whether there is good reason to withhold information, a control regime may adopt either a class based approach (e.g. Australia) or an outcome based approach (e.g. New Zealand). The class based approach exempts certain classes of official documents. The outcome-based approach focuses essentially on the predicted prejudicial effect of release rather than the nature of the information on its own. In short, the key question for holders of information is “What is the harm if we disclose this information?” This requires an intelligent value judgement in each case, with a bias in favour of release, if there is doubt about whether the “harm” will actually occur.

Apart from the exemption provision, a modern access to information regime normally comprises the following characteristics :

- procedures for obtaining information are simple and subject to specific time frame
- no need for requesters to provide justification
- no need for requesters to seek legal representation
- no or affordable costs
- approval not subject to political influence
- existence of an appeal mechanism (e.g. an information commissioner or ombudsman)

### **IV. Weaknesses**

The existence of an access to information regime, however, does not guarantee that public information, other than the exempted items, is readily available to the public. It is the effective enforcement of the regime that is the most critical for the ultimate success of the right of access to information. Weak or ineffectual enforcement mechanisms can lead to arbitrary denials or encourage

agency silence, whereby no explicit denial is made, but rather the government agencies ignore the request for information or pretend that the law does not exist.<sup>3</sup>

In 2010, my Office completed an own motion investigation into the access to information regime in Hong Kong. The report identified a number of shortcomings in the system, for example :

- (1) many government officers who were designated as Access to Information Officers in the departments displayed considerable misunderstanding of the provisions and procedural requirements of the regime;
- (2) some departments had refused requests for information without giving any reason or with reasons not specified in the publicised exemption categories; and
- (3) some departments had failed to inform requesters of the avenues of internal review and the appeal channel to the ombudsman, while others had overlooked their responsibility to coordinate replies involving multiple organisations.

Our findings further revealed that the crux of the problem was due to the fact that :

- (1) the government had provided little or no training for Access to Information Officers and other staff;
- (2) there had been no media publicity of the access to information arrangements for the preceding 11 years;
- (3) while the government homepage featured the Code on Access to Information in both official languages, i.e. English and Chinese, the guidelines for the administration of the access to information regime was only in English;
- (4) there was inadequate publicity within the government of the access to information regime. For a decade only two general circulars and one memorandum had been issued to remind staff of the regime; and
- (5) there was no central monitoring of how individual departments should handle requests for information. Some departments issued their own internal circulars/guidelines, which had not been vetted by any central coordinating body. This resulted in a diversity of guidelines which might be inconsistent with the access to information system.

## **V. Culture and mindset**

However, in deeper analysis, the shortcomings I mentioned above are not the most damaging. There are remedies. What is most worrying is rather many government officials have yet to adjust their mentality and attitude in line with the development of open government, when they handle requests for information from the public.

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<sup>3</sup> Laura Neuman, "Access to information Laws : Pieces of the Puzzle," in *The Promotion of Democracy through Access to Information : Bolivia*, Atlanta, GA : Carter Center, 2004.

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There is a tendency for bureaucrats to over interpret into the exemption provisions. Let me give you an example.

An academic researcher asked the transport authority to provide information about the suicide incidents that had taken place along the local railway tracks during a given period. He asked for specific information about the date, time and location of the incident, age and gender of the person involved and duration of service disruption. The authority turned down the request claiming that disclosure of the information would lead to identification of the deceased or injured, thereby infringing upon the privacy of the individuals and their families.

Not satisfied with the refusal, the researcher made a complaint to my Office. Our investigation concluded that the transport authority was over-cautious and in breach of both the letter and spirit of the access to information system. The researcher asked for anonymised information. It would not be reasonably practicable to ascertain or deduce from such information alone the identity of the individuals concerned. Even if matching was carried out, it would be information not from the transport authority but those media reports that contained personal information. By extension, it would be information already in the public domain that might facilitate identification, and not the anonymised information requested of the transport authority. We concluded by substantiating the complaint. And the transport authority followed our advice to release the requested information to the researcher.

Here is another example.

The food and hygiene authority in Hong Kong conducted tests for melamine in food samples and announced the results on its website. However, only the amount of melamine found in unsatisfactory samples would be disclosed, while samples passing the test would all be classified as “satisfactory” without specifying the amount of melamine found.

A member of the public requested the authority to provide information on the amount of melamine found in food samples that had been tested “satisfactory”. The request was rejected on the ground that disclosing the amount of melamine in satisfactory food samples might cause concern and mislead the public that these foods were also unsafe because they contained melamine. The food industry might thus be affected unnecessarily and sue government for compensation.

A complaint was made to my Office. At the end of our investigation, we concluded that if the amount of melamine found in food products was made known, consumers could make an informed choice. Food manufacturers might adjust their production methods or prices to attract customers and avoid decline in sales. The authority should not have kept the community in the dark for fear of causing

public concern or disruption to the market. It's worry that disclosure might lead to legal liability was unnecessary, so long as it could state clearly on its website that the food samples had passed the test and that the results were based on evidence. We concluded that the complaint was substantiated and the authority released the information accordingly.

## **VI. Information systems and technologies**

There are other impediments which can stifle access to information despite the presence of the relevant legislation. I can cite two here.

One factor affecting the effectiveness of an access to information regime is whether a comprehensive and duly protected record management and archive system is in place.

If records are not properly kept, even if citizens are entitled to access government records, this right to information is as good as none. Poor record management system or lack of archive system renders access to information stipulations useless because no record will remain that will reveal information about major functions and decisions made by the government. Without such, the public has no way of monitoring and scrutinising government decisions.

Archive law is one way of ensuring the maintenance of records of value. It provides that bureaucrats who carelessly or intentionally dispose of government records are to be punished. It ensures that records that reveal the operation and decisions of government and records of ethical, political and historical significance are archived and passed on to the future generations.

Another factor affecting the effectiveness of an access to information regime is bureaucrats' response to advancements in information and communications technology. In the modern age of information, official communication is carried out through a variety of mediums and official records take numerous forms. Electronic mails are only one of them. Other mediums and forms include text messages, SMS, facsimiles and even blogs and facebook. Whether and how these records are filed, managed, archived and retrieved directly affects the ease of public access.

Paperless office and electronic information system enhances accessibility and openness of records by minimising their physical storage space, shortening the time for records retrieval and enabling parallel access by a number of users at the same time. Indeed, some jurisdictions take full advantage of electronic information system by proactively providing and updating information about government operation through the websites of government agencies. Using information and communications technology, some jurisdictions have released information in innovative ways and have enlarged the type and scale of information available to the public.

However, electronic information system could also facilitate the destruction of records. While a citizen can have access to a variety of information at the press of a button at the comfort of his home, a government agency can, also at the press of a button, dispose of electronically archived information.

Let me illustrate this with an actual case. A parent requested information about the academic banding of his twin boys. For your background, in Hong Kong, the examination authority assigns a banding number to each student for internal reference to facilitate the allocation of secondary school place. Such information is not disclosed to the public. The banding number ranges from 1 to 3, with 1 representing best academic results. A Band 1 student would be assigned to the top schools.

Going back to the case, the parent believes that both boys are of similar academic standing. But after the school place allocation exercise, one of the twin boys was assigned to an academically inferior secondary school. The parent requested the examination authority to reveal the boys' banding information. The authority refused on two grounds: first, disclosure would create an undesirable labeling effect and bring about unnecessary pressure on the students; second, the information had been destroyed already. Indeed, immediately after the school place allocation exercise was completed, the examination authority disposed of the information. Since the information was gone, no one had a legitimate claim of access.

We found the second reason arbitrary. Is the examination authority's decision to hastily erase the data reasonable? Shouldn't the students be entitled to view data that belongs to them, in the spirit of freedom of information and for safeguarding of personal data? At the end of the investigation, we urged the authority to re-consider its policy of instant destruction of banding information in the spirit of freedom of information. This case may well exemplify how bureaucrats work its way around the information request system.

## **VII. Conclusion**

Administration of an effective access to information regime is a delicate matter. To maintain an effective regime, one has to fight bureaucratic tendencies, while maintaining a balance between public and private interests. The task of an ombudsman or whoever authorised to monitor the enforcement of an access to information regime is to discern and ensure that due process in compliance with access to information stipulations is practised by government agencies before they respond to information requests. Advancement in information and communications technology has raised public expectation for better and speedier government services. It has also presented good tools for government agencies to manage, store and share information. Yet technological advancement is only instrumental to facilitating access to information. It is the will and commitment of the bureaucracy and its culture that makes for a successful access to information regime.



For fellow ombudsmen who are present at the conference today, I would urge that if you are also tasked with the duties of enforcing an access to information regime in your jurisdiction, you should exercise fully your power to befit your role as “champion of open government”. This is not easy, because as observed by John McMillan, “Ombudsman investigations have customarily focused on the way in which a decision is made, and less on the merits of the decisions under investigations.”<sup>4</sup> It is therefore always difficult for an ombudsman to pressure an agency to exercise discretions in favour of public access without giving some deference to the agency that might argue for contrary decisions.

To overcome this difficulty, we need to equip ourselves for the job and stand ready to challenge the decisions of agencies. We cannot be wrong so long as we stick to the cardinal principle that access to government information on is a right and not a favour.

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<sup>4</sup> McMillan, John 2008 Speech given at Australasian Pacific Ombudsman Region Meeting, March 27 Melbourne, Australia [http://www.ombudsman.gov.au/commonwealth/publish.nsf/content/speeches\\_2008\\_02](http://www.ombudsman.gov.au/commonwealth/publish.nsf/content/speeches_2008_02).

## 12th Asian Ombudsman Association Conference

Challenges for the Ombudsman in a Changing Socio-Economic Environment

*“Some observations on how to protect the right of citizens  
pertaining to access to information”*

Presented by  
Mr Alan Lai, The Ombudsman of Hong Kong  
December 2011



OFFICE OF THE OMBUDSMAN HONG KONG

“A democracy requires accountability, and accountability requires transparency. ...The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”

— Barack H Obama



## History

OFFICE OF THE OMBUDSMAN HONG KONG

- ▶ First Ombudsman: Sweden 1809
- ▶ First Freedom of Information (“FOI”) legislation: Sweden’s Freedom of the Press Act 1766
- ▶ Wave of FOI laws began in the 1950s -
  - USA 1966
  - Norway 1970
  - Australia 1982
  - New Zealand 1982
  - Canada 1983
  - Denmark 1985
  - Hong Kong: Administrative Code on Access to Information 1995

3

## Right to information

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- ▶ In modern democracy, access to information (“ATI”) -
  - is a fundamental right of the people;
  - enables the public to be fully informed about government processes and decision-making;
  - replaces discretion of officials with a right of the public to information without having to justify their information requests;
  - provides checks and balances against government decisions;
  - provides the yardstick and standard towards which officials should work;
  - urges officials to carefully prepare documents, make recommendations and record decisions

4

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## ATI regime allows exemptions

- ▶ An ATI control regime may adopt -
  - a class-based approach; or
  - an outcome-based approach
- ▶ A class-based approach exempts certain classes of official documents.
- ▶ The outcome-based approach, which focuses on the predicted prejudicial effect of release, asks “What is the harm if we disclose this information?”
- ▶ Bias in favour of release




5

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## Typical features of ATI regime

- ▶ A modern ATI regime normally comprises the following characteristics –
  - procedures for obtaining information are simple and subject to specific time frame
  - no need for requests to provide justification
  - no need for requestors to seek legal representation
  - no or affordable costs
  - approval not subject to political influence
  - existence of an appeal mechanism (e.g. an information commissioner or the ombudsman)



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## Weaknesses

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- ▶ The key to success of an ATI regime lies in effective enforcement
- ▶ Study of Hong Kong's regime in 2010 identified systemic shortcomings, including –
  - many designated ATI officers in Government misunderstood the provisions and procedural requirements;
  - some departments refused information requests without giving any reason or with reason not specified in the publicised exemption categories;
  - some departments had failed to inform requestors of the avenues of internal review and the appeal channel;
  - some overlooked their responsibility to coordinate replies involving multiple organisations.

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## Weaknesses (continued)

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- ▶ The crux of the problem lies in –
  - little or no staff training;
  - lack of publicity, internal and external;
  - the guidelines for the administration of the ATI regime was in English only;
  - no central monitoring of individual departments' handling of requests for information
  - a diversity of guidelines with inconsistent information.

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OFFICE OF THE OMBUDSMAN HONG KONG

## Culture and mindset

- ▶ Government officials have yet to adjust their mentality and attitude in line with the development of open government.




9

OFFICE OF THE OMBUDSMAN HONG KONG

## Culture and mindset

- ▶ **Case 1**
  - Requestor: An academic researcher
  - Government agency: The transport authority
  - Information requested: Information about the suicide incidents that had taken place along railway tracks during a given period
  - Outcome: The request was rejected
  - Reason: The transport authority considered that disclosure would lead to identification of the deceased or injured, thereby infringing upon the privacy of the individuals and their families.
  - Ombudsman's conclusion:
    - The requestor's complaint against the transport authority was substantiated.
    - The authority was over-cautious and in breach of both the letter and spirit of the ATI system.
    - Not reasonably practicable to ascertain from the information requested the identity of the individuals concerned.



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## Culture and mindset (continued)

OFFICE OF THE OMBUDSMAN HONG KONG

### ► Case 2

- Requestor: A citizen
- Government agency: The food and hygiene authority
- Requested information: The amount of melamine found in food samples that had passed the tests and classified as “satisfactory”
- Outcome: The request was rejected
- Reasons:
  - Disclosure might cause concern and mislead the public that the food was unsafe because they contained melamine;
  - the food industry might be unnecessarily affected and sue Government.
- Ombudsman’s conclusion:
  - Disclosure would enable customers to make an informed choice;
  - food manufacturers might adjust their production methods or prices to attract customer;
  - the authority’s worry was unnecessary, so long as it states clearly that the food samples passed the tests and the results were evidence-based.

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## Information systems and technologies

OFFICE OF THE OMBUDSMAN HONG KONG

### ► Two other impediments to ATI –

- Lack of comprehensive and duly protected record management and archive system
- Advancements in information and communications technology –
  - official records take many forms: electronic mails, text messages, facsimiles, blogs, facebook...
  - type and scale of information available to the public much enlarged; but
  - electronic information system could also facilitate the destruction of records.

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## Information systems and technologies (continued)

### ▶ Case 3

- Requestor: A parent
- Government agency: The examination authority
- Information requested: The academic banding of his twin boys
- Outcome: The request was rejected
- Reasons:
  - Disclosure would create an undesirable labelling effect and bring about unnecessary pressure on students;
  - the information requested had been destroyed
- Ombudsman's conclusion:
  - Students should be entitled to view their own data in the spirit of freedom of information.
  - The authority should review its policy of destroying banding information immediately after the allocation of school places.

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## Conclusion

- ▶ To maintain an effective ATI regime requires -
  - fighting against bureaucratic tendencies;
  - keeping a balance between public and private interests.
- ▶ An ombudsman's tasks are to -
  - discern and ensure that due process in compliance with ATI stipulations is practised by government agencies;
  - exercise fully his/her power to befit the role of "champion of open government", standing ready to challenge agencies' decisions.

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## Conclusion (continued)

OFFICE OF THE OMBUDSMAN HONG KONG

- ▶ Access to government information is a right, not a favour.



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Thank You



## The Fundamental Rights of Citizens Pertaining to Access to Information



Mr. Man Chong Fong  
Commissioner  
Commission Against Corruption  
MACAO

### **A short introduction to the approach of Macau, China**

The fundamental right of freedom to seek, receive and impart information and ideas has been widely recognized and, among others, is enshrined in The International Covenant on Civil and Political Rights, to which most countries in the world are signatories.

The full significance of this recognition is perhaps more clear when one considers that in this age, when our lives are evermore dependent of information of all kinds, with societies woven in the complex processes of creation, transformation and exchange of information, the struggles for power are in a very significant way, struggles for access to information.

The fundamental right to a fair treatment by the administrative authorities often puts the individual in the awkward position of depending precisely on those who might be infringing on his or her rights, to access the information he or she needs to counter the wrongs being done.

And this as we all know very well, is why the right of access to information is a cornerstone of the protection of fundamental human rights.

Besides, this is not just a simple matter of secrecy vs. publicity.

To make matters more complex, the relationships between the State and the individual are asymmetric in that governments have huge information machineries working for them, while the individual is usually confined to those pieces and bits that are publicly available.

This means that individuals are frequently in no position to target specific files in their requests for information because they don't even know that such files exist.

The veil of secrecy was once heralded as the most valuable of tools of government. As the prime-minister of a French King said, “deception is the knowledge of kings”.

The concept of Ombudsman embodies the exact opposite of that idea.

We have a mission that includes – and I quote from our by-laws – a clear mandate 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. This implies that we should be able to protect the fundamental rights of individuals, including the access to information.

In our time, someone, somewhere must establish some kind of system to make sure that the individuals get adequate and timely access to the procedural and the nonprocedural information to which they are entitled, by reason of legitimate, personal and direct interest or by reason of a collective interest protected by law.

Collectively, we are the proof that there are many different ways to structure such a system.

Taking advantage of events like this also means sharing experiences and what I propose now is to describe the approach we have to the access to information in Macau, China.

Our current situation is of a generally easy and simple access by members of the public to the relevant information they need.

A brief review of the cases processed in 2010 by the Ombudsman shows that a total of 438 enquiries and 527 complaints were received overall.

Out of these, only a handful was due to failure of the Public Administration to disclose relevant information.

We attribute this positive situation to three main different factors:

- 1st – the legal framework;
- 2nd – the efficient and independent judiciary;
- 3rd – the preventive action of the Ombudsman

## **I . The legal framework**

The legal grounds to the system is laid by the Basic Law of Macau, which embodies the principle of “One country, two systems”, under the Constitution of the People’s Republic of China to establish the Special Administrative Region of Macau, enjoying a high degree of autonomy, with its own Executive, Legislature and Judiciary up to the power of final adjudication.

The Basic Law states that Macao residents shall have freedom of speech, of the press and of publication. In connection with this, it also states that the provisions of the International Covenant on Civil and Political Rights as they were applied to Macao in the past shall remain in force and shall be implemented through the laws of Macao. It further states that these rights and freedoms shall not be restricted unless as prescribed by law.

On the other hand, the Basic Law asserts the right of residents to resort to law and to have access to the courts and namely, the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.

It is interesting to learn that, on this basis, the two ordinary Laws pertaining to this matter are statutes which have been in force even before the hand-over of Macau in 1999.

The first one is the Administrative Procedure Code, dated 1999 in its current version, but largely inspired in previous versions dating back as far as 1991.

The rule of law is set as the first principle to which all administrative activity must adhere: Article 3 of the Code states that the Public Administration owes “obedience to the statutes...”. This obedience has to be understood not just as abstaining of going “against the law” but as a specific command to have a positive legal basis to all its administrative acts.

In articles 4 and 5 the goals and proportionality of the administrative activity require that the Administration pursues the public good, while respecting the citizen’s rights and legally protected interests.

In this context and besides being required to always act “*in good faith*” the Public Administration is then subjected to the “*principle of collaboration between the Public Administration and private persons*”, under which “*both the bodies of the Public Administration and the private persons shall act in tight reciprocal collaboration, namely by (a) rendering the requested information and*

*clarifications, unless they're of a confidential nature or belong in the sphere of personal privacy; (b) supporting and encouraging every socially useful initiatives."*

Not just the principles are outlined but also specific provisions are included.

One article (63) describes in detail the right to be informed of all procedural facts and acts directly concerning the private person, as well as off all decisions made on their regard. It goes on to list the items that necessarily must be included in such information, e.g. notice of any insufficiency in the case of the private person that he or she should remedy. However, information which is lawfully classified as secret, confidential or detrimental to the success of the concerned administrative procedure must not be disclosed. The requested information must either be supplied within 10 days or else the grounds for refusing it must be provided in writing.

Another two articles (64 and 65) establish at length the right to access files and obtain administrative certificates of their contents, provided that these documents are not classified nor include trade or industrial secrets.

The Code extends these rights to all persons who, even with no direct concern to the information or the files, prove to have a legitimate lawful interest in the said access.

Finally, article 67 embodies the principle of open-file administration. Non-personal data may be accessed by anyone regardless of any procedure concerning him or herself. Security, criminal investigation and privacy are the admissible grounds for refusing access to those administrative files. Personal data may only be accessed by the interested parties.

This or any other equivalent set of provisions, however, would amount to just wishful thinking, should they be left to stand for themselves, at the mercy of compliant or non-compliant officers.

## **II . The role of the judiciary**

The legal system of Macau includes the well known principle that every right must be supported by a corresponding action and this is indeed the case of the right to access information.

The Administrative Litigation Process Code completes the previous provisions, creating a specific type of action for obtaining a notice of order to comply with the provisions of the Administrative Procedure Code I have just mentioned.

## Plenary Session 2

This makes all the difference because any public officer found in non-compliance with the court order commits a crime under the provisions of the same Code, punishable with imprisonment up to one year or fine.

Our experience shows that with adequate legal provisions in place and the means to make them effective, the fundamental right of access to information is protected.

The most common issues in this respect are cases where the administrative authority invokes limitations based on confidentiality or unavailability of information. But these may be scrutinized by the court, as such limitations cannot be opposed to the judiciary, except when a secret of State is involved. Even this must be documented by a certificate issued at the highest level, that the required information is indeed a secret of State.

Summing this up, I should say that the very existence of this system works well as a deterrent. The total number of actions started at the Administrative Court, which includes also other types of actions, is usually under 20 per year, and are decided within a short period.

### **III. The role of the Ombudsman**

So, you may ask, which role is left for the Ombudsman in regard of the protection of the right to information in Macau?

A preventive one. As I said before, the total number of relevant complaints received is negligible.

We organize regularly seminars targeting public servants, addressing issues of integrity, governance and transparency in the public administration, covering a wide range of topics which include the protection of citizen's rights as prescribed by the Law.

In 2010 we conducted a total of 2,821 such seminars and that has been and continues to be an essential part of our activity.

The same issues and topics are also addressed in seminars and meetings with the civil associations of Macau, promoting their awareness of integrity and fairness matters.

The few cases where the members of the public come forward complaining are caused by some of the administrative authorities taking longer than prescribed by law to reply to the requests.

These are almost always solved as soon as we ask the concerned department to explain the reasons for the delay.

Should they fail to take adequate steps to correct the reported issues, or submit an unreasonable explanation, we have the power to send a recommendation to that effect and, if we think it is justified, even to publish the recommendation and give it a high-profile in the media.

Once again, we feel that this set of tools acts as an additional deterrent to the authorities who might, otherwise, be tempted to keep relevant information away from the legitimate interested parties.

I hope that this very short introduction to the approach of Macau was informative and thank you for your patience.

## The Fundamental Rights of Citizens Pertaining to Access to Information



Mr. Justice Narendra Kishore Mehrotra  
Provincial Ombudsman (Lokayukta)  
Uttar Pradesh, INDIA

In recent times, the right of the citizens to obtain information from the Government in regard to the functioning of the government has come to the forefront in all democratic countries.

Today, in most of the countries of the world, there are democratic forms of Government and people have rejected the monarchy or the King's rule. It was possible in the rule of monarchies that people could not know why they were being governed in the way they were. There has been a prerogative right of the King to prevent the disclosure of state secrets or even of "preventive the escape of inconvenient intelligence regarding intrigues of public servants." Even in India, there was a secrecy in the governance prior to independence by the Official Secret Act. The first of such Act was enacted by the Britishers in 1889 which was replaced by another Official Secret Act in 1923. This Official Secret Act has not been repealed even after the enactment of Right to Information Act. Only overriding effect has been given to Right to Information Act, 2005 over the inconsistent provisions of the Official Secret Act, 1923. The Right to Information Act, 2005 was enacted in India because of Article-19 of the Universal Declaration of Human Rights, 1948. It was reiterated in Article-19 of the International Covenant on Civil and Political Rights (ratified in 1978) which provides the Right to Freedom of opinion and expression without interference and to obtain and impart information and ideas through any media and regardless of frontiers.

The importance accorded to Freedom of Information internationally can be gauged from the fact that the United Nations General Assembly, in its very first session in 1946, adopted Resolution 59 (I), which states:

"Freedom of Information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated."

Article-19 of the 'Universal Declaration of Human Rights', a United Nations General Assembly Resolution 217 (III) A of 1948, has laid out equal rights for all people and three fundamental



principles governing human rights: these rights are “universal”, meaning that rights apply to everyone whoever or wherever that person is, “inalienable”, in that they precede state authority and are based on the “humanity” of the people; and indivisible in that all rights are of equal importance. The Declaration recognizes Freedom of Expression- including Freedom of Information and Free Press- a fundamental human right. Freedom of Expression includes the right to seek, receive impart information and right to access information held by public authorities.

Article-19 (2) of the ‘International Covenant on Civil and Political Rights’, a United Nations General Assembly Resolution 2200A (XXI) of 1966 states:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

A similar right of the public to be informed and of the free press to inform the public is guaranteed by Article-10 of the declaration of European Convention of Human Rights, 1950.

After the independence, Indian Constitution was enacted and enforced on the 26th of January, 1950. There is a separate chapter of The Fundamental Rights in the Indian Constitution. Article-19 (1) (g) of the Constitution of India provides the fundamental right to freedom of speech and expression. The right to receive information may be deduced as a counterpart of the right to impart information, which is an ingredient of the freedom of expression guaranteed by Art. 19 (1) (a). In this fundamental right, the right to receive information was implicit. I say so, on the basis that without receiving the information about the act and conduct of public servants, it was not possible to develop an express and well considered opinion on any matter.

Secrecy can be defended in monarchic rule, but it is not acceptable in a sovereign democracy where there is a government of the people and the rulers are merely the people’s representative. In this reference, I may refer the views expressed by James Madison, the fourth president of The United States, which I quote, “A popular government without a popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.”

In Indian Constitution, State means- the Legislature, the Executive and the Judiciary. Legislature consists of elected politicians who govern the state, the executive consists of elected politicians and the bureaucrats who administer the state and the Judges judge everything in the state because of the different provisions in the Indian Constitution. Therefore, the people of India have a right to know

whether these public servants are acting in accordance with the Constitution and how well they are using or are determining the use of the people money and resources to run a country. In the democratic system, people cannot be denied the right to participate in deciding the policies which will ultimately determine their rights and obligations. After independence in India, the elected politicians liked the practices discharged by their erstwhile British rulers by maintaining secrecy and not disclosing the reasons behind their acts and functions. That is why, at the time of drafting Constitution, the drafters had the foresight to include several fundamental rights which were guaranteed against encroachment by the State and its agencies, including the Right to Equality, Right to Life, Right to freedom of expression. Political democracy, the foundation of which is free election based on appeal to reason, cannot function in a society where there is no freedom of speech. It is thus indispensable for the operation of the democratic system, which is based on “free debate and open discussion for that is the only corrective of government action,” and which envisages changes in the composition of legislatures and governments. However, that the freedom of speech and expression includes the liberty to express to propagate one’s own views only. It also includes the right to propagate or publish the views of other people; otherwise this freedom could not have included freedom of the press which is obviously included in it.

As I said earlier, the right to freedom of expression cannot be exercised without obtaining the entire information.

In a democratic country, the elected government is accountable to the people who elect them to rule every after five years. Therefore, I say that all the agents of the public must be responsible and accountable for their conduct. Where, there is a democracy and the state is run by elected representatives, the people have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of the every public transaction in all its bearing.

There is a historic judgement of the Indian Supreme Court in 1975 in which one of the hon’ble judge found the right to know in the fundamental right of freedom of speech guaranteed under the Indian Constitution. But, at the same time hon’ble court clarified that the right was not absolute and was subject to consideration of public security.

This fundamental right to know about the conduct and actions of the public servants is such a right which is found to be a safeguard against oppression and corruption. Indian Supreme Court has expressed this view that the responsibility of the official to explain and to justify their acts, is the chief safeguard against oppression and corruption.

Indian courts had taken a step further and have said that besides the fundamental right of expression which implicit the people's right to know, there is another fundamental right included in the Indian Constitution is the right to life itself and the right to know is the part of this right.

I may remind that International Covenant on Civil Political Rights mandates that everyone shall have right to receive the information for which I may refer Article-40 and 49 of International Covenant on Civil and Political Rights. The member countries to these covenant had undertaken to take measures to give effect to all the rights including the right to information.

Now-a-days corruption is a world-wide problem and it is a subject-matter of inquiry and investigation by Lokpal/ Lokayukta/ Ombudsman or Vigilance Commissioner or Anti-Corruption Organization and people have started demanding corruption-free service as a fundamental right. This demand of fundamental right as a corruption-free service can be granted only if the right to information is guaranteed as a fundamental right in each and every country of the world. In the absence of the right to information as a fundamental right even the media is unable to expose cases of misuse of resources and corruption by public functionaries. That is why in most of the countries; it was considered necessary that there should be a separate institution to give recognition of a legal right to information and to ensure that people do not have to go court every time they want to exercise a constitutional right.

The public servants are the depositories of public trust. The public must be informed if the trust is breached. The people of the country have the right to know every public act and everything that is done in a public way by the public functionaries.

The right to information is a facet of and underlies all fundamental rights whether it be equality, liberty or any of the seven freedoms guaranteed to the citizens under either the Indian Constitution or any other Constitution of any other country because it can act as check against the misuse of power by those who are constitutionally bound to ensure the realization of those rights. In order to eradicate corruption, it is now for the public to be alert and watchful of their right to such information and compel disclosure because ultimately it is for them to use this weapon against all public functionaries to fix their accountability.

## The Role of the Ombudsman in a Democratic Legal State



Dr. Máté Szabó  
Parliamentary Commissioner for Civil Rights  
HUNGARY

The nowadays ombudsmen have multiple, but changing roles and functions matching to the 21st century's new and transforming requirements. The Ombudsman is a trusted person who acts as an intermediary mediator between organizations within a broad scope of constitutional concept as well as representing the public interests.

The legal basis, his/her jurisdiction and the institutional forms can be diverse in every different country following traditions and the state structure. Observing Hungary, we can see that this country has gone through huge political and economic change since 1989. Although, the (old) Constitution was adopted in 1949, and later comprehensively amended in 1989, Hungary was the only former communist country in Eastern Europe that did not adopt an entirely new basic law after the fall of Communism. This situation has changed in 2011, when the Hungarian Parliament adopted a new Fundamental Law, which has also brought significant amendments in relation to the previous ombudsman-system in the country.

The Hungarian ombudsman institution came to life during the democratization process of the early 1990s and the office was formally established in 1995. The overall organizational structure with a range of ombudsman institutions was complex, with a general civil rights ombudsman (Parliamentary Commissioner for Civil Rights, sometimes referred to as the human rights ombudsman/commissioner) and three independent and equally ranked specialized ombudsmen assigned to guard specific constitutional rights (including data protection and freedom of information, the rights of national and ethnic minorities, and environmental rights). In accordance with the Fundamental Law of Hungary (adopted in April 2011), the new Act on the Commissioner for Fundamental Rights will create a unified ombudsman system with new mandate and new challenges.

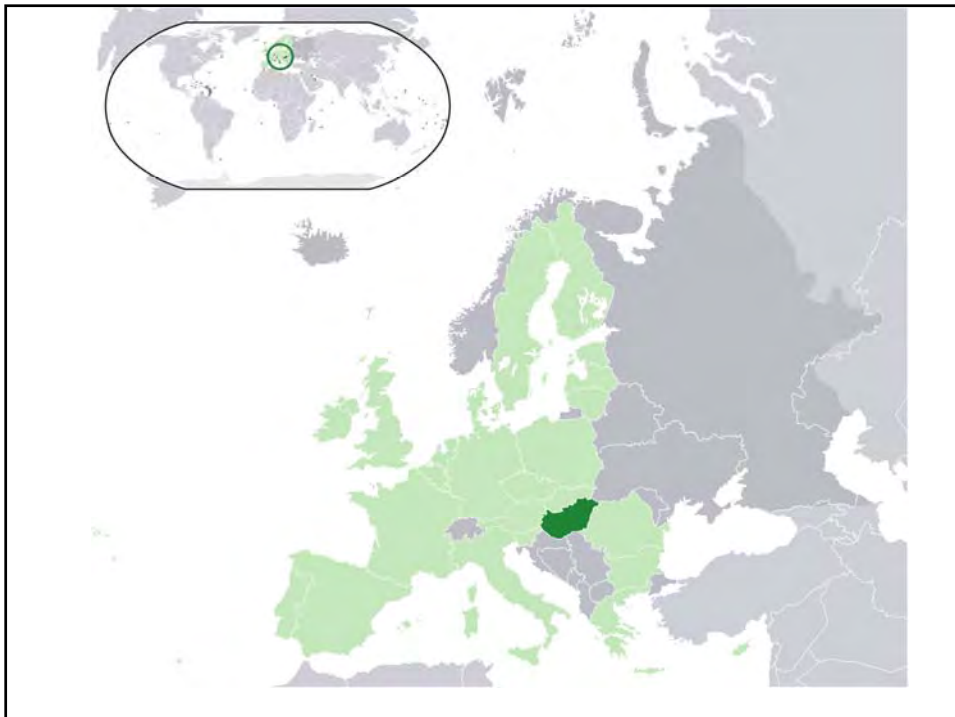
# Constitutional reforms in Hungary, 2011-12

**Prof. Dr. Máté SZABÓ**

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6 December 2011

Numazu



## Introduction: Republic of Hungary

- Middle-Europe, member of the European Union
- Population: appr. 10 Million
- History: Hungarian tribes from Central Asia



896: Principality of Hungary

1000: Kingdom of Hungary

1848: revolution against the Habsburg empire (demanding political and human rights reforms)

- The form of government was changed from Monarchy to Republic briefly in 1918 and again in 1946, ending the Kingdom and creating the Republic of Hungary.

1948-1989: Communist era

The (old) Constitution was adopted in 1949 (Act XX/1949)

**People's Republic of Hungary**



23 October 1956: Revolution

1989 – fall of Communism in Eastern Europe

Hungary, 1989: Round Table Negotiations- complete amendment of the 1949 Constitution,

1989: reburial of Imre Nagy

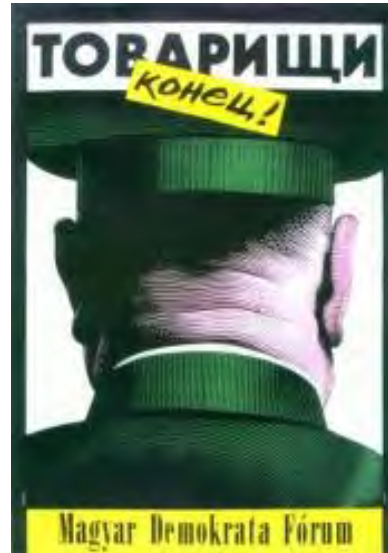
**Republic of Hungary**



## Free parliamentary elections, 1990



**TESSÉK VÁLASZTANI**



## Transition to Western-style democracy

Parliamentary representative democratic state, multi-party system,  
free elections, economic market  
2004: member of the EU



Respect for human rights and  
political freedoms:

(Constitution, Constitutional Court,

Ombudsman, 1993: general ombudsman for civil rights and specialised  
ombudsmen for data protection/freedom of information,  
national/ethnic minorities, environmental issues)

## Constitutional reforms, 2011-12

April 2010: parliamentary elections won by a centre-right party (FIDESZ) with two-thirds majority and with the promise of introducing constitutional changes.



June 2010: ad-hoc committee for the preparation of the New Constitution.

March 2011: draft of the new Constitution submitted to the Parliament and presented to the public

18<sup>th</sup> April, 2011: parliamentary acceptance of the New Fundamental Law

(entering into force by 1<sup>st</sup> January, 2012)

**„Easter Constitution” - Hungary**



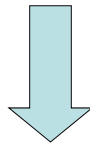
## Socially and fiscally conservative constitution

- preamble contains references to the Holy Crown, as well as to God, Christianity, the fatherland and traditional family values
- life of a fetus is protected from the moment of conception, same-sex couples may legally register their partnerships but not marriage
- ban on discrimination does not mention age or sexual orientation
- Life imprisonment for violent crimes without the possibility of parole
- judges' mandatory retirement age is lowered from 70 to the general retirement age of 62
  
- public debt from 80% to less than 50% of GDP: powers of the Constitutional Court on budget and tax matters restricted, the President may dissolve Parliament if a budget is not approved, only companies with transparent activities and ownership structures are allowed to bid for government contracts, the powers of the head of the National Bank also limited, the modification of tax and pension laws requires a two-thirds majority



## Changes in the ombudsman system:

Art. 30 of the new Fundamental Law and new Act on the Commissioner for Fundamental Rights  
(cardinal law: CXI/2011)



Create a simplified and unified ombudsman system with new opportunities.

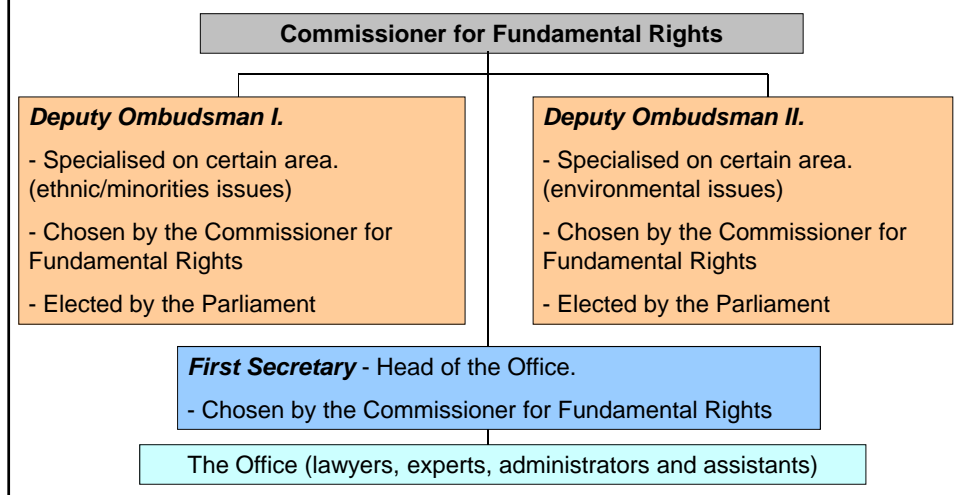
- New name: **Commissioner for Fundamental Rights** (instead of Parliamentary Commissioner)
- **One single person** shall be nominated by the President of the Republic and elected by the Parliament for six years.
- Changes in the **organizational structure**:



An unified ombudsman system will be created from the current complex system with four ombudsmen.

## Changes in the organizational structure:

### Hierarchical structure:



## The mandate of the General Ombudsman

- **Greater independence** (even from the parliament by leaving the former „parliamentary” attributive from the name of the institution)  
Through investigating „improprieties related to fundamental rights”, the commissioner is a controller of the public administration and not part of it.
- **Empowers the commissioner with special competencies in the field of human rights protection.**  
In the new legislation, there will be an opportunity to launch **special proceedings** related to organizations which are not public bodies (e.g.: companies, banks, social organizations).
- The Commissioner acts like a kind of “*constitutional filter*”.  
(He will forward the constitutional complaints to the **Constitutional Court**.)

Different scenes of the ombudsman's work...



Thank you for your attention  
and see you in Budapest!





# Plenary Session 3

## Sub Theme

### Improvement in the Advocacy and Outreach Strategy in Protecting the Vulnerable Segments of the Society

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## Efforts and Achievements of the ACRC Korea in Protecting Vulnerable Classes of the Society



Ms. Youngran Kim  
Chairperson  
Anti-Corruption & Civil Rights Commission  
KOREA

### **I .Introduction**

#### **1. Launch of the ACRC**

About 600 years ago, the Ancient Joseon Dynasty had a system for ordinary people to file their complaints by beating a big drum, called “Shin-mun-go” located in front of the palace so that their king could listen to the sound, and help solve their problems. This system is the origin of the Korean government’s system to address people’s problem.

Before 2008, the functions to protect people’s rights had been divided into several agencies, making people feel confusions and inconvenience to use the services. In this regard, to provide “one-stop service” for people who suffer from “unfair and painful problems,” three different agencies, “Ombudsman of Korea,” “Korea Independent Commission against Corruption,” and “Administrative Appeals Commission” were integrated into one single agency, based on the “Act on Anti-Corruption and the Establishment and the Operation of the Anti-Corruption & Civil Rights Commission” which was enacted in February 29, 2008.

During the process of integration, some people insisted that it was impossible to combine them into one agency as the natures of the three agencies were totally different. After three years have passed, however, we do not see any side effects of the integration that concerned them at that time. Even if the workload has significantly increased, the ACRC has handled more works, making the organization more effective.

