



**THE THIRD ASIAN**

**OMBUDSMAN**

**CONFERENCE**

**MACAU  
1998**



**MR. JUSTICE LUÍS DE MENDONÇA FREITAS**

**HIGH COMMISSIONER AGAINST CORRUPTION AND ADMINISTRATIVE ILLEGALITY**

*This book is a collection of all the written materials that formed the backbone of the addresses and discussions held at the 3<sup>rd</sup> Asian Ombudsman Conference convened by the Macau High Commissioner Against Corruption and Administrative Illegality, under the auspices of the Asian Ombudsman Association (AOA).*

*The aim of the Conference was to discuss and submit for endorsement of AOA founding members the Association's bye laws drafted at the historical Islamabad Conference. Those objectives, I am please to note, were integrally achieved in Macau. A solid set of rules and regulations is now in place, that enables its effective institutional operation and confers added strength and prominence to the Association in carrying out its purpose to uphold the Ombudsman's ideal. The endorsement constituted a decisive step in validating the AOA's bodies vis-à-vis public opinion in general and the legal community in particular. But, most importantly, it conveys a firm message to those near whom firm and persistent pressure must be exerted, in order to guarantee that rule of law is prevailing in all government and administrative practices, in the effective implementation of fundamental rights, in the tangible support of citizens and in the upholding of legitimate interests of all social players.*

*Trust should, therefore, be placed in the role to be played in Asia by those entities claiming to follow in the footsteps of the Ombudsman tradi-*

*tion, regardless of the context in which their legal systems are designed and enforced. That trust stems, notably, from the fact that transnational solidarity has been reinforced through an efficient instrument of coordination and mutual assistance as the AOA, with its balanced, consensual and equitable statutes, and as encompassing as strict in its objective to congregate all institutions, either national or decentralised in nature, under the principle of transparency and justice.*

*But the Macau Conference also provided the opportunity for a broad exchange of views on the Ombudsman's current concerns over present and future prospects in specific fields such as environmental protection and mediation of social conflicts. On this particular, Asia Ombudsmen received a kind word of support from the International Ombudsman Institute (IOI) and from notable representatives of similar institutions from around the world, who brought their wealth of knowledge and experience to the meeting.*

*I shall not give emphasis to any of the contributions, because all of them must be unconditionally perused upon and analysed. However, I must note the consistency of all proposals put forward by the various Asian delegations, which is a clear sign of significant maturation of the way the Ombudsman concept is being implemented in this part of the world.*

*Finally, it should be taken into account that a common understanding is being crafted on the need for the Ombudsman or similar entities to take on an active role in the fight against corruption. After all, fighting corruption is only one more way, among others, to protect the community at large, by ensuring that the right to individual liberties, equal treatment and opportunities is available to, and enjoyed by, everyone. Only thus can human life be lead with dignity.*

*Macau, which, to some extent, was foremost in defending this notion, has every reason to praise such an outcome.*



OPENING CEREMONY OF THE III ASIAN OMBUDSMAN CONFERENCE: LION DANCE

## I – INTRODUCTION

Under the guidance and organisation of the Ombudsman of Pakistan, Mr. Justice (Rtd) Abdul Shakurul Salam, the First Asian Ombudsman Conference was held, in Islamabad, on 15th and 16th April 1996. Invited by the Ombudsman of Pakistan, the High Commissioner Against Corruption and Administrative Illegality, Mr. Justice Luís de Mendonça Freitas, took part in that conference together with his Deputy, Mr. Lino Ribeiro, having presented a communication in which he referred to history of Macau, the Basic Law of the Special Administrative Region of Macau and the foundation of the High Commission Against Corruption and Administrative Illegality based on the classical concept of the Ombudsman.

The First Asian Ombudsman Conference had the presence of delegates from 18 countries and territories, from Australia to Turkey, representing 65% of the world's population. In this Conference, thanks to the enthusiasm and enterprising ability of the Ombudsman of Pakistan along with the High Commissioner and the remainder delegates contribution and earnest striving, the Constitution of the Asian Ombudsman Association was approved by unanimity. On that occasion a Preparatory Committee was elected for drafting the Association Bye-Laws. The delegates also approved the Republic of Korea and Macau's candidatures to welcome the Second and the Third Asian Ombudsman Conferences in Seoul, in 1997, and in Macau, in 1998.

Dr. Luís de Mendonça Freitas led the delegation of the High Commission to the Second Asian Ombudsman Conference which took place in Seoul, on 25th and 26th March 1997, having presented a communication on the origins of the Ombudsman, its functions and importance in contemporary societies.

In July 1997, Mr. Justice Luís de Mendonça Freitas, accompanied by his

Chief of Staff, Mr. António Gomes da Silva, visited Pakistan to discuss several matters relating to the organisation of the Third Asian Ombudsman Conference to be held in Macau in 1998.

## II - THE THIRD ASIAN OMBUDSMAN CONFERENCE

The Third Conference of the Asian Ombudsman Association was convened by the High Commissioner Against Corruption and Administrative Illegality, Mr. Justice Luís de Mendonça Freitas, in Macau from the 3<sup>rd</sup> of May to the 8<sup>th</sup> of May, 1998.

Twenty-one Countries or Territories from the five Continents - Asia Pacific, Asia, Africa, Europe and America (Argentina, Australia, Canada, Chile, Hong Kong, India, Iran, Japan, Kuwait, Mozambique, Netherlands, New Zealand, People's Republic of China, Pakistan, Papua New Guinea, Philippines, Portugal, Republic of Korea, Sri Lanka, Vietnam and Macau), represented by sixty five delegates participated in the Conference.

### **THE OPENING CEREMONY**

It started in the morning of May 4<sup>th</sup>, 1998 with the Eye dotting ceremony followed by Lion dance and lighting of fire crackers.

The Opening Ceremony was presided by His Excellency the Governor of Macau, General Vasco Rocha Vieira. Mrs. Anabela Sales Ritchie, President of the Legislative Assembly; Mr. José Manuel Menéres Pimentel, Provedor de Justiça of Portugal; Mr. Li-Zhilun, Vice-Minister of Supervision of the People's Republic of China; Mr. Marten Oosting, President of the International Ombudsman Institute; Mr. Chu Kwang-II, Chief Ombudsman of Korea and Mr. Justice Luís de Mendonça Freitas, High Commissioner Against Corruption and Administrative Illegality of Macau sat along with the Governor at the main table.

The High Commissioner thanked the Governor and welcomed the delegates and the participants. Mr. Marten Oosting delivered a speech about the Ombudsman concept and Mr. Chu Kwang-II gave a Congratulatory Speech. The Inaugural Speech was made by His Excellency the Governor of Macau, General Vasco Rocha Vieira.

## THE FIRST SESSION

The First Session of the III Asian Ombudsman Conference with the subject : "The Ombudsman as a relief of citizens in the construction of a balanced society and environment." took place in the afternoon of May 4, 1998.

Chairman of the First Session was His Excellency the Vice-Minister of Supervision of the People's Republic of China, Mr. Li Zhilun, and Keynote speech was delivered by His Excellency the Provedor de Justiça of Portugal, Dr. José Manuel Menéres Pimentel.

Presentations on the subjects indicated below were made:

"The Ombudsman as a relief of citizens in the construction of a balanced society and environment", by Mr. Justice ® Manzoor Hussain Sial, Provincial Ombudsman of Punjab, Pakistan;

"The Ombudsman and the protection of human rights in Hong Kong", by Mr. Ka Hung Leung, Office of the Ombudsman, Hong Kong, P.R. China;

"Twenty five years of experience in Maharashtra State, India", by Mr. Narayanswami Jayaraman, Upa-Lokayukta (Deputy Ombudsman), Maharashtra State, India;

"The annual report of the Ombudsman", by Dr. Marten Oosting, National Ombudsman of the Netherlands and President of the International Ombudsman Institute;

"The prelude; the situation and efficiency of inspection and supervision in Iran; From Seoul to Macau, the tasks and functions of the Inspection Organisation of the Islamic Republic of Iran in the year past", by Mr. Mohammad Ebrahim Nekounam, Deputy to the State General Inspection Organisation, Iran;

"Maladministration and redress", by Miss Viola Chan, Assistant Ombudsman, Hong Kong, P.R. China; and

"The Ombudsman as a reinforcement of citizens' participation in administrative life: Macau's experience", by Mr. Lino Ribeiro, Deputy High Commissioner, Macau.

## THE SECOND SESSION

In the morning of May 5, the Second Session of the III Asian Ombudsman Conference with the subject "The Ombudsman as a conflict mediator", was

presided by His Excellency the Wafaqi Mohtasib (Ombudsman) of Pakistan, Mr. Justice @ Abdul Shakurul Salam. The Keynote speech was delivered by Sir Brian Elwood, Chief Ombudsman of New Zealand.

