

Plenary Session 4

Sub Theme

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

Mr. Danang Girindrawardana	151
Chief Ombudsman, INDONESIA	
Dr. Cheselden George Vida Carmona	163
Professor, Ateneo De Manila University, PHILIPPINES	
Dr. Nagatomo Yamaoka	199
Emeritus Professor, Nihon University/ Administrative Counselor, JAPAN	

Public Services Reform in Indonesia



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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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- 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.
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- ✓ 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.
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- 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.

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- 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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- 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.

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Thank you

Danang Girindrawardana

Chief Ombudsman of Republic Indonesia

Ensuring Accountability in Privatized and Decentralized Delivery of Public Services: The Role of the Asian Ombudsman¹



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“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.”³

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.⁴ 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.⁵ 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

¹ 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>

² 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).

³ 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.

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

⁵ World Bank, “What is Decentralization?,” The Online Sourcebook on Decentralization and Local Development, 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).⁶ It can be through such means as government downsizing, outsourcing, and partnership;⁷ and the fragmentation and decentralization of public services.⁸

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.⁹

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.”¹⁰ 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.¹¹

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.¹² Graeme A. Hodge and Ken Coghill pointed out that “[t]he

⁶ 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>.

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

⁸ 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>.

⁹ 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.

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

¹¹ 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>.

¹² 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.”¹³ 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.¹⁴ 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;¹⁵ and one on New Zealand by Michael Taggart, which was especially scathing about the effects of privatization on accountability.¹⁶ 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.¹⁷

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.

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

¹³ 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.

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

¹⁵ 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.

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

¹⁷ 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.¹⁸

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.”¹⁹ 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

¹⁸ 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.

¹⁹ 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.²⁰

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. Decentralization²¹

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;²² empowering citizens through their enhanced participation in decision making, planning, and management; improving economic and managerial efficiency or effectiveness; and creating better governance.²³ Thus, if properly implemented, it can be an effective management approach to make public service more efficient.²⁴ It also broadens the reach of national government, enabling its policies and service to penetrate even into remote rural areas.²⁵

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.²⁶ The

²⁰ 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.

²¹ 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.

²² 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.

²³ 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.

²⁴ Kahkonen and Lanyi, "Decentralization and Governance," 1.

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

²⁶ 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.²⁷

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.”²⁸ 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.²⁹

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.³⁰ 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.³¹

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

²⁷ 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>.

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

²⁹ ADB, *Public-Private Partnership*, 1.

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

³¹ ADB, *Public-Private Partnership*, 11.

contracts, build-operate-transfer (BOT) and similar arrangements, concessions, and joint ventures.³² 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

Scheme	Role of government	Role of private sector
Service Contracts (Outsourcing)	Remains the primary provider of the public service.	Specific tasks at an agreed cost according to pre-set performance standards.
Management Contracts (Outsourcing)	Monitors compliance of contractor with its contractual obligations	Full line management and must realize performance targets.
Lease Contracts	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.
Concessions	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 ³³ for an extended period of time.
Build-Operate-Transfer and Similar Arrangements	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.
Privatization	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.³⁴ 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

³² ADB, *Public-Private Partnership*, 27.