**Table1: The number of cases before (2007) and after (2010) the integration:**

**Civil petitions and administrative appeals**

	<b>Civil Petitions (rate of increase)</b>	<b>Administrative Appeals (rate of increase)</b>
<b>2007 (before)</b>	22,412	23,178
<b>2010 (after)</b>	27,043(20.7%)	30,478(31.5%)

**2. Organization and functions**

The ACRC consists of 15 commissioners including Chairperson. The ACRC has three Vice Chairmen and standing commissioners respectively, and 8 non-standing commissioners. It also has a Secretariat to deal with office work of the ACRC, and the Secretary General is appointed by Chairperson among Vice Chairmen.

The ACRC has established its one-stop service system, combining three functions: ombudsman, anti-corruption, and administrative appeals. The main functions of the ACRC are (1) to protect people’s rights by addressing civil complaints and improving institutions and securing legitimacy of administration, (2) to establish a clean public-service society by preventing and controlling corruption, and (3) helping people whose rights or interests are violated by illegal or undue administrative measures.

**II. Major Programs to protect vulnerable classes**

**1. Ombudsman Outreach Program**

To actively communicate with people, the ACRC is carrying out “Ombudsman Outreach Program” to visit those who live in isolated rural areas and listen to their problems and opinions, reflecting them into policies, since it is difficult for them to visit the ACRC even if they have difficulties and problems.

With the “Ombudsman Outreach Program,” the ACRC visits the people who suffer from undue administrative measures taken by central government agencies or other public agencies, receives their complaints and investigates the cases. If there is any undue measure or false institution that caused the problems, the ACRC recommends the concerned agency to correct the measures or to revise the institution. By doing so, the ACRC actively engages in mediation to deal with the civil complaint in a neutral position.

From October 2003 to 2011, the “Ombudsman Outreach Program” has received 6,178 civil complaints in 181 regions. Among them, 1,219 cases were received as civil complaints and addressed, while 861



cases reached a settlement on the spot. Particularly in 2010, total of 290 cases reached a settlement between petitioners and concerned agencies on the spot.

**Table2: Ombudsman Outreach Program by Year**

(Unit: number of cases)

		<b>Total</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011. 11</b>
<b>Number of region</b>		181	4	8	8	17	18	20	28	33	45
<b>Ombudsman Outreach Program</b>	<b>Received as civil complaint</b>	1,219	12	57	75	255	142	86	272	199	121
	<b>Settlement</b>	861	-	-	-	-	-	96	244	290	231
	<b>Counseling</b>	4,098	65	98	112	385	342	381	1,004	1,000	711
	<b>total</b>	6,178	77	155	187	640	484	563	1,520	1,489	1,063

Also, if a collective petition is received, which has a significant influence on society, the Chairperson firsthand counsels petitioners with the concerned agency in attendance, and solves the problem, providing one-stop service. In this way, 29 collective petitions have been resolved, for example, installing soundproofing walls near railroads or highways that the residents have desired for a long time.

## **2. On-site mediation**

The ACRC actively utilizes its mediation system to promptly and impartially solve civil petitions or complaints that have a significant influence on many people or are involved in multiple interests.

The mediation system is the most appropriate tool for the ACRC, working as an ombudsman that values impartiality, independence, and professionalism. According to the Article 45 of the Anti-Corruption Act, mediation is presided by the Chairperson and the commissioners, and once the mediation is completed, it has the same effect as a settlement under the Civil Act.

The ACRC always puts its priority on the “on-site oriented” policies dealing with civil complaints. It means that the ACRC makes its efforts to firsthand visit the site of a complaint, and listen to the voices of stakeholders enough, to find out the solutions from the point of view of the complaint.

Particularly, the ACRC has visited the sites of complaints and found out solutions through persuasion and mediation when solving a protracted complaint. Especially, to solve protracted collective complaints, the ACRC considers the possibility of mediation even when receiving the complaints, and

the professional investigators and senior officials visit the sites firsthand to undertake closer investigations so that they can find out the ways to solve problems. As a result of such efforts, 18 long-term protracted collective complaints have been resolved through on-site mediation in 2010.

### **3. Bilateral MOUs to protect the rights of nationals abroad**

The ACRC and the Indonesian Ombudsman concluded an MOU to solve difficulties and problems of people (including businesses) who reside in the partner countries in February 2010. This is the first attempt to protect the people's rights and promote the business activities in the partner countries through cooperation between ombudsmen.

Under the MOU, both agencies have visited the partner countries to visit the sites of complaints and help to solve the difficulties of their compatriots. The activity results are shared in January and July every year.

In accordance with the MOU, the ACRC officials visited the Ansan Migrant Community Service Center in November, 2010 and August, 2011, as the largest Indonesian populations live in the Ansan city in Korea. The ACRC officials have counseled 82 cases in total, and received 16 complaints. The major complaints of Indonesians living in Korea were related with the delay of severance pay, and inconvenience of receiving national pension. As of 2011, 60% of the complaints have been resolved and 40% are now in progress.

The ACRC expanded the bilateral cooperation activities and concluded an MOU with Kyrgyzstan Ombudsman in October 2011. It is also expected to sign MOUs with the Thailand Ombudsman and the Uzbekistan Ombudsmen.

### **4. Systemic investigation to enhance rights of vulnerable classes**

The ACRC carries out systemic investigations to enhance preventive functions not to make people feel unfair and injustice, taking a step forward from solving individual complaints.

The systemic investigation of the ACRC is a new model to expand the people's rights by approaching social and national issues in a more fundamental and in-depth way, moving from the existing way that just focused on addressing individual complaints. Also, it is a proactive research activity to find out comprehensive and fundamental solutions such as improving institutions, suggesting alternative policies, as well as addressing civil complaints of the year. The systemic investigations focus on the vulnerable areas in protecting people's rights, the areas that need special care of the nation, and the issues that require in-depth researches and consideration of experts.

Particularly, the systemic investigation is used as a useful tool to support the vulnerable classes that relatively cannot respond to the financial crisis, focusing on addressing the difficulties of socially and financially vulnerable people in a timely way.

For example, the ACRC has recognized that financial support for the low-income bracket is needed as the fuel prices have gone up, due to financial crises and increasing price of the crude oil. Accordingly, the ACRC carried out the systemic investigation through conducting studies on documents, monitoring media, and collecting various opinions of experts and concerned agencies. In addition, it conducted researches on actual conditions of urban and rural areas and interviewed energy suppliers and concerned civil groups so that it could recommend the concerned agencies to reduce utility fees such as city gas costs or electricity costs.

Also, based on the results of the systemic investigation, the ACRC extended the tax due dates and expanded the range of applicants for working scholarships for the disabled and those who are entitled to the government's livelihood subsidy.

### **III. Future directions to protect vulnerable classes**

#### **1. Prompt & faithful complaint solutions**

To solve difficulties and problems of vulnerable classes, we need to share the best techniques to address civil complaints and build a research capacity, by making standards, developing IT technology, and providing continuous education and trainings. Based on such efforts, we can deal with civil complaints in a prompt and faithful way through our policies that can satisfy and touch our people.

The ACRC introduced an internal review system to prevent trial and errors and increase the possibility to solve problems by analyzing the characteristics and reasons of the civil complaints filed by vulnerable classes so that it can easily find out the solutions. Also, the ACRC has accumulated related materials and information to make it easier to review the latest laws and judicial precedents by sector when addressing civil complaints. It also has established cooperative systems with the other public agencies in order to inform the concerned agencies of the examples of civil complaints so that they can revise and supplement their laws and regulations.

#### **2. Stressing on-site complaint solutions**

We need to stress "on-site investigation and mediation" from the people's point of view to address the issues involving the multiple interests at stake.

The ACRC considers regional situations such as frequency of civil complaints and operates “Ombudsman outreach program” by region across the nation. The ACRC is planning to introduce customized Ombudsman outreach programs for minority social groups that need special care, including migrant workers, multicultural families, and those who live in vulnerable residential situations and industrial complexes.

Particularly, in order to solve the complaints that can have significant influence on multiple stakeholders or protracted collective complaints for long time, the ACRC will carry out its duties in an independent and impartial way so that it can reach an optimal agreement to satisfy all the concerned parties.

### **3. Enhancing preventive measures**

The ACRC is planning to transfer its experience and techniques dealing with civil complaints to the administrative agencies that often cause civil complaints, supporting them to prevent civil complaints in advance, to build their capacity to address civil complaints, and to strengthen a cooperative system.

Furthermore, to vitalize local ombudsmen, the ACRC will create and distribute a standard ordinance to expand local ombudsmen. Also, it will support them to build their capacity by establishing “Local Ombudsman Councils,” holding workshops and trainings, providing consulting services, and carrying out joint researches.

## **IV. Conclusion**

There are still many people who don’t know what kinds of rights they have or who to speak when their rights are violated. Also, there are people who just endure their difficulties because they believe that it is hard to talk to the government. Therefore, the ombudsmen should do their utmost to enhance the accessibility of vulnerable classes and listen to their voice carefully.

The ACRC is making its efforts to visit people firsthand to solve their difficulties and problems by operating on-site counseling and mediation services and conducting systemic investigations. Despite such efforts, however, there are still many people who cannot enjoy such benefits. Therefore, we need to provide vulnerable classes with more and various ways to reach the ACRC.

The ACRC will also make its efforts to solve difficulties of foreign residents who live in Korea but also Korean compatriots who live in other countries by expanding bilateral Ombudsman MOUs with the concerned countries. To this end, active supports and cooperation are needed among the ombudsmen who gather together here at this occasion. Thank you very much.

## Efforts and Achievements of ACRC Korea in Protecting the Vulnerable in Society



**ACRC**  
Anti-Corruption &  
Civil Rights Commission

Presented by Youngran KIM

### ACRC Korea

- Tradition to hear grievances dates back 600 years
- Ombudsman of Korea, KICAC & AAC run separately until 2008
- Their merger created today's ACRC Korea

Now → "integrated services"  
for civil petitions,  
anti-corruption initiatives,  
administrative appeals





## Programs to Protect the Rights of the Socially Vulnerable

- Ombudsman Outreach Program
- MOUs with Foreign Ombudsman Agencies
- Systemic Investigation

## Overview



- Better protection of the people's rights by:
  - Assisting those who cannot submit petitions easily for geographical, linguistic and age reasons
    - \*e.g.: Residents in rural areas, migrant workers and elderly people
  - Expanding services to overseas Koreans
    - \*e.g.: MOUs with foreign ombudsman agencies
  - Improving responsiveness to immigrants' complaints
    - \*e.g.: foreign language service in e-People, On-site counseling

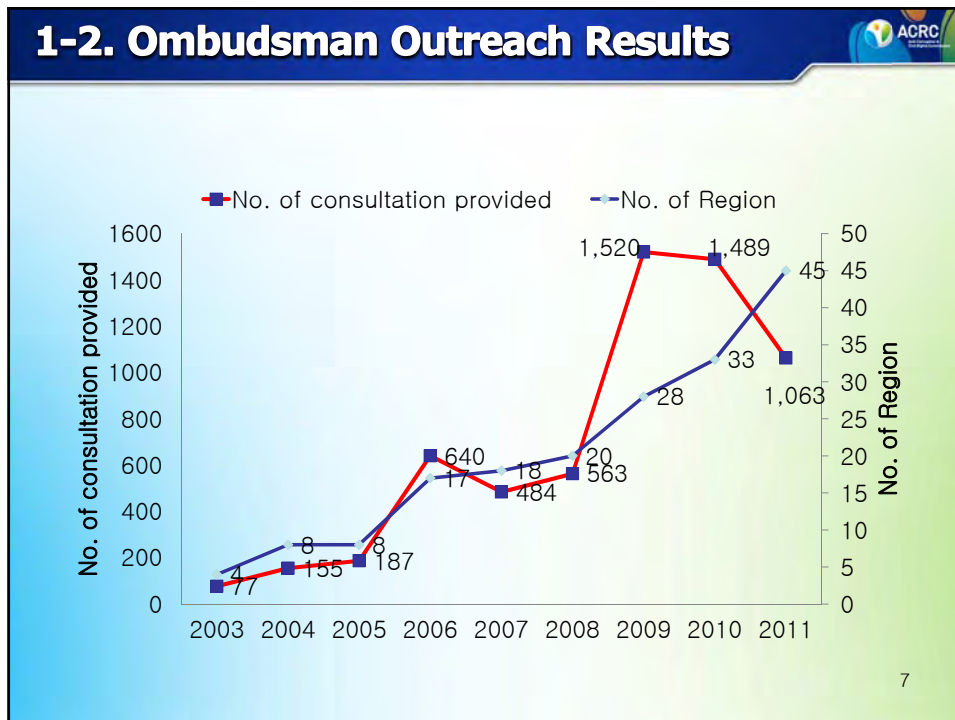
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## 1-1. Onsite Outreach Program



- Have received complaints and helped resolve issues onsite since 2003
- Focus on multicultural families, migrant workers and the homeless
- Recommend corrective action when undue administrative measures or problematic government systems are discovered

6



- ### 1-3. Resolution of Regional Conflict
- Ombudsman outreach also addresses regional conflicts.
  - Enhanced ability to solve collective actions with major social implications
    - ACRC Chairperson personally mediates between the government and aggrieved to reach an agreement
    - In 2010, some 18 regional conflict cases were resolved, including a 60-year old issue over livestock wastewater in Iksan
- 8



## 1-4. Onsite Mediation



- Mediate issues with significant social impact, involving multiple parties
- Mediated agreement works like a settlement under the Civil Act.



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## 1-5. Onsite Mediation Process & Results



- Priority on onsite resolution of complaints and civil petitions
- Onsite mediation of petitions involving multiple parties
- Chairperson to mediate socially significant issues
  - Upon complaint receipt, look for mediatory resolution
  - Have expert investigators and senior officials go onsite to learn the facts and conflict cause
  - Use findings to draw up mediation proposal
  - Complete the process with a signed agreement
  - 20 prolonged collective actions resolved in 2011

10

## 2. Cooperation with Foreign Ombudsman

- MOU with Indonesian Ombudsman
  - Help expats & businesses solve problems with support of local ombudsman
  - Jointly visit expat community to receive and solve complaints
  - Share information on complaint handling twice a year
- Expanded cooperation with foreign agencies
  - MOUs signed with Kyrgyzstan (Oct. 2011) and Thai (Dec. 2011) Ombudsmen
  - MOU with Uzbekistan Ombudsmen set for 2012

11

## 3-1. Systemic Investigation for Socially Disadvantaged

- Systemic Investigation address most common complaints
- Investigation subjects include:
  - Neglected areas needing immediate attention, of national concern
  - Complex conflict of interest issues needing in-depth research and professional study
- Extensive investigations and research to devise comprehensive solutions
- Recommendations for systemic enhancement or alternative policy proposals
- Acceptance of recommendations likely, given sufficient pre-consultation

12

### 3-2. Examples of Systemic Investigation

- Investigation to improve plight of the homeless
  - Interview people without a place to stay
  - Identify necessities lacked, obstacles to finding shelter, and ways to self-sufficiency
  - Offer concerned agencies proposals for improvement; most accepted
- Devise measures to provide homes for 13,000 homeless in 27 locations nationwide

13

**Future Policy Directions  
in Solving Civil Complaints**

## 1. Prompt & Sure Resolution of Complaints



- Relevant agencies share best practices and strengthen investigative capabilities
  - Continue to provide assistance until satisfaction reached
- Prompt & sure resolution of complaints
  - Analyze nature and causes; set investigation direction early
  - Accumulate recently-changed laws, regulations, & rulings relevant for addressing civil complaints
  - Transfer complaint cases to concerned agencies to complement relevant rules and regulations

15

## 2. Expansion of Onsite Resolution



- Run more Ombudsman outreach programs nationwide
- Develop customized outreach programs for migrant workers and multicultural families
- Expand mediation role for conflicts with significant social influence

16

### 3. Preventive Measure Enhancement



- Improve front-line agencies' abilities to prevent and settle complaints
  - Disseminate complaint-handling experience and techniques
  - Expand consultation efforts to address complaints
- Facilitate activities of local ombudsmen
  - Set standard ordinances and expand local ombudsmen
  - Support local ombudsmen to strengthen their capabilities to handle complaints
    - Form cooperative councils, and hold workshops and joint surveys

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### Conclusion



- Continue to improve access by socially vulnerable to rights protection measures
- Expand ongoing programs to provide the socially vulnerable with more opportunities to protect their interests and rights
- Further cooperation with foreign ombudsmen to protect the rights of Koreans living abroad

18





## Protecting the Vulnerable - A Philippine Experience



Ms. Justice Conchita Carpio Morales  
Ombudsman  
PHILIPPINES



- investigate and prosecute any act or omission by a public officer/employee that appears to be illegal, unjust, improper, or inefficient

- direct any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, or any government-owned or controlled corporation, to perform and expedite any act or duty required by law


- stop, prevent, and correct any abuse or impropriety in the performance of public duties

- determine causes of inefficiency, red tape, mismanagement, fraud, and corruption

- recover ill-gotten and unexplained wealth and prosecute parties involved



FIVE FUNCTIONS	ACTIVITIES
<b>1. Public Assistance</b>	<ul style="list-style-type: none"> <li>▪ Request for assistance</li> <li>▪ Mediation</li> <li>▪ Regional offices</li> <li>▪ Multi-media</li> <li>▪ Anti-Red Tape</li> <li>▪ Resident ombudsman network</li> </ul>
<b>2. Graft Prevention</b>	
<b>3. Investigation</b>	
<b>4. Administrative Adjudication</b>	
<b>5. Prosecution</b>	

Office of the Ombudsman 

**Request for assistance**

**Mediation**



**Regional offices**


**Multi-media**

**Anti-Red Tape**

**Resident Ombudsman Network**

- facilitate access to government services
- retirement pensions, non-payment of salaries and other benefits, health and medical services, money claims, and deductions from or stoppage/refund of the monthly salary of teachers
- 53, 016 requests received from 2006-2010
- 95.44% (50, 599) disposed

Office of the Ombudsman 



**Request for assistance**

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**Mediation**

Regional offices

---

**Multi-media**

Anti-Red Tape

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**Resident Ombudsman Network**

**Success Story:**

- US\$60,000 award for permanent disability enforced

- assistant waiter on cruise ship
- cracking sound and snapping sensation on knees
- only 1 day of rest and anti-inflammatory shot
- certified unfit for sea duty
- employer failed to act on permanent disability claim
- US\$60,000.00 judgment award unimplemented
- full satisfaction post assistance from OMB

Office of the Ombudsman

**Request for assistance**

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**Mediation**

Regional offices

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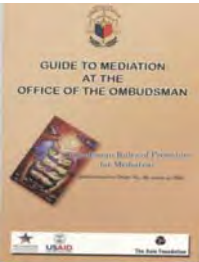
**Multi-media**


Anti-Red Tape

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**Resident Ombudsman Network**

- alternative form of dispute resolution
- voluntary and inexpensive process
- minor and non-graft cases : non-payment of debts, threats, simple dishonesty, misconduct, and failure to provide financial support
- 72% of 909 cases successfully mediated





Office of the Ombudsman

- 135 -

Request for assistance

Mediation

Regional offices


Multi-media

Anti-Red Tape


Resident Ombudsman Network

**Success Story: family support**

- military personnel
- abandoned wife and three children
- financial support
- authorization of allotment



Office of the Ombudsman



Request for assistance


Mediation

Regional offices


Multi-media

Anti-Red Tape

Resident Ombudsman Network



Office of the Ombudsman



**Request for assistance**


**Mediation**

**Regional offices**


**Multi-media**

**Anti-Red Tape**

**Resident Ombudsman Network**



Office of the Ombudsman



**Request for assistance**

**Mediation**


**Regional offices**

**Multi-media**


**Anti-Red Tape**

**Resident Ombudsman Network**

- weekly radio program  
- “Report to the Ombudsman”
- weekly TV program  
- “Ombudsman: Your Partner Against Corruption”



Office of the Ombudsman



**Request for assistance**

**Mediation**



**Regional offices**

**Multi-media**


**Anti-Red Tape**

**Resident Ombudsman Network**

- hotlines and text messaging
- e-mail



Office of the Ombudsman



**Request for assistance**

**Mediation**

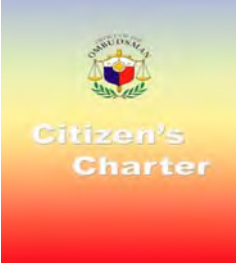
**Regional offices**

**Multi-media**


**Anti-Red Tape**

**Resident Ombudsman Network**

- Anti-Red Tape Act of 2007
- citizen's charter:
  - frontline services
  - step-by-step procedures
  - responsible employee
  - fees
  - documentary requirements
  - complaint procedure
- trainings



Office of the Ombudsman



**Request for assistance**

**Mediation**


**Regional offices**

**Multi-media**

**Anti-Red Tape**

**Resident Ombudsman Network**

- duties and responsibilities:
  - public assistance
  - public information and education
  - monitoring
  - systems review
- 12 resident ombudsmen organic to the OMB
- 568 resident ombudsman coordinators



Office of the Ombudsman

**Request for assistance**

**Mediation**

**Regional offices**

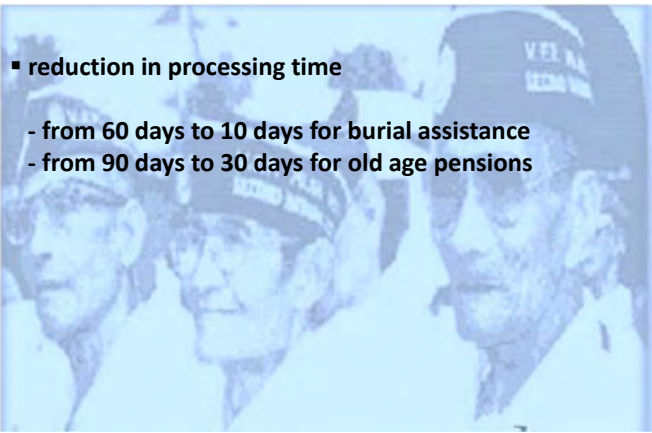
**Multi-media**

**Anti-Red Tape**

**Resident Ombudsman Network**

**Success Story: Philippine Veterans Affairs Office**

- reduction in processing time
  - from 60 days to 10 days for burial assistance
  - from 90 days to 30 days for old age pensions



Office of the Ombudsman

## The Way Forward

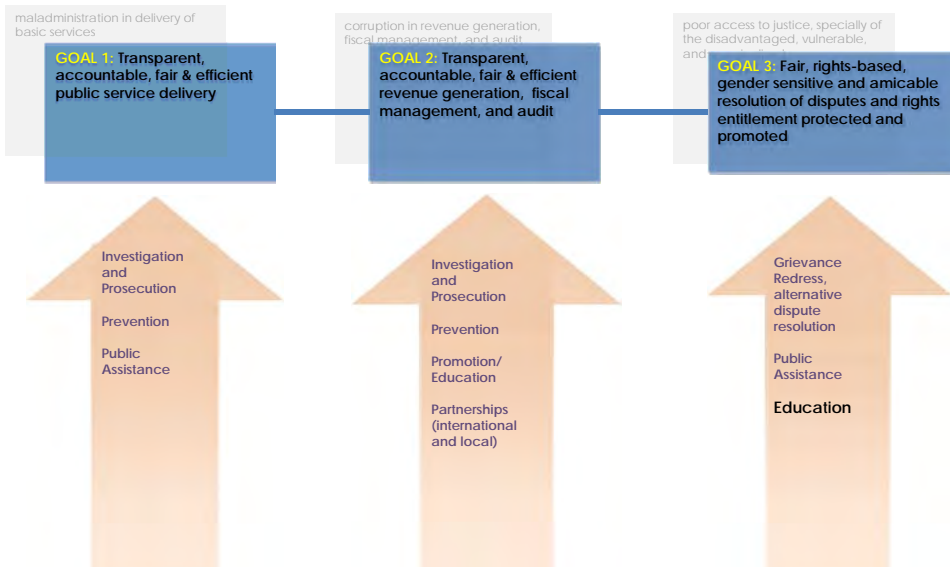
- Human Rights-Based Approach to Development
- P.A.N.T.H.E.R. Principles
  - Participation
  - Accountability
  - Nondiscrimination
  - Transparency
  - Human Dignity
  - Empowerment
  - Rule of Law



Office of the Ombudsman



## 2010-2016 OMB STRATEGY FRAMEWORK



Office of the Ombudsman



### Barangay Good Governance Workshops

- smallest and basic political unit
- basic services and facilities
  - agricultural support services
  - health and social welfare services
  - “katarungang pambarangay”
  - maintenance of barangay roads, bridges, water supply systems
  - information and reading center
- accountability awareness
- integrity building



Office of the Ombudsman



# Thank You!

Office of the Ombudsman





## The role of enhanced advocacy and outreach strategies in protecting the vulnerable groups in society



Mr. Lankanatha Ashanka Tissa Ekanayake  
Parliamentary Commissioner for Administration  
SRI LANKA

Any institution established for the purpose of protecting and promoting of human rights generally and fundamental rights in particular must be one which is known to the people particularly to the vulnerable groups in society, because they are the ones who seek recourse to these institutions due to their inability to resort to legal action for the protection of their rights, due to the high expenses involved in litigation.

It is a basic requirement that if there are institutions for the protection of people's rights, the people should be aware of the fact that such institutions exist. Secondly they must have easy access to such institutions.

The office of the Parliamentary Commissioner or the Ombudsman is an independent authority established for the purpose of providing redress to aggrieved persons in cases of maladministration, where the existing constitutional machinery had been insufficient or ineffective. Complaints had often been made that proper standards of conduct were not observed by public officers. The complaints include those of negligence, inefficiency, bias, unfair discrimination, oppressive behavior, delay and failure to reply to a communication addressed to administrative authorities.

As the Report of 'Justice', the British Section of the International Commission of Jurists (ICJ) has pointed out with reference to Britain, a developed country, such complaints (I quote) "give rise to feelings of frustration and resentment because of the inadequacy of the existing means of seeking redress."<sup>1</sup> It is submitted that in the mixed and heterogeneous polities of the Asian region these complaints of the people assume a more serious character than the countries where the population is homogeneous in nature.

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<sup>1</sup> The Citizen and Administration, the Redress of Grievances (UK 1961) p. 61. See also J. A. L. Cooray, Constitutional Government and Human Rights (1969), Chapter 3 'An Ombudsman for Ceylon.



It had been found in practice that in the expanding sphere of state activity and administrative power the traditional, constitutional, legal and administrative remedies had been inadequate and inappropriate to deal with various types of maladministration.

If I may cite an example, in order to institute a regular legal action in a court of law, the grievance should amount to a cause of action recognized by law. Even in cases where an express right of appeal to the courts against administrative decisions is conferred by statutes on specific grounds, the scope of the appeal is strictly confined to the grounds of appeal.

Similarly where a complainant invokes the supervisory jurisdiction of the appropriate court, it will grant relief only when the administrative agency had exceeded its powers and acted in breach of certain principles recognized by law. The court limits its control strictly to 'legal' acts with the result that the citizen is left without any legal remedy in cases of maladministration which stops short of illegality.

It is always the marginalized or otherwise vulnerable groups who are at the receiving end of such acts or omissions committed or omitted by various organs of the administration. It may sometimes be a case of not receiving a reply to a letter written by a citizen in his own language or receiving a reply in a language that he does not understand whilst he is legally entitled to receive a reply in his own language. In my country Sri Lanka, this had been one of the root causes for the armed conflict that engulfed the island nation for many years.

Even in cases where judicial review is available for redress of grievances the parties in Sri Lanka and other developing or (under-developed countries) are either too poor to pursue such remedies or the subject matter of dispute is too small for such remedies to be pursued in courts having regard to the delays and high cost of litigation.

It is a *sene qua non* for any institution dealing with rights of people especially relevant to marginalized and vulnerable groups in society, to make it transparent, and accessible without any hindrance of costs, proximity, formalities and discrimination on whatever grounds. The office of the ombudsman is such an institution. For example the Swedish Ombudsman has great freedom in deciding the direction of his supervisory activity. Every citizen has a right to complain to him. Neither the government nor parliament can stop the investigation of a complaint by the Ombudsman.

The Ombudsman of Denmark can receive complaints from anyone. He can even take up matters on his own initiative. Any person deprived of his liberty is entitled to address written communications in a sealed envelope to the Commissioner. In the process the Commissioner could inspect prisons and other penal institutions and the prisoners are informed that they will have an opportunity of talking to the

Commissioner without the presence of any official from the prison.<sup>2</sup>

The experience of the Ombudsman of Guyana would be of much importance to those of developing countries with societies that are heterogeneous. The Guyanese Ombudsman investigates complaints of injustices in consequence of a 'fault of administration.' Such fault of administration includes discrimination on grounds of race, place of origin, political opinion, colour or creed.<sup>3</sup>

The Ombudsmen in heterogeneous societies must appraise themselves of the best approaches which ensure protection of vulnerable groups of their societies. The well known **Paris Principles on national human rights protection institutions** promulgated under the auspices of the United Nations would provide a sound beginning.<sup>4</sup> Principles C (1-7) of the Paris Principle sets out inter alia, (I quote) 'freely considering any question falling within their competence, hearing any person and obtaining any information necessary for assessing situations, addressing public opinion directly through the press-particularly to publicise their opinions and recommendations, maintaining consultations with other bodies responsible for the protection and promotion of human rights and developing relations with NGOs devoted to protecting and promotion of human rights in related fields.'(Unquote)

I propose that national ombudsmen in our region must draw strategic plans based on the above principles to convey their mission to the target groups. Both advocacy and outreach could be used as vehicles in pursuit of this mission.

Sri Lanka is a tri-lingual state where there are two official languages (Sinhala and Tamil) and a link language which is English. It is imperative that due to this heterogeneity my office must reach the marginalized segments through one of the two official languages in that the vulnerable groups only speak the vernacular languages. Otherwise they will never come to know about the jurisdiction of the Ombudsman in Sri Lanka. Although there is a separate Official Languages Commission in Sri Lanka the language problem has not been resolved. This also gives rise to a duty on the part of the Ombudsman to reach out to the said Commission for joint action although the Ombudsman has no specific powers in implementing policies.

Originally the Sri Lankan Ombudsman had the authority only to inquire into complaints filtered through the Public Petitions Committee of Parliament. The first Ombudsman of Sri Lanka in his Annual Report for 1984 voiced that,(I quote) ' Sri Lanka is the only country in the world which filters

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<sup>2</sup> Public law (1958), p. 240. The experience of the Guyanese Ombudsman would be of much importance to those of developing countries with societies that are heterogeneous. The Guyanese ombudsman investigates complaints of injustice in consequence of a fault in administration.' Such faults includes discrimination on grounds of race, place of origin, political opinion, colour, or creed.

<sup>3</sup> Constitution of Guyana, Article 56.

<sup>4</sup> Paris Principles on National Human Rights Institutions.

such petitions through so many levels.’ (unquote)<sup>5</sup> He stated further in his report that, (I quote) “the Indian experience of (epistolary jurisdiction of the Supreme Court could be a major breakthrough in bringing justice to the large mass of people. In parts of Canada a mere telephone call to the office of the ombudsman could be the basis of an investigation. In some countries the ombudsman could commence inquiries on his own (sic) initiative.” ( unquote).

His criticism did not fall on deaf ears. In 1994 the new government which came into power amended the 1981 Act which established the office of the Ombudsman enabling the public to submit petitions directly to the Ombudsman.<sup>6</sup> Although no provisions were introduced empowering the Ombudsman to receive complaints by telephone he was empowered to act on his/ her own initiative. This was an instance how an Ombudsman could use his outreach to make his office more effective and meaningful by taking an initiative within his powers to bring his office very much closer to the ordinary people.

The impact of this procedural change made in 1994 is amply demonstrated by the comparison of the number of matters referred to before 1994 and after. The number of 32 complaints received by the Ombudsman in 1984<sup>7</sup> increased to a massive 5221 in 1995 in addition to the 41 referred by the Public Petitions Committee of Parliament.<sup>8</sup> This upsurge could be attributed to the liberalising of the petition procedure and the wide publicity given to the amendment made in 1994 to the 1981 Act.

Historically the Ombudsman’s office has been a relatively closed institution, with no stakeholder interaction and only peripheral attention paid towards improving advocacy and outreach of its service. Responding and recognizing the need to keep pace with public expectations and as part of a process of representing itself as a more client oriented institution, the Ombudsman should identify steps leading to its transformation into a more open institution becoming more inclusive in its policy making and purposefully engaging with different stake holders to enable third party perspectives to be imbibed in its work.

It must be emphasized that with the opening of direct access to the Ombudsman steps have to be taken to create a greater awareness among the public, the majority of whom belong to vulnerable groups. Consistent and effective communications with stakeholders is a critical aspect of the functioning of any institution whose clients are broad based.

The envisaged communication flow comprises two aspects. Firstly, building awareness amongst the different audiences on the mandate, the plan and the programs of the Ombudsman. Secondly, impetus,

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<sup>5</sup> Mr. Sam Wijesinghe, in Parliamentary Series No. 76, Report of the Parliamentary Commissioner (Ombudsman ) for the Year 1984 (9 July 1984).

<sup>6</sup> Section 10(2)and (3) of Act No. 17 of 1981.as amended by Act No. 26 of 1994.

<sup>7</sup> Supra, n, p. 34.

<sup>8</sup> Parliamentary Series No. 15, Report of the Parliamentary Commissioner for Administration (Ombudsman) for the year 1995 (21st August 1996). p. 59.

building and sustenance of momentum with respect to interaction, culminating in the success of the Ombudsman's strategic plan.

In furtherance of these objectives the ombudsman must formulate a process involving,

- (1) The Identification and segmentation of target groups,
- (2) Developing an effective system of communication instruments and media. A number of Instruments and a variety of media would be used to communicate with the different stake holders.

I would list some of them as follows,

- (1) **Annual or other Periodic Reports or Thematic Reports:** These Reports that comply with legal provisions in the law or the statute that established the Ombudsman himself would form the principal instrument for public disclosure of the agencies working on the social sector. The Ombudsman should place them on his official web site and publish them in the newspapers in all official and national languages of a given country. He also could propose through his reports to the government to amend the Constitution or the statute which established his office to decentralize the powers of the office of the Ombudsman. Decentralization of the functions of the office of the Ombudsman would further bring his office closer to all citizens in general and the marginalized segments in particular. This was amply demonstrated in Sri Lanka by the immense response shown by the aggrieved people living in the provinces after the National Human Rights Commission (NHRC) opened regional offices. Those offices began to receive hundreds of applications in respect of violations of fundamental rights by executive and administrative organs of the government. Those applications would never have been submitted had not those regional offices been opened by the Commission which was earlier functioning only in the capital city, Colombo.
- (2) **Ombudsman's News Letter:** A news letter which portrays and builds on the existing image of the Ombudsman's office on a responsive and responsible manner published in all official and national languages as the case may be will be a very effective tool in propagating the jurisdiction and the working of the Ombudsman's office.
- (3) **Participation and Sponsorship of community events:** Awareness programs and competitions to mobilize communities at various levels to various stakeholders and awareness of issues in administrative justice. The competitions could take the form of posters, essay and other innovative projects in relation to access to justice, freedom of information, public grievance redress and making the Ombudsman's mission more effective and efficient.
- (4) **Media Briefings and Press Releases:** Media briefings are very useful to keep the media abreast of the Ombudsman's efforts in public grievance redress and to provide insight and information to specific activities undertaken by the Ombudsman. Establishment of a public cum media relations unit in the office of the Ombudsman will facilitate the abovementioned activities with efficiency and continuity.
- (5) **Ombudsman's Web Site and Blog:** A web site and a blog are a sine qua non for the Office of

the Ombudsman in this technologically advanced age to act as a channel for public disclosure on programs, activities and a web based information centre with a continuing update of all administrative justice services that the Ombudsman provides.

(6)**Radio and TV Programs:** Like many organizations, human rights based institutions both public and private utilize these programs to disseminate their message and programs to the general public at large because of its great effectiveness the expansive reach. Both these media reach the remotest hamlets in any country in minutes if not seconds with great impact.

(7)**Workshops and Seminars:** Workshops and seminars are useful means to reach stakeholders on specific policy issues and also to receive feedbacks from them.

(8)**Print and Electronic Media Advertising:** This is another very effective activity to ensure a wide outreach of the message of the Ombudsman, declaring what public grievance redress mechanisms are and how the Ombudsman is hoping to redress the grievances or how his office can help in resolving them and what the role of the stakeholders should be, which may also include a report of the progress achieved so far and the next steps proposed to be taken in the future in that regard.

Let me conclude quoting Stieber: "Common threads run through the conceptual fabric of every ombudsman's office - all aim to humanize administration, to support fairness, accountability, and equity. All ombudsmen can be approached in confidence. No ombudsman has enforcement or disciplinary powers. All depend on the power of persuasion, as well as the credibility of the office, which leads individuals to trust it. Although the process in achieving objectives of fairness may differ, the product is the same: a chance for ordinary people, those without power or prestige, to be heard and to get fair treatment."<sup>9</sup>

Thank You.

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<sup>9</sup> Stieber, 57, Varieties, para.3 pp. 56-567, cited in The Functions of an Ombudsman: Nathalie Des Rosiers, Annotated Bibliography, Forum of Canadian Ombudsman, First Annual Conference 2003



# Plenary Session 4

## Sub Theme

### The Role of Ombudsman in Decentralization, Out Sourcing and Public Private Partnerships

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Chief Ombudsman, INDONESIA	
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Professor, Ateneo De Manila University, PHILIPPINES	
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Emeritus Professor, Nihon University/ Administrative Counselor, JAPAN	





## Public Services Reform in Indonesia



Mr. Danang Girindrawardana  
Chief Ombudsman  
INDONESIA

Indonesia is now growing rapidly to be an economic power in Southeast Asia, through various agendas of reform programs. Indonesia state administration improved after the amendment of 1945 Constitution, which is continuously changing in between years 1999 to 2002. The Indonesia reformation program at the transition era is perceived to be able to perform the new state system in better condition. One of a good result now is Indonesia most likely known as a most democratic country in the world.

The various changes area in law and regulation of the state are the birth of external agencies which has the jurisdiction to oversee, monitoring and evaluate the government. As a consequence of those changes, Indonesia is now having of many 'Independent Commission (independent regulatory agencies) and other non-structural state institutions, such as the executive committee (executive branch agencies)'. The establishment of those state agencies are dedicated to improve the quality of accountability, transparency and competency. This three of desirable outcome would like to be generated public trust to the state institutions.

The reform agenda enforced the change of government system based on a democratic philosophy and the rule of law. Before the reform, the state executives and legislative tend to possess the practices of corruption, collusion and nepotism (KKN) of its performance. These conditions then become the main cause of public distrust to the Government apparatus. Therefore, to improve the performance of the Government, it is necessary to have good and clean governance through principles of good governance and the rule of law.

Since 2004, Indonesia had been known as the most democratic country, with President election system directly by the people on the basis of one man one vote. That also used the same system for the election of members of the House of Representative of Republic Indonesia and Local House of Representative. This system of one people one vote is also applied regarding to the election of the Governor, Regent and Mayor of Local Government.

The reform was also marked by decentralization system began in 1999. This system then generates various improvement of local government performance to support the growth of Indonesia macro economy. The result of the decentralization era is making the heads of the Local Government able to lead their region with their own innovation breakthroughs public service which would generate economic growth in the area. Those good results are not for free lunch, but it takes some consequences. There are several problems following, including example:

- (1) Corruption, collusion and nepotism were also spread flowering to the regions.
- (2) Then, the improvement of public services at local level was performed not as expected.
- (3) There are no system applied 'based on law and regulation' for Indonesia Government to punish the head of local government for their poor performance in making the quality improvement of public services,

Then how would be the development agenda of the reform program could take impact to the local government?

### **I .The main problem**

An agenda of state reformation must be followed with reforming of the executives bodies of government. This is an important part to realize the vision of Indonesia. But the changes of democratic systems are observed to be unparallel to the capacity of the Government bureaucracy.

It can be seen from the bureaucratic capabilities that are resulting less improvement in public service sectors. Obviously it will be the obstacle to accelerate the national welfare development. The phenomenon of poor quality in public services showed that the bureaucratic reform does not affect to the fundamental rights of the community, that is justice. A variety of opinions showed the existence of the four causes:

- (1) Firstly, there is a problem on the input of the public service in Indonesia. The state government of manpower at the range of education and training to deliver the quality of public services. This can be seen from the large number of practices of corruption, collusion, and nepotism at the planning of public policy which seemed abuse the importance of interests of society at large.
- (2) Secondly, the working culture of the bureaucracy known as maladministration such as delayed job, undiscipline, unfriendly to the business, abuse of authority, incompetent, illegal charges, and many others.
- (3) Thirdly, public participation in planning and monitoring to the government is still at low level, and then the society do not have courage to claim their rights for having proper public service.
- (4) Fourthly, the supervision and prevention against maladministration practice have not been adequate.

## **II .Solution**

In order to realise good governance and efforts to improve public services for the society requires the presence of a watchdog state agency that is capable and effectively have the right base on law and regulation to assist people and community stand up from their weak positions when they facing bureaucracy- maladministration. Internal supervision body placed at bureaucracy are assessed improper expectations of the society in terms of the objectivity and accountability perspective.