Presentations on the subjects indicated below were made:

“Settlement of disputes by means of intermediaries”, by Mr. Alexandre Ho, Chairman of the Executive Committee of the Consumer Council, Macau;

“The development of the Ombudsmadiator on a global scale”, by Mr. Daniel Jacoby, Acting Executive Secretary of the International Ombudsman Institute and Protecteur du Citoyen du Québec, Canada;

“Mediation Services”, by Mr. Pak Lee Ma, Office of the Ombudsman, Hong Kong, P.R. China;

“The Protector of the Nation as illustrated in Latin America”, by Mr. Jorge Mário Quinzio Figueiredo, Vice-President of the Asociacion Iberoamericana del Ombudsman, Chile;

“Development strategy toward positive settlement of conflicts”, by Mr. Chu Kwang-II, Chief Ombudsman of Korea;

“Administrative counseling system in Japan - The role of the Administrative Grievance Resolution Promotion Council”, by Mr. Takashi Mogushi, Chairman of Administrative Grievance Resolution Promotion Council, Japan.

### THE THIRD SESSION

The Third Session of the III Asian Ombudsman Conference was held in the afternoon of May 5, with the subject “The Asian Ombudsman: challenges and prospects vis-à-vis the region’s economic development aiming at a higher well being of populations.” and was presided by His Excellency the Ombudsman of Hong Kong, Mr. Andrew, Kwok Wing So. The Keynote speech was made by Prof. Bertram Bastiampillai, Parliamentary Commissioner for Administration, Sri Lanka.

Presentations on the subjects indicated below were made:

“China’s Supervisory Organs and their anti-corruption Work”, by H.E. the Vice Minister of Supervision, Mr. Li Zhilun, P.R. China.;

“Scope of Ombudsman’s Institution in developing countries”, by Mr. Jus-

tice ® Salahuddin Mirza, Provincial Ombudsman for Sindh, Pakistan;

“Strategic planning of the Office of the Ombudsman”, by Mr. Alec Pak Ming Kwong, Office of the Ombudsman, Hong Kong, P.R. China;

“People Ombudsman and Policy impact: Pragmatic paths to successful administration”, by Mr. Eugene Biganovsky, South Australian State Ombudsman, Australia;

“Settlement of complaints and denunciations of citizens in Vietnam”, by H.E. the First Vice-Minister, standing Deputy Inspector General, Vietnam;

“The Ombudsman as a tool in fighting corruption”, by Mr. Ho Chio Meng, Deputy High Commissioner, Macau.

### III - MEETING OF THE FOUNDING MEMBERS OF THE ASIAN OMBUDSMAN ASSOCIATION

On 6<sup>th</sup> May 1998, meeting of the Founding Members of the Asian Ombudsman Association was held for discussion and adoption of the draft Bye-Laws of the Association. These were formulated by the Preparatory Committee in its meeting held in Islamabad, Pakistan on 10<sup>th</sup> and 11<sup>th</sup> November 1997. The following attended:

**Mr. Justice ® Abdul Shakurul Salam**  
Wafaqi Mohtasib (Ombudsman)  
Islamic Republic of Pakistan  
Chairman/Convenor of the Preparatory Committee

**Mr. Li Zhilun**  
Vice-Minister of Supervision  
People's Republic of China  
Member of the Preparatory Committee

**Mr. Andrew So Kwok-wing**  
Ombudsman of Hong Kong  
People's Republic of China  
Member of the Preparatory Committee

**Mr. Mohammad Nekounam**  
Deputy President of General Inspection Organization  
Islamic Republic of Iran  
Member of the Preparatory Committee

**THE THIRD ASIAN OMBUDSMAN CONFERENCE**

**Mr. Chu Kwang-II**

Chief Ombudsman  
Republic of Korea  
Member of the Preparatory Committee

**Professor Bertram Bastiampillai**

Parliamentary Commissioner for Administration  
Democratic Socialist Republic of Sri Lanka  
Member of the Preparatory Committee

**Mr. Hisao Tsukamoto**

Councillor of the Administrative Inspection Bureau  
Japan

**Mr. Faisal S. Al Gharib**

Assistant Undersecretary for Legal Affairs  
Civil Service Commission  
State of Kuwait

**Mr. Luís Manuel Guerreiro de Mendonça Freitas**

High Commissioner Against Corruption and Administrative Illegality  
Macau

**Mr. Tariq Masud**

Ombudsman for Azad Jammu and Kashmir  
Islamic Republic of Pakistan

**Mr. Justice ® Salahuddin Mirza**

Provincial Ombudsman for Sindh  
Islamic Republic of Pakistan

**Mr. Margareto P. Gervacio Jr.**

Deputy Ombudsman for Mindanao  
Republic of the Philippines

**Mr. Alec Kwong Pak-ming,**

Principal Executive Officer, Office of The Ombudsman of Hong Kong,  
People's Republic of China attended the meeting as Note-taker.

## **OPENING REMARKS AND BRIEFING BY THE CHAIRMAN/CONVENOR OF THE PREPARATORY COMMITTEE**

The meeting started at 09:15am. Mr. Justice ® Abdul Shakurul Salam extended a warm welcome to the Founding Members of the Asian Ombudsman Association. He conveyed a good will message from Dr. Jorge Luis Maiorano, Vice-President of the International Ombudsman Institute and Defensor del Pueblo de la Nación, Republic of Argentina to consolidate the relationship with the Asian Ombudsman Association (AOA) to work towards fairer societies. Mr. Justice ® Abdul Shakurul Salam went on to brief the representatives on the work done by the Bye-Laws Preparatory Committee elected in April 1996 in Islamabad, Pakistan comprising Pakistan as Chairman/Convenor, China, Hong Kong(China), Korea, Sri Lanka and Iran as Members and thanked them.

Mr. Justice ® Abdul Shakurul Salam read out the Articles in the draft Bye-Laws and drew particular attention to Article 5 which dealt with the various categories of membership of the AOA, Article 6 on the composition, rights and quorum of the General Assembly and Article 7 on the composition, responsibilities and functioning of the Board of Directors.

Mr. Justice ® Abdul Shakurul Salam then informed the members that since the last meeting of the Preparatory Committee held in November 1997 in Islamabad, Pakistan, the Preparatory Committee had taken another look at the draft Bye-Laws. It considered that some articles needed to be improved upon. These were to add (a) before (d) in line 5 of Article 6(5) at page 13; to replace "The Secretary" under Article 7(1)(c) by "The Treasurer" and "The Treasurer" under Article 7(1)(d) by "The Secretary" on page 14; and to add at the end of Article 7(3) on page 14 after the full stop replacing it by comma, the words "and in such meeting the quorum shall be five." He went on to explain the rationale behind these suggestions.

## **DISCUSSION ON THE DRAFT BYE-LAWS**

The members appreciated the hardwork of the Preparatory Committee and expressed their approval of the Draft Bye-Laws as amended. Mr. Faisal S. Al Gharib asked whether a country would have one vote even if there are more members from their country. Mr. Andrew So clarified that this will be so except that the Founding Members would each have one vote. Mr. Faisal S. Al Gharib expressed gratitude to Mr. Justice Luís de Mendonça Freitas, High

Comissioner Against Corruption and Administrative Illegality of Macau and his staff for the excellent organisation of the AOA Conference and to the Chairman/Convenor and Members of the Bye-Laws Preparatory Committee for their efforts. He stated that he would require legal sanction from his Government for approval of the Bye-Laws. He was informed that Kuwait was already a member of the AOA and the Bye-Laws are consequential. This view was endorsed by Prof. Bertram Bastiampillai who added that the Bye-Laws allow withdrawal if there is change of mind subsequently. Both Mr. Justice Luís de Mendonça Freitas of Macau and Mr. Mohammad Nekoonam of Iran also shared the above views and added that Kuwait could safeguard its position by endorsing the Bye-Laws and ratifying them at a later date after consulting the Government. Mr. Faisal S. Al Gharib agreed and approved the Bye-Laws. He added he will confirm it later.

#### **DECISION**

Mr. Margareto P. Gervacio Jr. of the Republic of the Philippines proposed and Mr. Justice Luís de Mendonça Freitas of Macau seconded the proposal to adopt the draft Bye-Laws, updated by the Preparatory Committee, as the Bye-Laws of the AOA. The Founding Members, having discussed in detail the draft Bye-Laws drafted by the Preparatory Committee, adopted and approved the same as the Bye-Laws of AOA. All Founding Members present then signed to signify the acceptance and adoption of the Bye-Laws.