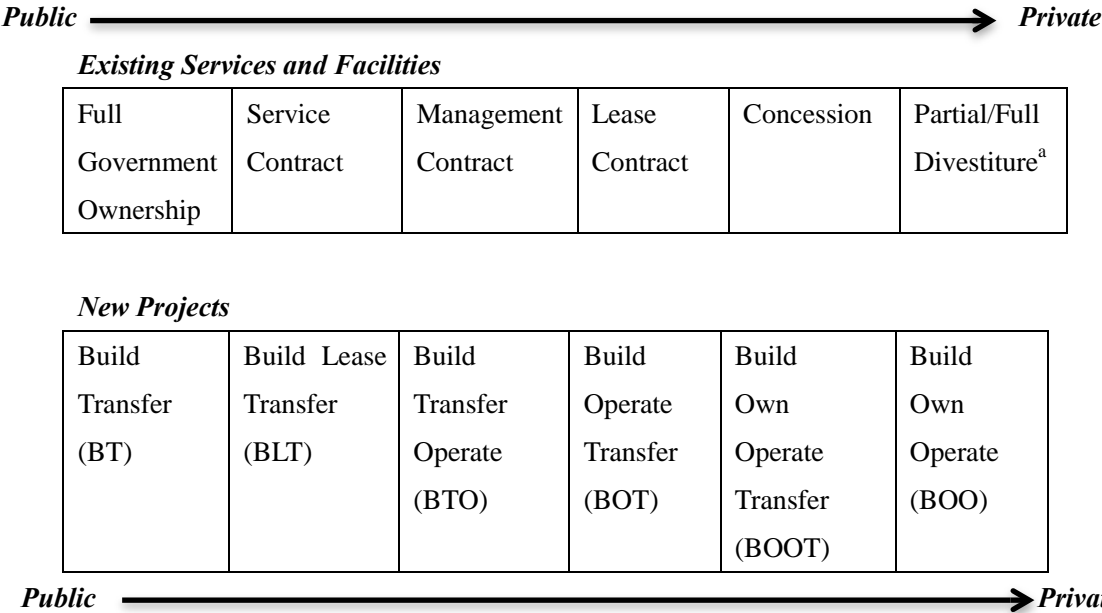
³³ ADB, *Public-Private Partnership*, 34.

³⁴ 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.³⁵ 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.”³⁶

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.³⁷

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.

^a 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

³⁵ 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.
³⁶ Grout, “Private Delivery of Public Services,” 14.
³⁷ 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.³⁸ 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:

³⁸ 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.³⁹

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.¹

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.⁴⁰

³⁹ 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.

⁴⁰ 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.⁴¹

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.

⁴¹ 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**

Forms	Definition	Operationalization	Accountability Issues
Fiscal decentralization	Decentralizes fiscal resources and revenue-generating powers	<ul style="list-style-type: none"> ■ Self-financing ■ Expansion of local revenues ■ Local expenditure ■ Intergovernment fiscal transfers ■ Authorization of municipal borrowing 	<ul style="list-style-type: none"> ■ Corruption ■ Poor spending allocations ■ Poor utilization of fiscal transfers from the central government ■ “Pork barrel” ■ Use of finances for purposes other than those specified in technical and financial documents
Political decentralization	Transfers political power and authority to subnational levels	<ul style="list-style-type: none"> ■ Local elections ■ Representation ■ Local decision making 	<ul style="list-style-type: none"> ■ Abuse of decision-making powers ■ Interference in public transactions, such as the bidding process
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"> ■ Deconcentration ■ Delegation ■ Devolution 	<ul style="list-style-type: none"> ■ Abuse of authority ■ Poor public service delivery of devolved functions such as health, education, social services, and agriculture
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"> ■ Deregulation ■ Debureaucratization 	<ul style="list-style-type: none"> ■ Collusion ■ Conspiracy ■ Noncompliance or substandard services ■ Citizen complaints

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.⁴² 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

⁴² 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."⁴³ (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."⁴⁴ (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

⁴³ 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.

⁴⁴ 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.⁴⁵ The government department or agency concerned must closely monitor the contractor's performance and provide necessary guidance for meeting public expectations.⁴⁶ 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:

⁴⁵ 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.

⁴⁶ 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.⁴⁷ 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.”⁴⁸ 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

⁴⁷ Wafaqi Mohtasib (Federal Ombudsman) of Pakistan, *Annual Report 2008* (Islamabad: Wafaqi Mohtasib, 2009), 17.

⁴⁸ 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.⁴⁹

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.”⁵⁰

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.⁵¹ 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.⁵²

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.”⁵³ 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

⁴⁹ 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.