It needs an external supervisory body of institution in order to have effective supervisory mechanism to pull and push the bureaucracy more accountable and responsive to the needs of the society.

At the year of 2008, the Parliament stipulates the Act No. 37 Year 2008 on Ombudsman of the Republic of Indonesia. Another authority given to the Ombudsman RI is the stipulation of Act Number 25 Year 2009 on Public Services. Those two Acts remarked Ombudsman RI role to improve the quality of public services.

## **III.The strategic role of the Ombudsman of Republic Indonesia**

To strengthen Ombudsman of Republic Indonesia in watching the bureaucratic reform program needs to be optimally supported. The existence of this state watchdog body is expected to be along the lines with other state institution such as the Corruption Eradication Commission (KPK-Komisi Pemberantasan Korupsi). The practices of corruption, collusion and nepotism that occurred could have been prevented as much as possible by the Ombudsman and against the corruption handled by the KPK. The main role of the Ombudsman of Republic Indonesia is to ensure that the government provides proper public services and reducing maladministration practices.

The society is now able to lodge the complaint regarding their dissatisfaction in receiving public services, that is free of charge, faster and no need to use such services of a lawyer.

Ombudsman of the Republic Indonesia has become an alternative way to resolve their dispute over the public service rather than through judicial process that is known as expensive, time consuming, and difficult access of information.

Ombudsman of the Republic Indonesia with its jurisdiction has the authority to issue a 'legally binding recommendation' or 'improvement suggestion' to the state institutions or state apparatus that are assessed maladministration. Ombudsman of the Republic Indonesia also has jurisdiction to bring by force (subpoena power) with the help of police of RI to examine state officials who refuse to attend the Ombudsman instruction. With the various jurisdiction of the Ombudsman of the Republic of Indonesia by Act No. 37 of 2008 and a Act No. 25 of 2009, the President then issued a Presidential Instruction No.9 in 2011 on the Prevention of Corruption Issues. The stipulation of Presidential Instruction forces

any other government bodies to make some synergic actions with Ombudsman of the Republic Indonesia in range of prevention programs. Ombudsman of the Republic of Indonesia now is expected to become an independent State institution that is powerful, prestigious, and fully supported by the community. Expectations from the society to the Ombudsman of the Republic of Indonesia are continuously strengthened in this year of 2011. We will need to increase public trust in a way of improving public services.

Nevertheless, the Ombudsman of the Republic of Indonesia still needs to learn from other countries that already have Ombudsman as part of the life of the State. Having legal based stipulated in the Act, the Ombudsman of the Republic of Indonesia is now becoming Parliamentary Ombudsman similar to Finland, Sweden, and Norway. This relates to the inauguration of the Ombudsman who are elected and appointed by the Parliament and that's why they are powerful in implementing their jurisdiction.

The establishment of the institution of Ombudsman of Republic Indonesia based on several considerations, namely, firstly, that service to the community and law enforcement that is performed in the framework of implementation of State and Government is an inseparable part of an effort to create a good, clean, and efficient way to enhance the welfare and the justice and legal certainty for all citizens.

Secondly, public services delivered by the State Officials and by the Government apparatus at any level from centre to local government is important element to create good, clean, and efficient and also to the implementation of the principle of democracy that needs to be developed and applied to prevent the practices of the abuse of power.

Thirdly, as part of society empowerment the Ombudsman of Republic Indonesia has to be involved actively within the society to supervise the Government apparatus to assure that the public service performance are accountable, clean, transparent, free of corruption, collusion and nepotism. Empowerment the community is the implementation of democratization in order to prevent and reduce the abuse of power by State apparatus.

The society now have felt the benefit of the existence of the Ombudsman of Republic Indonesia that could help them resolving the dispute of public services through variation authority of Ombudsman Republic Indonesia such as of investigation, clarification, mediation, reconciliation, adjudication, suggestions and recommendations.

The Ombudsman of Republic Indonesia now lead by 9 Ombudsman, including the Chairman and Vice Chairman, starting this year 2011 to 2016. Those new leaders are conducted numerous changes such as:

- (1) Re-engineering management (capacity building and enhancing team and personal skill).

- (2) Mass media involvement.
- (3) Renewing handling complaint procedure and own motion investigation.
- (4) Gaining public awareness to empower society's rights to receive proper public services.
- (5) Strategic collaboration with the Police and the judiciary body
- (6) Focusing program of important public services sectors i.e. education, health, employment, environment, economic competitiveness and administrative residency.
- (7) Strategic collaboration with other institutions including Governments, the Parliament, Local Parliament, Education, NGO's and the society.

#### **IV. Closing Remarks**

Our high expectation is that the quality of public services in Indonesia will better in the near future. Providing good quality public service of the state apparatus is an obligation that should be fulfilled by the State at all level, from center to local government.

This is the way the Ombudsman of Republic Indonesia build in a strategic role at all level of government, to reduce corruption collusion and nepotism is to improve public service with a different approach and perspective with other state bodies.

Thank you

## Ombudsman and the Public Service- Reform in Indonesia



Ombudsman Republik Indonesia

- Indonesia is now growing rapidly to be an economic powers in Southeast Asia, through various agendas of reform programs. Indonesia state administration improved after the amendment of 1945 Constitution, which is continuously change in between years 1999 to 2002. The Indonesia reformation program at the transition era is perceived to be able to perform the new state system in better condition. One of a good result now is Indonesia most likely known as a most democratic country in the world.
- The various changes area in law and regulation of the state are the birth of external agencies which has the jurisdiction to oversee, monitoring and evaluate the government. As a consequence of those change, Indonesia now having of many 'Independent Commission (independent regulatory agencies) and other non-structural state institutions, such as the executive committee (executive branch agencies)'. The born of those state agencies are dedicated to improve the quality of accountability, transparency and competency. This three of desirable outcome would like to generate as many as possible public trust to the state institutions.

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- Since 2004, Indonesia had been known as the most democratic country, with President election system directly by the people on the basis of one man one vote. That also used the same system for the election of members of the House of Representative of Republik Indonesia and Local House of Representative. This system of one people one vote is also applied regarding to the election of the Governor, Regent and Mayor of Local Government.

- The reform was also marked by decentralization system began in 1999. This system then generates various improvement of local government performance to support the growth of Indonesia macro economy.
- The result of the decentralization era is making the heads of the Local Government able to lead their region with their own innovation breakthroughs public service which would generate economic growth in the area.
- Those good results are not for free lunch, but it takes some consequences. There are several problems following, including example:
  1. Corruption, collusion and nepotism were also spread flowering to the regions.
  2. Then, the improvements of public services at local level were perform not as expected.
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- Then how would be the development agenda of the reform program could take impact to the local government?

**The main problem**

- An agenda of state reformation must be followed with reforming of the executives bodies of government. This is an important part to realize the vision of Indonesia. But the changes of democratic systems are observed to be unparallel to the capacity of the Government bureaucracy. It can be seen from the bureaucratic capabilities that are resulting less improvement in public service sectors. Obviously it will be the obstacle to accelerate the national welfare development.
- The phenomenon of poor quality in public services showed that the bureaucratic reform does not affect to the fundamental rights of the community, that is justice. A variety of opinions showed the existence of the four causes:

- ✓ Firstly, there is a problem on the input of the public service in Indonesia. The manpower of state government at the range of education and training to deliver the quality of public services. This can be seen from the large number of practices of corruption, collusion, and nepotism at the planning of public policy which seemed abuse the importance of interests of society at large.
- ✓ Secondly, the working culture of the bureaucracy known as 'maladministration' such as delayed job, undiscipline, unfriendly to the business, abuse of authority, incompetent, illegal charges, and many others.
- ✓ Thirdly, public participation in monitoring to the government is still at low level, and then the society do not have courage to claim their rights for having proper public service.
- ✓ Fourthly, the supervision and prevention against 'maladministration' practice have not been adequate.



**Solution**

- In order to realise good governance and efforts to improve public services for the society requires the presence of a watchdog state agency that is capable and effectively have the right base on law and regulation to assist people and community stand up from their weak positions when they facing bureaucracy- maladministration.
- Internal supervision body placed at bureaucracy are assessed improper expectations of the society in terms of the objectivity and accountability perspective.
- It needs an external supervisory body of institution in order to have effective supervisory mechanism to pull and push the bureaucracy more accountable and responsive to the needs of the society.
- At the year of 2008, the Parliament stipulates the Act No. 37 Year 2008 on Ombudsman of the Republic of Indonesia. Another authority given to Ombudsman RI with the stipulation of Act Number 25 Year 2009 on Public Services. Those two Acts remarked Ombudsman RI role to improve the quality of public services.

**The strategic role of the Ombudsman of Republic Indonesia**

- To strengthen Ombudsman of Republic Indonesia in watching the bureaucratic reform program needs to be optimally supported. The existence of this state watchdog body is expected to be along the lines with other state institution such as the Corruption Eradication Commission (KPK-Komisi Pemberantasan Korupsi). The practices of corruption, collusion and nepotism that occurred could have been prevented as much as possible by the Ombudsman and against the corruption handled by the KPK. The main role of the Ombudsman of Republic Indonesia is to ensure that the government provides proper public services and reducing maladministration practices.
- The society is now able to lodge the complaint regarding their dissatisfaction in receiving public services, that is free of charge, faster and no need to use such services of a lawyer.
- Ombudsman of the Republic Indonesia has become an alternative way to resolve their dispute over the public service rather than through judicial process that is known as expensive, time consuming, and difficult access of information.

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- Ombudsman of the Republic Indonesia also has jurisdiction to *bring by force* (subpoena power) with the help of police of RI to examine state officials who refuse to attend the Ombudsman call.
- With the various jurisdiction of the Ombudsman of the Republic of Indonesia by Act No. 37 of 2008 and a Act No. 25 of 2009, the President then issued a Presidential Instruction No.9 in 2011 on the Prevention of Corruption Issues. The stipulation of Presidential Instruction force any other government bodies to make some synergic actions with Ombudsman of the Republic Indonesia in range of prevention programs.
- Ombudsman of the Republic of Indonesia now on is expected to become an independent State institution that is powerful, prestigious, and fully supported by the community. Expectations from the society to the Ombudsman of the Republic of Indonesia are continuously strengthened in this year of 2011. We will need to increase public trust in a way of improving public services.

- Nevertheless, the Ombudsman of the Republic of Indonesia still needs to learn from other countries that already have Ombudsman as part of the life of the State. Having legal based stipulated in the Act, the Ombudsman of the Republic of Indonesia is now becoming Parliamentary Ombudsman similar to Finland, Sweden, and Norway. This relates to the inauguration of the Ombudsman who are elected and appointed by the Parliament and that's why they are powerful in implementing their jurisdiction.
- The establishment of the institution of Ombudsman of Republic Indonesia based on several considerations, namely, firstly, that service to the community and law enforcement that is performed in the framework of implementation of State and Government is an inseparable part of an effort to create a good, clean, and efficient way to enhance the welfare and the justice and legal certainty for all citizens.

- Secondly, public services delivered by the State Officials and by the Government apparatus at any level from centre to local government is important element to create good, clean, and efficient and also to the implementation of the principle of democracy that needs to be developed and applied to prevent the practices of the abuse of power.
- Thirdly, as part of society empowerment the Ombudsman of Republic Indonesia has to be involved actively within the society to supervise the Government apparatus to assure that the public service performance are accountable, clean, transparent, free of corruption, collusion and nepotism. Empowerment the community is the implementation of democratization in order to prevent and reduce the abuse of power by State apparatus.
- Now on, the society have felt the benefit of the existence of the Ombudsman of Republic Indonesia that could help them resolving the dispute of public services through variation authority of Ombudsman Republic Indonesia such as of investigation, clarification, mediation, reconciliation, adjudication, suggestions and recommendations.

The Ombudsman of Republic Indonesia now lead by 9 Ombudsmans, including the Chairman and Vice Chairman, starting this year 2011 to 2016. Those new leaders are conducted numerous changes such as:

1. Re-engineering management (capacity building and enhancing team and personal skill).
2. Mass media involvement.
3. Renewing handling complaint procedure and own motion investigation.
4. Gaining public awareness to empower society's rights to receive proper public services.
5. Strategic collaboration with the Police and the judiciary body
6. Focusing program of important public services sectors i.e. education, health, employment, environment, economic competitiveness and administrative residency.
7. Strategic collaboration with other institutions including Governments, the Parliament, Local Parliament, Education, NGO's and the society.

**Closing Remarks**

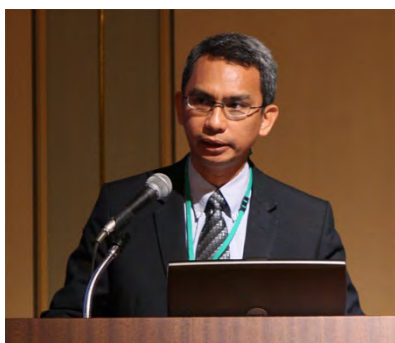
- Our high expectation is that the quality of public services in Indonesia will better in the near future. Providing good quality public service of the state apparatus is an obligation that should be fulfilled by the State at all level, from center to local government.
- This is the way the Ombudsman of Republic Indonesia build in a strategic role at all level of government, to reduce corruption collusion and nepotism is to improve public service with a different approach and perspective with other state bodies.

**Thank you**

**Danang Girindrawardana**

**Chief Ombudsman of Republic Indonesia**

## Ensuring Accountability in Privatized and Decentralized Delivery of Public Services: The Role of the Asian Ombudsman<sup>1</sup>



Dr. Cheselden George Vida Carmona<sup>2</sup>  
Professor  
Ateneo De Manila University  
PHILIPPINES

“Probably the greatest change that will impinge on the activities of the Ombudsman in the future flows from the contraction of performance of government functions by central agencies in favor of contracting out of functions to the private sector. The right of the citizen to complain about adverse decisions or inappropriate action is lost unless the private organization is brought within the aegis of the Ombudsman.”<sup>3</sup>

### I . Introduction

Countries around the world have embraced new public management (NPM) as a framework within which government can be modernized and the public sector reengineered.<sup>4</sup> This involves the reduction of the public sector’s direct responsibility for service delivery in favor of the private sector. The shifting of responsibility from the public to the private sector is expected to make public services more efficient in their use of resources.<sup>5</sup> It is also envisioned that the citizen will benefit both as a customer, with the promise of better public services, and as a taxpayer, with better value for money paid.

The participation of private capital and management in public service delivery covers a wide range of options and includes the transfer of ownership from the public sector to private companies, the

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<sup>1</sup> This is the abridged version of the study, which was co-authored with Alex Brillantes, Ranjani Jha and Jose O. Tiu Sonco II found in Asian Development Bank’s “Strengthening the Ombudsman Institution in Asia: Improving Accountability in Public Service Delivery through the Ombudsman”. The whole book can be downloaded from this site: <http://beta.adb.org/publications/strengthening-ombudsman-institution-asia-improving-accountability-public-service-delive>

<sup>2</sup> George V. Carmona is a professor at the Philippine Judicial Academy and the Ateneo de Manila University School of Law. He is the international consultant for the Strengthening the Asian Ombudsman Association Project (a regional technical assistance grant of ADB to AOA).

<sup>3</sup> Philip Giddings, “The Ombudsman: Accountability and Contracts,” in Contracts, *Performance Measurement and Accountability in the Public Sector*, ed. Gavin Drewry, Carsten Greve, and Thierry Tanquerel (Amsterdam: IOS Press, 2005), 93.

<sup>4</sup> Kempe Ronald Hope Sr. “The New Public Management: Context and Practice in Africa,” *International Public Management Journal* 4, no. 2 (2001): 119.

<sup>5</sup> World Bank, “What is Decentralization?,” The Online Sourcebook on Decentralization and Local Development, [http://www.ciesin.org/decentralization/English/General/Different\\_forms.html](http://www.ciesin.org/decentralization/English/General/Different_forms.html).

conversion of public enterprises into private entities, the involvement of private entities in the operation of public enterprises, or some form of public-private partnership (PPP).<sup>6</sup> It can be through such means as government downsizing, outsourcing, and partnership;<sup>7</sup> and the fragmentation and decentralization of public services.<sup>8</sup>

Decentralization is another approach for improving service delivery. It is seen to enhance allocative and productive efficiency in the delivery of public services through the transfer of functions, powers, and responsibilities to lower-level institutions or local authorities. Allocative efficiency is achieved through a better matching of resources to local preferences, while productive efficiency results from the increased accountability of local governments, the involvement of fewer levels of bureaucracy, and the better knowledge of local costs.<sup>9</sup>

But the outcomes of decentralization, privatization, and the various forms of PPP (such as outsourcing) have not always been positive. Decentralization has failed to deliver all its promised benefits, and has so far been unable to fix the problems it was expected to resolve. While it has been widely embraced as a strategy for improving the quality of services provided by central governments, “in too many cases no significant improvements have been realized and service delivery has actually declined.” In some cases, “decentralization appears to have generated new sets of problems, sometimes opening new arenas of conflict between the national government and subnational officials.”<sup>10</sup> In addition, because local government officials are susceptible to “capture” by special interest groups—and often slacken their efforts to improve public services when there is no risk of losing their jobs—accountability, efficiency, and equity in service delivery may even take a turn for the worse under decentralization.<sup>11</sup>

Various studies have shown that, while privatization has led to the improvement of managerial accountability, political accountability was greatly diminished; and the studies have shown that many people were not happy with privatization.<sup>12</sup> Graeme A. Hodge and Ken Coghill pointed out that “[t]he

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<sup>6</sup> Brooke Chambers, “A Critical Appraisal of Privatization in Nigeria,” HG.org Worldwide Legal Directories (October 8, 2008), <http://www.hg.org/article.asp?id=5491>.

<sup>7</sup> M. Shamsul Haque, “Theory and Practice of Public Administration in Southeast Asia: Traditions, Directions, and Impacts,” *Intl Journal of Public Administration* 30 (2007): 1306.

<sup>8</sup> Roger Levy, “Modernization, Decentralization and Governance: A Public Management Perspective” (paper, Political Studies Association Annual Conference, Aberdeen, UK, April 4–6, 2002), 3, <http://www.psa.ac.uk/journals/pdf/5/2002/levy.pdf>.

<sup>9</sup> Satu Kahkonen and Anthony Lanyi, “Decentralization and Governance: Does Decentralization Improve Public Delivery?” (PREM Notes Number 55, Washington DC: World Bank, 2001), 1, [www1.worldbank.org/prem/PREMNotes/premnote55.pdf](http://www1.worldbank.org/prem/PREMNotes/premnote55.pdf).

<sup>10</sup> United States Agency for International Development (USAID), *Democratic Decentralization Programming Handbook* (Washington, DC: USAID Office of Democracy and Governance, 2009), 2.

<sup>11</sup> Royal Economic Society, “Delivering Public Services in Developing Countries: How The Poor Can Benefit From Decentralisation” (Media Briefing, Royal Economic Society, 2006), <http://www.res.org.uk/society/mediabriefings/pdfs/2006/jan06/bardhan.asp>.

<sup>12</sup> Refers to the constraints placed on the behavior of public officials by organizations and constituencies with the power to apply sanctions on them. See the World Bank Anti-Corruption web page:

common thread throughout was the consistent reductions observed in political accountability and judicial/quasi-judicial accountability, along with a simultaneous rise in market-based and managerial accountabilities, particularly through contract law.”<sup>13</sup> They mentioned several earlier studies that demonstrate their point. One was a survey of 828 water customers in the United Kingdom in 1994 by Peter Saunders and Colin Harris, which found only 28% of respondents believing that the privatization of water had improved accountability, with 39% disagreeing, and 34% having no opinion.<sup>14</sup> The other studies included those by David Heald and Lydia Thomson, which both concluded that voluntary disclosures of performance, costs, and financial information declined following privatization in the United Kingdom;<sup>15</sup> and one on New Zealand by Michael Taggart, which was especially scathing about the effects of privatization on accountability.<sup>16</sup> Taggart claimed that the legal process of privatization created an “accountability vacuum” by stripping away most of the public sector’s broader accountability mechanisms, including ombudsman review, freedom of information, scrutiny by the Auditor-General, and ministerial responsibility.

Similar problems have also been reported with PPPs. In a study of water privatization and restructuring in Asia-Pacific, for example, David Hall and others documented some failed PPP projects and recommended a review of PPPs, including the Build-Operate-Transfer (BOT) model:

A number of water supply BOT projects have been abandoned or are causing serious problems in Vietnam, China, Malaysia and elsewhere, due to unaffordable levels of prices being built into take-or-pay contracts. Similar problems have been observed elsewhere in the world. There should be a serious re-appraisal of the economics of existing water supply BOTs, and a moratorium on further developments, while the lessons of this experience are explored. Otherwise long-term economic liabilities may be accumulated which damage the ability of water utilities to function.<sup>17</sup>

Given the tendency to reduce or streamline the role of the public sector in service delivery, there is a clear need to strengthen state accountability mechanisms in order to protect the public from private sector abuses or administrative neglect that may arise as a result of decentralization, privatization, and PPPs. This is particularly a problem in Asia, where most people do not have the resources to invoke the intervention of the courts to redress their complaints, especially those regarding public services.

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<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION/0,,menuPK:384461~pagePK:149018~piPK:149093~theSitePK:384455,00.html>

<sup>13</sup> Graeme A. Hodge and Ken Coghill, “Accountability in the Privatized State,” *Governance: An International Journal of Policy, Administration, and Institutions* 20, no. 4 (2007): 693. Market accountability refers to the expectation of customers/consumers that a provider/company will offer an acceptable service/product.

<sup>14</sup> Peter Saunders and Colin Harris, *Privatization and Popular Capitalism* (Philadelphia, PA: Open University Press, 1994).

<sup>15</sup> David Heald, “A Financial Autopsy on the CEGB,” *Energy Policy* 17, no. 4 (1989): 337–350; Lydia Thomson, “Reporting Changes in the Electricity Supply Industry,” *Financial Accountability and Management* 9, no. 2 (1993): 131–157.

<sup>16</sup> Michael Taggart, “The Impact of Corporatisation and Privatisation on Administrative Law,” *Australian Journal of Public Administration* 51, no. 3 (1992): 368–373

<sup>17</sup> David Hall, Violeta Corral, Emanuele Lobina, and Robin de la Motte, “Water Privatisation and Restructuring in Asia-Pacific” (report, Public Services International Asia-Pacific meeting, Changmai, Thailand, 2004, <http://www.psir.org/reports/2004-12-W-Asia.doc>).

Although it is only one of several formal accountability institutions in democratic states, the ombudsman is in a unique position to help ordinary citizens lodge complaints about public services. Ombudsman offices are accessible. Often referred to as the poor man's court, they provide the public with a fast, cheap, and simple means of redressing grievances. There have been concerns, however, about the diminution of the ombudsman's role as a result of decentralization, as noted by a former Commonwealth Ombudsman in Australia:

Probably the greatest change that will impinge on the activities of the Ombudsman in the future flows from the contraction of performance of government functions by central agencies in favor of contracting out of functions to the private sector. The right of the citizen to complain about adverse decisions or inappropriate action is lost unless the private organization is brought within the aegis of the Ombudsman.<sup>18</sup>

This paper examines how decentralization and private sector involvement in public service delivery can affect the role of the ombudsman. It poses the following questions: What are the implications on the role of the ombudsman—and on the right of the citizens to seek redress of their grievances—when public services are decentralized, privatized, or delivered under a PPP arrangement? How do Asian ombudsmen process complaints about public services that are delivered by the private sector? When the private sector takes over the delivery of a public service, does the ombudsman maintain the power to enforce accountability measures if some public funds or resources are used (e.g., as in subsidized housing and education)? Does the ombudsman office have—or should it have—a role in grievance redress concerning public services that have been decentralized, privatized, or handled by a PPP? While these questions have already been discussed in various conferences, a review of the debate will be informative as we look at how Asian ombudsmen have responded to this issue.

## II. Reforms in Public Service Delivery

Public services are a “set of services provided for large numbers of citizens in which there are potentially significant market failures (broadly interpreted to include equity as well as efficiency) that justify government involvement, whether in production, finance or regulation.”<sup>19</sup> The manner of delivery has become immaterial: what defines a public service is the fact that the government has a fundamental responsibility to provide it. Whether the government chooses to provide public services directly, rely on nongovernmental or private sector agents (e.g., for toll roads, electricity, contracted functions), or to devolve the task to local administrative units, is merely a question of the government's mode of engagement. Among the core areas for which there is a consensus in favor of

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<sup>18</sup> Philip Giddings, “The Ombudsman: Accountability and Contracts,” in *Contracts, Performance Measurement and Accountability in the Public Sector*, ed. Gavin Drewry, Carsten Greve, and Thierry Tanquerel (Amsterdam: IOS Press, 2005), 93.

<sup>19</sup> Grout, “Private Delivery of Public Services, 6.



government responsibility are: law and order, infrastructure (i.e., major irrigation works, transport services, water resources, road construction and maintenance), education, health (promotive, preventive, and curative), tax collection, sanitation, and social safety nets.<sup>20</sup>

In the last 25 years, Asian countries have used various strategies to improve the delivery of public services, among them decentralization and private sector participation (i.e. PPPs and privatization).

### **1. Decentralization<sup>21</sup>**

As a key component of the NPM philosophy, decentralization is considered to be the best approach for enabling governments to provide high-quality services that citizens will value; increasing managerial autonomy, particularly by reducing central administrative controls; demanding, measuring, and rewarding both organizational and individual performance; enabling managers to acquire the human and technological resources needed for meeting performance targets; generating a receptiveness to competition and an open-mindedness when deciding which public services should be provided by the public and which by the private sector;<sup>22</sup> empowering citizens through their enhanced participation in decision making, planning, and management; improving economic and managerial efficiency or effectiveness; and creating better governance.<sup>23</sup> Thus, if properly implemented, it can be an effective management approach to make public service more efficient.<sup>24</sup> It also broadens the reach of national government, enabling its policies and service to penetrate even into remote rural areas.<sup>25</sup>

### **2. Private Sector Participation**

The role of the private sector in public service delivery has taken a variety of forms, including outright privatization (partial or full divestiture) and variations of PPPs, such as contracted services, concession agreements, and partnerships with privately funded mechanisms.<sup>26</sup> The

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<sup>20</sup> World Bank, "India Inclusive Growth and Service Delivery: Building on India's Success, Development Policy Review," (Report No.34580-IN, Washington, DC: World Bank, 2006), 31-32, [http://siteresources.worldbank.org/SOUTHASIAEXT/Resources/DPR\\_FullReport.pdf](http://siteresources.worldbank.org/SOUTHASIAEXT/Resources/DPR_FullReport.pdf).

<sup>21</sup> This section draws from Alex B. Brillantes Jr., "Decentralization Imperatives: Lessons from Some Asian Countries," *Journal of International Cooperation Studies* 12 (2004a): 33-55, [http://www.research.kobe-u.ac.jp/gsics-publication/jics/brillantes\\_12-1.pdf](http://www.research.kobe-u.ac.jp/gsics-publication/jics/brillantes_12-1.pdf).

<sup>22</sup> Sanford Borins, "Government in Transition: A New Paradigm in Public Administration" (paper, Inaugural Conference of the Commonwealth Association for Public Administration and Management, Charlottetown, Prince Edward Island, Canada, August 28-31, 1994), cited in Hope, "The New Public Management," 124.

<sup>23</sup> Jerry M. Silverman, *Public Sector Decentralization: Economic Policy and Sector Investment Programs* (Washington, DC: World Bank, 1992), cited in Hope, "The New Public Management," 124.

<sup>24</sup> Kahkonen and Lanyi, "Decentralization and Governance," 1.

<sup>25</sup> G. Shabbir Cheema and Dennis A. Rondinelli, eds., *Decentralization and Development: Policy Implementation in Developing Countries* (Beverly Hills, CA: Sage, 1983).

<sup>26</sup> Hodge and Coghill, "Accountability in the Privatized State," 675-702.

growth of the private sector's role in public service delivery can happen in a number of ways, for instance, when a government:

- allows private companies to perform functions that it had previously monopolized;
- contracts out the provision or management of public services or facilities to private companies;
- finances public sector programs through the capital market, with adequate measures to protect itself from risk, and allows private organizations to participate;
- transfers responsibility for providing public services to the private sector through the divestiture of state-owned enterprises (i.e., privatization);
- deregulates by reducing or eliminating restrictions imposed on private firms providing specific services.<sup>27</sup>

### 3. Public-Private Partnerships

The term “public-private partnership” (PPP) refers to an arrangement in which a private company or organization complements “the role for government in ensuring that social obligations are met and successful sector reforms and public investments achieved.”<sup>28</sup> It proceeds from the acknowledgment that the public and private sectors each have certain advantages when it comes to performing specific tasks:

The government's contribution to a PPP may take the form of capital for investment (available through tax revenue), a transfer of assets, or other commitments or in-kind contributions that support the partnership. The government also provides social responsibility, environmental awareness, local knowledge, and an ability to mobilize political support. The private sector's role in the partnership is to make use of its expertise in commerce, management, operations, and innovation to run the business efficiently. The private partner may also contribute investment capital depending on the form of contract.<sup>29</sup>

It is also a contractual arrangement between a public and private entity that defines their risks and obligations, as well as the skills and assets each will contribute to the provision of a service or facility to the general public.<sup>30</sup> Aside from defining the responsibilities of the parties, PPPs have two other key characteristics: (1) sensible risk sharing between the public and private sector partners, and (2) financial rewards to the private partner commensurate with the achievement of pre-specified outputs.<sup>31</sup>

The basic PPP contract types are: service contracts, management contracts, affermage or lease

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<sup>27</sup> Hodge and Coghill, “Accountability in the Privatized State,” 675–702; *Encyclopedia of Business*, 2nd ed., s.v. “Privatization,” <http://www.referenceforbusiness.com/small/Op-Qu/Privatization.html>.

<sup>28</sup> Asian Development Bank (ADB), *Public-Private Partnership Handbook* (Manila: Asian Development Bank, 2004), 1.

<sup>29</sup> ADB, *Public-Private Partnership*, 1.

<sup>30</sup> The National Council for Public-Private Partnerships, “How PPPs Work,” <http://www.ncppp.org/howpart/index.shtml>.

<sup>31</sup> ADB, *Public-Private Partnership*, 11.

contracts, build-operate-transfer (BOT) and similar arrangements, concessions, and joint ventures.<sup>32</sup> The schemes that have the most direct bearing on public service delivery are service contracts and management contracts (both of them forms of outsourcing), lease contracts, concessions, and BOT and similar arrangements. A brief description of each scheme, including that of privatization, is given below.

**Table 1: Comparative Matrix of PPP Arrangements**

<b>Scheme</b>	<b>Role of government</b>	<b>Role of private sector</b>
<b>Service Contracts (Outsourcing)</b>	Remains the primary provider of the public service.	Specific tasks at an agreed cost according to pre-set performance standards.
<b>Management Contracts (Outsourcing)</b>	Monitors compliance of contractor with its contractual obligations	Full line management and must realize performance targets.
<b>Lease Contracts</b>	Monitors compliance with lease agreement.	Delivery of a service at its own expense and risk, and undertakes all the obligations relating to quality and service standards.
<b>Concessions</b>	Limited to setting performance standards and ensuring that the concessionaire meets them.	Full delivery of services in a specified area—including the operation, maintenance, management, construction, and rehabilitation of a facility <sup>33</sup> for an extended period of time.
<b>Build-Operate-Transfer and Similar Arrangements</b>	Provide legal and regulatory framework to enable private sector to recover investment and to protect the public.	Finances and develops a new infrastructure project or a major component according to performance standards set by the government.
<b>Privatization</b>	None unless privatized service is regulated.	Takes over full ownership and operations.

#### 4. Privatization

Privatization involves the sale of shares or ownership in a company or the sale of operating assets or services owned by the public sector. When services are privatized, the government's role is limited to regulation within the scope of the regulator's powers.<sup>34</sup> As a development strategy, privatization has paved the way to an increasingly diversified role for the private sector in the public service delivery. It is based on the assumption that the introduction of market forces or their equivalent in government operations could enhance the efficiency of those operations, including the delivery of public services.

One of the more striking advantages of privatization is the extent to which it can make the behavior and performance of companies more transparent. The reason given is that privatization facilitates the emergence of distinct enterprises with clearly defined lines of responsibility, in contrast to public

<sup>32</sup> ADB, *Public-Private Partnership*, 27.

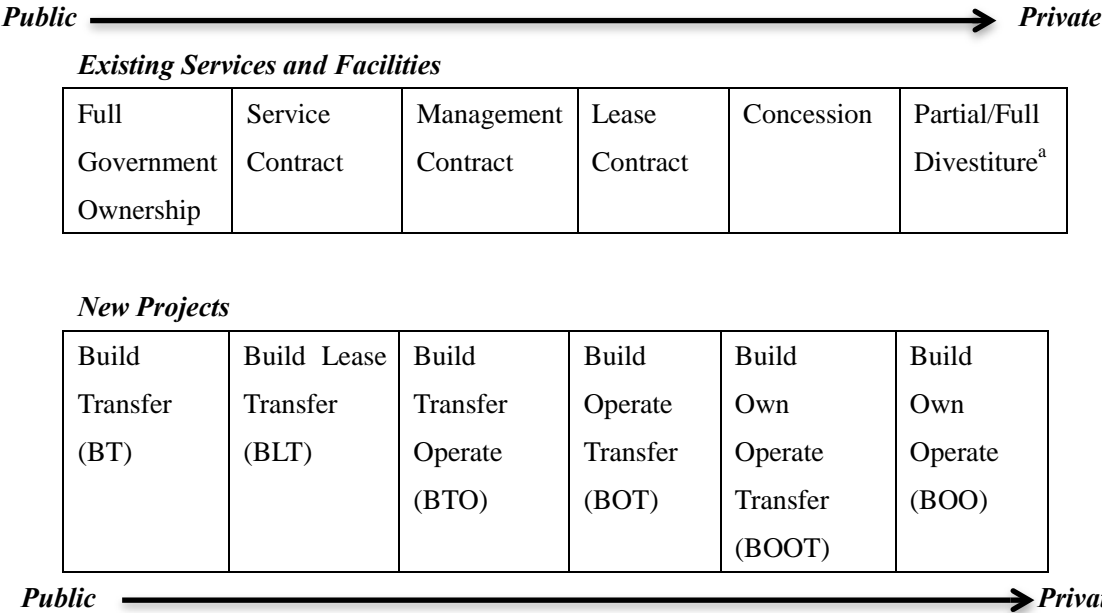
<sup>33</sup> ADB, *Public-Private Partnership*, 34.

<sup>34</sup> Grout, "Private Delivery of Public Services, 6.

sector enterprises, which are often submerged in the depths of government ministries, making accountability almost impossible to establish.<sup>35</sup> It has been adopted throughout the world for large utilities such as telecommunications, energy, and, to a lesser extent, water and transport. A comprehensive international survey of relevant studies concluded that privatization has worked in the sense that “divested firms always become more efficient, more profitable, and financially healthier, and increase their capital investment spending.”<sup>36</sup>

Not all PPPs, especially those with BOT-type arrangements, result in a full public divestment of responsibility. In some types of PPP, ownership of a facility remains with the government, while in others it is partially or completely transferred to the private sector, as can be seen in the continuum below.<sup>37</sup>

**Figure 1. Continuum of Public-Private Service Delivery, including PPPs**



Source: Seader, D.L. “The United States’ Experience with Outsourcing, Privatization and Public-Private Partnerships,” (National Council for Public-Private Partnerships, 2002), 4, [http://www.ncppp.org/resources/papers/seader\\_usexperience.pdf](http://www.ncppp.org/resources/papers/seader_usexperience.pdf).

<sup>a</sup> Partial and full divestiture, found at the “private” end of the continuum, are forms of privatization, not of public-private partnerships.

**III . Implications of Decentralization, Privatization, and PPPs for the Role of**

<sup>35</sup> Matthew Bishop, John Kay, and Colin Mayer, *Privatization and Economic Performance* (Oxford, UK: Oxford University Press, 1994), cited in Hodge and Coghill, “Accountability in the Privatized State,” 682.

<sup>36</sup> Grout, “Private Delivery of Public Services,” 14.

<sup>37</sup> Seader, “The United States’ Experience with Outsourcing,” 4.

## **Ombudsman**

The major criticism against delivery of public services by the private sector is that, unlike the public sector, whose stated objective is to serve the interest of the public, the priority and mandate of private corporations are to ensure profitable and growing businesses.<sup>38</sup> Private companies answer to their shareholders, not to the taxpayers, and they are usually outside the ambit of formal accountability mechanisms of the state, including the ombudsman.

The most obvious question arising from this discussion is how to ensure that private sector providers of public services remain accountable. Past experience has shown that service delivery can be made effective if accountability is strengthened. It is true that people can make the private service provider accountable by refusing to patronize it or by filing cases in court when the service has caused dissatisfaction or injury. But what about those situations in which people do not have the possibility or the resources to pursue such courses of action? This is why accountability should not be effected solely through the market, but also through state accountability mechanisms, in particular the office of the ombudsman.

A related question is how to bring the private sector provider of public services within the ombudsman's mandate, directly or indirectly. With many of the ombudsman offices created or organized before the advent of decentralization, privatization, and PPPs, one can readily assume that their jurisdiction would be limited to public sector providers of public services. In fact, ensuring accountability in public service delivery was not traditionally part of the ombudsman's direct mandate at all. Yet, with its power to investigate specific instances of bureaucratic injustice, provide redress, recommend corrective measures, and make erring public officials accountable, the ombudsman has come to assume a crucial role in the government's provision of basic services.

The ombudsman institution stems from a phase of administrative development when the state was thought of as a provider of public services affecting many areas of a citizen's life. It is closely associated with democratic development, good governance, and public administration, and is viewed as a simple means for citizens to address grievances they may have with government bureaucracy, ranging from simple clerical errors to oppression, including:

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<sup>38</sup> Canadian Union of Public Employees, "Ten Reasons to Say NO to Privatization," February 2010, <http://www.cupe.bc.ca/sites/default/files/ten-reasons-no-privatization1.pdf>. Note, however, that European companies have a duty to citizen stakeholders. There is a social obligation of private companies in Europe that distinguishes them from US companies [e.g., the German model].

... injustice, failure to carry out legislative intent, unreasonable delay, administrative error, abuse of discretion, lack of courtesy, clerical error, oppression, oversight, negligence, inadequate investigation, unfair policy, partiality, failure to communicate, rudeness, maladministration, unfairness, unreasonableness, arbitrariness, arrogance, inefficiency, violation of law or regulation, abuse of authority, discrimination, errors, mistakes, carelessness, disagreement with discretionary decisions, improper motivation, irrelevant consideration, inadequate or obscure explanation, and all the other acts that are frequently inflicted upon the governed by those who govern, intentionally or unintentionally.<sup>39</sup>

Criticisms against the increasing role of the private sector in public service delivery:

- private companies focus too much on profit-making, to the detriment of essential public services;
- private firms generally fail to invest in infrastructure;
- privatization leads to a reduction in the public workforce and in experienced personnel;
- private companies are interested only in short-term benefits;
- state monopolies are replaced by private monopolies;
- private firms have difficulty delivering high-quality public services such as water, public health, and transportation at affordable costs;
- privatization usually leads to the creation of wealth for the rich while making the poor poorer;
- privatization reduces public accountability;
- privatization is subject to abuse by regulators and private enterprises (i.e. regulatory capture); and
- it can result in private corruption replacing state corruption.<sup>1</sup>

Over the years, Asian ombudsmen have assumed or been given roles and mandates that were not typically included in their traditional portfolios. In her review of the growth and evolution of the Asian ombudsmen, Alice Tai observed that, while the region has embraced the concept of ombudsman as an accountability institution, it has not done so slavishly. Of the institutions she reviewed, she identified the ombudsmen of Hong Kong, China; Pakistan, and Thailand as the only ones that adhere closely to the classical ombudsman model, which originated in Sweden. According to Tai, most Asian governments have developed their own models according to their own requirements:

Beyond sharing a common purpose of redressing public complaints, Asian ombudsman offices are not at all homogeneous in terms of remit and organizational structure. A country's institutions reflect the state of its political, social, cultural and economic development. Hence, there cannot be a blueprint that fits all. Each country or jurisdiction must select those features that best serve its community.<sup>40</sup>

<sup>39</sup> Bernard Frank, "The Ombudsman and Human Rights—Revisited," in *Israel Year Book on Human Rights 1976*, vol. 6, ed. Yoram Dinstein (Tel Aviv: Israel Press Ltd., 1989), 134.

<sup>40</sup> Alice Tai, "Diversity of Ombudsmen in Asia – Back to Roots: Tracing the Swedish Origin of Ombudsman Institutions," (paper, International Ombudsman Institute 9th World Conference, Stockholm, June 8–13, 2009), 3.