Mr. Justice ® Abdul Shakurul Salam thanked on his own behalf and on behalf of the members of the Preparatory Committee for adoption of the Bye-Laws by the Founding Members of the Association.

After adoption of the Bye-Laws and conclusion of the meeting Mr. Justice ® Abdul Shakurul Salam handed over the proceedings to Mr. Justice Luís de Mendonça Freitas, High Commissioner Against Corruption and Administrative Illegality of Macau, Chairman of the III Asian Ombudsman Conference for further action in pursuance of the Bye-Laws.

## IV - FIRST GENERAL MEETING OF THE AOA

### ELECTION OF THE BOARD OF DIRECTORS

Mr. Justice Luís de Mendonça Freitas, Chairman of the III Asian Ombudsman Conference took over the chair. He congratulated all the Founding Members for adopting the Bye-Laws.

Mr. Li Zhilun, Vice Minister of Supervision of the People's Republic of China remarked that due to the joint efforts of Mr. Justice Luís de Mendonça Freitas and his colleagues and all the delegates to the Conference, remarkable achievements have been made in the III AOA Conference. He observed that since the Bye-Laws have been adopted, the Voting Members may proceed to elect the Members of the Board of Directors. He stated that Mr. Justice ® Abdul Shakurul Salam had contributed tremendously to the formation and sound development of the AOA, therefore, he would propose that Justice Salam should be elected as the President of AOA. The proposal was seconded by the delegate of Sri Lanka. Delegate of Iran supported the proposal. All agreed. Mr. Justice ® Abdul Shakurul Salam, Ombudsman of Pakistan was thus unanimously elected as President of the Asian Ombudsman Association. In view of the remarkable efforts and contributions made by Prof. Bertram Bastiampillai, Mr. Chu Kwang-II and Mr. Andrew So and their vast experience in Ombudsmanship, Prof. Bertram Bastiampillai was elected as the Vice-President, Mr. Chu Kwang-II as the Treasurer and Mr. Andrew So as the Secretary of the Asian Ombudsman Association. H. E. the Vice Minister of Supervision of the People's Republic of China supported the proposal from Iran to host the next AOA Conference in 1999. On behalf of the Ministry of Supervision of the People's Republic of China, he expressed great confidence that the AOA would be an important regional organization of ombudsman and contribute significantly at the international level. Mr. Justice ® Abdul Shakurul Salam, President elected, then, conducted the election of the members of the Board of Directors. Delegates of China, Macau, Iran, Japan and Philippines were so elected.

**FINAL LIST OF THE ELECTED BOARD OF DIRECTORS OF THE ASIAN OMBUDSMAN ASSOCIATION:**

PRESIDENT: Mr. Justice ® Abdul Shakurul Salam  
Wafaqi Mohtasib (Ombudsman)  
Islamic Republic of Pakistan

VICE-PRESIDENT: Prof. Bertram Bastiampillai  
Parliamentary Commissioner for Administration  
Democratic Socialist Republic of Sri Lanka

TREASURER: Mr. Chu Kwang-II  
Chief Ombudsman  
Republic of Korea

SECRETARY: Mr. Andrew So  
Ombudsman of Hong Kong  
People's Republic of China

MEMBERS ON THE BOARD OF DIRECTORS: H.E.Mr. Li Zhilun  
Vice-Minister of Supervision  
People's Republic of China

Mr. Justice Luís de Mendonça Freitas  
High Commissioner Against Corruption and  
Administrative Illegality  
Macau

Mr. Mohammad Nekounam  
Deputy President of General Inspection  
Organization  
Islamic Republic of Iran

Mr. Hisao Tsukamoto  
Councillor of the Administrative Inspection  
Bureau

Japan  
Mr. Margareto P. Gervacio Jr.  
Deputy Ombudsman for Mindanao  
Republic of the Philippines

### **MEMBERSHIP DUES**

The President of the AOA, Mr. Justice ® Abdul Shakurul Salam invited Mr. Chu Kwang-II, as Treasurer of the AOA, to examine and advise on the appropriate amounts to be set and also for appointment of an Auditor by the Voting Members in due course.

### **VENUE OF NEXT CONFERENCE**

Representatives unanimously agreed to accept Iran's proposal to host the IV Conference in the Islamic Republic of Iran in 1999 at a time to be advised by Iran. Mr. Margareto Gervacio Jr. of the Philippines proposed to host the V Conference in the Republic of the Philippines. This was accepted subject to a firm confirmation.

### **CLOSE OF MEETING**

There being no further business, Mr. Justice Luís de Mendonça Freitas, Chairman of the III Asian Ombudsman Conference, announced closure of the meeting at 11:00am.

### **CLOSING CEREMONY**

The Closing Ceremony of the III Asian Ombudsman Conference, was held on the 6<sup>th</sup> of May 1998. It was presided by Dra. Anabela Sales Ritchie, President of the Legislative Assembly of Macau. It was addressed by the High Commissioner, Mr. Justice Luís de Mendonça Freitas and by the Deputy President of the General Inspection Organization of the Islamic Republic of Iran.

The President of the Asian Ombudsman Association, Mr. Justice ® Abdul Shakurul Salam on his own behalf and on behalf of all the delegates and partici-

pants thanked Mr. Justice Luís de Mendonça Freitas, High Commissioner and his lady wife, Dra. Maria Margarida de Mendonça Freitas, the government and the people of Macau for excellent arrangements, most successful conference and wished good luck, happy life, peace and prosperity for all.

Dra. Anabela Sales Ritchie, President of the Legislative Assembly of Macau delivered the Closing Speech.

## V - AGREEMENTS OF INTRA-INSTITUTIONAL AND TECHNICAL COOPERATION

During the Conference 10 Agreements of Intra-Institutional and Technical Cooperation were signed between the High Commissioner Against Corruption and Administrative Illegality of Macau, Mr. Justice Luís de Mendonça Freitas and:

- 1 - The Wafaqi Mohtasib (Ombudsman) of Pakistan, Mr. Justice ® Abdul Shakurul Salam;
- 2 - The National Ombudsman of the Netherlands, Dr. Marten Oosting;
- 3 - The Chief Ombudsman of New Zealand, Sir Brian Elwood.
- 4 - The Protecteur du Citoyen du Québec, Canada, Mr. Daniel Jacoby;
- 5 - The Chief Ombudsman of Papua New Guinea, Mr. Simon Gregory Pentanu;
- 6 - The Provincial Ombudsman for Punjab, Pakistan, Mr. Justice ® Manzoor H. Sial;
- 7 - The Provincial Ombudsman for Sindh, Pakistan, Mr. Justice ® Salahuddin Mirza;
- 8 - The Attorney General of the Republic of Mozambique, Dr. António Paulo Namburete;
- 9 - The Ombudsman for Azad Jammu & Kashmir, Mr. Tariq Masud; and
- 10 - The South Australian State Ombudsman, Mr. Eugene Biganovsky.

# *Opening Ceremony*

**MR. JUSTICE LUÍS DE MENDONÇA FREITAS**  
**HIGH COMMISSIONER AGAINST CORRUPTION AND**  
**ADMINISTRATIVE ILLEGALITY**

Your Excellency, the Governor of Macau  
Madam President of the Legislative Assembly,  
President of the High Court of Justice  
Government Secretary for Administration and Youth Affairs  
Government Secretary for Justice  
Assistant Public Prosecutor  
Distinguished Guests and Delegates of the IIIrd Conference of Asian Ombudsmen  
Ladies and Gentlemen

General Rocha Vieira,

You represent the efforts made by the Portuguese Administration of Macau's in its struggle and desire to uphold the Law. To put it another way, you have consistently given clear and insistent support through political and administrative directives that have fitted in exactly with the protection of the legitimate freedoms and interests of Macau's residents.

Further encouragement and support for the High Commission against Corruption and Administrative Illegality —responsible for ensuring that institutions correct themselves, and that citizens are protected—is the guarantee that the mission with which it has been entrusted is independent.

As such, it is not only your presence here at the opening of this Conference of the Association of Asian Ombudsmen held in Macau, precisely because of the confidence that the Territory is demonstrating to the participants, for which we are grateful. Your presence here, Your Excellency, is seen in its own right and I am very pleased to acknowledge it.

Doctor Marten Oosting, distinguished President of the International Ombudsman Organisation,

Your presence in this Conference must be interpreted as an indication that we have achieved an excellent degree of universal solidarity generated by the goals of justice and peace. We are very grateful to you. We Ombudsmen of Asia expectantly await the support, experience and good advice that you are certain to give us in order to strengthen this movement which acts to protect citizens and counter arbitrary acts thus ensuring that relations between community and State in this part of the world can progress in peace and in the hope of a better future.