⁵⁰ Kiani, “Privatized public utilities,” *Dawn*, August 3, 2007.

⁵¹ Iffat Idris, “Capacity Mapping and Assessment: Grievance Redress Systems of 5 Federal Agencies” (report, Strengthening Public Grievance Redress Mechanisms Project, UNDP Pakistan, 2009).

⁵² 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).

⁵³ The Ombudsman Act, B.E. 2542 (1999), sec. 16, 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.⁵⁴

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).

⁵⁴ 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.⁵⁵ 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 its 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."⁵⁶ 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

⁵⁵ 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.

⁵⁶ Philippines Constitution (1987), art. 11, sec. 13, <http://www.chanrobles.com/article11.htm>.

who makes the decision.⁵⁷

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.

⁵⁷ 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

Types of Private Sector Participation	Duration	Features	Entry Points for the Ombudsman
1. Service contract	<ul style="list-style-type: none"> • 1 to 3 years 	<ul style="list-style-type: none"> • Hires a private company or other private entity to carry out one or more specified tasks or services for a period • Multiple contracts for a variety of support services, such as meter reading, billing, etc. • Useful as part of strategy for improving the efficiency of a public agency • Promotes local private sector development 	<ul style="list-style-type: none"> • Advise the government during contract negotiations and drafting to ensure that the public interest is protected through grievance redress mechanisms • Ensure that the bidding process is conducted by the public sector in a transparent and accountable manner. • 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 • Ensure that intense competition among private service providers does not prejudice the welfare of the public • Hold the government agency that outsourced the service

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"> • 2 to 5 years 	<ul style="list-style-type: none"> • 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.) • Interim solution during preparation for more intense private participation 	<ul style="list-style-type: none"> • Same as above
3. Lease contract	<ul style="list-style-type: none"> • 10 to 15 years 	<ul style="list-style-type: none"> • Responsibility for management and operation is passed to the private partner, which guarantees quality and service standards • Private firm charges an agreed-upon amount for providing the service 	<ul style="list-style-type: none"> • Advise the government during contract drafting to ensure that the public interest is protected through grievance redress mechanisms • Ensure that the bidding process is conducted by the public sector in a transparent and accountable manner • 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. • Prevent regulatory capture
4. Concession	<ul style="list-style-type: none"> • 25 to 30 years 	<ul style="list-style-type: none"> • Responsibility for all operations, also for the financing and execution, of a specific service or facility • Improves operational and commercial efficiency. • Mobilizes investment finance. • Development 	<ul style="list-style-type: none"> • Ensure that the bidding process is conducted in a transparent and accountable manner • 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) • Help enhance the capacity of the regulator to provide redress to consumers when such function is included in its mandate. • Prevent regulatory capture
5. BOT and similar arrangements	<ul style="list-style-type: none"> • Various 	<ul style="list-style-type: none"> • Private firm develops and finances a new infrastructure project according to performance standards set by the government • Private firm operates a government asset for a period set by a contract so 	<ul style="list-style-type: none"> • Advise the government during contract negotiations and drafting to ensure that the public interest is protected through grievance redress mechanisms • Hold the regulator accountable for any form of maladministration that compromises the safety and

Types of Private Sector Participation	Duration	Features	Entry Points for the Ombudsman
		that it can recover investment costs through user charges • In some instances, the government, through a regulator, sets tariffs or user fees	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) • Prevent regulatory capture.
6. Privatization	• N/A	• Ownership and operation is transferred to the private sector	• Engage and capacitate stakeholders to ensure that private sector providers of public services continue to protect the public interest • Help enhance the capacity of a privatized utility to provide redress to consumers. • Prevent regulatory capture

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:⁵⁸

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

⁵⁸ 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."⁵⁹ 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.

⁵⁹ 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

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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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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 Act¹ was passed in 1960 and in the following year, the official administrative counseling system was commenced in the AMA with 882 members of Administrative

¹ 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 Act² (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.³ 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.⁴ 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

² Administrative Counselor Act in 1966.