In some jurisdictions—among them Hong Kong, China; Indonesia; Japan; Pakistan, the Philippines; South Korea; and Thailand—the office of the ombudsman performs the role of mediator or conciliator in order to expedite the resolution of individual grievances. In the Philippines and India, the ombudsman office is granted authority to prosecute erring government officials and to impose administrative sanctions. Other ombudsman offices have taken on the role of advocate for the rights of important sectors of society or on issues of public interest, as Pakistan’s Federal Ombudsman has done on children’s rights. Ombudsmen in Azerbaijan, the Kyrgyz Republic, Tatarstan, and Uzbekistan, on the other hand, focus solely on human rights protection, while those in the PRC; the Philippines; Macao, China; South Korea; Viet Nam; and Yemen have varying mandates, including anti-corruption issues.<sup>41</sup>

Asian countries also differ in their methods of ensuring accountability in the wake of NPM. There appears to be no common thread—even among the members of the Asian Ombudsman Association (AOA)—in their policies, practices, and procedures for handling complaints against private sector providers of public services. This diversity actually reflects the public’s assertiveness in demanding a more accountable bureaucracy, the result of fast-changing social, political, and economic conditions in the region. It also reflects the growing recognition of the ombudsman’s role in service delivery, as well as the willingness of authorities to respond to the public’s demand for better governance.

### **1. On the Capacity and Jurisdiction of Asian Ombudsmen**

Based on the literature and the relevant laws and regulations of various countries, decentralization of service delivery from the central to local governments should not diminish the mandate of the ombudsman. Local public officials who assume the responsibility of delivering devolved services continue to be within the jurisdiction of the ombudsman office. Our review of the laws and regulations that created the various ombudsman offices in Asia has shown that ombudsman jurisdiction over local and central government officials concerning administrative malfeasance is comprehensive, except for well-defined exceptions, such as when specific officials are identified as being outside their jurisdiction. In fact, decentralization may actually open up new areas of intervention by the ombudsman, as shown in Table 2.

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<sup>41</sup> Based on the Fact Sheets submitted by AOA member institutions. See the AOA website: <http://www.asianombudsman.com>. Clarify context and credibility of survey as fact as opposed to legislative frameworks

**Table 2: Decentralization and the Role of the  
Ombudsman in Exacting Accountability**

<b>Forms</b>	<b>Definition</b>	<b>Operationalization</b>	<b>Accountability Issues</b>
Fiscal decentralization	Decentralizes fiscal resources and revenue-generating powers	<ul style="list-style-type: none"> <li>■ Self-financing</li> <li>■ Expansion of local revenues</li> <li>■ Local expenditure</li> <li>■ Intergovernment fiscal transfers</li> <li>■ Authorization of municipal borrowing</li> </ul>	<ul style="list-style-type: none"> <li>■ Corruption</li> <li>■ Poor spending allocations</li> <li>■ Poor utilization of fiscal transfers from the central government</li> <li>■ “Pork barrel”</li> <li>■ Use of finances for purposes other than those specified in technical and financial documents</li> </ul>
Political decentralization	Transfers political power and authority to subnational levels	<ul style="list-style-type: none"> <li>■ Local elections</li> <li>■ Representation</li> <li>■ Local decision making</li> </ul>	<ul style="list-style-type: none"> <li>■ Abuse of decision-making powers</li> <li>■ Interference in public transactions, such as the bidding process</li> </ul>
Administrative decentralization	Transfers decision-making authority, resources, and responsibilities for the delivery of some public services from the central government to lower levels of government or to field offices of central government line agencies	<ul style="list-style-type: none"> <li>■ Deconcentration</li> <li>■ Delegation</li> <li>■ Devolution</li> </ul>	<ul style="list-style-type: none"> <li>■ Abuse of authority</li> <li>■ Poor public service delivery of devolved functions such as health, education, social services, and agriculture</li> </ul>
Market decentralization	Allows functions that had been primarily or exclusively the responsibility of government to be carried out by businesses, community groups, cooperatives, private voluntary associations, and other nongovernment organizations	<ul style="list-style-type: none"> <li>■ Deregulation</li> <li>■ Debureaucratization</li> </ul>	<ul style="list-style-type: none"> <li>■ Collusion</li> <li>■ Conspiracy</li> <li>■ Noncompliance or substandard services</li> <li>■ Citizen complaints</li> </ul>

Sources: Brillantes 2004; World Bank Institute 2004; authors' findings.

The continuation of the ombudsman's jurisdiction after decentralization was confirmed by the responses to the survey questionnaire administered by the authors to the participants of the AOA



workshop conducted by the Asian Development Bank (ADB) in Bangkok, in February 2010. Most of the respondents felt that their policy frameworks for enforcing accountability remained largely in place vis-à-vis decentralized powers and services.<sup>42</sup> Respondents agreed that under decentralization the ombudsman's powers, mandates, and jurisdictions over the delivery of public services have been maintained. According to the respondents, their powers are broad enough to prevent significant constraints, dilution, or weakening by decentralization. In fact, they claimed that they had aggressively and successfully pursued cases of abuse at the local government level even after decentralization.

Respondents said that their offices were capable of addressing complaints about decentralized services. About 75% of the key respondents said that the organizational structures of their ombudsman organizations were properly designed. More than 50% said that they were responsive to complaints about decentralized services, and most responded positively to questions regarding the competencies (i.e., knowledge, skills, and attitudes) of ombudsman officers and field investigators. Respondents also felt that their field investigators were motivated to pursue erring local government officials.

The respondents' concerns regarding decentralization lay more with practical issues arising from the additional responsibilities involved. Several respondents said that they may not have enough personnel to address cases at both the national and subnational government levels, while nearly half said that the rules and procedures for decentralized cases were not clear to investigators. Moreover, they noted that the coordination and links between ombudsman institutions and other accountability and oversight agencies were weak and needed to be strengthened.

While the ombudsman's jurisdiction in the context of decentralization is generally clear, the same is not true with respect to privatization and PPPs. Of the relevant laws that we reviewed, only those of Japan and Malaysia explicitly state that the jurisdiction of accountability institutions extend to the private sector. In other jurisdictions, the mandate of the ombudsman vis-à-vis the private sector is not very clear or consistent. Many of the ombudsman offices in Asia were created before their countries started to privatize or outsource public services, or their governments never considered the implications for accountability. Thus, most of the enabling laws that we examined do not explicitly describe the ombudsman's jurisdiction over private entities with respect to privatized services or to the various forms of PPP.

On the question of ombudsman jurisdiction over private sector providers of public services, the survey responses were mixed. Although all the respondents agreed that their respective offices had a broad policy framework for decentralization, not all thought that they had jurisdiction over the private sector. Most believed that, since their enabling laws limited their jurisdiction to public officials, the private

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<sup>42</sup> However, as suggested earlier, their responses have to be considered in light of how "mature" or established their organizations are.

sector was outside their mandate.

Those who answered otherwise argued that because their laws did not prohibit them from looking into complaints against the private providers, they should be able to do so. However, they hesitated when asked whether they were actively pursuing cases regarding public services that had been outsourced or relegated to some other form of PPP. About 60% of the respondents thought that their organizational structures were unsuited for such cases. This is consistent with their previous claims that they deal with the concerned government agencies and public officials, but not directly with private entities.

It also appears from the responses that, while ombudsman institutions have broad mandates, explicit powers and appropriate organizational structures are lacking when it comes to handling private sector providers of public services. Thus, a majority of respondents (about 76%) felt that the role of the ombudsman should be further clarified in the context of new public management (NPM).

## **2. Responses of Asian Ombudsmen to NPM Challenge**

Asian governments and their ombudsmen have addressed the challenges of NPM in different ways. In most countries, the ombudsman's jurisdiction covers maladministration by elected and appointed officials at the national and subnational levels of government, as well as in state enterprises or government-owned and controlled corporations. As mentioned above, there are only two jurisdictions in which the ombudsman's mandate over the private sector is clearly specified via laws or administrative issuance: Japan and Malaysia.

One of the main functions of Japan's Administrative Evaluation Bureau is mediating "citizen's complaints *regarding business* within the jurisdiction of national administrative organs, Incorporated Administrative Agencies (IAA), and public corporations."<sup>43</sup> (italics added) Malaysia's Development Administration Circular No. 4 of 1992, which lays out the roles of different levels of government (i.e., ministries, state or federal statutory bodies, and local authorities) in the management of public complaints, says that the public may lodge complaints regarding dissatisfaction caused by "any administrative action, including those made by Government agencies that have been *privatized* or institutions that have a monopoly."<sup>44</sup> (italics added) Pursuant to this provision, Malaysia's Public Complaints Bureau is able to investigate the private sector and make it accountable for the delivery of public services.

In countries where the mandate over the private sector is not explicit, ombudsman and/or other

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<sup>43</sup> Asian Ombudsman Association (AOA), "Fact Sheet: Administrative Evaluation Bureau of Japan" (Institutional Overview Number 1, 2010a), 1, [http://asianombudsman.com/ORC/factsheets/2010\\_4\\_22\\_FINAL\\_JAPAN\\_Fact\\_Sheet\\_Member\\_Profile.pdf](http://asianombudsman.com/ORC/factsheets/2010_4_22_FINAL_JAPAN_Fact_Sheet_Member_Profile.pdf).

<sup>44</sup> AOA, "Fact Sheet: Public Complaint Bureau of Malaysia" (Institutional Overview Number 1, 2010b), 1, <http://asianombudsman.com/ORC/factsheets/MalaysiaFactsheet.pdf>.

accountability institutions have devised resourceful ways to provide redress to the public. The discussion below is not exhaustive, as it focuses on AOA members, but it provides a good picture of how ombudsmen in Asia are responding to the growing role of the private sector in the provision of public services.

## **Hong Kong**

The Ombudsman of Hong Kong has the power to investigate alleged acts of maladministration committed by government departments and public organizations. It may also initiate direct investigations, even without a complaint, if it thinks that a person may have incurred an injustice resulting from maladministration. After an investigation, the Ombudsman may report its opinions and recommendations to the head of the concerned agency, together with a time frame for actions to be taken. If no action is taken, or if the action taken is inadequate, the Ombudsman can submit its report to the Chief Executive, together with such observations as it thinks fit. If the Ombudsman considers that a serious injustice has taken place, it may submit an extended report to the Chief Executive. In such cases, the Chief Executive is mandated to table the report in the Legislative Council within one month or such period as he may determine.

As in many jurisdictions, a number of public services have been outsourced in Hong Kong, including cleaning, garbage collection, the management of housing estates, and others. Under its ordinance, the Ombudsman does not have any direct responsibility for complaints involving the private providers of public services, which are subject to different regulations. The law limits its mandate to public officials.

This limitation has not, however, prevented the Hong Kong Ombudsman from ensuring accountability regarding outsourced public services. While authority over these services has been delegated elsewhere, accountability remains with the government, specifically with the department or agency that entered into the contract with the private entity.<sup>45</sup> The government department or agency concerned must closely monitor the contractor's performance and provide necessary guidance for meeting public expectations.<sup>46</sup> Nevertheless, in dealing with grievances concerning outsourced services, the Ombudsman's strategy is not to intervene directly, but to refer the case to the department(s) that outsourced the services in the first place. This approach has proven successful, as is illustrated by the following case:

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<sup>45</sup> Office of the Ombudsman, Hong Kong, *Annual Report of The Ombudsman Hong Kong 2009: 20 Years On* (Hong Kong, China: Hong Kong Ombudsman, 2009), 11.

<sup>46</sup> Hong Kong Ombudsman, *Annual Report 2009*, 6.

**Case No. 1: Garbage Collection.**

The complainant alleged that, at around 4:00 a.m. every morning, a refuse collection vehicle would come to collect garbage in front of the building in which he lived, causing nuisance and odor. The complainant had repeatedly complained to the Food and Environmental Hygiene Department (FEHP), but the problem remained unsolved because it was not within the purview of the FEHP. Nonetheless, the FEHP referred the case to the police and to the Environmental Protection Department (EPD) for action.

In this case, the complainant declined EPD assistance. However, the department still investigated the case. Records showed that no similar complaints had been received in the prior few years. As the complainant refused to disclose his personal information and did not contact the department directly, the EPD could not conduct any odor assessment at his flat. Still, it asked the cleansing contractor to consider another location for garbage collection in order to reduce the nuisance. The contractor complied.

*Source: Office of The Ombudsman, Hong Kong, Annual Report of The Ombudsman Hong Kong 2009: 20 Years On* (Hong Kong, China: Hong Kong Ombudsman, 2009), 81–82.

**Pakistan**

Established in 1983, the Wafaqi Mohtasib (Federal Ombudsman) of Pakistan functions as an “administrative justice institution” against maladministration.<sup>47</sup> Its primary objective is to “diagnose, investigate, redress and rectify any injustice done to a person through Mal-administration” committed by “any agency or any of its officers or employees. The ‘Agency’ includes a Ministry, Division, Department, Commission or office of the Federal Government or statutory corporation or other institution established or controlled by the Federal Government.”<sup>48</sup> As a general rule, the Federal Ombudsman does not have jurisdiction over the private sector, although ombudsman offices exist for the banking and insurance industries, both with jurisdiction over the private sector.

There is no specific legislation granting the federal and provincial ombudsmen jurisdiction over private providers of public services that have been decentralized, privatized, or made subject to a PPP. Pakistan’s Ministry of Law, however, has ruled that privatized public utilities and companies must remain answerable to the Federal Ombudsman regarding public complaints and consumer issues. It held that completely privatized companies, over which the government no longer has any control, still

<sup>47</sup> Wafaqi Mohtasib (Federal Ombudsman) of Pakistan, *Annual Report 2008* (Islamabad: Wafaqi Mohtasib, 2009), 17.

<sup>48</sup> AOA, “Fact Sheet: Wafaqi Mohtasib (Ombudsman) Pakistan” (Institutional Overview Number 1, 2010c), 1, <http://www.asianombudsman.com/ORC/factsheets/WafaqiMohtasibFactsheet.pdf>.

fall under the jurisdiction of Federal Ombudsman because the government established them in the first place. Regulatory bodies like National Electric Power Regulatory Authority, Oil and Gas Regulatory Authority, and the Pakistan Telecommunication Authority continue to help resolve complaints about service delivery, and are also answerable to the Federal Ombudsman.<sup>49</sup>

Significantly, the Ministry of Law's ruling arose when two privatized companies—the Pakistan Telecommunication Company (PTCL) and the Karachi Electric Supply Company—refused to appear before the ombudsman's office or answer queries arising from public complaints on the grounds that “they had become private concerns after partial or full management transfers and hence not answerable to the ombudsman.”<sup>50</sup>

In the case of the PTCL, it is worth noting that the Federal Ombudsman has developed an innovative approach to helping customers obtain redress, albeit indirectly, for complaints they have filed against the company. The PTCL used to be a state-owned entity, but was privatized in 2006 when the private investor Etisalat took over its management. Although the government is still a significant shareholder, the PTCL is no longer a government entity.<sup>51</sup> It remains, however, within the jurisdiction of the Federal Ombudsman. In fact, of all the major federal agencies within the Wafaqi Mohtasib's jurisdiction, the PTCL ranks third in the number of complaints received.

In partnership with the United Nations Development Programme (UNDP), the Federal Ombudsman is helping the PTCL and four other companies to improve their redress and response systems, as well as their procedures for aligning public services with the needs and expectations of citizens.<sup>52</sup>

## **Thailand**

The Ombudsman of Thailand was established on 14 September 1999 to consider and investigate complaints of injustice, illegality, or maladministration done to persons by “a civil servant, member or employee of a government body, state agency, state enterprise or local government.”<sup>53</sup> According to the 2004 guiding code of conduct, the Ombudsman and his staff must redress public grievances promptly and fairly. The 2007 Constitution of Thailand substantially changed the mandate of the Ombudsman to that of a constitutional body that would safeguard the people's rights and “inspect the exercise of state power.” It also gave enormous *suo moto* power to the Ombudsman to investigate

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<sup>49</sup> Khaleeq Kiani, “Privatised public utilities remain answerable to ombudsman,” *Dawn*, August 3, 2007, <http://archives.dawn.com/dawnftp/72.249.57.55/dawnftp/2007/08/03/nat11.htm>.

However, their policy decisions and determinations could only be challenged before the superior judiciary.

<sup>50</sup> Kiani, “Privatized public utilities,” *Dawn*, August 3, 2007.

<sup>51</sup> Iffat Idris, “Capacity Mapping and Assessment: Grievance Redress Systems of 5 Federal Agencies” (report, Strengthening Public Grievance Redress Mechanisms Project, UNDP Pakistan, 2009).

<sup>52</sup> The other agencies are Sui Northern Gas Pipelines Ltd (SNGPL), the National Database and Registration Authority (NADRA), Pakistan Post, and State Life Insurance Corporation (SLIC).

<sup>53</sup> The Ombudsman Act, B.E. 2542 (1999), sec. 16, [http://thailaws.com/law/t\\_laws/tlaw0292\\_4.pdf](http://thailaws.com/law/t_laws/tlaw0292_4.pdf).

**Case No. 2: Foul Smell from a Shrimp Processing Company**

After receiving a complaint from community residents about a foul smell coming from a shrimp processing company, the Thai Ombudsman’s office instructed the Provincial Industrial Office (PIO) to investigate the cause of the problem by inspecting the company’s equipment. The PIO found some defects and ordered the company to replace the defective parts. Still, the problem remained unresolved. The Ombudsman’s office conducted a further investigation of the concerned government agencies, and found that public officials had failed to ensure compliance by the companies in the area. The Ombudsman’s office instructed the Tambon Administrative Organization, the PIO, and the Provincial Health Office to perform their duties and strictly enforce the rules and regulations for industry expansion and pollution control. They ordered the Provincial Health Office to monitor the companies’ plants on the third and sixth month of every year. The concerned public agencies were also required to report their performance, and failure to improve their services would generate further action by the Ombudsman’s office.

*Source:* Office of the Ombudsman of Thailand. *Thai Ombudsman at a Glance* (Bangkok, Thailand: Office of the Ombudsman of Thailand, 2009).

cases that involve adverse effects on the public or in which the safeguarding of the public interest is required.<sup>54</sup>

Though the Thai Ombudsman’s jurisdiction is limited to public authorities, and does not cover private individuals or companies, the Ombudsman investigates any complaint against an individual or firm engaged in the delivery of a public service by focusing on the public authorities that outsourced the service. The Ombudsman has also documented resolved cases involving decentralized functions and services of the Thai government.

These cases include complaints about the operations of the Bangkok Metropolitan Administration, the national government’s unexplained decreases in financial assistance to villages and subdistricts, an unlawful purchase of waste disposal services by the Tambon Administrative Organization, failure in the performance of duties by the Provincial Industrial Office and the Provincial Health Office,

**Case No. 3: Complaint on Outsourced Public Service**

Citizens complained to the ombudsman that the public toilet in their community was very dirty. Aside from the foul smell, it posed a health hazard—particularly to young children and the elderly—and also gave tourists a bad image of the community. The private company contracted to clean the toilet had not been doing its job for a long time.

The Ombudsman can take action by investigating the public agency that outsourced the service. It cannot investigate the private contractor directly. Instead, its purpose is to determine why the government agency did not supervise the private contractor to ensure that the expected services were delivered. After the investigation, the Ombudsman may give its recommendation on how to resolve the case.

*Source:* Office of the Ombudsman of Thailand. *Thai Ombudsman at a Glance* (Bangkok, Thailand: Office of the Ombudsman of Thailand, 2009).

<sup>54</sup> Office of the Ombudsman of Thailand, *Thai Ombudsman at a Glance* (Bangkok: Thai Ombudsman, 2009), 17.

failure to dredge a clogged drainage system by a municipality and the Department of Highways, and other unlawful practices.<sup>55</sup> Case No. 4 illustrates a situation wherein the Ombudsman acted on a complaint against a private company regarding air pollution. While it has no jurisdiction over the private company, the Ombudsman retained its authority over the decentralized government instrumentalities that are supposed to enforce rules and regulations and monitor operations and safety standards.

## Philippines

The Office of the Ombudsman of the Philippines has a very broad mandate that covers all government instrumentalities, personnel, services, and functions, including national government agencies, local government units, and government-owned and controlled corporations. The Philippines Ombudsman’s legal framework originates from the 1987 Constitution, which states that it can “investigate on its own, or on complaint by any person, any act or omission of any public official, employee,

### Case No. 4: Task Force Illegal *Hatak* (Towing)

This case illustrates the Philippines Ombudsman’s lack of jurisdiction over private contractors authorized by the public sector to perform towing functions. The Task Force Illegal Hatak was created to address the abuses committed by towing companies contracted by local governments units to tow vehicles that were illegally parked and/or blocking traffic. Although the abuses of these companies were proven, the Ombudsman had difficulty pursuing cases against them because they were not within it’s jurisdiction, as they were not public officials, and the legal government unit concerned refused to cooperate.

*Source:* A field investigator from the Office of the Ombudsman of the Philippines.

office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.”<sup>56</sup> It can enforce administrative, civil, and criminal liability laws in every case for which there is sufficient evidence. And it has preventive, investigative, and prosecutorial powers in cases of graft and corruption.

The 1987 Constitution and Republic Act No. 6770, which created the Office of the Ombudsman, limit the jurisdiction of the Ombudsman to government bureaucrats. According to Ombudsman officials, complaints filed against private entities are usually dismissed due to lack of jurisdiction, or they have been very difficult to pursue or prove (as in Case No. 4). It has therefore been suggested that the Ombudsman be mandated to look into private persons or corporations engaged in public service delivery if public funds or other resources are involved, which is similar to the ‘follow the dollar approach’ espoused by the Australian Commonwealth Ombudsman. According to him “the Ombudsman’s jurisdiction would be attracted if the decision making is government funded no matter

<sup>55</sup> See *Thai Ombudsman at a Glance*, 44–75, for the 50 highlighted cases of the Thai Ombudsman. Many of these cases involved complaints about public services that were supposed to be delivered by subnational government institutions.

<sup>56</sup> Philippines Constitution (1987), art. 11, sec. 13, <http://www.chanrobles.com/article11.htm>.

who makes the decision.<sup>57</sup>

**Case No. 5: A Case of Outsourcing in the Philippines**

In the Philippines, certain functions of the Land Transportation Office (LTO) have been outsourced. A case in point is the drug-testing requirement for drivers before they are issued licenses. Since the government does not have the capacity to administer drug tests, certain private companies have been accredited to perform such tests. The question was raised whether the Ombudsman should pursue possible cases of collusion between certain frontline LTO officials and private drug testing companies.

There have been cases in which LTO officials encouraged applicants to go to their “preferred” drug testing companies to obtain their tests. Either citizens don’t suspect potential collusion and corruption, or they simply let it go because all they want is to get the driver’s license. Some Ombudsman officials have told us that they may pursue a case if it is warranted and brought before them. However, there are accompanying issues that must be addressed, including the resources of the Ombudsman office and the willingness of citizens to testify.

*Source:* Authors’ experiences at the Land Transportation Office.

However, the Ombudsman can claim jurisdiction over outsourced services, or those delivered via PPPs, when there is established proof or evidence that collusion or conspiracy between public official(s) and the private partner has occurred. Under a specific law (Republic Act No. 3019), private individuals can be investigated and prosecuted together with public officers if a conspiracy to commit an irregularity is established.

Case No. 5 illustrates a situation in which the Philippines Ombudsman can pursue a case of suspected conspiracy between government

officials and a private entity if citizens bring the case to its attention.

Thus, while the Ombudsman is viewed as having some authority over private sector entities, but it can only look into the operations of the government agencies for possible illegal or unethical acts. It cannot take direct action against a private service contractor, especially if the dispute is about the quality of service.

Case No. 6 concerns a nongovernment organization: a cooperative. The Ombudsman handled this case

**Case No. 6: The Case of Rural Electric Cooperatives in the Philippines**

Cooperatives are considered nongovernment organizations in the Philippines, and are therefore not part of the public sector. Electrical cooperatives are among the most common in the Philippines. Any misdemeanor committed by officers of these electric cooperatives is considered outside the ombudsman’s jurisdiction. However, if a cooperative has a loan from the National Electrification Agency (NEA), a government-owned and controlled corporation, the NEA can step in to ensure that the borrowed funds are properly utilized. And the Office of the Ombudsman can file the case if the NEA finds evidence of misuse of public funds.

*Source:* Case related by a key respondent to the survey of participants at the Asian Ombudsman Association workshop in Bangkok, February 2010.

<sup>57</sup> Giddings, “The Ombudsman: Accountability and Contracts,” 93.



by investigating a government agency that lent money to the cooperative.

The Philippines Ombudsman can also enforce private sector accountability through partnerships with its own stakeholders. In 2005, the Ombudsman entered into a Memorandum of Agreement with the Department of Public Works and Highways (DPWH), the Department of Education, and the Boy Scouts of the Philippines, together with the Parents-Teacher Community Associations in every community where a public school was to be built.

The Memorandum of Agreement sought to address corruption and irregularities in the construction of public school buildings, which the DPWH was outsourcing to private contractors. The partnership, called the “Bayanihang Eskwela,” was based on the premise that communities could monitor such construction (i.e., to see whether it is compliant with the terms of reference), and thereby served as a complementary accountability mechanism to improve project performance.

These partnerships proved to be effective. By February 2007, 16 of 25 projects were 100% completed, while 9 were 50%–85% completed. Of the completed projects, 6 involving DPWH engineers and contractors finished early. The average completion period of 81 days, although still considered long, is remarkable when compared with those of other projects, which generally take more than one year to finish. The quality of the school buildings was reported to be satisfactory, and they were completed within the prescribed costs.

#### **IV. Conclusions and the Way Forward**

Decentralization, privatization, and PPPs have provided a new context for ombudsmanship. This must be recognized as the structures and procedures of ombudsman offices continue to evolve. The process of decentralization continues to be a challenge for ombudsmen, who must adjust at the policy, organizational, and individual levels. Our study has shown that most ombudsman offices in the region have done just that, but they need to enhance their organizational capability if they are to perform their expanded role more effectively.

The ombudsman’s accessibility may be a concern, inasmuch as the devolution of public services does not automatically mean a corresponding decentralization of ombudsman operations. In this regard, an IT system similar to ePeople, of South Korea’s Anti-Corruption & Civil Rights Commission, would be helpful in increasing ombudsman accessibility. This is a one-stop IT system for civil/administrative complaints that connects 56 offices of the central government through the internet, making the filing and processing of cases more efficient. It also acts as an interactive forum linking citizens and policy makers through an e-portal, where citizens can raise questions and make suggestions and comments about government policies.

When the private sector provides public services, however, the jurisdiction of the ombudsman is unclear, except when it comes to consumer protection. From the survey of the participants in the AOA workshop in Bangkok, we learned that ombudsman offices need to clarify their role in addressing malfeasance and misfeasance committed by the private sector. The experience of various countries shows that government accountability diminishes once the private sector has taken over the delivery of public services. With privatization and PPPs, ombudsman offices appear constrained by their legal mandates, which in most cases do not explicitly include the private sector.

The traditional concept and role of the ombudsman has been more reactive than active in nature. With the current developments in Asia brought about by new public management (NPM), among other factors, there is a need for ombudsmen to play a more proactive role in matters of public service delivery.

Thus, a government decision to delegate the delivery of a public service to the private sector should not exclude a role for the ombudsman. As shown by the experiences of the ombudsman offices discussed above, there are various ways in which an ombudsman can still provide redress and protect the public welfare. The table below presents a summary of various types of private sector participation, along with possible entry points through which the ombudsman could enforce accountability.

**Table 3. Possible Role of the Ombudsman When Public Service Provision is Given to the Private Sector**

<b>Types of Private Sector Participation</b>	<b>Duration</b>	<b>Features</b>	<b>Entry Points for the Ombudsman</b>
1. Service contract	<ul style="list-style-type: none"> <li>• 1 to 3 years</li> </ul>	<ul style="list-style-type: none"> <li>• Hires a private company or other private entity to carry out one or more specified tasks or services for a period</li> <li>• Multiple contracts for a variety of support services, such as meter reading, billing, etc.</li> <li>• Useful as part of strategy for improving the efficiency of a public agency</li> <li>• Promotes local private sector development</li> </ul>	<ul style="list-style-type: none"> <li>• Advise the government during contract negotiations and drafting to ensure that the public interest is protected through grievance redress mechanisms</li> <li>• Ensure that the bidding process is conducted by the public sector in a transparent and accountable manner.</li> <li>• Ensure that the responsible government agency strictly enforces the laws, including contractual provisions that define performance standards intended to protect the public from any form of malfeasance or misfeasance</li> <li>• Ensure that intense competition among private service providers does not prejudice the welfare of the public</li> <li>• Hold the government agency that outsourced the service</li> </ul>

Types of Private Sector Participation	Duration	Features	Entry Points for the Ombudsman
			accountable for abuses, neglect, and other wrongs committed by the contractor
2. Management contract	<ul style="list-style-type: none"> <li>• 2 to 5 years</li> </ul>	<ul style="list-style-type: none"> <li>• Expands the services to be contracted out to include some or all of the management and operation of a public service (i.e., utility, hospital, port authority, etc.)</li> <li>• Interim solution during preparation for more intense private participation</li> </ul>	<ul style="list-style-type: none"> <li>• Same as above</li> </ul>
3. Lease contract	<ul style="list-style-type: none"> <li>• 10 to 15 years</li> </ul>	<ul style="list-style-type: none"> <li>• Responsibility for management and operation is passed to the private partner, which guarantees quality and service standards</li> <li>• Private firm charges an agreed-upon amount for providing the service</li> </ul>	<ul style="list-style-type: none"> <li>• Advise the government during contract drafting to ensure that the public interest is protected through grievance redress mechanisms</li> <li>• Ensure that the bidding process is conducted by the public sector in a transparent and accountable manner</li> <li>• Hold the public sector agency that entered into the lease contract accountable whenever it fails to protect the welfare of the public, either through bureaucratic neglect or collusion with the private firm.</li> <li>• Prevent regulatory capture</li> </ul>
4. Concession	<ul style="list-style-type: none"> <li>• 25 to 30 years</li> </ul>	<ul style="list-style-type: none"> <li>• Responsibility for all operations, also for the financing and execution, of a specific service or facility</li> <li>• Improves operational and commercial efficiency.</li> <li>• Mobilizes investment finance.</li> <li>• Development</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that the bidding process is conducted in a transparent and accountable manner</li> <li>• Hold the regulator accountable for any form of maladministration that compromises the safety and welfare of the public (e.g., failure of the regulator of a water service concessionaire to enforce contractual provisions on water safety)</li> <li>• Help enhance the capacity of the regulator to provide redress to consumers when such function is included in its mandate.</li> <li>• Prevent regulatory capture</li> </ul>
5. BOT and similar arrangements	<ul style="list-style-type: none"> <li>• Various</li> </ul>	<ul style="list-style-type: none"> <li>• Private firm develops and finances a new infrastructure project according to performance standards set by the government</li> <li>• Private firm operates a government asset for a period set by a contract so</li> </ul>	<ul style="list-style-type: none"> <li>• Advise the government during contract negotiations and drafting to ensure that the public interest is protected through grievance redress mechanisms</li> <li>• Hold the regulator accountable for any form of maladministration that compromises the safety and</li> </ul>

Types of Private Sector Participation	Duration	Features	Entry Points for the Ombudsman
		that it can recover investment costs through user charges <ul style="list-style-type: none"> <li>• In some instances, the government, through a regulator, sets tariffs or user fees</li> </ul>	welfare of the public (e.g., the failure of a regulator to compel a BOT operator to install safety measures in toll roads, despite complaints from public, thus resulting in road accidents) <ul style="list-style-type: none"> <li>• Prevent regulatory capture.</li> </ul>
6. Privatization	• N/A	<ul style="list-style-type: none"> <li>• Ownership and operation is transferred to the private sector</li> </ul>	<ul style="list-style-type: none"> <li>• Engage and capacitate stakeholders to ensure that private sector providers of public services continue to protect the public interest</li> <li>• Help enhance the capacity of a privatized utility to provide redress to consumers.</li> <li>• Prevent regulatory capture</li> </ul>

Source: Asian Development Bank. *Public-Private Partnership Handbook*. (Manila: ADB, 2004); Skilling and Booth 2007; and authors’ analysis.

As noted above, whenever the provision of a public service is transferred to the private sector, the government should make a conscious effort (especially at the policy level) to strengthen accountability mechanisms. Effective grievance redress should be a key component of all private sector arrangements involving public service delivery. As noted by Giddings, this was the same point made by the Ontario Ombudsman who urged the Ontario Prime Minister to ensure that effective and independent complaint-resolution mechanisms were protected in view of the government’s plans for extensive privatization and self-regulation. The Ontario Ombudsman pointed out that:<sup>58</sup>

It has become a basic feature of democracy that individuals who believe they have been treated unfairly in the provision of public services have a right of recourse to seek redress. As the government introduces a range of initiatives to re-structure the delivery of government services, it is necessary to be vigilant in ensuring the right of complaint is not overlooked in the process, or indeed lost altogether.

At the same time, the government should ensure that the standards set in public-private contracts are strictly enforced, with compliance monitored regularly. The ombudsman can play a key role in this regard by advising the government on the best ways to safeguard the public interest and by holding the service provider accountable. As an independent institution, the ombudsman can extend its jurisdiction to include examinations of the terms of contracts between the government and private agencies.

Another area worth exploring is the ombudsman’s role in systemic investigations—finding the root causes of maladministration in cases involving a large number of complaints. Since PPPs normally

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<sup>58</sup> Giddings, “The Ombudsman: Accountability and Contracts,” 93.

cover public utilities serving a large number of people, the ombudsman can be tapped to look into systemic issues that are causing recurring problems.

NPM and the role of ombudsman in Asia should not be considered in isolation. In almost all Asian countries, the ombudsman plays an important role in ensuring quality public services by looking into such issues as delays in pension payments, inaction or unsatisfactory action by government departments regarding service delivery, the quality of outsourced services, the terms and conditions of outsourcing, the government's role regarding outsourced services, the need for service providers to issue service charters, and the provision of avenues for citizens' grievance redress.

Ombudsmen should continue to maintain their role under NPM. As long as the ombudsman is viewed by the public as someone who adds value in promoting higher standards of service delivery, there appears to be no threat to the institution's existence and jurisdiction. But ombudsmen need to demonstrate that value by devising new areas of service and ways of functioning. Similarly, as the administrative systems in many countries become more and more complex because of globalization, ombudsmen will require greater expertise in order to deal with such challenges as the technical nature of many citizens' complaints, the higher expectations on the part of an increasingly aware public, and, of course, the growing role of the private sector in public service delivery. Information and communication technology can help empower ombudsmen, along with other best practices by ombudsmen in the region.

Finally, another area worth looking into is the expansion of the ombudsman's jurisdiction to include private sector providers of core public services that are clearly defined in the law. One example is the law creating the Ombudsman of Argentina, the *Defensor del Pueblo* (Defender of the People), which directly addresses the issues of decentralization, privatization, and PPPs. It specifies that the ombudsman has jurisdiction over public utilities that have been privatized. Article 2 of Law No. 6644, which created the Ombudsman of Argentina, states that "[t]he Office of the Defender of the People shall have jurisdiction over public non-state legal entities that exercise public powers, as well as over private suppliers of public utilities."<sup>59</sup> This may serve as a model for ombudsman institutions in AOA member countries, should they feel the need to adapt to decentralization or expand their jurisdiction to include private sector providers of public services.

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<sup>59</sup> De Creación Del Defensor Del Pueblo, Law No. 24.284 (1993), amended by Law No. 24.379 (1994), <http://www.dpn.gob.ar/main.php?cnt=22>

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## Ensuring Accountability in Privatized and Decentralized Delivery of Public Services: The Role of the Asian Ombudsman

By  
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### NPM as a Development Approach

- To modernize government and reengineer the public sector.
- Reduction of public sector's responsibility in service delivery in favor of the private sector.
- Decentralization of powers and responsibilities from the central to the local governments.

## NPM as a Development Approach

- Results have not always been positive.
  - decentralization failed to deliver all promised benefits and to fix problems it promised to resolve.
  - privatization of delivery of public services did not result to improved service delivery.
- Lesser accountability on the part of service provider.

## Reforms in Public Service Delivery

- Decentralization
- Private Sector Participation
- Public-Private Partnerships
  - service contracts, management contracts, affermage or lease contracts, build-operate-transfer (BOT) and similar arrangements, concessions, and joint ventures.
- Privatization

## Implications of NPM Approach to the Role of Ombudsman

- how to ensure that private sector providers of public services remain accountable
- how to bring the private sector provider of public services within the ombudsman's mandate, directly or indirectly.

## Implications of NPM Approach to the Role of Ombudsman

- Diminution of the role of ombudsman

*"Probably the greatest change that will impinge on the activities of the Ombudsman in the future flows from the contraction of performance of government functions by central agencies in favor of contracting out of functions to the private sector. The right of the citizen to complain about adverse decisions or inappropriate action is lost unless the private organization is brought within the aegis of the Ombudsman."*

## Implications of NPM Approach to the Role of Ombudsman

- While decentralization of public service delivery did not result to diminution of ombudsman's mandate, it has great implications on ombudsman's *accessibility, capacity and effectiveness* to ensure accountability in service provision in a decentralized environment.
- Since most Asian Ombudsman offices were established prior to emergence of the NPM approach to service delivery, most do not have jurisdiction over private sector provider of public services.

## Responses of Asian Ombudsman : Decentralization

- Use of IT system : Online Citizen Participation Plaza (*e-People*) of South Korea's ACCRC
  - PCB of Malaysia, WM of Pakistan
- Use of Administrative Counselors : Administrative Counseling System of Japan's AEB
- Provincial Ombudsmen : Pakistan, India, Philippines

## Responses of Asian Ombudsman : PPP and Privatization

- Among AOA members, only Malaysia's PCB has explicit jurisdiction over the private sector.
  - to some extent Japan's AEB and the Pakistan and Philippines Ombudsman

## Responses of Asian Ombudsman : PPP and Privatization

- HK Ombudsman maintains jurisdiction over government agency that outsourced public service.
- Thailand Ombudsman investigates any complaint against an individual or firm engaged in the delivery of a public service by focusing on the public authorities that outsourced the service.

## Responses of Asian Ombudsman : PPP and Privatization

- Philippine Ombudsman has jurisdiction over outsourced services, or those delivered via PPPs, when there is established proof or evidence that collusion or conspiracy between public official(s) and the private partner has occurred.
- Privatized public utilities and companies remain answerable to Pakistan's Federal Ombudsman regarding public complaints and consumer issues.
  - WM is helping public utility companies improve their redress and grievance systems.

## Conclusion and Way Forward

- Decentralization, privatization, and PPPs have provided a new context for ombudsmanship.
- To improve accessibility as a result of devolution/decentralization of public services, IT systems can help.

## Conclusion and Way Forward

- Government decisions to delegate the delivery of public services to the private sector should not necessarily exclude the ombudsman
- In the case of PPP and privatization of public service delivery, Asian ombudsmen have proved to be adoptive and pro active.

## Conclusion and Way Forward

- Transfer of service delivery provision to private sector could pave the way for new roles for ombudsman
  - Contract review
  - Ensuring effective grievance redress
  - Ensuring observance of standards by making responsible agency accountable.
  - Systemic investigations of recurring problems in public utility operations



## The Role of Ombudsman in Decentralization: Outsourcing and Public-Private Relationship

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Administrative Counselor  
JAPAN

Thank you for introduction.

Good morning, ladies and gentleman. My name is Yamaoka. I am Professor Emeritus, Nihon University in Tokyo, Japan, and also have been a member of the administrative counselors since April 1993.

Today, my topic is The Role of Ombudsman in Decentralization as you can see on the screen. I would like to make my presentation by using this power point, and I try to compare Ombudsman Systems of the United State of America with that of Japan.

**Slide 3.** The first point that I would like to focus is the Power of the Legislature in Japan and the United States. Japan employs the national government system which is composed of the Diet (House of Councilors and House of Representative), under which there are 47 prefectural governments and 1820 local governments. In Japan, the only Diet has the power to enact laws, and the metropolitan and ward assemblies have the power to enact only ordinances. As the United States has the Federal System, there are the one federal government and 50 state governments.

**Slide 4.** In the United States, however, both the federal and state governments have power to enact laws or statutes. In the federal level, the Congress has power to enact laws in the areas enumerated in the only 18 provisions of the Constitution of the United States (Arts. 1-8-1 to 1-8-18), and the other remaining legislative power is reserved for the State Congress (10th Amendment). This point is completely different from the Japanese system.

**Slide 5.** We call sometimes, the Federal Congress has the limited legislative power and

**Slide 6.** The State Congress has the general legislative power (i.e. Police Power).

As you see this government system, I would like to say that the United States of America is the most advanced decentralization nation.