Mr. Chu Kwang-II, Ombudsman of South Korea,

The institution that was responsible for organising the previous conference which provided such exhaustive, useful conclusions, it is stimulating to have you with us. It indicates the continuing efforts, the acknowledged usefulness of our meetings and the persistence of the Asian Ombudsman Movement which, I am sure, will move closer towards consolidating its beneficial influence over the construction of just national societies in which everybody feels it is worth living.

Delegates of the founding members of the Asian Ombudsman Organisation, represented symbolically by His Excellency, the Vice-Minister of Supervision of the People's Republic of China, I welcome you all in the name of Macau and the High Commission against Corruption and Illegality, and urge you to work as fruitfully as possible. I know you are all aware that one of the most important aims of this Conference is to approve the Articles.

These will mark a decisive step in the life of the Association of Asian Ombudsmen, endowing it with an internal law which can project a united image of the efforts of the modern international Ombudsman movement.

It is only fair that I highlight, at this point, the enthusiasm and entrepreneurial capacities of the Ombudsman of Pakistan, Judge Abdul Salam who not only nurtured the idea of a strong and active Asian Ombudsman Association from the outset; he has also lent this project his energetic support and this has been indispensable in the organisation of the IIIrd Conference.

Ombudsmen and representatives who were invited to attend (of whom Counsellor José Meneres Pimentel, Provedor de Justiça of Portugal has been called to the table), I thank you for having accepted our invitation. We will benefit tremendously from accounts of such diverse perspectives as you hold,

offered in the spirit of a fraternal gift. This is what makes them particularly valuable for those of us who will find in them guidance and precious paths.

Please forgive me if I now give way to affection and respect by addressing my dear friend Doctor Jorge Maiorano, Defensor del Pueblo de la Nación Argentina, to thank him for the excellent advice he has given me as part of an exemplary institutional co-operation rooted in solid university, humanist research, as is only correct in true science.

Last, but not least, Madam President of the Legislative Assembly of Macau, Anabela Ritchie, your presence here in this opening session honours us tremendously. It brings home to us the ideal of popular representation as a form of limiting arbitrary acts which is, at the end of the day, what guides us and requires us to be willing to co-operate with all State authorities on behalf of citizens.

To our other guests, the President of the High Court of Justice of Macau, Government Secretaries, the Assistant Public Prosecutor, President of the Lawyers Association and high-ranking Civil Servants, we offer our thanks for the support your presence gives us.

I shall be brief.

In a modern world, the challenge of globalisation and technological development has created needs in governing peoples. The response to these needs involves careful scrutiny by citizens protecting their rights and legitimate interests. Regardless of whether complaints are from individuals or groups, whether the interests involved are private or more or less collective, whether they refer to the common themes of relations between citizen and State or new themes such as protecting the environment and the equity of promotional policies, there is a need to ensure that the administration acts correctly, and that procedures are transparent and just. This is basically the role of the Ombudsman as a driving engine of civil liberties and as the State organ on the front-line of a general fight against corruption which aims at damaging and sacrificing these same liberties.

The vigilance of Ombudsmen, however, does not follow the classical legal path of sanctioning and control. Rather it is a special form of persuasion which has been established as a broader form of governmental rationale, securing greater quality for democracy and a broader, calmer forum for public debate on genuine collective issues.

And this is where we find the issues of mediation, informal procedures, in sum, the invention of new kinds of trust that private individuals can place in

the administration, in good government, and in the speedy, appropriate settling of disputes. It is also here that the prospect of a promising future of harmony and civil peace opens up, and this is what we want and are responsible for achieving.

Certainly, our supervisory role on the one hand, and the promotion of more equitable procedures and legal frameworks on the other, is a far from easy task. It requires perseverance and determination. And success depends on winning both specialised opinion and public opinion in supporting the institutional model that we propose and, more importantly, in carrying out our specific duties.

Good causes always have those who promote them, and exemplary friends who are always available. We have both here. We should use this opportunity to examine the needs of this period and, at the close of this century in Asia, to shape a worthwhile path which can lead to unparalleled progress. However, we require the contribution of all, without neglecting those in other parts of the world who for many years have worked nobly to improve citizens rights, both nationally and universally.

In the 21<sup>st</sup> century, justice will be regarded, more than ever, as an on-going process of construction in order to keep up with up-coming changes. The Ombudsman will play a vital role in this on-going process since he is in the privileged position of being able to monitor the complaints and difficulties that populations encounter in change.

Just like the bamboo structure we can see behind us, justice must be at once solid and flexible, able to adapt but maintaining at all times its central essence.

We are here to discuss these ideas and to discover strategic paths in terms of efficiency and sustainable action for the good of the people. I hope, ladies and gentlemen, that we will be successful and that we leave with excellent memories of the Macau Conference.

Once again, thank you all very much.

**DR MARTEN OOSTING**

**PRESIDENT OF THE INTERNATIONAL OMBUDSMAN INSTITUTE  
NATIONAL OMBUDSMAN OF THE NETHERLANDS**

THE INDEPENDENT OMBUDSMAN IN  
A DEMOCRACY, GOVERNED BY THE RULE OF LAW

Dr Luís de Mendonça Freitas, High Commissioner Against Corruption and Administrative Illegality of Macau, distinguished participants, fellow ombudsmen,

The location chosen for this Third Asian Ombudsman Conference is quite unique. Macau: a region where different cultures have intermingled for centuries, now preparing to adapt to new conditions, optimistic that its special character will be preserved in the next millennium. These characteristics make apt surroundings for an international meeting of ombudsmen, as I hope to make clear.

First of all, however, I should like to thank Dr de Mendonça Freitas for offering to host this Third Asian Ombudsman Conference. I am particularly grateful for his inviting me to represent the International Ombudsman Institute here and to participate in the conference as his guest. It gives me great pleasure to welcome you all on behalf of the world community of ombudsmen. I am convinced that all the ingredients of a successful conference are present here in Macau, and I look forward to the presentations and debate.

The ombudsman as an institution has taken hold rapidly over the past few decades and now exists in some 80 countries spread over all the continents

of the world. It takes many different forms, partly related to constitutional and political, as well as economic differences between countries. As this diversity increases, the question of the integrity of the ombudsman as a concept becomes more interesting and more compelling. In origin, this concept has several essential features that make up the greatest common denominator, regardless of the name given to the office and other external features. But are these characteristics truly universal? Could any country have an ombudsman, whatever it's constitutional and political setup, or are there certain preconditions? I should like to examine this question in greater detail. I shall begin by dwelling on some of the characteristics of the ombudsman as an institution, and especially the one I deem most essential for every ombudsman institution - independence.

The ombudsman is an institution set up for members of the public; its *raison d'être* is to help protect ordinary people from the government. Any other role that it may fulfil, such as enhancing the quality of government, is subordinate to its primary task - to be the Defender of the People, the institution's superbly chosen name in Spain. The government - necessarily - is invested with special powers, and has numerous monopolies. This makes people dependent on it in countless ways, a dependency that may vary according to social position and circumstances. So members of the public must be able to count on the government performing its tasks correctly. That governments cannot always be relied upon to do so is universally acknowledged as a fact of life.

This brings me to the central responsibility of every ombudsman - to foster good governance in the interests of the general public. Good governance means a government that unconditionally respects the rules of the national and international legal order, especially in the realm of human rights, and that strives to fulfil its responsibilities properly in the service of the general public, free from corruption. If the ombudsman is to do a good job, the right of every member of the public to contact him must obviously be safeguarded beyond all doubt. People must also be assured that they can go to the ombudsman without any fear of reprisals from the government. Furthermore, it is essential that the ombudsman's existence should be well publicized, and that he himself should have the means, and the will, to make his presence known. And finally, the ombudsman must be able to operate completely independently of the government bodies within his area of competence.

The ombudsman's independence has several facets, relating to the office

itself and the person who holds it. As far as the office is concerned, it must furnish a solid basis - preferably on the basis of the Constitution - and assurances of continuity. Safeguards are needed to ensure that the ombudsman is not part of any other authority within the state, let alone subordinate to it. This means that the ombudsman must not be bound by any external instructions in his work other than the National Ombudsman Act or an equivalent piece of legislation, and that, as an external supervisory body, he may not be a part of supervisory structures or mechanisms such as those that exist in numerous situations within the government itself. It also means, for instance, that the confidential information passed on to the ombudsman in the course of his work is not accessible to others. The government and its officials must be under an obligation to give the ombudsman all the assistance he requires for his investigation, and their cooperation must be enforceable if needs be. The law must give the ombudsman the necessary powers in this respect. The independence of the ombudsman as an investigative agency is enhanced if he is also empowered to launch investigations on his own initiative. Furthermore, he must be assured of the financial and personnel resources needed to perform his job properly.