³ *Supra* 2, Art. 2.

⁴ *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.⁵ 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

⁵ *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.⁶ These opinions from the local representatives have contributed to promote improvement of operation or management of the

⁶ *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”.⁷ 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 1978.⁸

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.⁹ 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

⁷ “The Operation Rule and Regulation of Administrative Counselor Training” enacted on June 30, 1988, amended on March 22, 1992.

⁸ *Supra* 2, Art. 7.

⁹ *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.¹⁰

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.

¹⁰ 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 Act¹¹ 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.¹²

¹¹ Basic Law on the Reform of Central Ministry and Agencies was enacted in the 142 Section of the National Diet in June, 1998.

¹² 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.

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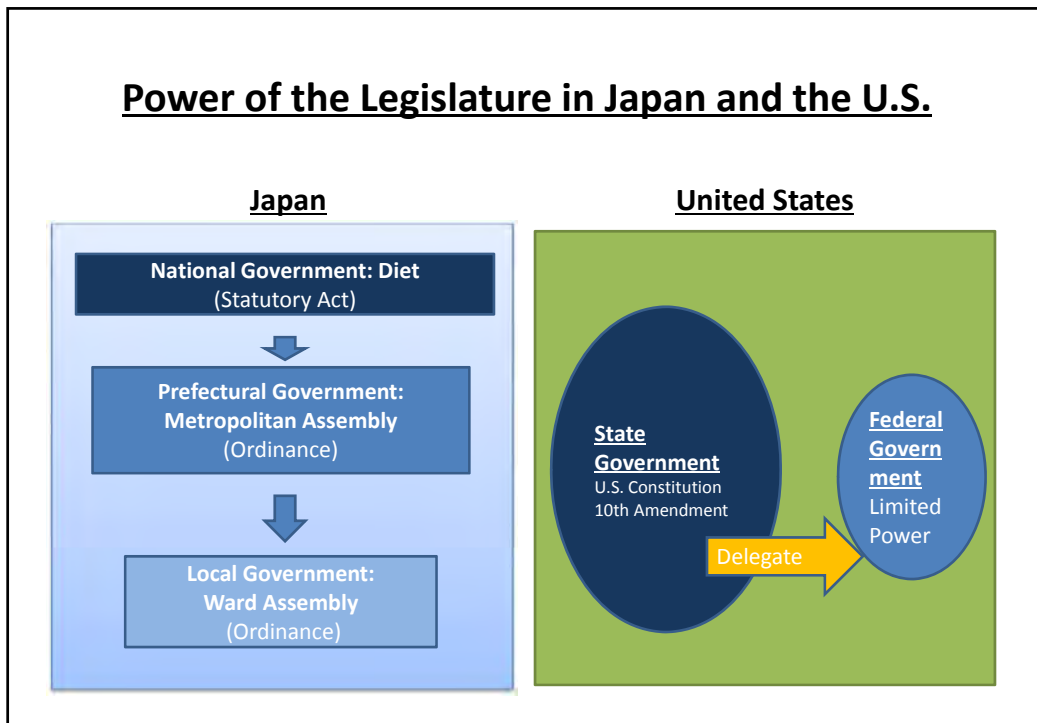
December 7, 2011

The 12th Conference of the Asian Ombudsman Association

Today's Topics

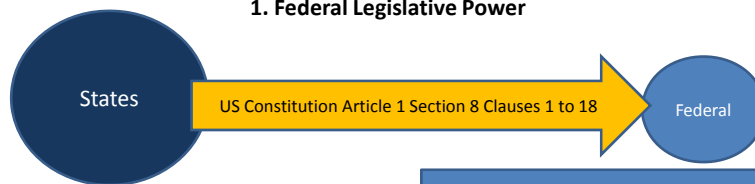
1. Power of the Legislature in Japan and the U.S.
2. Administrative Counseling System
3. Numbers and Types of Administrative Counseling
4. Windows for Counseling
5. Kinds of Actual Grievances

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.