## Plenary Session 4

Regarding the Ombudsman system, the United States have no general ombudsman system. They only have the special ombudsman system such as ombudsman for welfare, tax, university, and navy and many others. However, the several states and the local government have the general ombudsman system.

**Slide 7.** Now, I would like to introduce Mechanism of Administrative Counseling System of Administrative Evaluation Bureau in Ministry of Internal Affairs and Communication (MIC)..

**Slide 8.** This slide describes 2010 Result of Administrative Counseling. We received the total of 176,531 cases. The following are types of these cases:

The number of cases to Local Public Bodies is 57,385 which is about 32.5%;

Complaints or Requests to Public Office is 21,043 which is 11.9%;

References to Public Office is 41,587 which is 23.6%; and

Others are Civil Affairs, the number of which is 56, 516 which is 32%.

**Slide 9.** This slide shows Top Five Areas of Complaints and Requests in 2010. (Ref. Slide 14)

The first one is Medical Insurance and Pension

The second is Social Welfare

The third one is Matters of Road

The fourth one is Radio Wave and Communication

The fifth one is Employment.

**Slide 10.** This one is Windows for Counseling.

1. Cooperation with Several Agencies

We have several agencies which receive complaints. These agencies include Administrative Evaluation Bureau and Administrative Counselor. They provide consultation to complainants about the complaints or grievance.

**Slide 11.** This is Window for Counseling

2. Floor of Local Public Office

Administrative Counselors have been regularly opening a consulting window at a City Hall, a town or village office or a community center and receiving complaints from everyone. This consultation activities have been supported by their local public bodies or others.

If cities, towns and villages are located in a large district or inconvenient places, Administrative Counselors goes around these locations to receive complaints and provides their consultation.

Also, a consulting window has been jointly opened by Commissioned Welfare Volunteers and Civil Rights Commissioners.

**Slide 12.** This is Windows for Counseling

3. Special Booth Opened for Counseling

Counseling Windows were also opened at a stricken area at the time of a disaster. This picture is one of examples of Special Booth opened in Kawanami Town of Miyazaki Prefecture, after East Japan Big Earthquake. Since then, the total of 111 Special Booths have been opened and received 24,947 complaints and requests, including free dial telephone service as of October 30, 2011.

**Slide 13.** This is Windows for Counseling

4. One Day Combined Counseling Plaza

We also have been opening “One-Day Combined Counseling Plaza” at places including department stores or public buildings. It has been opened jointly by public servants of the related administrative agencies, the 47 prefectures and wards, towns and villages, administrative counselors, lawyers and tax attorneys. It serves as a one-stop counseling window. It has been used by people who seek consultation about pensions, medical insurances, employments, taxes, registrations, roads, etc. Even if their cases are related to matters concerning multiple administrative agencies or if people do not know where to ask about their complex cases, “One-Day Combined Counseling Plaza” will readily provide a necessary advice on the premise at once.

**Slide 14.** Kind of Grievance (Ref. Slide 9)

**Slide 15.** Kinds of Grievance

(1) Health Insurance/ Pensions

Questions asked on the qualifications to receive pensions and on the amount to be provided.

**Slide 16.** Kinds of Grievance

(2) Employment

Requested to improve labor conditions including working hours because long working hours are compelled.

**Slide 17.** Kinds of Grievance

(3) Road

Requested to promptly fix dangerous spots on a national highway.

**Slide 18.** Kinds of Grievance

(4) Social Welfare (Public Assistance)

## Plenary Session 4

Questions asked on the qualifications to receive livelihood protection.

### **Slide 19.** Kinds of Grievance

(5) Radio Wave • Communication

Explanations sought about terrestrial digital broadcasting.

### **Slide 20.** Kinds of Grievance

(6) Counseling Window

Asked where to make applications or procedures.

### **Slide 21.**

(7) Braille Block Road

Requested to promptly fix broken Braille blocks on a road, which resulted in a dangerous situation that not only cannot properly guide the visually impaired, but also is likely to cause the health persons to stumble. The administrative counselor who received such request took care of this problem. He went out to check the road condition, confirmed the dangerous status, and reported about the problem to a management office of the road. As a result, the broken Braille blocks were fixed finely.

Finally, we, administrative counselor, may usually solve claims or grievances by himself or herself, but when we receive difficult matters, we report to the local offices of Administrative Evaluation Office and the problems are solved in cooperation with the officers of the local offices.

### **Slide 22.** End

I would like to thank you for your attention. I hope you enjoy staying in Japan.

additional material

## The Administrative Counseling System of Japan

### **Introduction**

The public administration of the government is closely related to the life of the citizens in each field. However, the administrative system in the government has been getting complicated and diversified, so that the citizens have been facing difficulties to solve his or her problems in daily life. Recently, the various grievances about, complaints of and requests for public information or services have been brought by the citizens to the local, regional and central governments and their respective agencies, and this tendency has been growing every year.

The Administrative Counselors receive grievances about, complaints of, and requests for public information or services which are brought by the citizens, and they are reported in every month to the local offices, regional bureaus or head office of the Administrative Evaluation Bureau (hereinafter called as the “AEB”). The Administrative Counselors solve problems brought by the citizens in cooperation with and assistance of the local offices, the regional bureaus or head office of the AEB. On the other hand, the government realizes the grievances about, complaints of, and requests for the public information or services which the citizens face in his or her daily life, and utilizes solutions of the problems to promote reconstruction, improvement and remodeling of the operation of public administration and the system of the government and its agencies.

The administrative counseling system was originally born as a part of the Administrative Management Agency by Central Government in 1955 and has contributed toward solving the various problems regarding several governments and their respective agencies. This article was written to introduce the system of Administrative Counseling and activities of the Administrative Counselors. The author has been acting as one of the Administrative Counselors since 1991.

### **I . Historical Background**

After the Administrative Management Establishment Act was enacted in 1948, the Administrative Management Agency (hereinafter called the “AMA”) was established on July 1, 1948. Thereafter, administrative counseling was born in the AMA of Central Government in 1955, and counseling offices were established at the local branches of AMA. However, the counseling offices were insufficient, because there was only one officer for each prefecture. The Revised Administrative Management Establishment Act<sup>1</sup> was passed in 1960 and in the following year, the official administrative counseling system was commenced in the AMA with 882 members of Administrative

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<sup>1</sup> Revised Administrative Management Establishment Act in 1960.

Grievance Counseling Cooperator (the name was replaced with “Administrative Counselor” in 1966). They rendered counseling service conveniently and friendly to the citizens.

After the Administrative Counselor Act<sup>2</sup> (hereinafter called as the “Act”) was newly enacted in 1966, the administrative counselors were committed by Director-General of the AMA under the Act. The definition and status of administrative counselors is clearly provided by the Act. In 1984, AMA was reorganized and the name was changed to the Management and Coordinate Agency (hereinafter called as the “MCA”). The number of administrative counselors has been gradually increased to 1,755 in 1962, 2,690 in 1963, 3,605 in 1964, 3,660 in 1972, 4,576 in 1973, 4,789 in 1981, and 5,046 in 1991, which is the current total number of administrative counselors nationwide. In 1987, the office of the Administrative Grievance Resolution Promotion Council was established.

The Administrative System of National Government was largely reconstituted in the year of 2001 and the name of MCA was replaced by the Ministry of Public Management, Home Affairs, Post and Telecommunications (hereinafter called the “MPM”) and the Department of Administrative Evaluation of MPM takes in charge of administrating counseling.

## **II. Status and Duties of the Administrative Counselors**

A person to act as the Administrative Counselor is recommended by the mayor of local autonomy, such as a municipality where the person resides. The Administrative Counselor is desired to be a person who possesses social confidence, intellectual knowledge, profound understanding and enthusiasm to improve the operation of public administration. After the mayor recommends a person for the Administrative Counselor to a local office of the MPM, the resume of the recommended person is reviewed and examined, and the person is commissioned as an administrative counselor by the Minister of MPM with the term of two years.<sup>3</sup> Upon expiration of the term, the Administrative Counselor may be continuously re-commissioned until the age of 80. All members of the Administrative Counselors are not public employees, but they are private citizens. They render services to both the citizens and the governments in volunteer activities without any compensation.<sup>4</sup> At least one Administrative Counselor is posted to an each local government, and one counselor for the population of 50,000 is additionally commissioned in any municipality which has a larger population.

Where the problems or complaints brought to the Administrative Counselors by the citizens are not so much complicated, the Administrative Counselor contacts the related administrative agency and

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<sup>2</sup> Administrative Counselor Act in 1966.

<sup>3</sup> *Supra* 2, Art. 2.

<sup>4</sup> *Supra* 2, Art. 8(2): The Administrative Counselor renders services in volunteer activity without compensation, however, he or she shall be reimbursed necessary expenses within the budget.

requests them to solve them. However where they are complicated and involve the multiple administrative agencies, the Administrative Counselors bring them to the local offices or regional bureaus which are branches of the AEB of the MPM. When either the bureaus or the local offices receive a report of problems from the Administrative Counselors or directly receives complaints from the citizens, they review them and then pass them to the relevant administrative agency and request them to solve or improve the complained situations.

Where the problems or complaints are related to the national government, it must be handled by the head office of the AEB. If the Director-General of the AEB recognizes a necessity of improvement or correction as a result of their investigation, the Director-General makes recommendation to the head of ministry or agency concerned and requests to take an action for improvement or correction as recommended. Based on such recommendation of the AEB, the head of ministry or agency concerned, in turn, submits a written statement to the Director-General of the AEB on the action that has been taken or to be taken in response. Furthermore, within a certain period of time after the response is made, the Director-General may also request the head of ministry or agency concerned to submit a report on the status and the result of actual improvement. If the report of improvement based on the recommendation is judged unsatisfactory, the Director-General may instruct the relevant local office of the AEB to take another round of inspection. If it is necessary, the Director-General makes another recommendation to the head of ministry or agency concerned until the improvement or correction is completed.

Results of investigation are compiled into a report, and recommendations for improvement or correction are prepared and submitted to the administrative agency concerned. These reports are also made available to the public. They are circulated not only among the administrative agencies, but also to the legislative branches and local public institutions.

The Administrative Counselor may express his or her opinion obtained through performing his or her duties to the Minister of the MPM for promotion of improvement or correction in administrative operation.<sup>5</sup> This opinion is very important and highly honored by the government and is kept as the valuable information for them.

### **III. Activities of the Administrative Counselors**

The names and addresses of Administrative Counselors are published in public information, guide books, or local news by the local government where he or she resides. When the citizens have some problems or complaints, or want to obtain public service or information, the citizens can easily access to the Administrative Counselor by writing to, or visiting him or her, and can bring any complaints or

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<sup>5</sup> *Supra* 2, Art. 4.

problems relating to the operation of public administrative agencies. In addition to providing interview services at his or her residence, the Administrative Counselors approach to the citizens as follows:

**(1) Administrative Counseling Week**

The Administrative Counseling Week is held every year in the Fall for propaganda and promotion of the administrative counseling system to the public. During the week, the Administrative Counselors actively render counseling service at the City Hall or public place in their respective districts. For example, in Tokyo, the special counseling service was held by Tokyo Administrative Evaluation Office of the AEB in cooperation with the Tokyo Administrative Counselor Association at the Sinjuku Station of Japan Railroad on October 18, 2010. The Director-General and the other staffs of the AEB, and the representatives of many public agencies were present there and directly received complaints from the citizens at their booth. For another example, the special administrative counseling for the college students was jointly organized by Tokyo Administrative Counselor Association and College Festival Organizing Committee of College of Law, Nihon University in Tokyo, Japan during a period of the college festival held in the campus from November 3 through 5, 1999. The purpose of the special administrative counseling is for not only counseling service, but also propaganda of the administrative counseling system to the students. Many college students stopped by the counseling booth and brought requests for information regarding the system of public administration, national examination for public service employment and national scholarship, etc. Also, they brought complaints regarding the national pension plans under which the students of the age of over 20 are required to make monthly insurance payments, even if they do not earn any income yet. However, the payment of monthly insurance payments may be postponed by filing an application form until they graduate from the college, and the most students have no information of such application procedure for the postponement. The special administrative counseling service for the students turned out to be very much effective as counseling service and for propaganda to the students, and since then, this project has been continuously organized every year.

**(2) Counseling Booth**

The Administrative Counselors regularly open the counseling booth at least every month at the City Hall or public hall where the citizens can easily and conveniently be given access to the Administrative Counselors, and render counseling service to the citizens there. The dates to open the booth for administrative counseling is printed in the local news letter or announced in the other media such as local broadcasting and TV. The citizens, who have any problems or want to have public service or information, visit the counseling booth during opening hours.

**(3) Circuit Counseling Booth**

Since a person who lives in the area away from the city is difficult or inconvenient to visit the counseling booth in the City Hall, the Administrative Counselors visit, in circuit, the local or district



office of the City Hall for the citizens, and the Administrative Counselors open the local counseling booth there to render counseling service to the local citizens. Through those activities, the Administrative Counselors receive various grievances or complaints from many citizens in the territory assigned to him or her.

#### **(4) Joint Counseling Booth**

In Japan, there are various kinds of counselors under the many counseling systems such as Human Right Protection Counselor and Social Welfare Counselor. The total number of the counselors is about 450 thousand in the 35 counseling systems.

While the Administrative Counselors are commissioned by the Central Government and are authorized to render counseling services to the entire public administration of the central government and its agencies, the most of other counselors are commissioned or appointed by the local government. Thus, the Administrative Counselors may take the leadership to organize conferences with the other counselors and to open a joint counseling booth to receive complaints or grievances from the citizens, so that the citizens may solve a problem or problems at one place (One Shop Service) without going around to see different counselors to solve their problem or problems. Through the joint counseling, the Administrative Counselors have been making efforts to make the counseling system effectively function for the citizens.

As the MPM has realized that the activities of the Administrative Counselors under the joint counseling have contributed towards promoting the entire counseling system, and have been effective to operation of the public administrative agencies and to daily life of the citizens, the MPM has supported and encouraged the Administrative Counselors to have this kind of opportunities as many as possible throughout the nation.

#### **(5) Meeting with Local Representatives**

The Administrative Counselors have organized meetings with the local representatives in their territory to receive the latter's opinions which may reflect the operation of the administrative agencies. The local representatives from the Residents Association, Commerce & Industry Association, Board of Education, Social Welfare Association, and the other associations are invited to the meetings for administrative counseling. At these meetings, the Administrative Counselors request the local representatives to express their opinions regarding the operation or management of the public administrative agencies and discuss various opinions with them. Those opinions are reported to the local offices or regional offices of the AEB in the MPM by the Administrative Counselors, or may be directly submitted to the Minister of the MPM as their advisory opinion.<sup>6</sup> These opinions from the local representatives have contributed to promote improvement of operation or management of the

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<sup>6</sup> *Id.*

public administrative agencies. The MPM understands that this activity of the Administrative Counselors conveys various opinions of the local representatives to the MPM and is helpful to improve the public administration, and the MPM has made its efforts to support the Administrative Counselors for such activity. Occasionally, this kind of meetings has been specially organized for foreign students in college campuses by Tokyo Administrative Counselors' Association in cooperation with their college administration. Several students who attended a conference brought complaints against the procedures to be made at an immigration office. The Administrative Counselor reported those complaints to the local office of the AEB which requested the Immigration Bureau of Ministry of Justice of Central Government to improve their procedures for the foreign students, especially from Asian countries. As results of the request from the AEB of the MPM, Tokyo Immigration Bureau has gradually improved their procedures.

#### **(6) Training System for the Administrative Counselors**

As the Administrative Counselors receive the various kinds of consultations from the citizens and solve many problems, they are required to have distinguished knowledge and sophistication. The MPM has understood the necessity to organize the training programs for the Administrative Counselors and it has been making great efforts every year to provide effective training programs for the Administrative Counselors. The head office of MPM has assigned this business to the local offices of the AEB. On the other hand, the Administrative Counselors make the programs and organize the training in their local district by themselves. Through those achievements of training, the AEB finally decided to organize the training session for the Administrative Counselor at the head office of the AEB.

The first training was organized and held on November 15 and 16, 1971 at the head office of the AEB in Tokyo, Japan. The 49 Administrative Counselors were invited to the first nationwide training where the following three key notes were presented: On "The Japanese Government" by Mr. Iwado, Vice-Minister of the MCA, on "Role of the Administrative Counselor" by Professor Kijima, and on "Current Affairs" by Professor Takasaka. Following these key notes, the practical case studies regarding effective consultation were presented and then the Administrative Counselors discussed each other the cases which they had handled through their activities.

After the first training at the head office of the MPM, the almost same training has been organized every July at the head office of the MPM. In addition to the regular annual training program for the Administrative Counselors, the special training was organized for the female Administrative Counselors and held by the head office of the MPM in Tokyo, Japan on August 24 and 25, 1986. The 70 representatives of the female Administrative Counselors from all over the country and 20 representatives from Tokyo district were invited to the training. The various opinions were expressed and debated under the theme of "For Activity of Female Administrative Counselors" by the

participants.

The head office of the AEB in the MPM has contributed toward more actual training for the Administrative Counselors. However, the several issues have been pointed out with respect to the training. The most important issue is how to organize the training; i.e. the training should be more systematically organized. Consequently, this issue was finally concluded to be reviewed and more systematic training was reconstructed in support of the both head office and the regional and local offices of the AEB. For improvement of the training under the new idea, the principal rule was provided under the title of “The Operation Rule of Training for Administrative Counselor”.<sup>7</sup> In addition to the training at the head, regional or local offices, the induction course was established under the new rule for the Administrative Counselors who are newly commissioned. Pursuant to this rule, the role of various trainings has been shared among the head office, regional offices and local offices of the AEB. As a result, the training has been systematically organized and operated under the new system.

In addition to the central training system, the national conference for the representatives of the Administrative Counselors has been organized every year at the head office of the AEB since 1978.<sup>8</sup>

The main purpose of this conference is to promote the business of administrative counseling more effectively. The AEB invites the representatives of the Administrative Counselors who take the leadership in the counseling activities in their respective district or territory, and asks them to express their own opinions concerning their activities and to exchange their views in the various issues. Every year, the Minister or Vice Minister of the MPM, and Director-General, Deputy Director-General and the other managing officers of the AEB appear at the conference and exchange various opinions with the representatives. Also in this conference, several representatives express opinions or report their activities and experiences as administrative counselors, and key notes are addressed by the outstanding guest speakers.

#### **(7) Advisory Opinion of the Administrative Counselors**

The Administrative Counselors may express their advisory opinions obtained through their activities of administrative counseling with respect to improvement of the public administration of the agencies to the Minister of the MPM under the Act.<sup>9</sup> The advisory opinions have been received and highly appreciated by the Minister of the MPM as the important materials and information, since it is based on experiences of activities and knowledge of the Administrative Counselors. In order for the AEB of the MPM to promote improvement of operation on the public administration, the AEB has practically

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<sup>7</sup> “The Operation Rule and Regulation of Administrative Counselor Training” enacted on June 30, 1988, amended on March 22, 1992.

<sup>8</sup> *Supra* 2, Art. 7.

<sup>9</sup> *Id.* at Art. 4

used the opinions or comments of the knowledgeable Administrative Counselors, therefore, the AEB has requested and encouraged the Administrative Counselors to submit their opinions every year. After the AEB carefully considers the advisory opinions, the AEB takes inspection of the respective administrative agencies through the regional bureaus or local offices of the AEB.

The AEB notifies to the central government or its agencies concerned of the advisory opinions relating to the public administration in which the central government is directly involved, requesting correction or improvement of their operation, and then the AEB continuously watches the status of improvement. If it is necessary, the AEB further conducts inspection to enforce correction or improvement of operation of such administrative agencies. Every year, many advisory opinions have been expressed to the Director-General of the AEB by the Administrative Counselors, and about 150 opinions affect the central government or its agencies. In the fiscal year of 2009-2010, the AEB received 176,531 complaints, of which 97,725 complaints were received through the Administrative Counselors which consists of 55.1 % of the total complaints received by the AEB. In detail, 21,043 complaints were actual grievances and the others were requests for public information or matters relating civil action. The major fields of grievance were the matter concerning highway, public utilities, water service and drainage, traffic signal or sign, welfare and urban planning.

#### **IV. Role of the Administrative Grievance Resolution Promotion Council**

The system of Administrative Grievance Resolution Promotion Council

(hereinafter called the “Council”) was commenced in 1987 with five members in various fields who were a dean of law school, a professor of administrative law, a former top ranked civil servant of the central government, a chairman of the central league of baseball federation and a former commentator of broadcasting company. The Council is an advisory body to the Director-General of the AEB with respect to mediation of grievance.

The matters of grievance, which are submitted to the Council, are related to the basic matters on the administrative system and operation and to daily life of the citizens. The following points have been considered for the selection of the matters to be submitted to the Council.

- (1) Counter measure to the change of situation after operation of the system and enforcement of the policy
  - (a) Matter on which the harmonized measure shall be requested to the change of situation for increase of the objects after the system and the policy came into force.
  - (b) Matter on which the harmonized measure shall be requested to change of situation after the social role of administrative objects and the situation are changed.
  - (c) Matter on which review and reexamination of the system and of the

policy shall be necessary after the consciousness of the citizens and the social environment are changed.

(2) Correction of over evaluation on importance to the administrative convenience.

(a) Matter to which the correction has not been taken because of increase of quantity of business and of expenses in public administration.

(b) Matter to which the correction has not taken because of less administrative effects.

(c) Matter to which the correction has not been taken because of prudent consideration of administrative operation.

(3) Ensurement of generalization and coordination in public administration

(a) Matter on which the coordination among the administrative organizations and agencies has not been well taken.

(b) Matter on which the arrangement amount the systems and measures has not been well taken.

(c) Matter on which the adjustment among the similar systems and measures has not been taken.

The first conference of the Council commenced in December, 1989 and since then, it has been held quarterly every year. The conference of the Council had been organized and called by the Director-General of the AEB in the form of the friendship discussion. However, since February, 1990, the conference of the Council has been organized to promote activation of administrative counseling system. Currently the members of the Council were increased from five to seven. They are two professors (administrative law and public administration), two former top ranked civil servants, an editorial writer of major newspaper, a commentator of broadcasting company and a retired Director-General of Cabinet Legislative Bureau.

As the socio-economic structure has been changed rapidly and the public administration become more complex and diversified, the many grievances against the public administration have been brought to the government and administrative agencies by the citizens. The Council carefully reviews and examines the contents of the grievances which are selected by the AEB from those brought directly or through the Administrative Counselor to the AEB, such as ones affecting the basis of existing system and policies of the government, and then expresses its opinion from a high and broad perspective views to the Director-General of the AEB regarding contents of the grievances. The Director-General is to act based on the opinion issued by the Council. The Council is instrumental in ensuring appropriate and effective solution of grievance which is brought by the citizens, and contributes to guarantee fairness and neutrality in the operation of the administrative counseling system. The Council has been playing important role in conducting mediation for correct judgment as to what is right to the complaint and the public administration. Each administrative agency accepts and honors the mediation by the AEB, because of prestige and background of the members of the Council. The AEB urges the

agency to take the specific action based upon the opinion of the Council.

In addition to the Council, there are twelve regional councils which have advised to the regional directors of the AEB to resolve the grievances in each region in same nature as the Council. Once a year, the representatives of central and regional councils meet to exchange their opinions. Both the central and regional council have successfully worked for the citizens and public administration.

Usually, the conference of the Council is held four times every year and two or three grievances are discussed at each conference. In addition to the grievances discussed at the conference, about sixty grievances, including grievances discussed in the regional councils, are tabled on the conference every year. Some grievances are resolved and mediated, or dismissed at the conference, but most of cases are carried over the next conference for further research or investigation. Concerning the grievances carried over, the Council requests the AEB to undertake investigation further, since the AEB has a lot of experience and knowledge of public administration for long time, and has cooperated with the Council.<sup>10</sup>

The mechanism of administrative counseling of the AEB is shown in the figure I attached hereto.

## **Conclusion**

As the socio-economic environment surrounding public administration is changing drastically in recent years, the citizens have various complaints and requests for the public information or service to the public administration. However, the citizens hesitate to submit complaint to the administrative agencies. The Administrative Counselors have been playing the role of bridge between the citizens and the administrative agencies by directly contacting the citizens and by reflecting voices of the citizens concerning the operation of public administration.

It is expected that noncompliance of the officials is to be discovered and corrected through resolution of disputes between the citizens and the administrative agencies and that the administrative counseling system, which is readily accessible, in free of charge, and without time limitation, can play a pivotal role for solution of disputes and complaints on the administrative matters, even if the problems could be settled through the judicial proceedings. Accordingly, the AEB has continuously maintained the administrative counseling system, even after the reform on the structure of the central government was made on January 6, 2001.

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<sup>10</sup> A partial portion was cited from the speech of Mr. Takashi Mogushi, Chairman of Administrative Grievance Resolution Promotion Council, , which was made at the Third Asian Ombudsman Conference held in Macao, in 1998.

The administrative reform has been demanded and the Reform of Central Government Basic Act<sup>11</sup> was enacted in June, 1998. The main purpose of the reform is the reorganization of the structure of the central government in large scale. The number of the ministries and agencies was reduced from twenty-two to twelve ministries and agencies. Under the Reform Act, the all businesses of the Management and Coordinate Agency (MCA) were transferred to the newly established Ministry of Public Management, Home Affairs, Posts and Telecommunications which has the jurisdiction covering most of the jurisdiction of the MCA and Ministry of Home Affairs. As a result of the reform of the central government, the name of former “Administrative Inspection Bureau” was replaced by the “Administrative Evaluation Bureau” as of January 6, 2001. Thereafter the administrative counseling system has been managed by the Administrative Evaluation Bureau in the Ministry of Public Management, Home Affairs, Post and Telecommunication.<sup>12</sup>

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<sup>11</sup> Basic Law on the Reform of Central Ministry and Agencies was enacted in the 142 Section of the National Diet in June, 1998.

<sup>12</sup> Tomichi Yagi, “Japan’s Central Government Reorganization”, Comparative Law Vol. 15, College of Law, Nihon University (1998).

## **APPENDIX** *Case Studies*

The followings are some cases handled by the Administrative Counselors:

### **1. Guardrail**

The guardrail which is located at the corner at an intersection was broken by a traffic accident, and the parts of the guardrail disappeared. It was requested by a citizen that the guardrail needs to be replaced urgently, because the road is used by elementary school children and traffic accidents are frequently happened at the intersection.

After the Administrative Counselor inspected the intersection, he made a report of the conditions of the intersection to the department of public works, Ward Office and requested to repair the guardrail. It was newly built at the same corner of the intersection as shown on the picture.

### **2. Employment condition**

A person who is looking for a job on the internet, found on the home page of a company which has a labor condition that the male applicants are not permitted to have long hairs as a qualification to apply for the job, although the female applicants are so permitted.

This condition is invalid under the Equal Employment Act for Male and Female. This violation was notified to the company by the Labor Bureau of Tokyo Metropolitan Government. However, as the company has never corrected its condition, the above person informed the Administrative Counselor of this labor condition. After the Administrative Counselor reviewed this condition on the website of the company, he requested the Bureau of Labor to direct the company to improve the labor condition. The Bureau of Labor later reviewed and examined this condition again on the webpage of the company and found that the company kept the same labor condition. Then, the Bureau of Labor strongly directed the company to change the labor condition of “prohibition of long hairs for the male worker”. Thereafter, the company followed the direction of the Bureau and cancelled this labor condition.

### **3. Pension**

The claim came from a Korean citizen. He used to work for Japanese company in Tokyo. After he had worked for several years, he resigned from the company and returned to Korea. He sent the pension note to Tokyo Social Insurance Office and withdrew from the pension plan. However, he did not confirm remittance of withdrawal payment for him. He sent a notice that he wanted to meet with an officer of Tokyo Social Insurance Office when he visits Tokyo next time to ensure such payment to him.



The Administrative Counselor called Tokyo Social Insurance Office and inquired about the withdrawal payment. The Office replied to the Administrative Counselor that the Office received proposal of payment from the Korean citizen and has made the necessary procedures for the payment. The withdrawal payment is set on the schedule and must be remitted to the bank account designated by him. The Administrative Counselor informed the Korean citizen and solved his problem.

#### **4. Street light**

A local street was very dark, because there were a few street lights there. After the Administrative Counselor identified the situation of the street, he informed a local government about darkness of the street, and requested the local government to place additional street lights on the street. As a result of the provided information, the additional street lights were placed on the street and the street became lighter.

#### **5. Traffic signal for pedestrians**

The traffic signal for pedestrians cannot be clearly seen, since it was hindered by the other traffic signboard. The Administrative Counselor reported this situation to a local road maintenance office and requested them to move the traffic signboard downward. As a result, the local office lowered the traffic signboard, which enabled the pedestrians to easily see the traffic signal.

#### **6. Dirty curve mirror**

A curve-mirror stands on the street, but the driver cannot confirm the traffic conditions through the mirror, because the curve-mirror is very dirty.

The Administrative Counselor reported the situation to a local police office and requested them to clean up the curve-mirror. The office immediately cleaned up the curve-mirror, and the drivers can confirm the traffic conditions through the cleaned curve-mirror.

#### **7. A hole on the street**

A woman found a big hole on a street that the school children use every day. She informed the Administrative Counselor of the situation. The Administrative Counselor reported the bad condition of the street to a local road maintenance office and requested to repair the hole. They immediately took an action to repair the hole, so that the school children can safely walk on the street.

## The Role of Ombudsman in Decentralization: Outsourcing and Public-Private Relationship

Nagatomo Yamaoka, J.D.

Professor Emeritus, Nihon University

Administrative Counselor

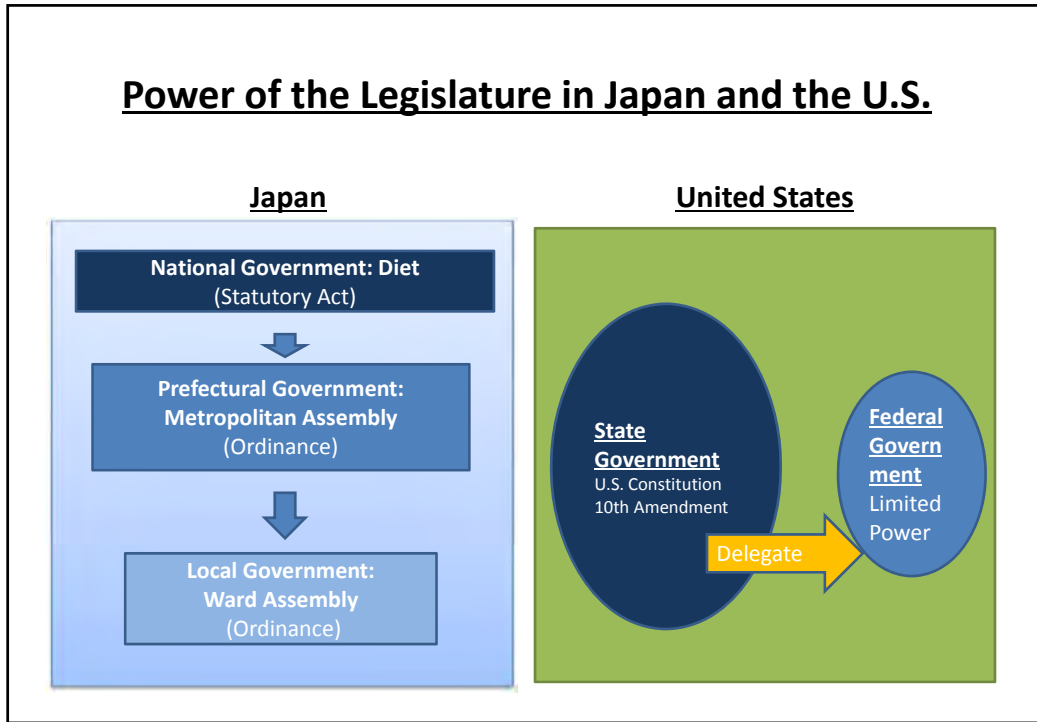
December 7, 2011

The 12<sup>th</sup> Conference of the Asian Ombudsman Association

## Today's Topics

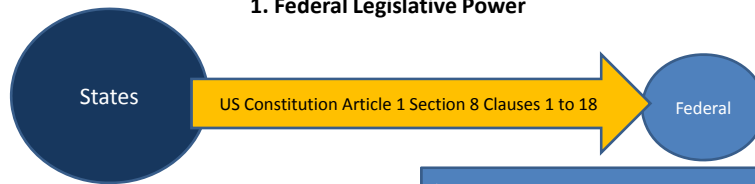
1. Power of the Legislature in Japan and the U.S.
2. Administrative Counseling System
3. Numbers and Types of Administrative Counseling
4. Windows for Counseling
5. Kinds of Actual Grievances

## Power of the Legislature in Japan and the U.S.



## Powers of the Federal Government and States

### 1. Federal Legislative Power



**Clause 1:**  
The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

**Clause 2:**  
To borrow Money on the credit of the United States;

**Clause 3:**  
To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

**Clause 4:**  
To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

**Clause 5:**  
To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

**Clause 6:**  
To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

**Clause 7:**  
To establish Post Offices and post Roads;

**Clause 8:**  
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

**Clause 9:**  
To constitute Tribunals inferior to the supreme Court;

**Clause 10:**  
To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

**Clause 11:**  
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

**Clause 12:**  
To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

**Clause 13:**  
To provide and maintain a Navy;

**Clause 14:**  
To make Rules for the Government and Regulation of the land and naval Forces;

**Clause 15:**  
To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

**Clause 16:**  
To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

**Clause 17:**  
To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise the Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

**Clause 18:**  
To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

## Powers of the Federal Government and States

### 2. Limit on the Federal Government

US Constitution Article 1 Section 9 Clauses 1 to 8 set forth the limits on the Federal Government (i.e. Congress) as follows.

**Clause 1:**

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importations, not exceeding 10 dollars for each person.

**Clause 2:**

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

**Clause 3:**

No bill of attainder or ex post facto law shall be passed.

**Clause 4:**

No capitation, or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken. (Modified by Amendment XVI (\*\*\*)

**Clause 5:** No tax or duty shall be laid on articles exported from any state.

**Clause 6:**

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

**Clause 7:**

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

**Clause 8:**

No title of nobility shall be granted by the United States: And no person holding any office or profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

\*\*\*Amendment XVI : The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration.

## Powers of the Federal Government and States

### 3. Power of the State Governments

**10th Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.**

**Powers that the States are Expressly Prohibited from Exercising**

**Article 1 Section 10:**

**Clause 1:**

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

**Clause 2:**

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

**Clause 3:**

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in a war, unless actually invaded, or in such imminent danger as will not admit of delay.

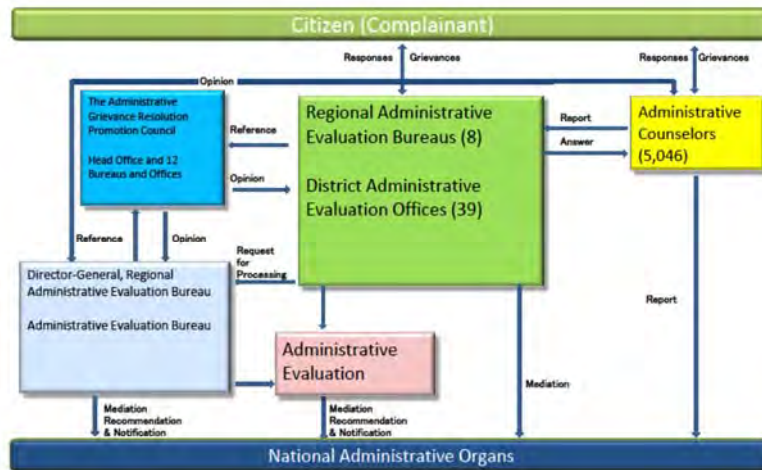
**Powers that the States are Impliedly Prohibited from Exercising**

Article 1 Section 8 Clause 2 (To borrow Money on the credit of the United States); Article 1 Section 8 Clause 4 (To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States); Article 1 Section 8 Clause 8 (To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries); Article 1 Section 8 Clause 11 (To declare War, etc.).

**Express Power that is exclusive to the Federal Government**

Article 1 Section 8 Clause 17 (Power to regulate Washington D.C., etc.)

Mechanism of Administrative Counseling System of Administrative Evaluation Bureau

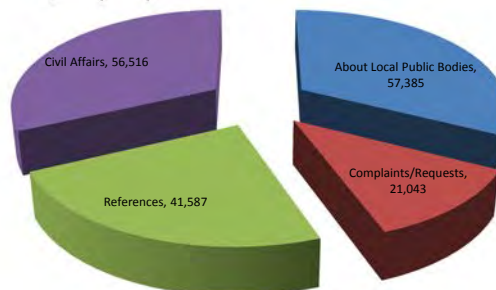


2010 Result of Administrative Counseling

Total: 176,531 Cases

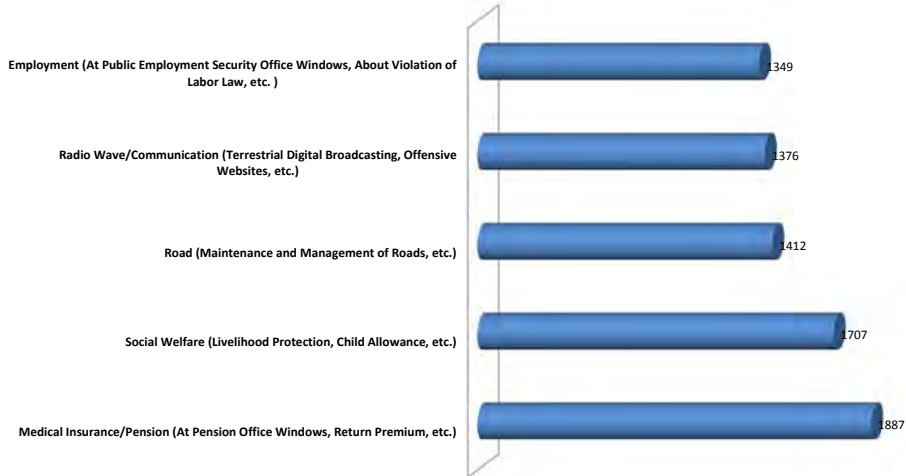
Types:

- About Local Public Bodies: 57,385 (32.5%)
- Complaints/Requests: 21,043 (11.9%)
- References: 41,587 (23.6%)
- Civil Affairs: 56,516 (32%)



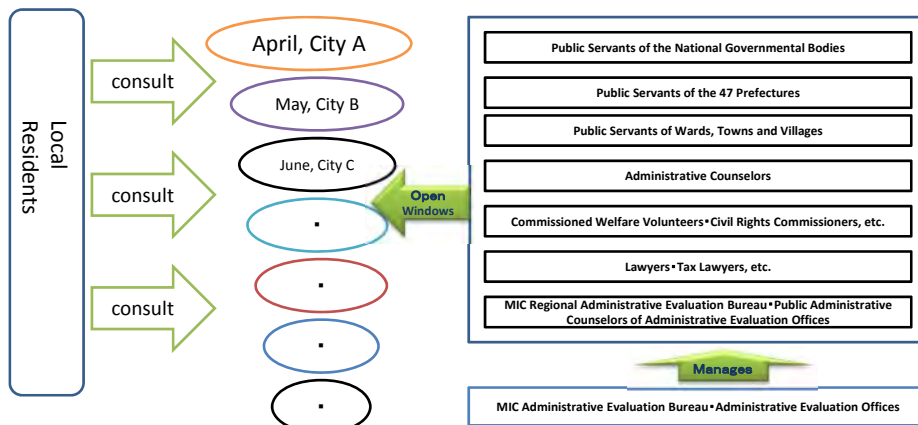
Prepared based on the figures reported on [http://www.soumu.go.jp/main\\_sosiki/hyouka/soudan\\_n/jituseki.html](http://www.soumu.go.jp/main_sosiki/hyouka/soudan_n/jituseki.html).

### Top Five Areas of Complaints and Requests in 2010



Prepared based on the figures reported on [http://www.soumu.go.jp/main\\_sosiki/hyouka/soudan\\_n/jituseki.html](http://www.soumu.go.jp/main_sosiki/hyouka/soudan_n/jituseki.html).

### Windows for Counseling -Cooperation with Several Agencies-



Prepared based on page 9 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Windows for Counseling -Floor of Local Public Office-



Supported by their local public bodies or others, Administrative Counselors who are appointed by the Minister of Internal Affairs and Communications have been regularly opening a consulting window at a City Hall, a town or village office or a community center and receiving complaints from everyone.

In cities, towns and villages located in a large district or inconveniently located, a consulting window has been opened, going around these locations.

Also, a consulting window has been jointly opened by Commissioned Welfare Volunteers and Civil Rights Commissioners.

Source of the above picture and the original Japanese text translated into English: Page 10 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Windows for Counseling -Special Booth Opened for Counseling- Counseling Windows were opened at a stricken area at the time of a disaster.