In any case, the ombudsman's independence should also mean that he is at liberty to address the general public and to make his presence felt in society without his actions being subject to approval of any kind. In this connection, the ombudsman must be free to perform an educational role, if he sees fit, informing the public of their rights vis-à-vis the government and the ways in which they can enforce them. Finally, the ombudsman must also be free to make his findings public without permission from any source, even when these findings are disagreeable to the government body under scrutiny.

The position of the person appointed ombudsman also needs statutory safeguards to ensure independence. Thus a fixed term of office must be laid down, making it impossible for him to be dismissed before this term expires. Or, in the event that he can be dismissed prematurely, special procedural and substantive conditions must be enshrined in statutory provisions, to guard against any political or administrative influence that might prejudice the independence of the ombudsman's office. The rank of the ombudsman must not be subordinate to that of the leadership of the bodies that he is empowered to investigate. In many countries the ombudsman is appointed by parliament; in some by the head of state. However the appointments procedure may be set up, the institutional safeguards for independence will be under-

mined if there is any possibility of party political considerations leading to bias - or the appearance of bias - in the person appointed. It is equally important to guard against making an appointment that waives or dilutes the necessary professional qualifications. In this respect all that can be done, once a sound selection procedure is enshrined in the law, is to hope that the responsible authority will act wisely. The ombudsman himself, of course, must endeavor to steer clear of any conduct that could undermine his impartiality or public confidence in him in this regard. He must never use his office to pursue his own personal interests, for instance in connection with his future career.

This is no mean list of requirements. They are essential, however, to ensure that the ombudsman can perform his responsibilities effectively, in such a way that the public can have confidence in him and know how to reach him. All these requirements come under the heading of "independence". In the By-laws of the International Ombudsman Institute, the independence criterion has acquired special significance as a requirement for membership.

It is important to see the ombudsman not only in his direct relationship, from his position of independence, with the bodies he is empowered to investigate, but also in relation to the wider political environment in which he has to work. I believe that the institution of the ombudsman can only develop healthily, and, in the final analysis, can only function as it should, if this environment is a democratic state governed by the rule of law. What does this mean?

In a democracy, the public comes first. The people are the ultimate bearers of the sovereignty of the state. In a democracy, the people determine, in open and free elections, who is to be entrusted with administrative responsibility. Democracy means a culture in which every individual matters, and is respected. In a democratic system it is taken for granted that government bodies must account externally - in particular to parliament - for the way in which they perform their duties. For this it is essential that open government is safeguarded. Free and pluralist news media play an essential role in this external accountability of government.

A state governed by the rule of law means that the government not only creates laws, but is then bound by them itself. In such a state, the government is expected to respect and safeguard the rights of ordinary people. This is most obvious in the case of human rights. Where the rule of law holds sway, the exercise of government authority is not determined by tradition or the

evolved, such as certain democracies with flourishing economies in Northern and Western Europe, and New Zealand, Australia and Canada. Coming as I do from the Netherlands, it is not up to me to answer this question, as my reply would be open to the same charge of bias. My main aim in making these remarks is to contribute to a debate that I consider to be of great importance within the International Ombudsman Institute, and that must not, therefore, be avoided. After all, the ombudsman institution has spread from the countries I have just mentioned to many countries with very different traditions, new democracies where the rule of law is new and sometimes extremely vulnerable, and to developing countries, where corruption appears to cleave to government like rust to iron. I should have said, perhaps, that agencies have started up in such countries calling themselves "ombudsman" or some similar name, and have sought to join the world community of ombudsman institutions as represented by the International Ombudsman Institute. At every fresh request for membership, the Board of Directors of the IOI faces the same difficulties of assessing whether the institution concerned, taking its surroundings into account, has enough in common with the basic concept of the ombudsman for the request to be granted. In making this assessment, the IOI's task is not to hold rigidly to a concept that is of sole relevance to the rule of law in prosperous democracies, but at the same time to guard against holding the door so wide open as to erode the common principles of the ombudsman's profession. This would ultimately undermine the foundations of this organization for those who practice the same profession. In a number of cases, associate membership has proved a good solution, creating ties with institutions that were interested in collaborating with and within the IOI, but did not yet meet the criteria for voting membership.

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I began by saying that Macau is an excellent place for a conference of ombudsmen: a society forged from the meeting of different cultures, and an area optimistic of retaining its identity in a period of transition. This links up with the development of the ombudsman's institution in different parts of the world. For other countries to adopt what was originally a Scandinavian blueprint also meant a meeting of different cultures, and this has created a certain diversity in the ombudsman's institution. While this development continues, it is the IOI's task to watch over the identity and integrity of the insti-

tution. These must not be allowed to become so blurred that the concept of the ombudsman loses its distinctive features. For the IOI as a whole, the Board of Directors has a special responsibility in this respect, as do those who constitute a regional branch of the IOI.

I should like to wish the Asian Ombudsman Association inspiration and strength in fulfilling this responsibility. You may rest assured that your fellow ombudsmen in other regions are following your work with the greatest of interest.

In particular, I should like to wish the High Commissioner Against Corruption and Administrative Illegality - the ombudsman - of Macau and his staff every success in the coming years in continuing to fulfil his important duties for the people of Macau.

Thank you.

**CHU KWANG-IL**

**CHIEF OMBUDSMAN OF KOREA**

CONGRATULATORY SPEECH

Your Excellency the Governor of Macao, General Vasco Rocha Vieira and Distinguished Representative Ombudsmen of Asian Countries:

It is an honor and a pleasure to participate in the 3<sup>rd</sup> Asian Ombudsman Conference, and to be here in Macao, a famous international commercial port where cultures of the East and the West exist in harmony.

Speaking for the Ombudsman of Korea, I'd like to express my heartfelt thanks to Mr. Abdul S, Salam, President of the Preparatory Committee of the Asian Ombudsman Association; Dr. Marten Oosting, President of the International Ombudsman Institute; and other ombudsmen for having participated actively in the 2<sup>nd</sup> Asian Ombudsman Conference held in Seoul, Korea last year. I'd also like to pay my sincere respects to L.M. Freitas, High Commissioner Against Corruption and Administrative Illegality of Macau for making unsparing efforts to prepare for this conference here in Macao, where the AOA will soon be organized.

I understand that the ombudsmen of Asian countries have their traditional systems developed to support efforts to achieve their respective national goals. I hope that this meeting will provide a good opportunity for these representatives to share views on these traditional systems and learn about differing systems used by other countries.

I am convinced that this meeting will do much to develop the ombudsman systems in the participating countries and strengthen the roles of ombudsmen through the exchange of opinions under the conference theme "*The Encompassing Role of Ombudsman in Today's Societies*".

The Asian Ombudsman Association was formed in April 1996 in Pakistan thanks to the efforts of Mr. Abdul S. Salam and many ombudsmen throughout the region. Thanks to their efforts, the Association has done and will continue to do much to strengthen the ombudsmen international exchange and cooperation among Asian countries and develop the ombudsman systems of the region.

Again, I thank the people of the High Commissioner Against Corruption and Administrative Illegality of Macau and the ombudsmen of the region for doing such a good job organizing this meeting. I promise you that I will do my utmost to ensure that this meeting is a success.

Thank you very much.

**HIS EXCELLENCY THE GOVERNOR OF MACAU  
GENERAL VASCO ROCHA VIEIRA**

SPEECH AT THE OPENING CEREMONY OF  
THE IIIIRD ASIAN OMBUDSMEN CONFERENCE

Macau, 4th May, 1998

I should like to express my pleasure that Macau is the city chosen for the IIIrd Asian Ombudsmen Conference. The fact that it has gathered together representatives of such a variety of countries makes this a truly significant international event.

This decision was most certainly taken in homage to the relevant institution in Macau -the High Commission Against Corruption and Administrative Illegality- in acknowledgement of its dynamism and capacity to organise such an event. It also pays justice to Macau as a city that has traditionally been sensitive to the values of freedom, a place where there has always been harmonious coexistence and which has sought to secure citizens' rights.

The application of the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, and legislation concerning fundamental rights, freedoms and safeguards currently ensures a perfect balance between the Law and the idiosyncrasies of Macau's society.

For both Macau and its population, the opportunity to welcome such a broad group of distinguished holders and representatives of public offices that correspond to the Ombudsman in several countries gives us just cause for pride.

As is its wont, the City has responded in the best way possible, mobilising all its resources in order to make your work as successful as possible, as well as enhancing your stay.