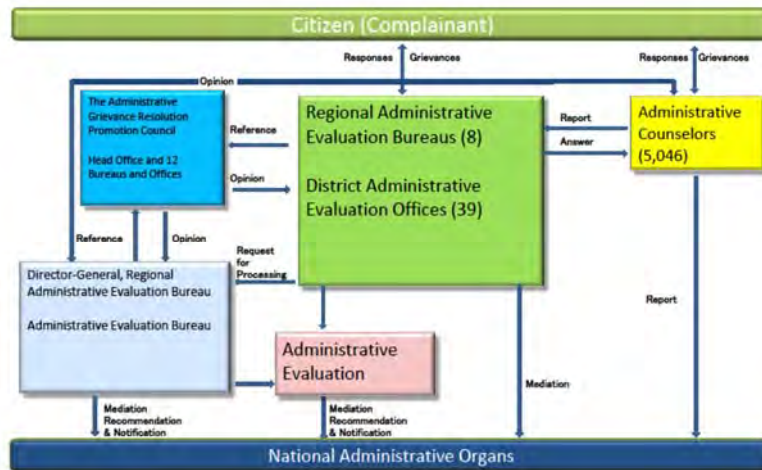
Powers that the States are Impliedly Prohibited from Exercising

Article 1 Section 8 Clause 2 (To borrow Money on the credit of the United States); Article 1 Section 8 Clause 4 (To establish a 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