Special Booth opened in Kawaminami Town of Miyazaki Prefecture.

Source: Page 9 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Windows for Counseling **-One-Day Combined Counseling Plaza-**

“One-Day Combined Counseling Plaza” has been jointly opened at places including department stores or public buildings by public servants of the related administrative agencies, the 47 prefectures and wards, towns and villages and administrative counselors. It serves as a one-stop counseling window. Because of such feature, it has been used by people who seek consultation about pensions, medical insurances, employments, taxes, registrations, roads, etc.

Even if their cases are related to multiple administrative agencies or people do not know where to ask about their cases, it is expected that One-Day Combined Counseling Plaza will readily provide a necessary advice at once.



Source of the above pictures and the original Japanese text translated into English: Page 7 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Kinds of Grievance



Source of the above pictures and the selected parts of the original Japanese translated into English: Page 4 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".



## Kinds of Grievance

### *(1) Health Insurances •Pensions*

- Questions asked on the qualifications to receive pensions and on the amount to be provided.



Source of the above picture and the contents: Page 4 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Kinds of Grievance

### *(2) Employment*

- Requested to improve labor conditions including working hours because long working hours are compelled.



Source of the above picture and the contents: Page 4 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Kinds of Grievance

### *(3) Road*

- Requested to promptly fix dangerous spots on a national highway.



Source of the above picture and the contents: Page 4 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Kinds of Grievance

### *(4) Social Welfare (Public Assistance)*

- Questions asked on the qualifications to receive livelihood protection.



Source of the above picture and the contents: Page 4 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Kinds of Grievance

### *(5) Radio Wave • Communication*

- Explanations sought about terrestrial digital broadcasting.



Source of the above picture and the contents: Page 4 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Kinds of Grievance

### *(6) Counseling Window*

- Asked where to make applications or procedures.

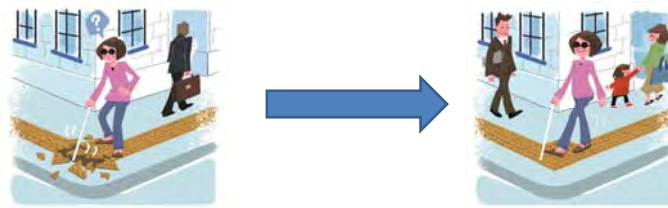


Source of the above picture and the contents: Page 4 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

## Kinds of Grievance

### *(7) Braille Block Road*

- Requested to promptly fix broken Braille blocks on a road, which resulted in a dangerous situation that not only cannot properly guide the visually impaired, but also is likely to cause the health persons to stumble. The administrative counselor who received such request went out to check the very road and after confirming the dangerous situation, he made a report thereof to a manager of the road. As a result, the broken Braille blocks were fixed finely.



Source of the above picture and the contents: Page 11 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

Thank you very much for your attention.

Nagatomo Yamaoka, J.D.  
Professor Emeritus, Nihon University  
Administrative Counselor

# Plenary Session 5

## Sub Theme

### Identifying People's Concerns from Daily Flow of Complaints and Contribute to Systemic Improvements

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## Identifying People's Concerns from Daily Flow of Complaints and Contribute to Systemic Improvements



Mr. Huawei Zhang  
Vice-Ministerial-Level Commissioner  
Ministry of Supervision  
CHINA

Ladies and gentlemen,

Today, the 12th Conference of the Asian Ombudsman Association is successfully held in the beautiful city of Tokyo. On behalf of the Ministry of Supervision of the People's Republic of China, I would like to express my sincere greetings to all delegates. The conference has provided a sound platform and opportunity for various Ombudsman institutions to enhance cooperation and cement friendship by learning and communicating with each other. I hereby convey my heartfelt thanks to the host of the conference, the Administrative Evaluation Bureau of the Japanese Ministry of Internal Affairs and Communications.

The Chinese government has been resolutely combating corruption and building a clean government. China adheres to the principles of addressing both the symptoms and the root causes of corruption, taking comprehensive measures to readdress both, and combining punishment with prevention while focusing on the latter. It has set up a system for corruption punishment and prevention and attached special importance to the root causes, the prevention of corruption and the institutional improvement in combating corruption. Efforts have been made to broaden the working area to prevent corruption at the source and gradually build a long-term mechanism of education for corruption prevention, a system of combating corruption and upholding integrity, and a monitoring mechanism over the exercise of power. China has explored a new way of combating corruption and building a clean government that conforms to China's national conditions and displays Chinese characteristics. In the practice of combating corruption and upholding integrity, we have paid much attention to public support and participation. We have built the whistle-blowing system and placed emphasis on the collection and analysis of information concerned so as to promote the institutional improvement in combating corruption and building a clean government as well as the innovative reform.

### **I . Handling Complaints by China's Supervisory Organs**

1. Special organs for handling letters and calls of complaints have been established. The Constitution endows the citizens with the rights to criticize, suggest, appeal, complain or accuse State organs and

functionaries. The procuratorial organs, supervisory organs and audit organs have all established departments to handle complaints as well as suggestions and accusations from the people. So are with China's supervisory organs at all levels. In 2010, 1,427,186 cases of complaints were handled.

2. Channels for making complaints have been expanded. On the basis of keeping the existing channels unimpeded as letters and calls, China's supervisory organs have managed to provide more information and offer more convenient and unimpeded approaches for the public. There are nationwide reporting hotlines and websites, leading officials regularly receive visitors, government functionaries may visit grassroots, groups are dispatched for collecting information, and the information network at grass-root levels are set up. Therefore, the channels have been expanded and the information concerned can be collected in a proactive manner.

3. Complaints handling system has been perfected. China's supervisory bodies have built the mechanism of information analysis on complaints, and conducted regular researches on the dynamics of complaints as well as the outstanding concerns of the public. The integrated information with the characteristics of generality and regularity summarized from the less valuable, independent and raw data has been forwarded to relevant officials and departments. These efforts have provided important basis for correct extrapolation of anti-corruption situation and scientific decision-making, furnished substantial clues for investigating into and dealing with all the breaches of laws and disciplines, and most significantly, promoted anti-corruption work from the source and the deepening of reforms.

## **II. Mechanism and Systemic Reform of Anti-Corruption Work**

1. Law and regulations for combating corruption and building a clean government have been promulgated. China adheres to the rule of law as a fundamental principle, attaches importance to the regulating and safeguarding role of law and regulations, and continuously promotes legalization and standardization in the fight against corruption. In order to ensure that leading officials work in a clean and honest way, a series of codes of conduct and ethical rules have been issued, including *the Guidelines for Leading Officials on Government Integrity*, *the Regulations on Strict Prohibition of Seeking Illegitimate Gains by Misuse of Official Power*, *the Regulations on Reporting of Relevant Personal Matters by Leading Officials*, and *the Interim Regulations on Strengthening Management of State Functionaries Whose Spouses and Children Have Emigrated Abroad*. China has also enacted a series of law and regulations to ensure the proper exercise of public power and prevent corruption, thus gradually establishing a legal framework for combating corruption and upholding integrity with scientific contents, rigorous procedures, well-matched regulations and effective enforcement, and strengthened supervision on the implementation of the regulations.

2. Power restraint and supervisory system are being perfected. A power without supervision will definitely lead to corruption, and an absolute power will corrupt absolutely, which is fully proved by



complaints from the masses. Therefore, we have strengthened the restraint and supervision of power exercise, advocating procedures and transparency, making government affairs public, strengthening supervision of chief officers, and streamlining the accountability system for decision-making. On the principles of reasonable structure, scientific distribution, rigorous procedures and effective restraint, we are gradually establishing a sound power structure and enforcement mechanism where decision-making power, executive power and supervisory power can check balance and coordinate at the same time.

3. Institutional reform and innovation have been promoted. China has adhered to the principle of punishing and preventing corruption by way of development and reform. In view of the main areas and key steps vulnerable to corruption, vigorous efforts have been made to promote institutional reform. Firstly, China has deepened the reform of administrative examination and approval system, reducing or adjusting the items requiring administrative examination and approval. As of January this year, various departments of the State Council had canceled or adjusted for five times 2,183 items which used to come under this heading, accounting for 60.6% of the former total. Secondly, China has promoted the reform of fiscal and tax management system. The State has improved the public finance system, and enhanced supervision and disclosure of financial budget. It has intensified the trial operation of public announcement and post-project appraisal of major government investment projects, and streamlined the supervision of government investment projects and livelihood-related public funds. It has also standardized the exchange market of State-owned property rights, and upgraded the risk prevention and control for monetary system reform. Thirdly, China has promoted the reform of personnel system. It has established a scientific mechanism for selecting and appointing officials as well as a management and monitoring mechanism in this regard. Fourthly, China has deepened the reform of judicial system and working mechanism. It has established a fair, efficient and authoritative judicial system to safeguard judicial justice. Through institutional reform and innovation, the State has established new regimes and mechanisms that accord with the demands of the times and managed to punish and prevent corruption at the very source.


4. Special campaigns for handling problems of strong public concerns have been launched. A special campaign has been targeted to the outstanding problems in the field of engineering and construction. Readdressing efforts are made in project decision-making, bid invitation and submission, land leasing, project planning and management, and construction supervision. The State has propelled the development of law and regulations on engineering and construction, as well as information disclosure and the building of credibility system. Another campaign is focused on the “little coffers”, misuse of government cars and excessive celebrations, workshops, and forums. China has spared no efforts to resolve the problems of strong public concerns and readdress the malpractices that harm the interests of the people. It has initiated the readdressing of arbitrary charges in highway toll offices and schools, and tried to alleviate the burdens of farmers. It has also redressed the malpractices in purchases and

sales of drugs and medical services, and started the special campaign for food safety. Through these campaigns, China is in a position to identify the existing problems and draw on the experience, improve the institutions and build the long-term mechanism which may prevent repeated occurrences of similar cases and ensure the addressing from the source.

What is more, based on the complaints from the masses, we have strictly investigated into and dealt with cases of corruption. We are serious in handling the cases of power abuse and embezzlement involving leading officials, the cases in which they take advantage of their power over personnel affairs, judicial powers, and the right of examination and approval to seek personal gains, the cases in which they provide protective shield for underworld and evil forces, and the cases of severe loss of State-owned assets. We have strengthened the efforts to deal with the cases in such key areas as engineering and construction, real estate, land leasing and mineral exploitation. We have laid stress on the cases of commercial bribery in the fields of purchasing and marketing of drugs, government procurement and deals in resources. We are also working on the cases of negligence and infringement that cause mass disturbances and major accidents in terms of food and drug safety and environmental pollution. As a result, a number of corrupt officials have been punished, which sounds alarming to corrupt officials and manifests the stand and resolution of Chinese government in combating corruption.

It is the mutual aspiration of all humanity and the common task faced by all governments to combat corruption and uphold integrity. With complicated causes, corruption may be occasioned by multiple subjective and objective factors, and the fight against corruption is to be a long-term process. China's supervisory bodies are willing to endeavor, together with their Asian counterparts, to build a clean, just, harmonious and fine world.




 **中华人民共和国监察部**  
MINISTRY OF SUPERVISION OF THE PEOPLE'S REPUBLIC OF CHINA  
WWW.MOS.GOV.CN

## Identifying People's Concerns from the Daily Flow of Complaints and Contribute to Systemic Improvements

Mr. Huawei Zhang  
Vice-Ministerial-Level Commissioner, Ministry of Supervision,  
P.R.China



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MINISTRY OF SUPERVISION OF THE PEOPLE'S REPUBLIC OF CHINA  
WWW.MOS.GOV.CN

China adheres to the principles of addressing both the symptoms and the root causes of corruption, taking comprehensive measures to readdress both, and combining punishment with prevention while focusing on the latter. It has set up a system for corruption punishment and prevention and attached special importance to the root causes, the prevention of corruption and the institutional improvement in combating corruption.





The banner at the top of the slide features the national emblem of China on the left, followed by the Chinese text '中华人民共和国监察部' and the English text 'MINISTRY OF SUPERVISION OF THE PEOPLE'S REPUBLIC OF CHINA'. Below the English text is the website address 'WWW.MOS.GOV.CN'. The background of the banner shows a scenic view of a mountain range with a Great Wall winding across it.

## I. Handling Complaints by China's Supervisory Organs

- Special organs for handling letters and calls of complaints have been established.
- Channels for making complaints have been expanded.
- Complaints handling system has been perfected.



A decorative circular emblem is located in the bottom right corner of the slide. It features a stylized white dragon or mythical creature design on a light green circular background.



The banner at the top of the slide features the national emblem of China on the left, followed by the Chinese text '中华人民共和国监察部' and the English text 'MINISTRY OF SUPERVISION OF THE PEOPLE'S REPUBLIC OF CHINA'. Below the English text is the website address 'WWW.MOS.GOV.CN'. The background of the banner shows a scenic view of a mountain range with a Great Wall winding across it.

## II. Mechanism and Systemic Reform of Anti-Corruption Work

- Law and regulations for combating corruption and building a clean government have been promulgated.
- Power restraint and supervisory system are being perfected.
- Institutional reform and innovation have been promoted.
- Special campaigns for handling problems of strong public concerns have been launched.



A decorative circular emblem is located in the bottom right corner of the slide. It features a stylized white dragon or mythical creature design on a light green circular background.



## Daily Complaint Handling Towards a Systemic Approach: Thai Ombudsman Experience



Mrs. Panit Nitithanprapas  
Chief Ombudsman  
THAILAND

Mr. Chairman,  
Distinguished delegates,  
Ladies and Gentlemen,

It is a great pleasure and honor for me to be addressing one of the five key sub-themes of the 12th Asian Ombudsman Association Conference in Japan. I would like to congratulate everyone whose dedication and efforts have contributed to the success of this conference, particularly Mr. Hideo Arai, the Director-General of the Administrative Evaluation Bureau in the Ministry of Internal Affairs and Communications and his team for their insights, goodwill, and hospitality extended to all of us.

Today I would like to share with you on the sub-theme “Identifying People’s Concern from the Daily Flow of Complaints and Contribute to Systemic Improvements” which I will focus on Thai Ombudsman experiences in daily complaint handling towards a systemic approach.

### **I . The Roles of Ombudsman in Thailand**

Ladies and Gentlemen,

Before going into details on how Thai Ombudsman deal with daily flow of complaints, let me briefly explain about the roles of Thai Ombudsman.

The Thai Ombudsman is an independent constitutional organization firstly established under the 1997 Constitution of Thailand to investigate the complaints on maladministration and unfair practices of the public officials. Therefore, the main duties of the Ombudsman in the past focus only on fact finding concerning the complaints on maladministration, unlawful performance as well as unfair practices (whether or not it’s lawful) of the public authorities.

But under the current 2007 Constitution, the Ombudsman has been given other important roles, i.e. to conduct the proceeding in relation to ethics of persons holding political positions and state officials, as well as, to investigate any omission to perform duties or unlawful performance of duties of the Constitutional Organizations or Agencies in the administration of justice, except the trial and adjudication of the Courts. Thus, if such acts of those public authorities cause injuries to the public or it is necessary to protect public interests, the Thai Ombudsman may conduct investigation irrespective of a complaint (or what we call “own motion”).

## **II. Thai Ombudsman’s Experiences**

Distinguished Guests,

With the various roles of the Ombudsman in Thailand under the Thai Constitution, we, the Three Ombudsmen, must take the lead in proactively ensuring proper complaint handlings (or people’s concern) and developing efficient and effective mechanism for systemic improvements. This entails more than simply providing an individual remedy to the complainant. We must as well regard prompt and professional access, timely service delivery along with fair and proportionate remedial actions on a broadest scale possible

### **-Thai Ombudsman’s Experiences in Dealing with Daily Complaint**

Let me now share some of the initiatives, what the Thai Ombudsman has done to effectively identify people’s concern from the daily flow of complaints, as the followings:

First, to ensure easy accessibility for people to file complaints, the frontline toll free call center (1676), which provide easy and free access for individual concerns without the cost of long distance telephone calls, has been set up. Mediation through direct telephone conversation instead of relying on traditional bureaucratic documentation and processes was also initiated by the Ombudsman. In addition, we have mobile “complaint handling” and also promotion unit travelling around the country to receive people’s complaints to provide a stronger presence and effective daily flow of complaints derived from public exposures.

Second, the Thai Ombudsman has set the target in our internal working procedure for all staff that all complaints coming into the office must be finished from start to end within 6 months. So far, out of totally 25,171 complaints received, we have finished 23,807 cases (94.6% of total complaints) meanwhile only 1,366 cases (or 5.4% of total complaints) are still under investigation.

Third, to guarantee accessibility for daily flow of complaints which will impinge on a more effective public services in a convenient and timely fashion, we collaborated with the Lawyer Council as well as the Department of Legal Aid and Civil Rights Protection, Office of the Attorney General, in every province throughout the country as alternative channels for the people to have legal advices or submit complaints to the Ombudsman. Since we do not have regional offices throughout the country, this co-operation can save the expenses of the poor to file their complaints at their own domiciles.

Fourth, on top of all initiatives, the Thai Ombudsman has used the divisional authority to efficiently handle the daily flow of cases. Each of the three ombudsmen will be allocated portfolio of responsibilities. Each has a full authority to preside over their respective area divisions or investigative bureaus. For example, although being Chief Ombudsman, I have been evenly allocated portfolio to preside complaint over police and local administration.

### **III. Thai Ombudsman's Experiences for Systematic Improvement**

Ladies and Gentlemen,

What I have been sharing with you so far are some of the works done by the Thai Ombudsman in dealing with the daily complaints coming to our office. We realize that complaint handling in a case by case basis is important to cope with daily grievances of the people. It is however a matter of fact that similar problem can emerge in different parts of the country. If we tackle the issue in a systemic manner, we will not be able only to solve the problem for the people, but also to prevent the same problem from ever occurring again.

I was reminded of a case where a motorcyclist filed a complaint to our office that the police fined and confiscated his driving license due to the loss of a license plate. The motorcyclist had explained that he had already filed for a new license plate and had gone through the proper process with a document to prove to the police. The police did not care to look at the document and made judgment without proper protocol. Considering this as a "systemic" improvement issue, I raise the bar to the whole system of the Thai Police and not just the handling of one police officer. My positioning results in a systemic level change and the Thai Police put in place a proper process in the matter of lost license plate so fairness and fair handling of the matter will be there for all, resulting from one individual complaint. On top of that, the Department of Land Transport responsible for the issuing of license plates responded to my recommendation and looked into measures to enhance faster services in their production line as well.



In order to promote systemic improvements, the Thai Ombudsman has set up the system to upgrade “individual” complaints, small as it may seem at the outset, to affect systemic change or “BIG PICTURE” impacts as follows:

First, “Tuesdays” (weekly) consultation meeting among the three Ombudsmen has been created. Given that each Ombudsman has a full authority to preside over different investigative bureaus, the three Ombudsmen set up a meeting on each Tuesday to brief the others on the latest development of cases under their respective areas in order to streamline cooperation, standards and procedures to make cases systemic and expansive.

For example, we have recently discussed a matter concerning flood and water management system instigated by own motion from one of our ombudsmen, namely, Professor Siracha Chareonpanij. Even as these cases fall under Prof. Siracha’s investigative bureau, it requires attention from all three ombudsmen since other public bodies must be integrated into a systemic and comprehensive planning to alleviate public distress.

In addition, all of Professor Siracha’s undertakings on the matter of concern, from his personal study leading to an extensive study on a nationwide scale with a support team, led us all Ombudsmen to come alongside to both rework and broaden the issue with him as a leader to that of “National Spatial Development Plan” thematic issue. He, with our full support, championed this “Grand Theme” integrative improvement of the whole issue surrounding flooding and water management.

Second, besides meeting arrangements between Ombudsmen each week, we also invite internal and external team of experts on a case-by-case basis. Internal and external expert team, individuals respected for their local wisdom pertaining to the issue at hand, and public participating are all crucial to the successes of case and systemic issue handling and processing. As in the case of the recent “Flood Crisis” in Thailand, we were well ahead of time to provide the Thai government with the support they need for systemic improvements to prevent future flooding in Thailand.

Third, we also streamline our public relations with various target groups, focusing on the general public, government agencies, state agencies, state enterprises and local government organizations, non- governmental organizations, mass media, private organizations, foundations, associations and educational institutions. Specific activities and media were designed for each target group. Television and radio programs are broadcasted regularly in order to send a message to the public at large.

Fourth, apart from the above practices, the Thai Ombudsman also investigated other cases of unconstitutionality and recommends to the Constitutional Court or Administrative Court to give ruling

in the case committed to a systemic resolution as the ruling of these Courts has a binding effect to all public concerned.

#### **IV. Conclusion**

Distinguished Guests,

Ladies and Gentlemen,

What I have been sharing with you so far are some of the works done by the Thai Ombudsman in handling daily complaints towards a systemic approach. I hope that our case sharing will be useful for others to apply for its own context as I myself find that case sharing throughout the conference has proved to be extremely useful to improve our future works at the Thai Ombudsman. Lastly, I strongly believe that with closer cooperation among fellows Asian Ombudsmen, we will become better adapted and equipped to face the challenges in an ever-changing Socio and Economic environment we live in at present.

Thank you very much for your attention.

## SYSTEMIC IMPROVEMENT IN PUBLIC SERVICE DELIVERY: COMPLAINTS AS SOURCE OF INNOVATION



Dr. Weng Wah Tam  
Director-General  
Public Complaints Bureau  
Prime Minister's Department  
MALAYSIA

### **I . ABSTRACT**

Malaysia's Government Transformation Programme (GTP) was formulated with the aim of transforming the public service delivery to be more effective, efficient and accountable. Complaints management is one of the vital components for ensuring the successful implementation of the GTP in transforming the public sector. In this regard, the Government views complaints as a source of innovation and creativity to bring about systemic improvement in public service delivery. This is achieved by way of eliminating irrelevant or obsolete laws, rules and procedures and creating more people-friendly processes. The Public Complaints Bureau will continue to serve as the key focal point between the Government and the people in managing public complaints. This is to ensure that the public sector continuously delivers service improvements beyond the ordinary with a view to enhancing the nation's competitiveness as well as the overall wellbeing of the people.

### **II . INTRODUCTION**

1. The main purpose of this paper is to present Malaysia's experience in the management of public complaints. It will give a special focus on new approaches and specific programmes carried out by the Government of Malaysia in the management of public complaints and in bringing about systemic improvement in its public service delivery. This paper will cover several key areas including: Change of Approach; Managing Complaints - Reaction vs Proaction; Identification of Issues and Systemic Improvement; as well as Conclusion and the Way Forward.

### **III . CHANGE OF APPROACH**

2. The key issues for improvement in public service delivery always feature customer satisfaction and expectation as the benchmark. In addressing public expectation, the quality of public service delivery becomes the focal point. In the case of Malaysia, it has become the number one objective of the Government under "1Malaysia - People First, Performance Now" principle.

3. Malaysia's Government Transformation Programme (GTP) was launched on 28 January 2010 aimed at, amongst others, transforming the Government to be more effective in delivering results in areas of major concern for the people through higher efficiency and accountability. The expected consequence of this transformation measure is about generating a robust economic growth to further improve the quality of life and welfare of the people.

4. Without improvement in the quality of public service delivery, efforts to implement GTP will not be effective. Complaints management is one of the vital components in ensuring effective public service delivery. Complaints management can no longer be seen merely as an administrative function. Rather, it must be viewed as a strategic function in implementing the GTP. Managing public complaints in a prompt, fair and courteous manner complements efforts in improving the quality of service delivery. The Government no longer views complaints as an impediment, but considers it as a source of innovation. Therefore, public complaints are always welcome.

5. With this changing approach, the roles and responsibility of PCB as a facilitator have also changed to meet the new dynamic in complaints management. In this connection, PCB has shifted its role from merely accepting and resolving individual complaints to critically analysing complaints. The critical analysis of complaints provides a valuable feedback to systemic improvement of the existing Government policies, procedures and work practices.

#### **IV. MANAGING COMPLAINTS – REACTION vs PROACTION**

6. PCB has been entrusted with not only managing public complaints on services provided by the Government, but also about civil servants who are administering or rendering such services to the public. Complaints are being viewed positively and considered as a form of feedback to keep the government departments alert and always prepared for improvement in their delivery system.

7. As such PCB provides a number of channels for the public to forward their flow of complaints. This includes electronic channel, walk-in, telephone, faxes, SMS and the proactive programmes.

Generally, the electronic channel (e-mail and website) is the public's preferred channel followed by the proactive programmes. From 1 January 2011 to 30 September 2011, a total of 9,887 complaints were received by PCB. Of this, 5,183 (52.4%) complaints was lodged through electronic channel and 1,847 (18.7%) via pro-active programmes.

8. With the enhancement of ICT, PCB's web portal provides main gateway for the public to lodge more than 50% of the complaints against Government agencies. The PCB manages the complaints through a system known as i-Aduan, an integrated public complaints management system that has

been upgraded to increase PCB staff productivity. Public Relations Officers (PROs) of other Government agencies are also allowed to access the i-Aduan directly. PCB does not even need to forward the complaints to agencies as they can access them directly and take immediate action on complaints which are under their respective jurisdictions.

9. PCB's proactive programmes are the Mobile Complaints Counter (MCC), Integrated Mobile Complaints Counter (IMCC) and Mesra Rakyat Programme (MESRA). These outreach activities have enabled the public to directly put forth their complaints, enquiries and suggestions to government agencies. In 2010, a total of 134 proactive programmes were held, with 2,310 complaints received from 16,277 visitors. For the period of 1 January to 30 September 2011, a total of 122 proactive programmes were held, with 1,820 complaints received from 18,345 visitors.

10. PCB has even taken a pro-active initiative by identifying problems or issues and forwarding them to relevant agencies for solutions before they become a subject of public complaint. The programme is acronymed as MASJA or in Malay language Menangani Aduan Sebelum Jadi Aduan. Literally means solving an issue before it becomes a complaint. Under this initiative, PCB personnel as proactive complainants are expected to be an agent in spotting and reporting issues on the ground before they become a complaint.

11. Government agencies are also required to monitor and address issues raised in the media including online media on a daily basis. Besides, PCB and the Department of Information also monitor issues and complaints highlighted in the media daily and forward them to the respective PROs of the ministries or departments for immediate action. The agencies are also required to monitor and response immediately to issues reported or raised in the media. The government agencies are required to upload them on their official websites. These feedback and responses will also be uploaded on PCB's website.

12. In addition, PCB also launched a smart partnership of online portal programme with BERNAMA, a government news agency. The portal enables more people to access the feedback on complaints over a longer duration.

13. More often than not, PCB also receives complaints on the services provided by and/or entities in the private sector. Similarly, the complaints are channeled to the relevant government agencies which in turn will deal with the private sector entities concerned for solutions. Therefore, the overall task of PCB is indeed very challenging.

14. Over the past few years, the number of complaints has increased quite significantly. However, the high volume of complaints does not necessarily reflect the declining standard of the government

service. Rather, it is an indication of the people's higher expectation on the quality of public services rendered and the speed of service delivery. It goes in tandem that as the society becomes more affluent, their expectation for better quality services and speedy solutions is higher.

## **V. COMPLAINTS AS SOURCE OF INNOVATION**

15. As the Malaysian society has become more affluent and demanded higher quality and speedy public service delivery, PCB's approach in managing complaints has also been redefined and further improved. PCB not only channels complaints it receives to the relevant government agencies for their appropriate action and response, but has taken a more pro-active and prominent role as innovator in solving issues which are the source of complaints.

16. One of the mechanisms for PCB to ensure agencies take a serious view of major issues in the flows of public complaints is through the Permanent Committee on Public Complaints (PCPC) chaired by the Chief Secretary to the Government of Malaysia. The PCPC which meets monthly will consider nation-wide or high impact issues that will contribute towards improving the public service delivery.

17. In this connection, PCB will sieve through all complaints received or raised in the media. Repeated issues or issues with high impact on the public wellbeing are identified. Concept papers are prepared on each of these issues. A thorough study and consideration of the causes of complaints/issues, their impacts and solutions to improve the related public service delivery are conducted through a mechanism established at the PCB level involving concerned agencies/organizations or parties. The concept paper will then be presented for consideration and decision of PCPC.

18. Since its first meeting on 6 October 1984 until September 2011, PCPC had considered 420 concept papers on various issues for purposes of innovating and improving the public service delivery. The ideas for innovation were generated by complaints raised by the public. The following are some examples of issues of public complaints which have become a source of innovation:

### **(1) Proposal to Improve Payment of Medical Claims to Pensioners**

#### **Complaint:**

Government retirees who purchased medicines from pharmacies experienced delay in getting their claims for reimbursement from the Public Service Department (PSD).

#### **Innovation:**

Under the new partnership arrangement to be introduced by the Government in 2012, retirees can continue to get their supply of certified medication unavailable at Government hospitals from any network providers chosen and appointed by the Government. Retirees will no longer be required to pay for the medication purchased from the pharmacy upfront and later claim for reimbursement from

the Government. Instead, the pharmacy concerned will claim directly from the Government based on the purchases made by the retirees. Under the new arrangement, the process of payment of medicines has been simplified involving only the pharmacy and the Government.

**(2) Proposal to Improve the Process that Suspends Individuals from Travelling Abroad Due to Debt or Security Reasons**

**Complaint:**

The complainants were not allowed to make overseas trips as their names had been blacklisted by the Government for various reasons such as criminal cases, bankruptcy, failures to pay income taxes or study loans provided by the National Higher Education Fund Corporation, etc. However, the complainants have proved to have been cleared off the blacklist.

**Innovation:**

The process and procedures for blacklisting of individuals has been streamlined and improved. This is to assist the Immigration Department to accelerate the process of listing and clearing the blacklisted names. Information concerning names that have been delisted from the blacklist is made available online to the Immigration Offices at exit points. The State Immigration Directors at all exit points are empowered to access the system for current status of blacklisted cases.

**(3) Proposal to Improve the Procedure and Scale of Payment for Subpoenaed Witnesses**

**Complaint:**

Subpoenaed witnesses faced difficulties and delays while claiming for expenses and compensation from enforcement agencies such as the Royal Malaysian Police, Royal Custom Department or Anti-Corruption Commission.

**Innovation:**

The new Criminal Procedure (Rate of Payment to Witnesses) Rules 2011 was introduced to replace the old Criminal Procedure (Witnesses Fees) Rules 1954. With the replacement, the relevant authority is required to make payment of expenses and compensation to the subpoenaed witnesses or their parents, relatives of guardians. The rates of compensation were also revised from RM10 to RM45 per day to RM50 per day. The witnesses are also entitled to claim for reimbursement on travelling, hotel accommodation and lodging expenses.

**(4) Proposal to Improve the Process of Resolving the Problem of Courses Without Accreditation Certification**

**Complaint:**

Complainants felt cheated because the fields of study in private institutions were not accredited by the Malaysian Qualification Agency (MQA). There were also cases of private colleges had deceived the public on their accreditation status by making misleading advertisement on the programmes or courses offered.

**Innovation:**

All institutions of higher learning are required to obtain accreditation by MQA for all their courses and study programmes offered which previously was optional. In addition, all Private Higher Learning Institutions (IPTS) are required to show the details of the MQA accreditation of courses or programmes offered in their advertisements to avoid confusion amongst prospective students.

**(5) Proposal on Addressing Problems of Swiftlet Farming**

**Complaint:**

Some members of the public have experienced noise problems generated by swiftlets farms, especially those living in residential areas close to the swiftlet farms locations. In addition they also have to endure the foul smells of the swiftlets droppings. In a rush for good profits generated by the industry, swiftlet farmers have resorted to renovating and turning unused shoplots and buildings into swiftlets nests without following the guidelines and approval of the authorities.

**Innovation:**

The Ministry of Agriculture and Agro-Based Industry has been identified as lead agency in developing a guidelines for the swiftlet farming industry. In ensuring that swiftlets farmings are not posing hazards to the residential areas, the States Governments are required to allocate and designate certain areas or zones in rural areas suitable for swiftlet farming activities. The properly managed swiftlets farming activities can create employment opportunities for the local community and have the potential for tourism in the area besides improving the inflow of foreign exchange through export of “Bird Nest”.

**(6) Proposal to Improve Services of State Education Departments**

**Complaint:**

Parents and teachers are not satisfied with the services of the State Education Department on matters related to delay in transfer process for school children, salary adjustment and reimbursement for travelling claims.

**Innovation:**

Specialised training on administration, financial management and audit inspection is given to administrative staff to improve the management of the State Education Department and schools. It also involves development of Standard Operating Procedures for each financial and administrative process in the State Education Department.

**(7) Proposal on Supervision Responsibility of Sewerage Service Channels in Public Reserved Areas**

**Complaint:**

Complainants facing faulty problem on their private sewerage pipelines channels wanted the authorities to bear the cost of repair because the private sewerage pipelines channels were located outside their area.



**Innovation:**

The National Water Services Commission (SPAN) and the Department of Sewerage Services (SRC) have agreed to use emergency funds to repair damages to the Private Sewerage Pipelines in public reserve areas. SPAN will determine Private Sewerage Pipelines across reserve lands, roads, drainages and others outside the reserve property as Public Sewerage Pipelines. Any damage to Private Sewerage Pipelines will be the responsibility of SPAN.

**(8) Proposal to Improve Process of Issuing Medical Reports in Hospitals**

**Complaint:**

Patients are unhappy with the delay to get medical reports by hospitals within the period of 8 weeks set by the Ministry of Health Malaysia.

**Innovation:**

The Ministry of Health has introduced a Guideline for Preparing Medical Reports (Director-General of Health - Circular No. 16/2010) and a Guideline for Managing Patients' Medical Records (Director-General of Health - Circular No 17/2010) in an effort to further improving the process of preparing reports and managing medical records.

**(9) Proposal on Implementing Guidelines for Gated and Guarded Community Not Covered under Act 318**

**Complaint:**

Concerned with the rising crimes such as frequent house breaking and robbery, some residents associations in certain housing areas have implemented their own gated and guarded community arrangements. These ad-hoc security arrangements have not complied with the State Governments Guidelines on Gated & Guarded Community Scheme (GACOS). For instance, some gated and guarded communities have been implemented without the consent of at least 85% of the residents in the respective housing schemes. In certain residential areas, the existence of ad hoc security arrangements have created various unintended problems to the local communities and surrounding residents.

**Innovation:**

With the continued need for gated and guarded neighborhood schemes, the Government has approved the standard Guidelines on Gated Community and Guarded Neighbourhood. The guidelines are intended to guide the local authorities on the management and monitoring of the development of the security scheme. Previously, the guidelines on gated community were provided separately by each state and local authorities.

**(10) Proposal to Improve Loan Management by the National Higher Education Fund Corporation (NHEFC)**

**Complaint:**

New students at the private institutions / universities were unable to enter NHEFC website to fill out the online loan application due to heavy web traffic. In addition, NHEFC is slow in adjusting student account refund following the reduction of service charges from 3% to 1%.

**Innovation:**

NHEFC has been providing diverse facilities and payment channels including online payment methods, Bank Draft and salary deduction by the Inland Revenue Board for loan repayment. NHEFC has also set up One Stop Centre at KL Central and NHEFC Info Centre in Sabah and Sarawak for various transactions including queries and complaints, consultation, loan settlement and Internet services for easy access to NHEFC online applications. NHEFC also has established Call Centre which operates from 8.00 am to 10.00 pm on weekdays to assist the public on general queries.

**(11) Proposal for Implementing Guidelines for the Establishment of Kindergartens and Nurseries in Housing Areas**

**Complaint:**

There are a number of kindergartens and nurseries in a particular housing which have affected the owners of adjacent or neighbouring houses. There is no standard guidelines to establish a kindergarten and nursery in residential areas.

**Innovation:**

The Ministry of Housing and Local Government has established uniformed guidelines to all local authorities on the number of nurseries and kindergartens that may be established in a housing estate. The guidelines require that parties seeking approval to open nurseries and kindergartens have to seek prior views or feedbacks from the residents in the housing areas concerned before the nurseries and kindergartens can be approved by the local authorities.

**(12) Proposal to Improve the Reading System for Electricity Bills**

**Complaint:**

Consumers were unhappy with the electric bills that were not issued on a monthly basis. This had resulted in them not being able to enjoy the RM20 of government subsidy. The bills which are not issued monthly will result in consumers being charged at a higher block rate for higher electricity consumption.

**Innovation:**

The National Electric Company (TNB) has ensured that the electricity bills will be issued on a regular monthly basis. TNB also has outsourced the job of meter reading to ex-TNB staff to ensure the consumers get their monthly electricity bills. This effort helped reduce the electricity bills and ensure the consumers benefit the RM20 government subsidy.

### **(13) Proposal to Improve Services of the Light Rail Transit (LRT)**

#### **Complaint:**

The public is dissatisfied with the quality of the Light Rail Transit (LRT) services. The complaints include services disruption, delays, ticket reader and train air-conditioning system not functioning and failure of LRT staff to furnish accurate information to the passengers.

#### **Innovation:**

PRASARANA, the company that manages the LRT has established the position of Station Master to strengthen the management of each LRT station. Improvement has been made on customer service and reliability of the system and facilities available at the station. The Station Master is assisted by technicians trained to immediately overcome technical failures especially during peak hours. Complaints management has also been improved by PRASARANA. Various channels such as website, Facebook hotline and e-mail are made available to disseminate information and receive complaints/suggestions from customers.

## **VI. CONCLUSION AND THE WAY FORWARD**

19. Viewed from a positive perspective, complaints can assist Government agencies improve the quality of their service delivery. This can be done through various ways which could lead towards overall systemic improvement of public service delivery. Elimination of obsolete laws, rules or procedures and creating more people-friendly processes are amongst examples of systemic improvements. They can have a positive impact in terms of boosting the image and credibility of the Government that is people-oriented and performance-based.

20. PCB will continue to serve as a key and effective focal point between the Government and the people in managing complaints about the public sector. Apart from strengthening the complaints management mechanisms, PCB will focus on mindset shifting efforts in building a customer-friendly public sector that strives to continuously deliver service improvements beyond the ordinary, create efficiency gains, ensure value for money and enhance customer satisfaction.

 **SYSTEMIC IMPROVEMENT IN PUBLIC DELIVERY SYSTEM:  
COMPLAINTS AS A SOURCE OF INNOVATION** 

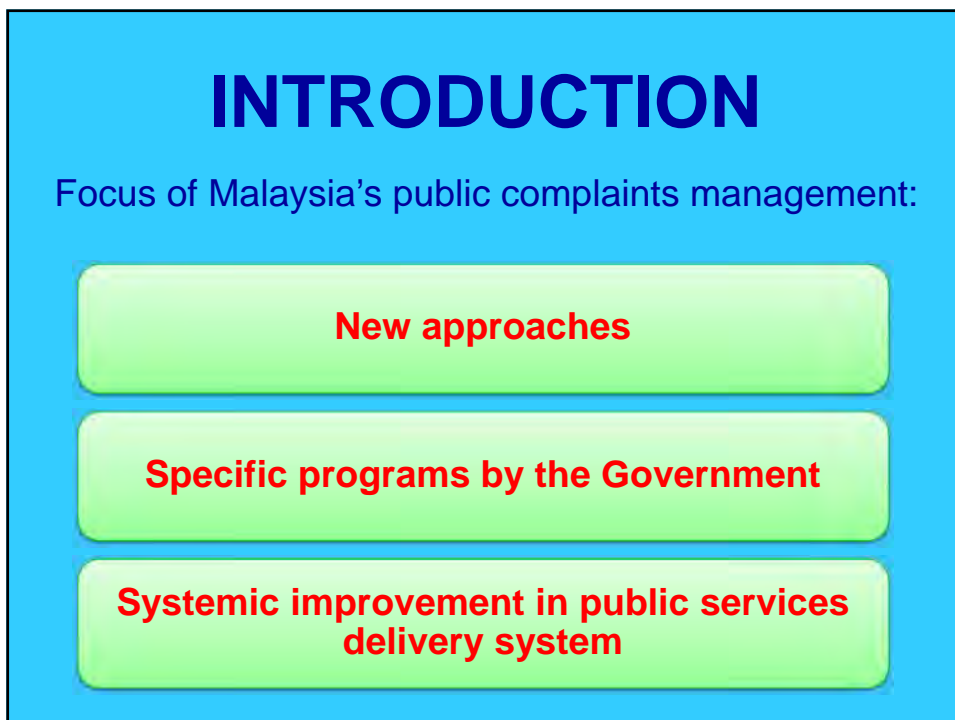
Dato' Dr. Tam Weng Wah  
Director General  
Public Complaints Bureau  
Prime Minister's Department  
MALAYSIA



The image shows a person in a spacesuit rolling a large roll of material on a road. The road has the words 'SYSTEMIC IMPROVEMENT' written on it in yellow. The background is a cloudy sky.