The institution of Ombudsman, although not exactly recent, has, in this

part of the world, progressively carved out a considerable, and prestigious position for itself. Its growing credibility, which must obviously be linked to the high degree of institutional responsibility that these organs usually demonstrate, must also be due to the efficiency it has shown in combating the complex and increasingly worrying problems it faces. It cannot be denied that the institution stands now as a highly significant instrument in promoting human rights and respect for legality.

While it is reasonable nowadays to pursue efforts to broaden and consolidate those social and economic rights that have already been won, there is still a pressing, fundamental need to strengthen democratic society, based on a culture of citizenship in which behaviour patterns are marked by solid ethical values.

We must counter with determination and using all means the tendency to loosen our civic values and the absence of ethical standards which is increasingly encroaching upon the margins of our communities. Unless we effectively combat this, it can exacerbate the deterioration in the system of balances that sustain social organisation or, in extreme situations, compromise its overall development or even result inevitably in social and political disintegration.

Society in general must also be mobilised in the fight against corruption alongside the efforts made by different organs and public services; it should have mechanisms that extend beyond the domestic plane into international co-operation, in order to counter more effectively this scourge which by nature and in terms of its organisation does not acknowledge border frontiers. In this context, particularly in South East Asia where there are specific cultural modes which can compound this phenomenon, the Ombudsman movement acts as a particularly appropriate, relevant instrument.

The creation in Macau of the High Commission Against Corruption and Administrative Illegality, in the superstructure of the territory's institutional organisation, represented a new and important means for ensuring the Law in Macau. On a par with most modern States, the Territory has been able to substantially extend its general system of safeguards in terms of respect for citizens' rights and in terms of the total adherence to the principles of equality and legality.

Acting as the critical conscience of the Administration itself, to which it belongs but within which it acts independently, the High Commission Against Corruption and Administration Illegality has been working in the field of edu-

cating the public and pursuing a systematic approach in its attempts to control behaviour patterns that diverge from the principles of the Law. In doing so, it has stimulated a high degree of active co-operation and interested participation from several sectors of the community. This is a very important indication, in that it shows that there has been an awakening and implementation of the civic awareness that is so essential in this process.

We are in the presence of a project which has to undergo several stages in order to mature. In many cases, it implies a tremendous change in individual attitudes. Consequently, its natural development is slow: it affects not only structures but also human nature, in the complexities of social organisation.

I congratulate you on this event which reflects so well the innovative spirit and dynamism that stimulates you. I wish you every success in this IIIrd Conference of Asian Ombudsmen in the hope that it represents a significant step in the Ombudsman movement. And, I repeat my wish that you have a pleasant stay in Macau.



GENERAL VASCO ROCHA VIEIRA, THE MACAU GOVERNOR, DELIVERING HIS SPEECH AT THE OPENING CEREMONY



*First Session*

**JOSÉ MANUEL MENÉRES PIMENTEL**

**OMBUDSMAN OF PORTUGAL**

THE OMBUDSMAN AS A SAFEGUARD FOR  
CITIZENS IN CREATING A BALANCED  
SOCIETY AND ENVIRONMENT

It is a great pleasure for me to participate in this meeting of Asian Ombudsmen. First of all, I would like to acknowledge the work of the organisers of this event, in the person of Dr. Mendonça de Freitas, the High Commissioner against Corruption and Administrative Illegality of the Territory of Macau, and to greet all the Ombudsmen and their delegations.

Despite the kilometres that separate us, and our different languages, cultures and legal systems, I do believe that what unites us is stronger: helping to build a more balanced world, making our societies fairer, avoiding and settling disputes.

The manner in which the Ombudsman, as an institution, has managed to play a role in the most varied countries and regions of the world is an overwhelming indication of the significance of its role and the interest people have in it. Rather than just adapting itself to different latitudes, the Ombudsman is in each country the creation of its own People and their sense of justice.

It would be mistaken to see this as a European-style institution imported by other continents. Even in Europe, there is a wide diversity of models and despite their Scandinavian origins (Swedish to be more precise), the Ombudsmen of these countries are no more than a frame of reference. The common denominator of all Ombudsmen is their independence and their *modus operandi*: persuasion, education, uncompromising with the authorities and

patience in defending what they believe to be just. As for the rest, their composition, status and the extent of their intervention are dictated by the will of the People.

It would be mistaken to see the Ombudsman as competing with the Courts, or an adversary of the Administration. Early on, the traditional framework of separate legislative, executive and judicial powers left a space that had to be filled: that of a moderating authority. I believe that this space, insofar as concerns moderating between the exercise of authority and citizens is nowadays rightly occupied by the Ombudsman's activities. The Ombudsman as moderator is not an adversary, nor a competitor with any authority or institution, for he has no powers to impose his attitudes, nor is he able to replace the decision-making organs.

What we all certainly share is our role in safeguarding the environment (an aspect affecting the quality of life of citizens in our countries), and preserving natural resources. These values are not only a requirement for Man's survival on Earth, but are also a prerequisite for achieving Justice. In this respect, caring for the Environment is not a luxury; it is a necessity. Caring for those who suffer most directly from the hazards of pollution is to assist through Justice.

We all know how important it is to have careful management of scarce natural resources. We all know how important it is for economic, political and even legal decisions to reflect the value of the Environment and the Quality of Life. We all know, too, how difficult it is to put these good intentions into practice. Another forest is destroyed, and we think there are still many that haven't been chopped down. A river is contaminated, and we believe there are still many rivers that haven't been contaminated. There is construction without rules, but we believe that growth cannot be sustained. At the end of the day, we confuse ephemeral progress with safeguards for development.

We all know, however, the planetary implications of environmental issues: deforestation of vast tracts of the Amazon or Indonesia, acid rain in Northern Europe, fatal, destructive flooding more or less everywhere, creeping desert extension in Africa, the greenhouse effect and damaging of the ozone layer. These are global problems that constantly interact with each other. At first glance, there is nothing that the Ombudsman could do.

I do not agree with this, however, It is not uncommon for the Public Administration to place environmental issues on the back burner, fully exercising its powers yet refraining from exercising careful vigilance, frequently re-

placing law in consideration for other assets. On its own scale, the Ombudsman has an important mission. He is responsible for using his experience to point out weaknesses in the legislation and regulations aimed at environmental protection, calling the lawmaker's attention to this fact. Often, it is not because the penalties to which people would be subject are heavy that they stop inflicting damage on the environment. More importantly, I believe, controls should be better structured and efficient, and the applicable regulations of law should be watertight, with no loopholes.

Let me give you an example of a recent experience in this field. In Portugal, as in many other countries, the construction of certain kinds of factories and developments must be preceded by an assessment of the effect this will have on the environment in order to select the least toxic location and to prevent excessive risk to people and natural resources. In order for the conclusions of this study to take the desired effect, they must be approved by the Ministry of the Environment within a certain period. However, after it was noted that a failure to comply with this deadline was due a lack of bureaucratic organisation, I recommended to the Government that in each and every case of this kind, an internal investigation should be opened as soon as the deadline had expired, and, if need be, the employees responsible should be subjected to prompt disciplinary measures. While it is true that protecting the environment is an interest shared by the whole community, it is also true that the responsibility for failing to diligently adopt the measures is also diluted amongst a huge variety of department. As the Ombudsman is very familiar with how the services of the Public Administration are structured and operate, he is in an excellent position to expose obstacles in achieving the common good.

In many countries, legislative measures have been being introduced in an attempt to increase citizens' participation in environmental decisions. Whether through public consultation or by allowing associations involved with environmental protection to voice their opinions, these measures will not pass from paper laws to practice unless procedures are made more transparent and access is given to information. This is, in my opinion, another environmental area in which the Ombudsman's actions have produced good results. If, in the course of inspections or other investigations led by the Ombudsman or his colleagues, a certain kind of information is found to be incorrectly classified, they can service the environment by demanding that the authorities make certain fact public.

The right to a healthy, balanced environment is now also a duty. This duty implies a very special duty for us as repositories of the hope our countries' citizens have that we will do everything possible to make the societies in which we live more just.

To create a balanced environment is to create a balanced society as protecting the Environment has nowadays become an essential aspect in promoting Justice.

**MANZOOR HUSSAIN SIAL**

**PROVINCIAL OMBUDSMAN FOR PUNJAB**

**PAKISTAN**

THE OMBUDSMAN AS A RELIEF OF CITIZENS  
IN THE CONSTRUCTION OF A BALANCED  
SOCIETY AND ENVIRONMENT

Honourable Dr. Luís de Mendonça Freitas, High Commissioner Against Corruption and Administrative Illegality and distinguished participants of the Conference!