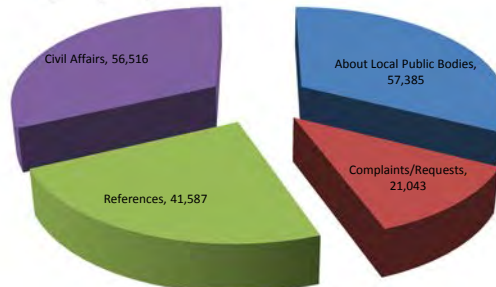


2010 Result of Administrative Counseling

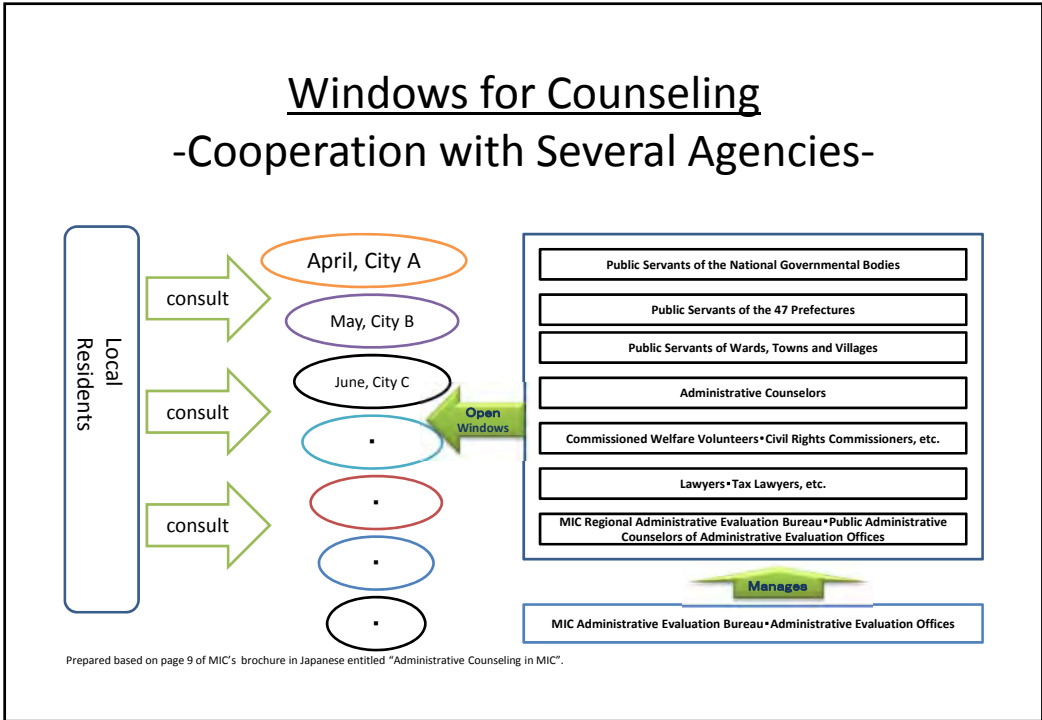
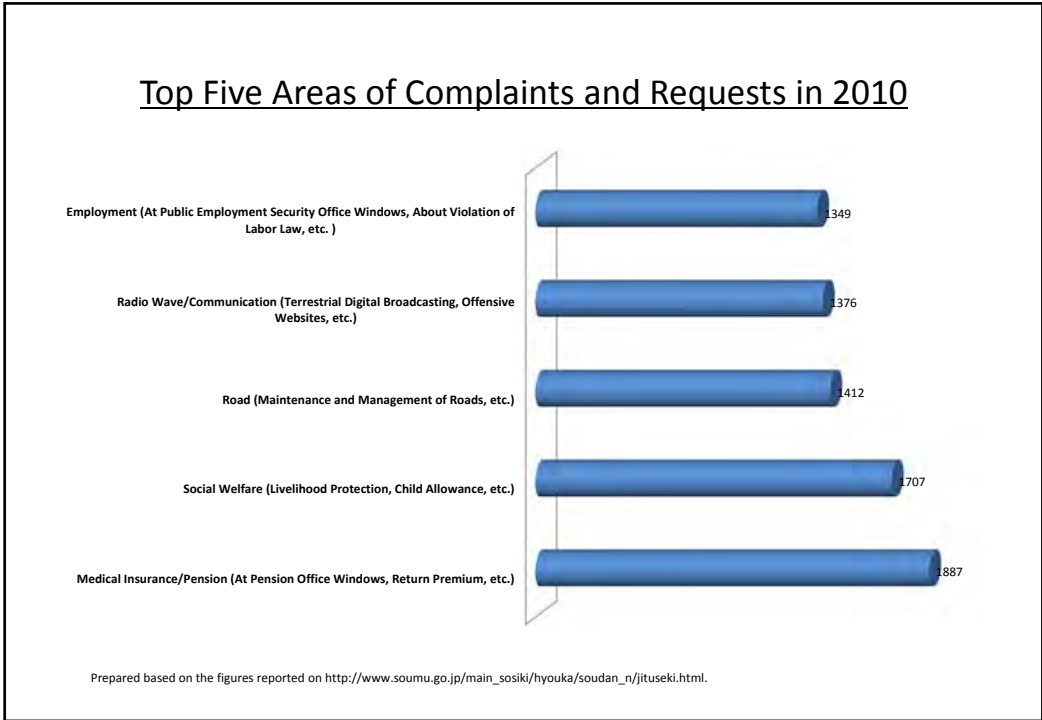
Total: 176,531 Cases

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.



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.

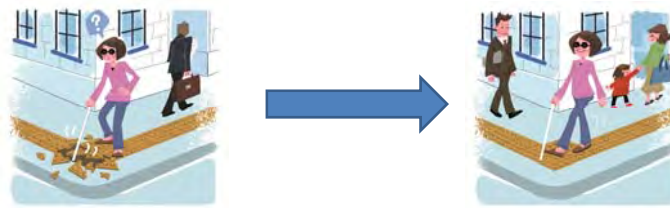


Source of the above picture and the contents: Page 4 of MIC's brochure in Japanese entitled "Administrative Counseling in MIC".

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.

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