## OBJECTIVE

Share Malaysia's experience in systemically improving public service delivery systems through public complaints management



## T-JUNCTION : WHICH WAY TO TURN?

### CHANGE OF APPROACH



- ❖ Government Transformation Programme (GTP)
- ❖ Transforming public service delivery
- ❖ Complaints as valuable source of innovation and creativity

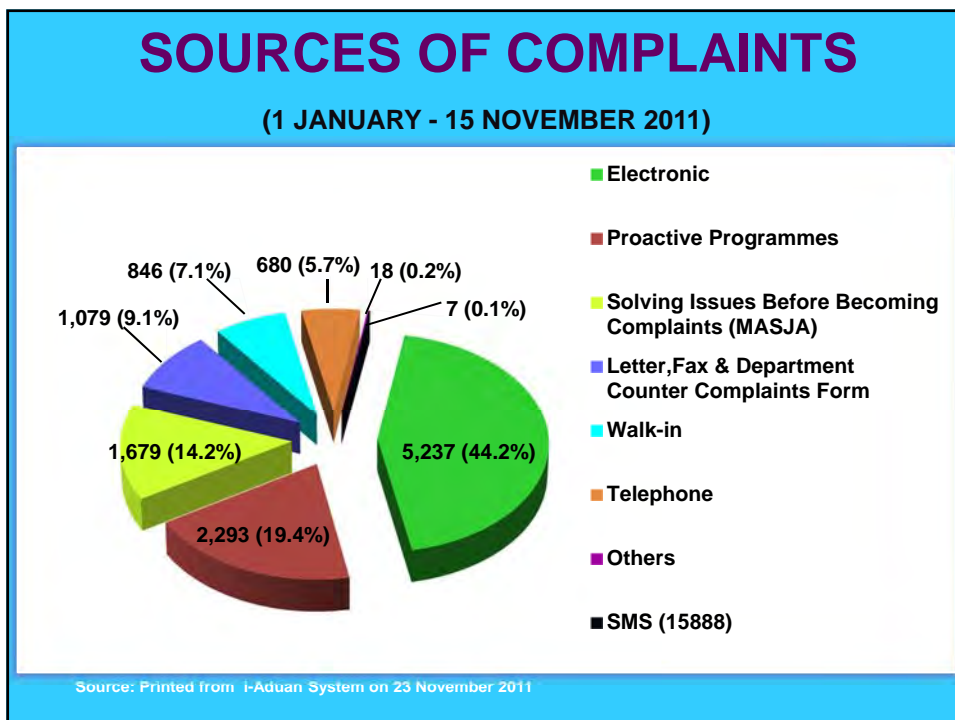
## MANAGING COMPLAINTS: REACTIVE vs PROACTIVE

- **Conventional wisdom:**
  - reacting to complaints/issues



**➤ New thinking:**

- Complaints as public feedback
- New channels for public complaints
- Proactive outreach programmes identify complaints/issues
- PCB personnel as complainants
- Constant monitoring of media
- Public access to complaints feedback

## ..... New Thinking

### INTEGRATED PUBLIC COMPLAINTS MANAGEMENT SYSTEM (i-ADUAN)

➡ 44.2% of complaints through web portal

➡ i-Aduan increases productivity

➡ i-Aduan allows agencies to take immediate action on complaints

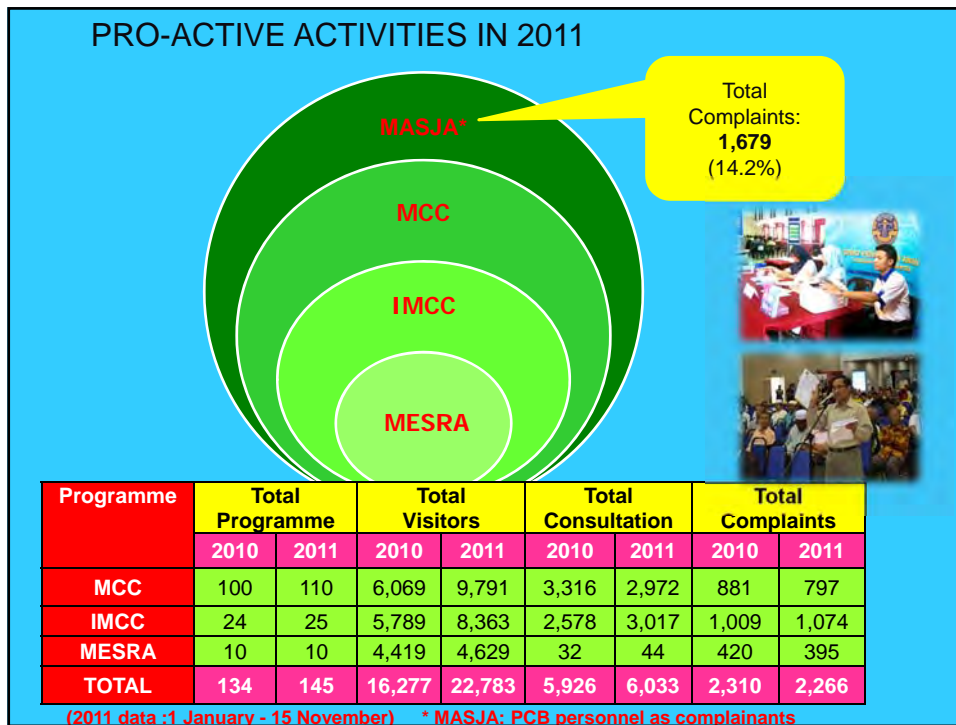
## PRO-ACTIVE PROGRAMMES

Mobile Complaints Counter ([MCC](#))

Integrated Mobile Complaints Counter ([IMCC](#))

MESRA Programme ([MESRA](#))





## ..... New Thinking

### CONSTANT MONITORING OF THE MEDIA

Agencies monitor and address issues raised in the media daily

PCB and the Department of Information monitor issues/complaints in the media daily

Agencies immediately respond and upload feedback on their websites and PCB website

# ..... New Thinking

## BERNAMA ONLINE

- Smart online partnership portal programme
- Agencies to upload feedback on issues in the media or Letters to the Editor
- Public can access to feedback over a longer period

# BERNAMA ONLINE

The screenshot shows the BERNAMA ONLINE website interface. At the top, there are navigation tabs for various sectors: Banking & Finance, Auto, Aviation, Maritime, Education, and Property. Below this is the BERNAMA logo and the text 'Malaysian National News Agency BERNAMA.COM'. A navigation menu includes MAIN, GENERAL, POLITICS, BUSINESS, SPORTS, FEATURES, and WORLD. The main content area is titled 'Maklumbalas Agensi Kerajaan' (Response From Government Agencies). It features a list of feedback items, including a prominent one about 'FEEDBACK TO THE NEW STRAITS TIMES ON "LET'S BE MORE UNDERSTANDING" FRIDAY, PAGE 19, DATED 22/7/2011 (LETTERS) - MOHA'. Other items include 'Netbook pemberian kerajaan disalah guna pelajar - MOE', 'Pertikai standard perkhidmatan Pos Laju - KPKK', and 'Lambang pos ada pejabat pos tiada - KPKK'. The page also includes a 'SUGGEST VIA EMAIL' button and a list of recent news items.

## COMPLAINTS RESOLUTION PERFORMANCE (2005 – 2011)

YEAR	2005	2006	2007	2008	2009	2010	2011*
<b>Total Received</b>	2,707	3,397	5,347	8,066	12,683	14,700	11,839
<b>Total Resolved</b>	83.0%	86.4%	89.1%	90.6%	97.6%	98.7%	93.7%

\* Until 15 November 2011

### KEY PERFORMANCE INDICATORS

(1 January – 15 November 2011)

KPI	TARGET FOR 2011	ACHIEVEMENT
Resolution Performance	93%	93.7%
Resolution Rate Within 15-Working Days	50%	59.8%
Customer Satisfaction Index (Excellent and Good) *	90%	84%

\* Based on 1,165 forms

(2010)

KPI	TARGET FOR 2010	ACHIEVEMENT
Resolution Performance	92%	98.7%
Resolution Rate Within 15-Working Days	35%	49.3%
Customer Satisfaction Index (Excellent and Good) *	86%	89.2%

\* Based on 1,480 forms

## **INNOVATION JUNCTION, TURN IN.....**

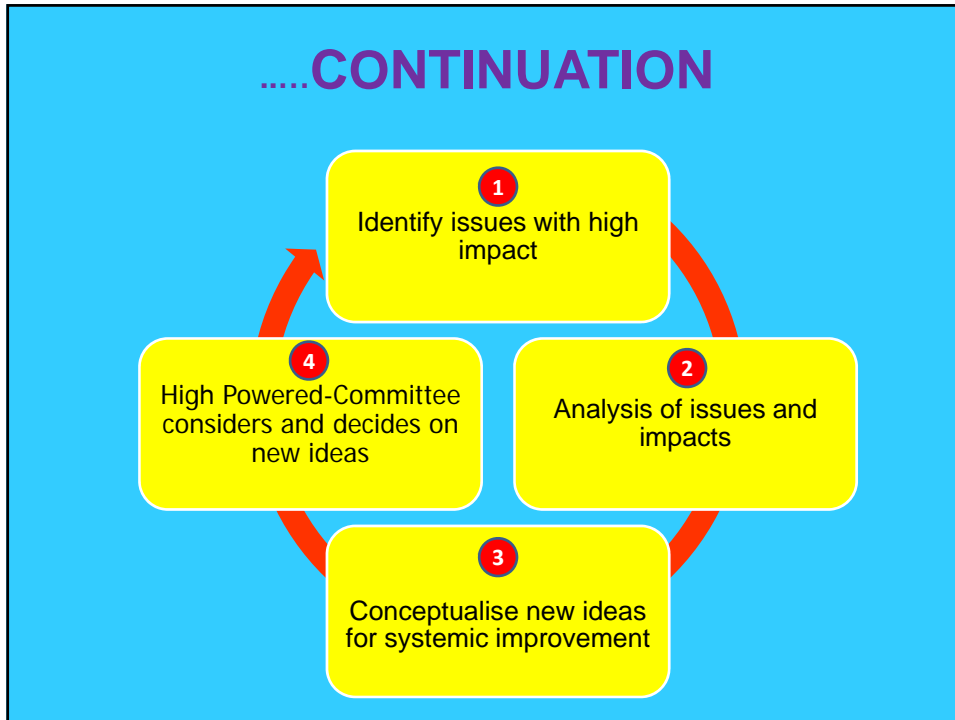
### **COMPLAINTS AS SOURCE OF INNOVATION**



## **COMPLAINTS AS A SOURCE OF INNOVATION/CREATION**

- PCB as innovator and creator of new ideas
- PCB as catalyst of change
- PCB as regulator





### .....CONTINUATION

**6 October 1984 - 24 November 2011**

✓ 426 concept papers to improve public service delivery

**.....CONTINUATION**

**Issues of public complaints which have become a source of innovation**

<b>1</b>	• Proposal to Improve Payment of Medical Claims to Pensioners
<b>2</b>	• Proposal to Improve the Process that Suspends Individuals from Travelling Abroad Due to Debt or Security Reasons
<b>3</b>	• Proposal to Improve the Procedure and Scale of Payment for Subpoenaed Witnesses
<b>4</b>	• Proposal to Improve the Process of Resolving the Problem of Courses Without Accreditation Certification
<b>5</b>	• Proposal on Addressing Problems of Swiftlet Farming.
<b>6</b>	• Proposal to Improve Services of State Education Departments
<b>7</b>	• Proposal on Supervision Responsibility of Sewerage Service Channels in Public Reserved Areas

**.....CONTINUATION**

**Issues of public complaints which have become a source of innovation**

<b>8</b>	• Proposal to Improve Process of Issuing Medical Reports in Hospitals
<b>9</b>	• Proposal on Implementing Guidelines for Gated and Guarded Community Not Covered under Act 318
<b>10</b>	• Proposal to Improve Loan Management by the National Higher Education Fund Corporation (NHEFC)
<b>11</b>	• Proposal for Implementing Guidelines for the Establishment of Kindergartens and Nurseries in Housing Areas
<b>12</b>	• Proposal to Improve the Reading System for Electricity Bills
<b>13</b>	• Proposal to Improve Services of the Light Rail Transit (LRT)

## **CONCLUSION AND WAY FORWARD**

**PCB will continue to serve as key focal point in managing public complaints to ensure the public sector continuously delivers service improvement to further enhance the national competitiveness and overall well-being of the people**

***TERIMA KASIH***

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**THANK YOU**

## Mobile Complaints Counter (MCC)



Miri, Sarawak (6 July 2011)



Chendering, K. Terengganu (12 July 2011)



Tesco Cheng, Melaka (30 October 2011)



SMK Nusajaya, Johor (10 November 2011)

## Integrated Mobile Complaints Counter (IMCC)



Hulu Langat, Selangor (8 October 2011)



Sabak Bernam, Selangor (9 November 2011)



Kangar, Perlis (10 November 2011)



Kuala Kangsar, Perak (17 November 2011)



## MESRA Programme (MESRA)



Bandar Melaka, Melaka (28 July 2011)

## MESRA Programme (MESRA)



Sipitang, Sabah (3 November 2011)

## Identifying People's Concerns from Daily Flow of Complaints and Contribute to Systemic Improvements



Mr. Nguyen Duc Hanh  
Deputy Inspector General  
Government Inspectorate  
VIETNAM

Complaints and denunciations are citizens' basic rights prescribed in Vietnam Constitution. In order to facilitate its citizens to exercise the rights, and create a legal framework for handling complaints and denunciations in accordance with laws, Vietnamese State issued Law on Complaints and denunciations 1998 (on the basis of Ordinance on Complaints and denunciations 1990) which were revised in 2004 and 2005.

Through consolidating practical implementation of Law on Complaints and denunciations in recent years, in the context of integration, at second session of the 13th National Assembly in 2011, Law on Complaints and Law on Denunciations were passed by. Vietnamese State always respects its citizens' complaint and denunciation' right and regards the handling of complaints and denunciations as important mandate with a view to protecting benefits of the State and lawful benefits of the people; contributing to prevent law violations and ensure social order, political and defense security as well as economic development. Law on Complaints and Law on Denunciations clearly stipulated rights and obligations of complainers and denouncers as well as procedures and responsibilities of state agencies in handling complaints and denunciations.

In order to enhance responsibility and ensure good progresses in handling citizens' complaints and denunciations, it can be seen from instruments of the Communist Party of Vietnam, Resolutions and directions of different levels of party committees, that different levels and sectors need to strengthen and pay more attention to handling citizens' complaints and denunciations.

Implementing the Communist Party's policies and State laws, authorities from central to grassroots' level received citizens, received, then classified and dealt with complaint and denunciation letters and cases within their scope of competence.

## **I . COMPLAINT AND DENUNCIATION SITUATION AND RESULTS OF HANDLING COMPLAINTS AND DENUNCIATIONS IN 2011**

In 2011, State administrative agencies received 356,487 citizens complaining and denouncing, decrease by 6.2% in comparison with 2010 and received 147,572 complaint and denunciation letters. There arised 120,197 complaint and denunciation cases in this year.

- Regarding complaint: There were 123,905 complaint letters and 104,133 cases, decrease by 8.07%. Complaints regarding land make up 79.04% (land recovery, site clearance compensation, project implementation, land dispute...); while complaints regarding housing make up 3.4% (claiming back rent/lent houses..); complaints regarding cultural and social issues represent 3.1%; complaints regarding judicial issues cover 10.16%; and other complaints make up 4.3%.

- Regarding denunciation: There were 23,667 denunciation letters and 16,064 cases. Denunciations regarding administrative affairs and judicial affairs represent 89.9% and 2.7% respectively.

- The Government of Vietnam considers complaint and denunciation settlement an important responsibility, and focused on directing different sectors and levels to reform citizen reception work and timely handle citizens' complaint letters in accordance with laws. At monthly meetings of the Government, the Inspector General report about factual situation and results of citizen reception, and complaint and denunciation settlement nationwide so that the Government can timely manage and direct, especially regarding new arising matters. The Government Inspectorate issued plans and documents guiding, supervising and speeding up citizen reception, letter handling and complaint and denunciation settlement. It is remarkable that the Prime Minister and the GI required state agencies, especially heads of these agencies to improve their responsibilities; timely dealing with new arising cases in accordance with laws right at grassroots' level with a view to ensuring benefits of the State and lawful interests of citizens. According to annual statistics, Heads of administrative agencies of Vietnam resolved 85% arising complaint and denunciation cases.

In 2011, GI received and dealt with 19.526 complaint and denunciation letters, out of which 6,462 are eligible to be handled, covering 33.1%; 12,526 are identical; and the rest are those without a clear issues, adress or anonymous, representing 2.75%.

Ministries and sectors at Central level received and dealt with 24,786 complaint and denunciation letters (decrease by 17.64%), out of which 10,866 cases (including 6,726 complaint letters and 4,140 denunciation letters) fall under their competence.

Localities received and dealt with 117,254 complaint and denunciation letters (decreasing by 1%) with 66,684 cases fall under their competence (including 60,879 complaint letters and 5,805 denunciation letters).

Ministries and localities settled 66,173 out of 77,666 cases under their competence, representing 85.21% which includes 57,883 out of 67,721 complaint letters and 8,341 out of 9,945 denunciation letters.

From the progresses made in settling 42,581 complaint cases, it can be seen that 8,487 letters reporting the truth (19.94%); 24,348 (covering 57.18%); and 9,746 letter containing both true and untrue information (22.88%).

Analysing the progresses made in settling 7,730 denunciation cases, it can be seen that 943 letters reporting the truth (12.2%); 4,646 (covering 60.1%); and 2,142 letter containing both true and untrue information (27.7%).

Through the complaint and denunciation handling, it was recommended to recover 24,587 millions dongs; 84.94 ha of land for the State; return 141,027 millions dongs and 76.8 ha of land for citizens; vindicate for 208 people; give back interest for 2,262 people, recommend to make administrative punishment with 503 people, transfer 116 cases with 131 people to investigation bodies for consider criminal responsibility.

Thanks to policies, legal framework and direct direction of Prime Minister, there have gained many considerable achievement in receiving citizens, handling letters and complaints and denunciation of people. The situation of complaints and denunciations has reduced, interests of the State are ensured, legal interests of citizens are protected. Social order and political security are stabilized.

## **II. Causes of the situation of complaints and denunciations- Solutions**

1. Compared to other countries in the world and region, there are a lot of complaints and denunciations in Vietnam. Analysing this situation, we find some main causes as follows:

- Vietnam always respects the rights to complain and denounce of citizens, from its legal framework to the implementation. Beside issuing legal regulations of the state, Vietnam also established citizen-receiving units, specialized agencies at local and central levels to receive complaint and denunciation letters from citizens. This helps people have convenient conditions to complain and denounce.

- There arise most complaints and denunciations in the land field. This comes from the fact that Vietnam passed a period of war, the management of dossiers, documents relating to land was not paid much attention leading the lack of documents and problems of land from the war have not been completely solved.

- In the process of socio-economic development, the Government of Vietnam plans to recover land from citizens (which was transferred or being used by the citizens) to carry out building projects of urban areas, industrial zones, and transportation projects. In the context of an economy having many difficulties, the state haven't had enough budget for the compensation and timely support for the people having recovered land. In some cases, in the implementation, authorized agencies haven't done well leading to the complaints and denunciations.

- Mechanism to handle complaints and denunciations in Vietnam remains certain limitations. In Vietnam, heads of administrative agencies (mainly Chairmans of People committees at all levels) are responsible for handling complaints and denunciations. In some cases, heads of state management agencies issue administrative decisions, administrative behaviours so changing administrative decisions and behaviours meets certain obstacles. On the other hand, beside sending complaints and denunciations to administrative agencies, citizens also have rights to send to judicial agencies for handling administrative cases. However, number of cases sent to administrative courses for consideration and solving are limited.

2. In order to better handle complaints and denunciations from citizens, it is necessary to focus on some key solutions as follows:

- Continue finalizing legal documents on complaints and denunciations to ensure the comprehensiveness and limit difficulties in handling complaints and thanks to this, people can better undertake their rights to complain.

- Improve the role of state agencies in receiving citizens, handling letters, solving complaints and denunciations, including: roles of heads of administrative agencies in assign, instruct, give directions, make decisions to handle complaints and denunciations, receive and dialogue with citizens; role of specialized agencies (inspection agencies at all levels) in examining, considering to suggest ways to handle and implement decisions; supervising role of the National Assembly and citizens.

- Strengthen the mediation of conflicts, limit arising complaints and denunciations;

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- Finalize mechanism, policies in all fields of the social life, especially land, construction investment, public finance management, investment granting, education, health,.... To ensure legitimate rights of citizens, attaching to the administrative procedure reform.

- Strengthen state management, adjust operations of state administrative agencies in implementing anti-corruption tasks to reduce violations or wrong-doings in the management.

- Strengthen the dissemination and propagandization of legal policies to increase the awareness of obeying laws in general and laws on complaints and denunciation in particular, to be imbued with a statement of President Ho Chi Minh: <Citizens only complain and denounce when they have grievances, or when they don't understand policies of the Party and Government>.

## Identifying People's Concerns from Daily Flow of Complaints and Contribute to Systemic Improvements



Prof. Elmira Suleymanova  
Commissioner for Human Rights  
AZERBAIJAN

Distinguished chairman!

Ladies and gentlemen!

I cordially greet the participants in the 12th Asian Ombudsman Association (AOA) Conference, I would like to express my gratitude to conference organizers and wish success.

I would be pleased to begin my speech with short historical overview.

Azerbaijan is one of the new independent countries that regained sovereignty second time in its history in 1991, after the collapse of the Soviet Union.

Great changes have been taken place in Azerbaijan over the last years of the transition period that are happening faster in Azerbaijan in comparison with other former Soviet republics despite the fact of 20 years Armenian aggression that was resulted in occupation of 20% of the territory damaged the economy of Azerbaijan. This occupation is still being continued and as a result of it over 1 million people became refugees or internally displaced persons.

Despite of the UN resolutions that demand the unconditional withdrawal Armenian military forces from those occupied lands, Armenia has not taken any steps in this regards and continues its occupation and violation of human rights in these territories.

Though all of these difficulties Azerbaijan is taking great steps in developing the democratic principles and values. During the short period of time significant reforms have been realized in the fields of economic and social development, improving legislation, instutualization for better promotion and protection of Human Rights and Liberties.

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After the collapse of the Soviet Union to which we were a party over 70 years rapid development started in Azerbaijan Republic. During 20 years of the independence as a result of the implementation comprehensive socio-economic and legal reforms aimed at improvement of the population's welfare, significant progress was achieved also in the sphere of the protection of human rights and freedoms of all groups of population. This achievement led to the decrease of the poverty rate from 46% to 9,1% during short period of time.

It should be noted that complying with the last UN Human Development Report, in comparison with 2005 the Republic of Azerbaijan has advanced by 34 steps and shifted from the rank 101 to 67.

According to the average annual rate of the human development index, during 10 years Azerbaijan is a leading country among post-soviet states. The Republic moved from the group of "medium human development" to the category of "high human development" countries.

Great changes including legal reforms have been conducted in Azerbaijan in the field of human rights provision. Despite that we have risk groups among the population, including refugees, IDPs, persons with disabilities, the elderly people, people in emergencies such as natural and manmade disasters, war, poor families, detainee persons, victims of trafficking and violence, including domestic violence, drug abused and people infected with HIV/AIDS.

The establishment of the Ombudsman Institute in the country has been most significant reform. Next year Azerbaijan Ombudsman Institute will celebrate its 10th Anniversary. The Institute of the Commissioner for Human Rights of the Republic of Azerbaijan was established in accordance with the Paris Principles. Due to compliance with the Paris Principles, the Institute of the Commissioner was accredited with A status by the International Coordinating Committee of National Institutions for Promotion and Protection of Human Rights (ICC).

By ensuring the protection of human rights without restricting or substituting the responsibilities of other state bodies, supplementing existing remedies of human rights protection, and providing independent, unbiased non-discriminative non-judicial protection of human rights guiding with Rule of Law for more than nine years, the Commissioner also built her activities on the basis of principles of independence, publicity, transparency, legality, justice and impartiality, widely used the mediation capacities, and could reach the restoration of human rights in the majority of cases, consequently contributed to protection of the rights of each applicant.

According to the Constitutional Law the Ombudsman each year submits the Annual Report on Protections and Promotions of Human Rights in the country to and speaks with that report before the Milli Mejlis (Parliament) of the Republic of Azerbaijan. The aim of the report is to evaluate the



situation of ensuring human and civil rights and freedoms, to analyze the situation of important problems on human rights, as well as to provide the information on activities and events conducted by the Commissioner for the restoration of violated human rights, protection of human rights and prevention of their violation, as well as learning the situation of ensuring human and civil rights and freedoms.

The Ombudsman's mandate was broadened in respect of National Preventive Mechanism (NPM) and Access to Information. In compliance with the Constitutional Law adopted and later on amended by the voting of the Milli Majlis (Parliament) and signed by the President of the Republic of Azerbaijan on 8 August 2011, the provision regarding the prevention of human rights violations was added to the Article 1.1 empowering the Commissioner to control whether governmental or municipal bodies and officials possessing information observe the Law of the Republic of Azerbaijan "On Access to Information" was added to the Constitutional Law of the Republic of Azerbaijan "On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan" (hereinafter Constitutional Law)..This led to the increase of effectiveness of the work on human rights protection as well as to provision of independence to the Commissioner what enhanced her mandate and responsibilities.

National Action Plan (NAP) on Protection of Human Rights was approved by the Decree of the President of the Republic of Azerbaijan from December 28, 2006 considering the proposal of the Commissioner. The plan that has the significance from the perspective of human rights development and provision envisages the improvement of normative-legal base, cooperation with international human rights organizations strengthening protection of the rights of different groups of population, improvement of the work of state bodies from the perspective of human rights provision, education, awareness-raising events, scientific-analytical research cooperation actions. Commissioner organized Public Hearings in 58 cities and rayons of the country with the aim to monitor the implementation and promotion of measures provided in the NAP.

The public hearings were attended by the representatives of local branches of central government structures, local executive bodies, courts, prosecutors' offices, law enforcement agencies, municipalities, non-governmental organizations, local communities, district electoral commissions and mass media. At the public hearings to monitor the situation of implementation of the NAP, it was discussed the follow up process of mechanism on "Universal Periodic Review" and its implementation in the Republic of Azerbaijan.

In the official report on UPR it was particularly mentioned that Ombudsman had also taken active part in its preparation. It should be mentioned that eleven points of the document somehow deals with the activity of the Commissioner. The establishment of the Ombudsman Institute was welcomed; in

general the activity of the Commissioner was highly appreciated in the Review on the Report of the Republic of Azerbaijan on UPR worked out by the UN High Commissioner for Human Rights. The Review enshrines proposals of Ombudsman on adhering to international documents, provision of gender equality, domestic violence, early marriages, combat against human trafficking, protection of the rights of inmates, refugees and IDPs and other strata of population, adoption of the National Action Plan (NAP) on Human Rights Protection, the activity of Ombudsman in its efficient implementation, by organizing independent monitoring, regular public hearings all over the country and other issues.

In the initiative of the Commissioner the staff members of the Office were presented and took active part in the activity of the Working Group “On preparation and submission of the report of the Republic of Azerbaijan in the frames of the Universal Periodic Review of the UN Human Rights Council” established according to the Decree of the President of the Republic of Azerbaijan from July 11, 2008.

According to the Resolution of the UN Human Rights Council No. 5/1 dated June 18, 2007 relevant report was compiled on UPR mechanism and it was sent to the UN High Commissioner for Human Rights. Best practices in provision of human rights in recent years, as well as current shortcomings, difficulties were reflected in that report in accordance with relevant demands. Besides, a reference on the activity of the Ombudsman was submitted to the Ministry of Foreign Affairs to be included in the official report.

The Commissioner regularly met with the population, organized receptions, provided them with explanations and recommendations, interfered into the solution of their problems, as well as attracted local executive and law enforcement bodies to the restoration of violated human rights.

Commissioner always pays great attention to the protection of the rights of different groups of population such as IDPs’ and refugees, women, children, elderly people and etc.

The protection of refugee and IDPs’ rights became one of the main directions of the Commissioners’ work. The Commissioner received the refugees and IDPs appealing to her at various times and helped them to solve their problems.

The issues of the provision and protection of rights of disabled people and children with disabilities were always on the spotlight. Numerous activities were taken for integrating these persons into the society.

The examinations showed that ramps for ensuring secure and free movement of people with disabilities on the wheel were not installed along a number of roads and in some buildings, or existing ones do not comply with contemporary standards.

The recommendations of the Commissioner on provision of buses and cars acceptable for disabled people were taken into account by the Ministry of Transport and modern vehicles having special ramps for disabled people and children on wheelchairs were brought to Azerbaijan.

In conformity with the State Program on Strengthening Social Protection of Older Persons, during 2006 – 2008 it was planned to provide old people of country cities and regions with gerontological services, professional psychological and medical aid as well as conduct appropriate courses on gerontology. Nevertheless, these activities have not been fully implemented yet.

Moreover, aimed at the protection of the health of old people the State Program covers organization of radio and television programs on psychology, sport and health as well as the implementation of appropriate activities on ensuring their health. These important issues should be taken into consideration and it was proposed the adoption of new state program on ageing.

It was recommended to take necessary measures for providing low-income categories of people with addressed social aid, which is a monetary support to poor families by state, to reexamine the legislation rules and list of documents for defining the assistance, train social workers and raise executors' capacity.

After examining homes for old people, the Commissioner advised to carry out training courses for the staff of these facilities, to create conditions on organization of trips for exchange of experience and conduction of different meetings. Such events will stimulate them that will have positive impact on the quality of work and make them feel that they are not isolated.

The continuation of examining the situation of the population groups in need of social provisions and of amending the law in this connection is expedient. In recent years the pensions increased 10 times in the country and 85 percent of pensioners have climbed out of poverty. There are 450 000 pensioners in the country.

There are also specialized advisors to the Commissioner who prepare specialized reports to submit to the Commissioner. It allows the Commissioner to investigate and study in depth the different fields of human rights and produce effective solutions to the challenges faced.

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The first specialized report of the Commissioner on child rights was prepared, translated into English and afterwards published and sent to the UN Committee on the Rights of the Child, UNICEF, ombudsmen of foreign countries and international organizations what served the dissemination of our positive practice and exchange of experience.

In her reports the Commissioner opposed the announcement of kindergartens' privatization and notified its harm on pre-school education.

It is a necessary to conduct examination as well the new surveys among children and parents in order to learn actual effect of curriculums applied in the sphere of education.

At the same time, the application of curriculums should not reduce responsibilities of teachers and unreasonably overload students. The training of teachers should be systematic and sustainable as well as should not be unified.

The posters entitled "Send immediately the information on violation of child rights to the Commissioner! 916 – is the hotline functioning for 24 hours", "Protect children from corporal punishment" and placards on the combating HIV/AIDS were multiplied and presented to the facilities dealing with children.

In order to solve such problems as early marriage, domestic violence, provision of addressed social aid supplying young families with apartments, problems regarding reproductive health, family planning, psychological aid, alimonies and others the Commissioner submitted proposals to appropriate state bodies.

These proposals were covering the following areas: adoption of the law and the plan on combating human trafficking; establishment of crisis centers for women and children being subjected to violence, shelters for juveniles released from penitentiary facilities as well as of centers of support to children deprived of parental care; adoption of legislative and normative acts for regulating legal state of people deprived of their place of residence or released from prisons addition of provisions on the fight against human trafficking to the Criminal Code; and preparation of legislative acts on protection of women's rights, provision of gender equality and prevention of domestic violence.

The Commissioner recommended to combat violence against women on various stages, including preventive measures, carrying out the work on legal enlightenment, organization of meetings and explanation, revealing the cases of violence, obtaining accurate statistic data, creation of data base, restoration of violated rights, establishment of special shelters, provision of financial, moral and

psychological support to women suffered from domestic violence as well as implementation of these activities in parallel to combating violence against children.

The Commissioner and the Institute's staff members regularly paid visits to investigatory isolators and prisons of the Penitentiary Service of the Ministry of Justice. During these visits it were inspected dormitories, medical units, canteens, libraries and clubs of penitentiaries as well as had meetings with inmates imprisoned in punishment and chamber cells and learned their problems.

Special attention was paid to personal security of prisoners, provision of their right to vote, freedom of conscience, belief and religion as well as their health protection.

Taking into account the significance of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly's Resolution No.63/117 on 10 December 2010 and already signed by our state the Commissioner considers acceleration of its ratification as a necessary step. It should be mentioned that the Optional Protocol provides the Committee on Economic, Social and Cultural Rights with the responsibility to hear individual or inter-state complaints.

One of the population problems has been complete or partial destruction of houses and agriculture as a result of floods on Kura and Araz rivers.

In connection with the floods urgent meeting in the area of natural disaster was conducted under the guidance of the President and with the involvement of state officials; the instructions were given on implementing urgent and complex activities following the plan. Also, Government Commission headed by the Prime Minister of the Republic of Azerbaijan was established.

According to the appropriate Decree of the President, the 2010 was declared as the "Year of Ecology". Within the successful implementation of relevant policy in the sphere of ensuring people's right to live in healthy environment the Ministry of Ecology and Natural Resources took significant measures.

With the aim of more efficient provision of citizens' right to live in healthy environment the Commissioner together with the mentioned Ministry carried out joint activities within the frame of the "Year of Ecology".

The Commissioner provided recommendations on conduction of joint discussions in connection with the improvement of the legislation on Ecology; conducting legal enlightenment events and short-term training courses in the secondary and high educational facilities as well as for people living in districts, IDP settlements and for NGO representatives; organization of joint awareness-raising TV programs

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within the “Year of Ecology”; publication and dissemination of leaflets, memory books, posters and other promotional materials.

It should also be pointed out that during the term of Commissioner in office 326 prisoners were pardoned or released upon the amnesty act following her motions. The Commissioner also urged with regard to pardoning of women, children, disabled persons, old people, and journalists.

The citizens personally may submit their applications to the Commissioner by various means, including postal service, e-mail, fax, reception rooms at the main office and the regional centers, “hotline” of the “Rapid Investigation Group”, “Hotline service for children”, and during the visits conducted by Commissioner and the Institute’s staff members to penitentiaries, investigatory isolators, temporary detention places (TDPs), military units, orphanages, boarding schools, settlements of the IDPs as well as healthcare, social protection and educational facilities all over the country.

The main reason in increase of amount of complaints’ lies in growth of confidence and trust to the Commissioner and the Institute; activation of regional center’s work; advancement of awareness-raising activities in cities and rayons; giving preference to the meetings with people on the spot; conduction of the work on legal education and enhanced explanation among groups of the population within the framework of the public hearings initiated with the aim to monitor the implementation and promotion of the measures provided in the NAP on Human Rights; holding meetings and receptions; giving preference for the conduction of investigations on the spot regarding the investigation of general cases specified in a number of complaints; increase of sustainability and consistency of inspections conducted in temporary detention places, investigatory isolators, penitentiaries, military units, settlements of IDPs, facilities for children, for old and disabled persons as well as other social objects; functioning of Rapid Investigation Group against torture; enlarging the efficiency of the national preventive mechanism (NPM) as well as improving its capacities.

The gained experiences from previous years proved once more the necessity of development and improvement of the cooperation with state bodies, municipalities, non-governmental organizations and mass media for provision of human rights and freedoms, consideration of complaints without delays, as well as for their rapid investigation.

The Commissioner addressed the appropriate state bodies with proposals and recommendations aimed at solution of important issues existing in the country as well as at effective ensuring of human rights and freedoms reflected in the annual reports. These recommendations, being considered as basing on economic state and financial resources of the country in the process of conduction of activities in the socio-economic sphere, continue to serve for reliable provision of human rights.

Working on effective protection of human rights as well as learning the state of their provision, prevention of their violation and the restoration of violated rights for more than nine years, the Commissioner also worked in close cooperation with appropriate state bodies and implemented planned and urgent activities.

As a result of a number of measures taken on such issues as the provision of responses by state agencies to submitted appeals of citizens, prevention of abuse of their responsibilities by officials, maintenance of ethics rules in dealing with citizens and elimination of red tape, in many cases violated rights were restored.

In order to perform NPM duties granted by the appropriate presidential Decree, the Commissioner prepared draft documents reflecting the new structure of the Ombudsman Institute, schedule of staff members and regulations and submitted them to the Cabinet of Ministers and the Ministry of Finances.

The Commissioner initiated and organized a number of important activities and made numerous proposals on effective provision of human rights and freedoms as well as on solution of the problems of different groups of population, including women, old people, children, disabled persons, refugees, IDPs, migrants, detainees and military servants, were taken into account in various legislative acts, programs and are applied in current work of state bodies.

The Commissioner and her staff members following her instructions regularly conducted meetings with the population in different country areas, carried out visit to prisons, investigatory isolators, temporary detentions places, military units, orphanages, boarding schools, settlements of refugees and IDPs as well as social protection, health and educational facilities, organized receptions, carried out explanatory and consultative work and took concrete measures on the protection of human rights.

Some of the officials having direct duty to ensure human rights and legally responsible for the protection of human rights demonstrate disrespect for Rule of Law, do not fully implement their commitments and lead to increase of discontent and disbelief of citizens.

It should be specially pointed out that such attitudes do not comply with the current measures and sustainable development course of the state aimed at the effective protection of human rights.

Thus, first of all, the Commissioner severely controlled the provision of people's right to appeal by different state bodies and officials.

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So, besides monitoring human rights situation and restoring violated rights in the country by establishing bridge between state bodies and civil society Ombudsman as National Human Rights Institute plays an important role in mediation and harmonizing the situation.

The Ombudsman has close cooperation with Mass Media and Civil Society. From the beginning of the establishment of the Ombudsman Institute Council of Independent Experts, which consist of the representatives of different NGOs, has been functioning at the Ombudsman Office. It has huge importance in evaluating main directions of human rights in the country, adoption of international conventions and preparing recommendations on the improvement of national legislation. Rational attraction of NGO resources in the conduction of joint activities and monitoring on the evaluation of the application of proposals submitted to the state is of outmost importance.

The eight of all seventeen inquiries sent by the Commissioner to the Plenary Session of the Constitutional Court were decided. The rulings including the explanations which have theoretical and practical importance were made by the Chamber regarding other eight cases. The work on further inquiries to be submitted to the Constitutional Court is being continued.

It was recommended that the district police should strengthen the preventive control over conflicting families, the attention to complaints on such issues should be increased, and reconciliation opportunities should be broadly used by changing of attitudes.

Among the complaints submitted to the Commissioner the cases on State Traffic Police treatment and professionalism attracted special attention. They treat drivers roughly, and conduct other actions contradicting with the law. Eventually, such situations lead to fair discontent of people and their appeal to the superior state agencies.

Upon the initiative and proposal of the Commissioner, trainings and legal awareness-raising activities were carried out for increasing professional skills and enhancing legal knowledge of mass media representatives, especially journalists writing on human rights, and furthermore, the competition of journalists' articles on the topic "Human Rights for All" are being carried out and winners receive certificates and rewards.

In connection with the Presidential elections, elections to the Milli Majlis (Parliament) and municipality elections the Commissioner conducted broad educational activities among the population of country cities and regions on the right to vote, visited district and local election commissions, provided instructions and proposals on the improvement of their work. Also, the Commissioner and the Institute's staff members observed the election process all over the country. The information was systematically provided to the mass media and society by means of mass media.



The Commissioner carries out seminars and other awareness-raising activities jointly with the Ministry of Labour and Social Protection of Population as well as with involvement of staff members of local agencies dealing with defining and providing addressed social aid, local NGOs and communities.

Along with the medical prophylactic measures for prevention of the spread of drug addiction, AIDS and tuberculosis among the population, especially the youth, it were taken measures for mass promotion of healthy lifestyle, and increased the advertising materials on AIDS in mass media and educational TV programs.

The Commissioner paid attention to the situation of ensuring the rights of people suffering from mental illnesses, regularly got acquainted with the conditions created in appropriate medical facilities for their treatment, learned the problem of these group of people in need of assistance and helped in their solution.

In addition, the improvement of mechanisms of people's provision with accommodation though society directed mortgage loans appropriate to the earnings of low-income families will play a crucial role in providing a big number of families with apartments.

The bribery cases were observed in various sphere of social-economic life, such as provision of the documents in illegal constructions areas, in some secondary schools, facilities of higher education, registration and notary offices; seizure of different documents from housing and community amenities or from the representatives of administrative territorial units of local executive body's heads; defining the disability degree in medical-social expert commissions; defining addressed social aid in STP agencies; in ID and Registration divisions, in public services and other.

As it is known in order to implement more serious and systematic fight against corruption and bribery proper instructions were given to appropriate state agencies, their main responsibilities were identified and concrete measures are being taken.

For better protection and ensuring human rights and freedoms in her previous annual reports the Commissioner recommended to the authorities to use the public control capacities in penitentiary facilities, army, and spheres of social protection, education and health as well as in socio-economic life.

As a result, many proposals on further improvement of the social situation of citizens are gradually implemented.