2. I am grateful to the High Commissioner Against Corruption and Administrative Illegality for providing me opportunity of addressing this august House. The theme of the first Session :“The Ombudsman as a relief of citizens in the construction of a balanced society and environment” is indeed a very interesting theme. Let us first see what it literally means, then examine the position on ground and thereafter look at its potential for future.

3. The Ombudsman, all over the world, is an officer appointed to investigate individual's complaints against public authorities. His appointment is made by government or legislature.

4. Relief means satisfaction of a genuine claim in the best possible manner. For the claimant, it may be tangible like refund of tax wrongly deducted or charged or non-tangible like punishment to the wrong doer only. For the Government, it may have administrative implications but mostly it is in the nature of restoration of faith in a system. If relief is not provided to aggrieved citizens promptly, their faith in the system is eroded and this sets in motion the wheel of corruption and nepotism under which ultimately the society is crushed. To save the society from such a catastrophe, governments have set

up institutions for dispensation of justice and provision of relief to the aggrieved citizens.

5. Citizens in some of the Asian countries are less educated and hence easy prey for the greedy officials. Citizens of these countries are also generally poor and hence victims of depression and frustration. A big majority of these citizens is marginally adjusted in the society. The depression and frustration of such citizens can aggravate if their grievances are not handled carefully. One major factor responsible for commonly witnessed unruly behavioural pattern at home and in society is non-redressal of genuine grievances. Prolonged neglect of such citizens can lead to breeding of unpatriotic feelings. The citizens in affluent Asian countries having high literacy rate are totally different from the citizens of the aforementioned category. Their problems are quite different from the problems faced by the citizens of poor Asian countries. The Ombudsmen in these two kinds of societies have obviously different roles to perform.

6. Let us now see what a balanced society and an environment are. To my mind, a society is a balanced society if it is just and fair and an environment is balanced if it is conducive for the honest and the efficient and has institutional arrangement to punish the delinquents.

7. The construction of balanced society and environment is the aim and objective of every good government. This objective can be achieved if all segments of society cooperate with the government and put in their best efforts in strengthening the institutions set up by the government for correcting the imbalances. Soliciting cooperation and support from various segments is an uphill task in those Asian countries where structural weaknesses exist in the institutional frame-work or pressure groups are so strong that if guided by negative impulses they can thwart all government efforts in achieving the objective of construction of balanced society and environment. Support may not be forthcoming even from citizens in whose interest the government is working for reasons of lack of education and awareness. Where citizens are educated and are reasonably well off, governments are able to get support in their efforts in the matter of construction of balanced societies and environments readily and this brings dividends to institutions and societies both. The task of construction of balanced society is more difficult in poorer and less literate societies.

8. Structural weaknesses exist in the institutional frame work of countries which have been ruled by the elite for a number of years and where enough

efforts have not been made to ensure that fruits of economic development reach all those who have contributed to it.

9. Pressure groups are strong in those countries where people's participation in local affairs has been limited for certain reasons.

10. Honourable participants of the Conference ! Having explained the terms and the connotations of the theme, I now proceed to examine the position on ground in Punjab, which is the most populous province of Pakistan.

11. The institution of Ombudsman has been recently set up in Punjab. The provincial legislature has enacted the law in June, 1997. As per this law, the appointment of Ombudsman is made by the government. He is a person who is, or has been or is qualified to be a judge of the High Court and is a person of known integrity. Before entering upon office, the Ombudsman has to take an oath before the Governor that he will discharge his duties and perform his functions without fear or favour, affection or ill will. The oath is so comprehensive that it covers all points relating to good conduct. The Ombudsman can look into the decision, omission or commission which

- a) is contrary to law, rule or regulation
- b) is arbitrary, unreasonable, unjust, biased or discriminatory
- c) involves exercise of power for corrupt motive such as bribery, jobbery, favouritism and administrative excess.

The Ombudsman can diagnose, investigate, redress and rectify any injustice done to a person through maladministration.

12. The salient features of our institution of Ombudsman are :

- a) it is independent of executive
- b) provides easy access to the complainants
- c) procedures are simple
- d) it is inexpensive, almost free of cost,
- e) it is manned by officers having long experience in the field of administration and justice,
- f) it combines in itself the investigative and judicial functions,
- g) all the executive authorities throughout the province are bound to act in aid of the Ombudsman.

13. The Ombudsman has the same powers as are vested in a civil court under the Code of Civil Procedure in respect of:

- i) summoning and enforcing the attendance of any person and examining him on oath;
- ii) compelling the production of documents;

- iii) receiving evidence on affidavits; and
- iv) issuing commission for the examination of witnesses.

These powers can also be exercised by a person authorized in writing by the Ombudsman in this behalf while carrying out an inspection or investigation under the provisions of the Ombudsman Act. The Ombudsman has set up a Secretariat where Investigating Officers have been appointed to look into citizens' complaints against government agencies. These Investigating Officers are retired or serving judges or senior officers from executive having aptitude for judicial work. After conducting investigation, they submit their findings to the Ombudsman with whose approval the recommendations/findings are conveyed to the concerned agency for implementation. The agency has to inform, within such time as may be specified by the Ombudsman, about the action taken on his direction or the reasons for not complying with the same. If the agency concerned does not comply with the recommendations of the Ombudsman or does not give reasons to the satisfaction of the Ombudsman for non-compliance, it is treated as "Defiance of Recommendations" and the Ombudsman may refer the matter to the government which may, in its discretion, direct the agency to implement the recommendation and inform the Ombudsman accordingly. In each instance of "Defiance of Recommendations", a report by the Ombudsman becomes a part of personal file or character roll of the public servant primarily responsible for the defiance provided that the public servant concerned has been granted an opportunity to be heard in the matter.

14. The Ombudsman in Punjab has the same powers as the High Court has to punish any person for its contempt who abuses, interferes with or obstructs the process of the Ombudsman in any way. However, fair comments made in good faith and in public interest do not constitute contempt of the Ombudsman or his office.

15. The office of the Ombudsman has received number of complaints from citizens against the excesses, inattention or corruption of the government functionaries. I have gone through most of these complaints personally. I have given personal attention to complaints emanating from disadvantaged groups. The complaints of retired officials against pension sanctioning authorities disturb me a lot. I have taken serious notice of these complaints and in many cases personally ensured immediate sanction of retirement benefits. I have seen tears in the eyes of poor people and have done my best to make them happy. My appointment as Ombudsman has given me a new vision. I have

found that the problems of the poor are not very difficult to resolve. It is inhuman to neglect them because small things mar their happiness. Not clearing a medical reimbursement claim in time may be a small decision but it has the potential of disturbing the budget of a poor family and affecting their peace of mind. Not processing a pension/gratuity case in time is a matter of inattention but it does effect the total planning of the retiring official having large number of liabilities. The aggrieved people need to be heard very patiently because they are already sick and tired of bureaucratic indifference and apathy. When an agitated mind is satisfied, I feel that I have performed my role in the construction of a balanced society and environment.

16. It is a matter of satisfaction for me that so far there has been no serious case of "Defiance of Recommendations" or contempt of Ombudsman. The senior government officials have been generally helpful in streamlining administrative matters of the Ombudsman's office.

17. Distinguished participants of the Conference ! Let us now see the potential of this institution in the matter of construction of balanced societies and environments in future.

18. The problems of citizens of rich Asian countries are not the same as the problems of citizens of poor Asian countries. For the latter, access to inexpensive forums of relief is nothing short of a bliss. There is, therefore, an urgent need of strengthening the institution of Ombudsman in these countries. Even rich Asian countries can benefit from the experience of Europe where the institution of Ombudsman is providing relief to citizens in various spheres of life.

19. Institutions derive their strength from societies and societies march on the road of progress when they develop work ethics, place premium on merit, hard work and justice. Inattention to speedy and inexpensive justice breeds disregard for law. The rich Asian countries should help the poorer ones in the field of education, justice and science and technology. They should co-ordinate and not compete in the field of sending manpower to other continents. This will save their citizens from exploitation. The efforts of Asian Governments in these directions coupled with the stabilizing role of Ombudsman will help all in the matter of construction of balanced societies and environment.

20. Since Governments of poorer Asian countries cannot afford to make big investments in education and in systems of dispensation of justice, Asian media should come to their rescue by focusing on education and methods of

poverty alleviation. It can also help by promoting civic sense and respect for public property.

21. In the end, I would say that Governments should strengthen the institution of Ombudsman for another reason also. It is the only institution at least in Punjab which has the unique arrangement of combination of investigative and judicial functions. These functions are compartmentalized in the case of other institutions. The combination of functions and the level of education and experience of Investigating Officers makes investigation comprehensive and strictly in accordance with law.