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The activities on increasing the welfare of various groups of the population make positive input year by year. At the same time, for more effective provision of human rights there is a need in carrying out of measures to solve existing problems in social sphere.

Finally, the Commissioner who is carrying out analysis on the basis of received complaints, submitting effective proposals and recommendations to responsible state bodies for the protection and provision of violated human rights and bringing to the spotlight the important issues on reliable protection of citizens' rights and freedoms, expresses her intention to continue her activities through the cooperation with state bodies, municipalities, local communities, civil society organizations and mass media to build effective cooperation for better protection of each person in country jurisdiction without any discrimination.

Thank you for your attention

## Identifying People's Concerns from the Daily Flow of Complaints and Contribute to Systemic Improvements report



Mr. Tursunbek Akun  
Ombudsman (Akyikatchy)  
KYRGYZ

First of all, let me express a sincere gratitude to the hosts who has arranged international conference.

According the Constitution of the Kyrgyz Republic parliamentary control over human rights and liberties observance is vested with Akyikatchy (Ombudsman) of the Kyrgyz Republic. Activity of the Akyikatchy (Ombudsman) is devoted to the human rights and liberties protection according to requirements and obligations of the Kyrgyz Republic to the world community.

In compliance with Strategic plan of development of the Institution of Ombudsman (Akyikatchy) of the Kyrgyz Republic for 2008 to 2013, the **main area** of Ombudsman's activity is **complaints handling**.

Written and oral complaints are the main source of information about human rights violations. They are the reason for taking action in restoration of the violated rights by the Ombudsman whose rights are enshrined in the laws. To handle complaints in a proper way it is required to hire skilled and honest staff. For this purpose last three years Ombudsman has paid attention to capacity building of his staff, improving of his staff structure and regulations and legal basis, optimization of staff number. The biggest flow of the complaints since the founding of the Office has led to create the department for complains receiving and civilians' reception which nowadays has transformed into agency for complaints handling and documentation circulation of Office of Ombudsman. According to the duties the staff members of the agency are divided into 2 groups. The **first group** is register inbound and outbound documents, correspondences, input inbound and outbound correspondences into the data base, classify the information, codify the inbound documents and complaints, track the document processing, control over the document handling process, make registration of the complainants, explain them the complaints handling process. In case of problems such as how to submit a complaint, the staff members are willing to help the complainant. They also conduct archival processing and search the documents upon request and keep them in order and in a proper way. The **second group** deals with examination and investigation of the inbound complaints, make reports on results of the investigation to the Ombudsman.

Written complaints to the Ombudsman of the Kyrgyz Republic are handed directly to the Office, sent via mail, fax, email or delivery person. Web site surfers who logged on the web site of the Ombudsman have an opportunity to post their complaints in the site and get a reply there. In the Office of Ombudsman, there is a **Public Reception Room** where every complainant has an opportunity to get elucidation, consultations and advises. All these actions lead to lessen the number of the written complaints.

For the Ombudsman staff it is obligatory to fulfill reception of the complainants with their complaints in a proper way. General principles for the fulfilling the above-mentioned duties are defined below:

- honestly and impartially treat the complainants;
- to provide the complainants with detailed and exhaustive information;
- it is not allowed to harm the complainant who has asked the Ombudsman for help
- to keep and process the confidential information which was received from the staff members in compliance with the laws
- value the trust to the Ombudsman (Akyikatchy) expressed by the complaints.

Complainants-related activities are not limited to interrogation, consultations and interview them along with examination of their complaints. Usually every complainant tries to apply his complain directly to the Ombudsman (Akyikatchy) and only to him. But he is not able to accept everyone phisically. There is one day determined by the Ombudsman when he examines urgent and extremely important complaints. There also determined the day where he accepts by himself or the deputy of the Ombudsman accepts the complainants.

Analysis of inbound complaints indicates that insufficient legal awareness of people about methods of legal protection of their rights and liberties. Fifth part of the complaints comprises complaints that according to the laws Ombudsman of the Kyrgyz Republic could reject them. Taking into consideration the political situation of the country which was shaped after political events in April 2010 and tragic events of June 2010 in the southern part of the country no any complaints were rejected.

Office of Ombudsman applies all necessary steps for the improvement of complaints and documents processing. It also improves the document circulation between the departments in the Office of Ombudsman.

In **January 1<sup>st</sup> 2010** Office of Ombudsman set up computerized documents processing system. Earlier Office of Ombudsman applied paper logging and registration system. **ASKID Ombudsman electronic registration and documents circulation computer program was set up.**

Setting up ASKID Ombudsman electronic registration and documents circulation computer program led to enhance efficiency of the system, track a **detailed records** of complaints processing, documents and

assignments which in the process of handling in the departments assigned for their duties. It also allows to track the records of the documents circulation up to sending them to the archive. The system also provides all the privies with accountability. **It allows every complainant to get a detailed information on his complaint which is being document processed.**

The electronic archive with a short version of every compliant was also set up. In the electronic version complaint and document processing is shown. Thus sorting of documents circulation, setting up the electronic computerized programme is main factor of improvement of the activity of Office of Ombudsman aimed at human rights and civilian liberties protection and rehabilitation.

It is necessary to point out that since the establishment of the Institution of Ombudsman work which is done by staff members is impossible to fulfill properly. For the prompt reply to the complaints by the Ombudsman (Akyikatchy) it was decided to set up representatives of Ombudsman (Akyikatchy) in the regions forever. Nowadays in Kyrgyzstan, there are seven representatives who have their own staff members. Annually they examine more than **30 % complaints out of general number**. The staff members of regional representatives upon the complaints requirements attend the court of local judges. Complainants get oral consultations in their regional offices of Ombudsman. In 2009, it was decided to set up the office in the southern part of the state where one of the Ombudsman deputies will be working. It will enhance efficiency of collaboration between local officials and Ombudsman officials.

The analysis of complaints indicates that in 2010 many complaints were **successfully** completed in comparison with previous years. For example, in 2009 such kind of complaints consist of **12,9 %**. In 2010 it goes up to **16,6 %**. But unfortunately for the last 10 years of year 2011 it consists of **7,4 %**. Approximately one third of registered complaints and issues highlighted in the complaints remain unsolved. Particularly they comprise the complaints related to court decisions and sentences. In these cases Ombudsman`s staff members explain the complainants how to protect their rights during the court hearing. Those complainants who did not apply all the legal actions explanations and advises on methods of further actions are sent.

Analysis shows that greater number of complaints (**99,5 %**) are sent from the Kyrgyz citizens, **0,5 %** of complaints are sent from CIS countries. Complaints are sent from all regions of Kyrgyzstan. There are also complaints which are sent from the prison and by prisoners. For the last 3 years they comprise approximately **4 %**.

Contents of the complaints shows that greater number of complaints is connected with tyranny and lawlessness done by governmental officials, law enforcement officials and judges.

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Statement made by one of the famous politicians during Public parliament meeting where he said that police, prosecutor and judges are not agencies which must keep and order and make people to obey the law proves the statement. Majority of complaints is related to maladministration of police, prosecutor and courts. Revolution did not improve the human rights situation. Thus, every second complaint connected with maladministration of law enforcement agencies and court decisions. The decision made by the officials cause distrust, complainants feel uncertainty towards the decisions made by the officials.

Approximately **7 %** of the complaints is connected with issues of land distribution for the erection of houses, **6 %** of the complaints is connected with abuse of power, corruption, unlawfulness. **4 %** of complaints is connected with abuse done by local self governance agencies. The same number of complaints are connected with issues of labour disputes. **3,3 %** of complaints is connected with social services actions, **2,7 %** of complaints is connected with malfunction of health service staff members, **2,3 %** of complaints is related to the issues of education.

All the complaints which sent to the Office of Ombudsman are scrutinized according to the laws. According to the legally determined term complainant get a reply. In some cases the complainant is given a non-full reply because it takes time to get connected with the officials.

For the last 10 months of 2011 more than 3500 inbound correspondences were sent to agencies (1535 inquires on complaints, 1130 replies to the complainants)

One of the most efficient ways of handling of complaints is holding the **press conferences** by the Ombudsman on different issues when there is a need to inform the people about abuses done by some officials.

If there are cases of human rights violations, reaction certificate is issued. The reaction certificate is sent to the agency or the official who has violated the human rights abusing his own power. Ombudsman in the reaction certificate indicates human rights and liberties violations facts, makes suggestion how to solve the issue, particularly advise the agency or an official to change his decision. He suggest a fair decision to reexamine the situation. In addition, he suggests compensating physical injury to the aggrieved person. In 2009, Ombudsman sent only seven reaction certificates. In 2010, he sent **22** reaction certificates. For the last 10 months, he sent **24 reaction certificates**.

It is worthy to note that those cases which were not completely finished make the officials to reexamine their actions and decisions that earlier were disapproved by the complainant. Later officials will be more considerate towards the issues of human rights, liberties and legitimate interests protection of the Kyrgyz citizens.

**Comparison data of the complaints to the Ombudsman (Akyikachy) of the Kyrgyz Republic from  
2003 to November 1<sup>st</sup> 2011**

<i>Complaints</i>	<i>YEARS</i>								
	<i>2003<sub>2</sub></i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>November 1<sup>st</sup> 2011</i>
<b>Written complaints</b>	2717	4064	4051	3509	3014	2136	1742	1862	1705
<b>Single</b>	2602	3935	3745	3196	2703	1848	1594	1700	1526
<b>Communal</b>	115	129	306	313	311	288	148	162	179
<b>Communal complaints were signed (number of complainants)</b>	8561	7403	51530	9005	9373	8715	6797	5979	2744
<b>Oral complaints (number of complainants)</b>	2952	4273	6737	6118	6212	3135	3421	4457	3352
<b>Total number of complainants</b>	<b>14214</b>	<b>15740</b>	<b>62012</b>	<b>18319</b>	<b>18288</b>	<b>13698</b>	<b>11960</b>	<b>12136</b>	<b>7801</b>





# Concluding Remarks



## Concluding Remarks



Mr. Javed Sadiq Malik  
Honorable Member, Former President of AOA  
Former Federal Ombudsman, PAKISTAN

Ladies and gentlemen,

We have, over the last couple of days, had a most interesting discussion on a subject of great relevance i.e. The Role of the Ombudsman in a Changing Socio-Economic Environment

The socio-economic environment within which the ombudsman functions is indeed in a state of constant flux and change. The pace of change may differ from country to country but nothing remains static in human affairs. The world is changing around us. And unless the ombudsman adapts to the realities of such change, his office is likely to be viewed as less than relevant in the prevailing environment.

The important dimensions and issues emanating from socio-economic change that countries of the Asian region are facing today have been brought out succinctly by the speakers in the conference. Developments such as demographic shifts in a society, liberalization of national economies through deregulation and privatization, empowerment of marginalized and disadvantaged groups, and increasing degrees of democratization, are some of the developments that generate demands from the environment as well as administrative responses that are of close concern to a national or a sub-national ombudsman.

The environment obviously evolves differently in different countries.

For instance, the demographic issue in Japan, as in a number of other countries, is an ageing population. On the other hand, In my country, Pakistan, a demographic bulge has developed over the years that now accounts for over 50% of the population falling in the children and youth category. This has made the protection and promotion of the rights of children an important component of public policy. Being a signatory to the UN Convention on the Rights of the Child, Pakistan has made a national plan of action to

## Concluding Remarks

put into effect its commitments under the Convention. With a view to overseeing progress on this key social issue, the Pakistan Ombudsman, in collaboration with UNICEF, has established the Children's Complaint Office as a part of the Ombudsman's office. You will note this step necessarily puts the Ombudsman in a pro-active mode-in the sense that, apart from being a recipient of individual complaints regarding children, he is now looking at whether the government is neglecting to take the administrative steps to implement the Convention commitments. Since neglect falls under the definition of maladministration under the Pakistan Ombudsman's law, he has used his jurisdiction to look at whether the state is living up to its commitments in the light of a significant change in the country's social environment.

The important point here is that it is now essential for the ombudsman-if he is to address such challenges of change-to shift from a purely reactive individual complaint taker to a more pro-active overseer of policy implementation.

Another big social change evolving in Pakistan is the growing profile of women in the political sphere as well as at the workplace. Today, in Pakistan by law, women's representation in the legislative bodies, at the national, sub-national and local body levels, is a full 33%-apart from a 10% quota in the civil services. Also, a law has recently been passed against women harassment at the workplace. The increasing prominence of women in the country's national life has brought the matter of women's rights to the fore and the response of the state has been to set up an office of a woman's ombudsman in Pakistan to open the doors for redress for a socially vulnerable group in Pakistani society.

The office of a woman's ombudsman is not uncommon in the international community of ombudsmen, but its existence in Asian countries is low. In a number of western countries the office is called the office of equal opportunity or gender equality. However, as women are generally a disadvantaged group with a traditionally unequal relationship with men in the cultures of developing countries, it is perhaps more important in such countries to provide for a specialist office for their welfare.

This highlights the growing importance of providing for specialist ombudsmen. As the socio-economic environment becomes more complex and demands more focused and professional attention on the issues it generates, it is likely that there will be felt a growing need for specialist or single-purpose ombudsmen. This would be especially important in areas of state priority in the economic and social sectors. For instance, in most developing countries, the education and health sectors stand out as critical to the goals of national development. Yet hardly any country in Asia has single-purpose ombudsmen in these social sectors.

Elsewhere, on the other hand, such specialist ombudsmen do exist. The Health Services Ombudsman in England and Wales, the Health Ombudsman in Austria, France, Germany, as well as in some Australian states, and in some US states and cities are examples of such ombudsmen. Examples of education ombudsmen at the tertiary education for quality assurance include the Office of the Independent Adjudicator for Higher Education in the UK, the Austrian Student Ombudsman in Europe, as well some state ombudsmen in the United States.

But what we come across as one of the major issues in providing ombudsman services in today's changing environment is that most entities in these sectors are increasingly operating in the private sector. This presents the challenge today to extend the ombudsman to the private sector to enable him to remain relevant in the changing circumstances.

This issue has drawn attention of states world-wide and some very innovative approaches have been adopted in various countries which Asian states can take note of. The general approach has been to create what are called hybrid ombudsmen-statutory ombudsmen who operate both in the public and private sector. Different models have been adopted through legislation putting in place ombudsman's schemes for specific private sector services.

One type of model, for instance, makes membership of private sector service providers as mandatory in the hybrid ombudsman's scheme. Another makes it voluntary. One model provides for financing the office from the government; another from levies on member service providers; a third from case fee for each case adjudicated; and yet another from cost sharing amongst service providers.

An example of a mandatory scheme is the Banking Ombudsman in Pakistan where the law gives him jurisdiction over both public and private scheduled banks. Similarly, the Insurance Ombudsman in Pakistan has jurisdiction over all insurance companies that are registered with the Securities and Exchange Commission. The Financial Ombudsman's Service in England also covers all businesses regulated by the Financial Services Authority. The Insurance Ombudsman scheme in India-which actually comprises twelve ombudsmen with regional jurisdictions-is also mandatory for insurance providers but restricts coverage to contracts not exceeding a specified amount.

A variation on such mandatory schemes is where membership is voluntary. For instance, the Commonwealth Ombudsman in Australia also acts as the Ombudsman for private post operators, but it is voluntary for the post operators to register or not register with the ombudsman scheme. So only those entities that voluntarily register submit to the Commonwealth Ombudsman's jurisdiction. Another example-an Asian example-is the Insurance Ombudsman in Sri Lanka where it is voluntary for insurance

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providers to participate in the scheme. The same is the case with the Financial Ombudsman scheme in Sri Lanka where participation by financial institutions and business is voluntary.

Still another model of the ombudsman's extension to the private sector is a participative one. For example, the Financial Ombudsman Service in Australia has the structure of a limited company. It has a board of directors which has representatives from the service providers as well as consumers. The Ombudsman is appointed by the board but is independent. The Telecommunications Ombudsman in Australia is also in the form of a limited company. But here membership of the scheme for all service providers is mandatory. The Financial Ombudsman's Service in the UK is also registered as a limited company with membership that is mandatory.

We see, therefore, many examples where governments are cognizant of the importance of the ombudsman retaining his relevance in the face of a changing environment. It is clear that with a changing socio-economic environment, there is a case for the ombudsman to redefine his role.

Another important, and related, aspect discussed in the conference has been the matter of the human right of freedom to information. Its importance has rightly been emphasized as critical to socio-economic development in any society. This freedom is imperative to enable people to assert their interests and claim their socio-economic rights, and is necessary to secure full public participation in the process of social and economic development. It works both ways. While freedom of information induces social change, social and economic change itself generates increased demand for access to information.

But here also, an important aspect to consider is the fact that that over time the private sector has assumed a prominent role in the delivery of public services which raises the question of how far its operations affect the economic rights of citizens and , consequently, to what degree the private sector should remain insulated from the right of citizens to demand information that affects the public interest. Again, a number of countries have carried out FOI reform—among them the UK, France, Poland, Finland, Turkey and some African and South American states—and this reform extends the FOI laws to the private sector, but makes the laws mostly applicable to entities providing public functions or those receiving public funds either through sub-contracting or outsourcing. This, in my opinion, is the right step to ensure that FOI reform keeps pace with economic reform, and the right of the citizen to information is not lost in the process of liberalization, deregulation and privatization.

So, as we can see, there is much to learn from each other in the area of ombudsmanship, promotion of human rights and accountability mechanisms, and the deliberations of the conference have highlighted many of the significant areas that need our attention to address the issues emanating from the constantly

changing environment in which the ombudsman functions. We need to closely study models already in existence and assess to what degree we can adapt them to our circumstances. This is what organizations such as the AOA stand for—for learning and leveraging on wisdom that exists within the ombudsman community and facilitating the use of it for its member states.

I would like to thank the Asian Ombudsman Association for inviting me to this conference. It has been a pleasure to attend the conference and a privilege to address this esteemed gathering.

I thank our hosts for their generous hospitality; and I extend my best wishes to the AOA and look forward to seeing it grow as a forum for the promotion of ombudsmanship in Asia.

Thank you.





# Japan Session

## Theme

Administrative Counseling in  
the Great East Japan Earthquake



## Japan Session Administrative Counseling in the Great East Japan Earthquake



In this session, two administrative counselors and staff of the administrative counseling division of Tohoku Regional Bureau of MIC will hold a discussion on “Administrative Counseling in the Great East Japan Earthquake”.



Noboru TANI: First of all, let me introduce myself. My name is Noboru Tani and I am President of The National Federation of Administrative Counselors' Associations of Japan which comprises 5,000 administrative counselors.



Isao SATO: I am Isao Sato, an administrative counselor from Iwate Prefecture. Iwate was heavily damaged by a powerful tsunami wave at the time of the Earthquake. I am President of the Administrative Counselors' Association of Iwate Prefecture.



Toru SASAKI: I am Toru Sasaki. I am a Manager of the Administrative Counseling Division of the Tohoku Regional Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications.

PHOTOS OF DAMAGES  
震災被害の状況



OTSUCHI, IWATE 岩手県大槌町

TANI: The earthquake which hit the Tohoku area on March 11<sup>th</sup> this year caused severe damage to our country. Even though already 9 months has passed, those pictures vividly recall the fear and anxiety we experienced at the time of the Earthquake and Tsunami. It was a truly terrible earthquake and tsunami. Especially the tsunami when it hit the Tohoku coast, causing widespread devastation. I have heard that bits of the coast-line literally dropped into the sea and disappeared. Over 15 thousand people lost their lives. Many more lost their homes and workplaces, and many of them are still having to endure uncomfortable living conditions in shelters or temporary housing.

After the earthquake came the nuclear accident in the Fukushima Nuclear Power Plant complex. In Tohoku and the surrounding area the lives of many were blighted by worrying rumors of the risk of radiation and by lack of electric power.

SASAKI: I have some data on the quake and the damage caused. The quake measured 9.0 on the Richter scale. It was the largest earthquake ever to have hit Japan. As for human casualties, 15,838 people died, 5,950 were injured and 3,647 are still missing. Most of the dead and missing are concentrated in 3 prefectures, Iwate, Miyagi and Fukushima.

Regarding damage to residential buildings, 319,192 houses were either completely or half-destroyed, with again the bulk of the damage occurring in the 3 prefectures already mentioned. As of mid-November, there are some 330,000 people still being forced to live in uncomfortable emergency accommodation.

The government's current estimate of the economic damage is from 16 trillion to 25 trillion yen. It is a staggering figure, but this estimate doesn't include damages incurred by planned power outages and meltdowns of the nuclear power plant. The final toll will be even greater when all those damages have been taken into account.

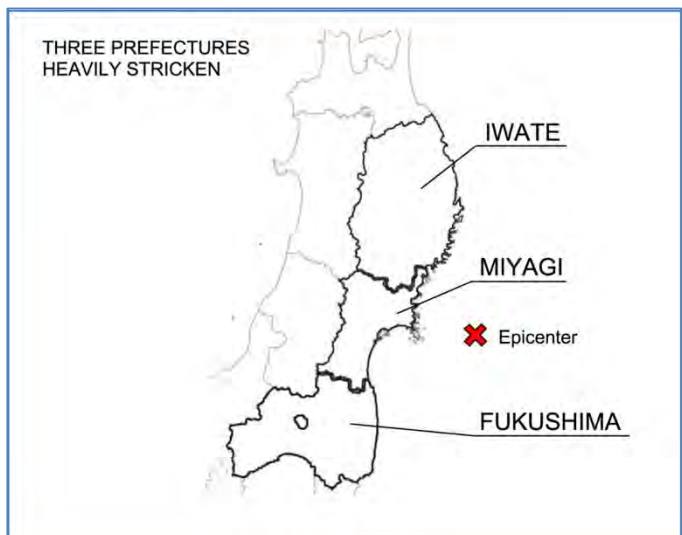
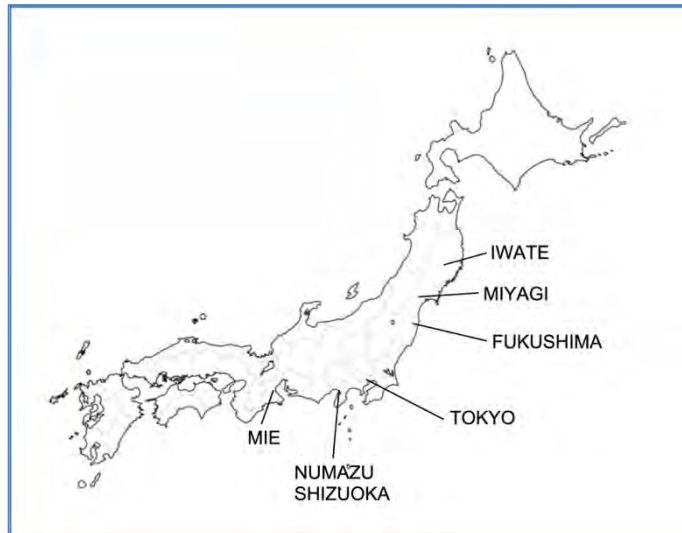
TANI: When the quake struck both of you were in the worst-hit area, weren't you? Mr. Sato was in Iwate and Mr. Sasaki was in Miyagi.

SASAKI: Yes, I was in the MIC office in Sendai, the capital of Miyagi Prefecture. It was Friday afternoon. Immediately after the earthquake, all the staff had to be evacuated from the office building because there was a danger it might collapse and it was then sealed off. Crucial services such as electricity, gas, water and communications stopped. We couldn't do anything on 11th and 12th March.

From Sunday 13th, communications partially recovered and the restriction on entering our building was lifted, so we went back to the office and started checking whether our administrative counselor personnel were safe.

Gradually, communications recovered. We conducted some counseling sessions by phone-link to victims, even though a number of staff of MIC had themselves been affected by the quake. From Monday 14th, we started to receive administrative counseling calls during the daytime, including Saturday and Sunday.

SATO : I was attending a meeting in the inland city Morioka, the capital of Iwate prefecture. After a terrible and long earthquake, I was wondering what I should do.





### CASUALTIES (死傷者数)

	TOTAL 合計	IWATE 岩手 a	MIYAGI 宮城 a	FUKUSHIMA 福島 c	a+b+c 三県計	a+b+c /TOTAL
DEATH 死者	15,840	4,665	9,504	1,605	15,774	99.6%
MISSING 行方不明	3,611	1,413	1,973	221	3,607	99.9%
INURED 負傷者	5,950	188	4,013	241	4,442	74.7%

Source: National Police Agency, As of Nov. 25, 2011  
警察庁発表 平成23年11月25日現在

In Iwate, the most of main roads near coastline are usually closed to traffic when a tsunami warning is issued. All branch roads access to those main road are also shut off. On the day of the quake, somehow I managed to drive along the Sanriku coast back home to Otsuchi where my wife was waiting for me. In an emergency your initial decision is the most crucial and it needs to be made promptly. I decided to take a narrow mountain pass road. As it was the beginning of March, there was still a lot of snow on the road as well as fallen stones, making it difficult to drive.

### DAMAGED RESIDENTIAL BUILDINGS (住家被害)

	TOTAL 合計	IWATE 岩手 a	MIYAGI 宮城 a	FUKUSHIMA 福島 c	a+b+c 三県計	a+b+c /TOTAL
COMPLETELY DESTROYED 全壊	121,656	20,184	78,454	18,398	117,036	96.2%
HALFLY DESTROYED 半壊	197,536	4,551	100,606	57,117	162,274	82.1%
PARTLY DAMAGED 一部損壊	613,390	7,291	190,869	132,467	330,627	53.9%

Source: National Police Agency, As of Nov. 25, 2011  
警察庁発表 平成23年11月25日現在

My decision to take mountain pass might be the reason why I wasn't involved in the tsunami and fire as a result.

It was about 3 pm when I left Morioka which is some 100km from Otsuchi and it was about 8 pm when I finally got home. It was a very cold night and all we could do was spend the night with a blanket around us, having no electricity or water.

### DAMAGE IN STOCKS (Estimation) (施設等に関する損害額推計)

BUILDINGS 建築物等	10.4 trillion yen
LIFELINES ライフライン	1.3 trillion yen
PUBLIC INFRASTRUCTURE 社会基盤施設	2.2 trillion yen
INFRASTRUCTURE FOR PRIMARY INDUSTRY 農林水産関係	1.9 trillion yen
OTHERS その他	1.1 trillion yen
TOTAL 合計	16.9 trillion yen

Source: Cabinet Office, Jun. 24, 2011  
内閣府発表 平成23年6月24日



TANI: Could you really get back home that day in five hours? It was reported that most of Otsuchi Town was devastated by the tsunami. Furthermore there was a terrible fire when a gasoline station blew up. The mayor was killed in the tsunami, wasn't he? How come you could avoid both the powerful tsunami and the fire?

SATO: Fortunately, the tsunami stopped just front of my house. My wife and I were both so relieved when I finally made it home. As for the fire and explosion, I was unaware of them because they happened while I was still driving over the mountain. But as sparks had settled in the mountain, for a while fires were breaking out in many places.

Due to having no electricity we were in utter darkness and it was extremely cold. The power-down continued for a while. Thankfully, we could use gas after the quake because my household uses cylinders of propane gas.

There was no road access to other towns from Otsuchi because all the roads along the coastline were cut off except the narrow mountain road which I had driven down the day of the quake. Otsuchi was a virtually isolated island.

Even if the roads had been connected, I couldn't get out of the town as I was almost out of gasoline due to the long drive home on March 11th, and it was hard to get supplies as you know. I used a bicycle to get around the town which was a sea of rubble. While riding the bicycle I got a chip of rubble in my ear. That caused otitis media and I had to go to hospital for a month.

Fudai Town, one of my work bases, is about 100 km north of Otsuchi. I am an

SERVICE CENTER FOR ADMINISTRATIVE  
COUNSELING OF TOLL-FREE NUMBER (IN MIYAGI)  
フリーダイヤルによる行政相談受付（東北管区）



administrative counselor and a local welfare commissioner there. I was worried about the people of Fudai as I couldn't reach them.

It was impossible to use normal tools of communications such as a house phone or mobile phone. In such conditions, the car radio and any battery-operated radio were really useful for obtaining information. I recommend everyone to equip themselves with such a radio in case of disaster.

SPECIAL COUNTER FOR ADMINISTRATIVE  
COUNSELING SET UP IN SUFFERED AREA  
被災者支援特別相談所



MINAMISOMA, FUKUSHIMA 福島県南相馬市

TANI: I respect you for your attitude in such a critical situation. What about you, Mr. Sasaki?

SASAKI: As normal office function resumed in Sendai, we made every effort to run the administrative counseling service in order to meet the needs of the people in the affected area. First of all, we started a toll-free telephone

counseling service from March 23rd, having had to wait for the reinstallation of the telephone line. In the meantime, we traveled around the affected area and met local chief executives to get information about their primary needs.

Then, from March 28th, we began operating special administrative counseling counters on visits to refugee camps or other such places in the cities and towns affected by the quake and tsunami, with the assistance of staff from the main office of MIC and other local offices. At those counseling counters, we received complaints and requests, helped as much as possible by counselors from other ministries and administrative agencies.

As Mr. Sato has already said, most of the roads and public transport system including train and bus services having broken down in the affected areas, we had to borrow special buses in order to be able to run the counseling counters with the help of counselors from other ministries and administrative agencies.

Many administrative counselors from the local neighborhood joined in with these counseling services, even though themselves victims of the disaster. The counseling



counters opened despite lack of fuel and other supplies, never mind that there was a shortage of food and things to drink during those days.

We made an information brochure about our counseling service, including advice to victims for administrative counselors to distribute to the people.

## AN ADMINISTRATIVE COUNSELOR IN A REFUGEE' S CAMP

避難所で活動する行政相談委員



OFUNATO, IWATE on Mar.28

岩手県大船渡市 3月28日

SATO: It was almost impossible to browse a website in the affected area, although we began to get newspapers again from the beginning of April. In such a situation, the most useful means of obtaining information regarding the various measures being provided by the government and other authorities were leaflets and wall news-sheets displayed in the refugee camps and emergency shelters.

TANI: This picture (upper) was taken by a staff of MIC, wasn't it? One of my administrative counselor colleagues opened the counseling counter at the shelter in Ofunato City in Iwate which was particularly badly hit by the tsunami.

SATO: Yes, I also met him and was told that he had launched straight into his administrative counseling activity on his own initiative in a refugee camp as of March 13th. I visited that camp

myself. The camp was in a very cold school gymnastics hall and I hardly know how to describe the misery of those marooned there with a shortage of heaters and only just enough food.

I was strongly impressed by this administrative counselor's dedication to cheering up the refugees of disaster in such circumstances.

TANI: Besides him, many administrative counselors received complaints in the emergency shelters despite even though themselves suffering as a result of the quake. In fact, people were very needy at that time and bombarded the administrative counselors with requests for information.

How many complaints and requests did MIC receive in total, related to the Great East Japan Earthquake?

SASAKI: We dealt with in all 25,361 cases throughout northern Japan, from 11th March to the end of November.

TANI: Out of those, how many cases were filed through the toll-free telephone counseling service you mentioned earlier?



SASAKI: The total number had reached 12,017 by the end of August. It included cases opened in Tohoku as well as other areas. During the earlier period, other branch offices outside of Tohoku area, such as Hokkaido and Kanto had also provided this free service. At the Tohoku Regional Bureau we are still providing the service.

80% of those case-files are received in the March to May period. At the same time we received 7,365 complaints and requests at the 114 special administrative counseling counters set up on a temporary basis in the emergency shelters and camps.

Let me give some examples of the cases received by administrative counseling service. Most of them concerned a refugee camp or a house and included how to dispose of tsunami debris and rubble.





For example, look at this picture (upper). A big fishing boat had wrecked a family's house. In this case, we contacted the relevant agency and got it removed.

In addition, there were also complaints about the procedure for obtaining a Damage Certificate which required the victim to apply for certain official dispensations, about the procedure relating to the vehicle registration and a lot of complaints and requests relating to radioactive contamination due to the accident at the Fukushima Nuclear Power Plant.

TANI: It might be difficult for foreign guests to understand the vehicle registration issue. Could you explain a bit more about that?

SASAKI: In Japan there is a regulation which requires the registration of every vehicle whereby vehicle tax payment and other burdens come into force. Many people suffered their cars being crushed or washed away by the quake and tsunami and needed their vehicle registration terminating. They were required to go to the government agency in the prefectural capital which tended to be far from the coast. Also they needed to submit various documentation, including the vehicle registration certification and the license plates attached to front and rear of the car.

TANI: Wasn't it impossible and rather unkind to people to expect them to collect their number plates from their car which had been washed away by the tsunami?

SASAKI: Yes, of course. Many of the roads were cut off and it was very difficult to get to a city further inland. Therefore quite a number of people brought license plates which they had just about managed to retrieve from their car in the rubble on the seashore to one of the special administrative counseling counters set up in the refugee camps.

TANI: We administrative counselors all reported similar cases, didn't we?

SASAKI: Yes, it was much the same everywhere, we received similar complaints through individual administrative counselors and the toll-free telephone counseling service. Hence we managed to prevail upon the Ministry concerned and invited its officials to our special administrative counseling counters in the refugee camps to accomplish those procedures on the spot. The number of cases relating to the vehicle de-registration issue reached to more than 600, proving clearly that those procedures constituted an acute need for those in the affected areas.



TANI: Judging from today's conversations so far, I can see that the activity of administrative counselors in this great earthquake disaster was quite different from usual circumstances. I would like to talk about some of the typical activity in which we were involved.

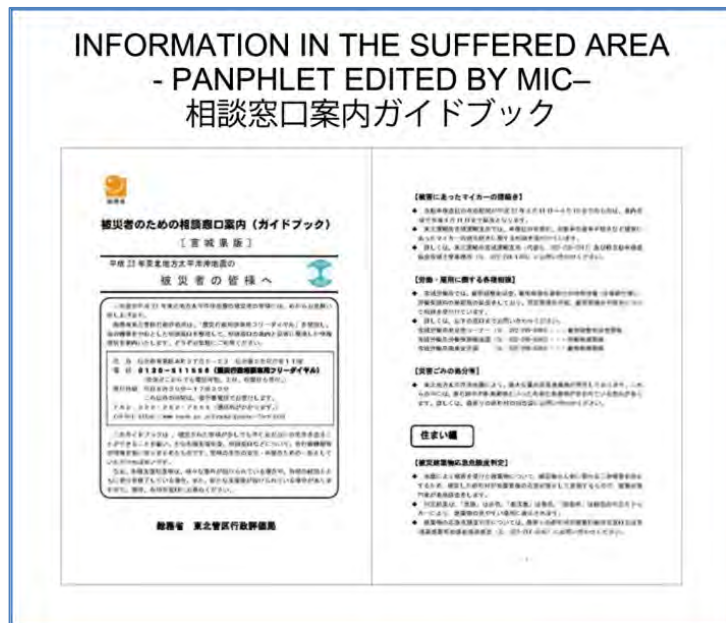
Firstly, there were a lot of people who had to be evacuated away from their hometown where they had been residing for a long time. Those evacuees temporarily spread all over the country and visited nearby administrative counseling windows in order to make complaints and requests. I myself live in Mie Prefecture which is quite a way away from the Tohoku area but administrative counselors in Mie, of which I was one, might receive complaints and requests from those evacuees. On the other hand, most of various supporting measures were being provided by the cities and municipalities in the Tohoku area where the evacuees originally lived. The meant that any administrative counselor





anywhere might have to deal with complaints and requests about an area with which he or she was unfamiliar. We had to do our best to assist people who wanted information regarding their hometown and wanted to make a complaint to the local authority in their hometown. It was not easy to deal with and I had to go to staff of MIC for help.

Secondly, what made matters worse, local authorities in the affected areas were terribly confused by the strain of



trying to perform their normal official functions after the earthquake which in some cases proved impossible. Some local authorities had to install their offices in refugee camps.

SASAKI: We made some leaflets (right) with a list of useful contacts for the benefit of people needing assistance from the various governments and agencies, and distributed them in the refugee camp. It was quite difficult to disseminate this information to all the people especially those in refugee camp, nevertheless our leaflets were of great help.

TANI: In addition, many administrative counselors were themselves victims of this dreadful disaster as was Mr. Sato. Sadly, some administrative counselors lost their precious lives. Needless to say, this affected our activity as administrative counselors.

As President of the National Federation of Administrative Counselors' Associations, I think it is vitally necessary to increase cooperation between all counselors throughout the country, in order to ensure a good quality of service even in these dire circumstances. Each administrative counselor's appointment

was scheduled for renewal last April. And as 2011 is the 50th anniversary of the administrative counselors' system, each prefectural Administrative Counselors' Association was planning a ceremony in celebration of this important milestone.

So we requested donations from the public to enable administrative counselors affected by the disaster to enjoy a get-together. Approximately 4.5 million yen was raised and was distributed to the prefectural Administrative Counselors' Association in the relevant areas.

SATO: I can tell you that our Iwate Prefectural Administrative Counselors' Association was very grateful to receive such a donation.

## Japan Session

TANI: In addition to the donations, we distributed materials such as a flag to place on the administrative counseling counter. I think this was well-received.

SASAKI: In my jurisdiction, Miyagi Prefecture, a Chinese lady who is a naturalized Japanese subject has become an administrative counselor. Given the increase in the numbers of foreign residents in Japan, the MIC had considered her commission prior to the quake, and appointed her as an administrative counselor last April. She was very helpful to the refugees who were foreign, including acting as interpreter for those who were Chinese, and provided useful assistance at the special administrative counseling counter. This was one of the typical items on our agenda of activity at the time of the disaster.

TANI: Well, our effort following March 11th is still in progress. We seem to have talked at some length and it would be difficult to summarize, but we are running out of time. Perhaps we could just mention what we have felt most strongly about in our activity thus far, Mr. Sato, do you have any comment?

SATO: Well, I don't know if this is an issue covered by administrative counseling but I faced many tragic situations in our city, with lives being claimed by the tsunami because people had been given the wrong evacuation procedure or route. My local area, Sanriku coast has had a history of suffering tsunamis. Therefore, people must have been aware of the horrors caused by a tsunami.

We have been taught from way back, that in the event of a tsunami heading our way, we should immediately run to higher ground, leaving our belongings behind, and not even to pay too much heed to what is happening to other people. In our local dialect we must run away in a "tendenko" manner, meaning we must immediately save ourselves.

We were also taught not to have anything in our hands. We should keep our hands free for carrying a child on our back whilst fleeing and for holding onto driftwood when being washed away. I guess such lessons hadn't got through widely and that added to the number of fatalities.

As to the evacuation procedures followed by schools, they were incredibly varied. One of the schools followed a standard disaster and emergency manual and as a result, failed to escape from the tsunami with the result that many died. By contrast, another school didn't have any victims, having created its own disaster manual and having repeatedly carried out a preparatory drill.

Judging by these examples, I believe it is vital to introduce disaster-prevention education which is tailored to the local circumstances in all levels of school, and for that to be an administrative priority.

SASAKI: When local authorities, which have responsibility to directly provide services to the people are hit by a catastrophic event and are practically paralyzed, the activity of central government's administrative counseling service could subsidize a part of their function. The original activity of administrative counselors in dealing with complaints and requests from the public is in itself a passive

activity. But in the course of receiving and sorting out complaints and requests relating to the disaster, we can see that the counselor could be an active provider of information about the various supportive measures for refugees. Thus I found that our function of administrative counseling could be proactive rather than reactive and passive, as a provider of information.

Consequently, it could be said that dealing with complaints and requests could play a significant role in communicating

governmental policies and measures to the people in the event of a breakdown in normal transmission of information, which could hold good for other disasters too.



TANI: The assumption of such a role could be useful for government in conveying practical measures equally and fairly to those affected, thus it would help promote “good governance”, as is the aim of all ombudsmen and as Ms. Morales, Ombudsman of the Philippines described in the last session.

We administrative counselors aren't government officials but ordinary citizens who gain no reward from our activity as counselors. But on the occasion of this disaster not a few people engaged in their activity of administrative counseling despite being themselves directly affected by the crisis. Each counselor's motivation for offering his services might have been different, but I believe most of them were fired up to resume their administrative counselor role by seeing their fellow-citizens in trouble.

People in the refugee camps were able to come to us directly and tell us about their worries, questions, complaints or requests. They were able to do this knowing that counselors are private citizens and live alongside them in their neighborhoods; we are accessible to them and no one 'special'. I think this is why we were able to be of real help to the refugees at the time of the quake.

The administrative counselor is one of the important elements in the ombudsman system operating in our country and I believe we have proved our real worth on this occasion.

And speaking as President of the National Federation of Administrative Counselors' Associations, I also believe that the importance of supporting individual activity through mutual cooperation between all administrative counselors is by now well recognized.

In this memorable year of the 50th anniversary of the administrative counselors system, therefore, I would like to end this session by paying tribute to our activity in the Great East Japan Earthquake.

Conference Report

The 12th Conference of the Asian Ombudsman Association

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