22. Some may say that all institutions are the mirror reflections of societies. I would say, yes, they are, but this happens when these are similarly staffed, similarly paid and similarly supervised. The institution of Ombudsman has, by law, at least in our case, the distinction of better supervision. If the other two requirements are also met, this institution can not only play a very effective role in providing relief to the citizens but also in advising the governments on issues relating to construction of balanced societies and environments.

Thank you very much for the patient hearing.

**KA HUNG LEUNG**

**OFFICE OF THE OMBUDSMAN**

**HONG KONG - P.R. OF CHINA**

**THE OMBUDSMAN AND THE PROTECTION OF  
HUMAN RIGHTS IN HONG KONG**

**INTRODUCTION**

The Ombudsman system is an integral part of any open, accountable and good governance. It has a very important supervisory role to play in the furtherance of fairness, openness, efficiency and effectiveness in public administration through redressing individual grievances arising from and addressing itself to issues leading to acts of maladministration. With the rising expectations from the people in every community for better environment conducive to achieving an enhanced level of respect for and protection of their various rights, the above role has become increasingly more prominent in terms of providing, outside the conventional judicial system, an effective safeguard against any invasion of such rights by arbitrary, discriminatory or otherwise unreasonable or unjust governmental actions and practices.

2. In this connection, it is generally appreciated that much of the work of the Office of The Ombudsman in ~~Hong Kong~~ does indeed, in many aspects and on a frequent basis, deal with complaints from the public alleging denial of their rights in a wide spectrum of social, economic and health matters by the government departments and agencies or by the statutory bodies coming under his jurisdiction. These rights, as experience shows, are usually provided for in some international human rights agreements by which Hong Kong happens to be bound. In a manner of speaking, administrative fairness

and human rights can therefore be regarded, on many if not all occasions, as being the two sides of the same coin.)

### **HUMAN RIGHTS OBLIGATIONS IN THE HONG KONG CONTEXT**

3. It is believed that the term "human rights" itself came into common use in the wake of World War II when various appalling atrocities committed against humanity were found to have taken place during the years of conflict. The most significant single event in the development of the modern "human rights" concept is, needless to say, an unanimous resolution adopted by the General Assembly of the UN in December 1948 - the Universal Declaration of Human Rights. The Declaration however simply set out general principles of international law, and imposed no obligation to put those principles into practices. In 1966, therefore, two human rights treaties, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the United Nations. The Covenants, setting out the basic human rights and fundamental freedoms, and imposing an obligation on all States which became parties to them to implement those rights by all appropriate means, eventually came into force in 1976.

4. In 1984 the Chinese and British Governments agreed that the provisions of the Covenants should remain in force in Hong Kong after 1997. The agreement is reflected in Article 39 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China, the so-called mini-constitution for Hong Kong, which was adopted on 4 April 1990 by the National People's Congress of China and has been put into effect since 1 July 1997.

5. In 1991, following a period of public consultation and discussion, the Bill of Rights Ordinance (BORO) was enacted with the original intention of incorporating, as far as practicable, the provisions of the ICCPR as well as the ICESCR as then applied to Hong Kong in its domestic laws. Incorporated in the BORO is the Hong Kong Bill of Rights. This is where the individual rights are set out in 23 different articles.

### **THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS IN HONG KONG**

6. Each place must design its own system of protecting and defending the rights of its citizens according to its own traditions, requirements, cultural

background and realities. In Hong Kong, the executive branch of the Government as a whole, particularly the various Bureaux at the Government Headquarters, have their definite roles to play in the formulation of specific policies affecting the rights of their residents and dictating how these rights are to be protected. Needless to say, the courts, too, have been playing a very vital role in administering justice and in protecting the legal rights of individuals. In this connection, access to free or subsidized legal representation for those in need has also been made possible by the provision of legal aid through the Legal Aid Department or by means of the Legal Advice Scheme jointly administered by the Law Society and the Bar Association. In an effort to promote overall administrative fairness to meet rising public expectations, the Office of The Ombudsman was set up in 1988 to investigate and report on grievances from members of the public as a result of administrative actions of not only the executive branch of the Government but also of other designated public bodies having a direct and significant impact on the daily livelihood of the public. The scope of The Ombudsman's functions has since been widened to include the powers to initiate direct investigations and to investigate complaints for non-compliance with the Code on Access to Information by government departments. Other measures taken in recent years by the Government in the human rights front include the establishment of other statutory bodies to specifically deal with matters such as equal opportunities and protection of personal data. A Human Rights Education Group has also been set up to educate the public on human rights matters.

#### **THE HUMAN RIGHTS ASPECT OF THE WORK OF THE OMBUDSMAN IN HONG KONG**

7. The very link between the work of The Ombudsman and the protection and promotion of human rights for the people of Hong Kong can easily be seen. There are many vivid examples indicative of the constant and regular involvement of The Ombudsman in the protection of important human rights cited in various international covenants, the Basic Law or other related local enactments like the BORO. For instance, many of the complaints received by The Ombudsman deals with matters pertaining to the provision of social, medical, educational services and of subsidised housing accommodation by the authorities coming under The Ombudsman's jurisdiction. All these or other related matters do, in one way or another, resemble and reflect the aims and

spirit as enshrined in the provisions of the ICESCR. On the other hand, in processing complaints lodged against the Correctional Services Department over the treatment of prison inmates, those against the Legal Aid Department for refusal of legal aid applications, or those against the Department of Justice or the Judiciary Administrator for any improper administrative acts, The Ombudsman is *de facto* dealing with matters falling within the purviews of the relevant provisions in Basic Law, ICCPR and BORO.

## CONCLUSION

(8. The Ombudsman is playing an important role as an integral part of the good governance ~~for Hong Kong~~. He enjoys more flexibility in making his decisions and recommendations than do the courts and/or other kindred agencies whose statutory roles are often more restrictive. He is in such a position that he can more readily appreciate and successfully deal with human rights issues in a wider perspective and in a more flexible manner. He is, to a definite extent, already carrying out the functions of what may be regarded as those belonging to Human Rights Commissioners in other jurisdictions. Of course, whether he can continue to carry out successfully his human rights monitoring and promoting functions shall ultimately depend very much on his being given the necessary support from the public as well as from the Government ~~of the HK SAR~~ in terms of providing the necessary resources and policy backing. Without such support and understanding, the task will become exceedingly difficult, let alone being accomplished.)

*Office of The Ombudsman, Hong Kong, China  
May 1998*

services more accountable. The State of Maharashtra became the pioneer State in the Country to introduce the concept of Ombudsman by enacting the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 and the first Lokayukta assumed office on 25th October, 1972. It was envisaged while framing the Act that debate in the legislature of the Annual Report will ensure transparency in the functioning of the administration and enable the legislature and the general public to know about the nature of grievances. The institution is now in its Silver Jubilee Year and a time to review its achievements and failings. First of all the institution has become a model in the Country and has paved way for similar institutions in 12 States of India. Of the bigger States only Tamil Nadu and West Bengal are yet to create Ombudsman type institution for redressal of public grievances. Only in the two States of Kerala and Goa the institution is known as 'Vigilance Commission'. The institution in Maharashtra has been functioning in the same pattern it was created since there has been no confrontation with the Government and the anxiety of the State to strengthen the organisation by making its officials to give priority to the complaints and grievances investigated by the institution. The permanent Secretary of the department has to appear if called and assures the public that the person in charge of the department is answerable for the acts and omissions. In some of the States, due to political confrontation the institution has been abolished and has re-appeared later on account of change of Government in the State.

There has been delay in placing of the Annual Report and lack of any worthwhile debate in both Houses of the Legislature, the public continue to be unaware of the good work done by this institution. The institution is also not in a position to go to the Press directly to highlight the extent of maladministration and the remedial steps required to be taken. The public have no access to decided decisions to fight their cause quoting precedents and the recommendations made in similar cases.

#### **OFFICE OF LOKAYUKTA AND UPA-LOKAYUKTA**

Lokayukta and Upa-Lokayukta are two independent functionaries created to investigate actions and decisions of public servants. They are creature of the State legislature and lack Constitutional status. In many respects they are on par with the Chief Justice and Judges of the High Courts to make them independent of the State Executive and Legislature. They are appointed by

## **POWERS AND FUNCTIONS**

As for the investigative functions of Lokayukta and Upa-Lokayukta, they cover both allegations (i.e. corruption, nepotism, favouritism etc) and injustices (grievances) arising out of maladministration as well. Powers are wide enough to cover any complaint alleging : (a) abuse of his position to gain favours or causing undue harm to others, (b) discharges his duties with improper or corrupt motive, is guilty of corruption, favouritism, lack of integrity etc..

It is worthwhile to mention that complaints of allegations are fewer in number as compared to complaints of grievances relating to maladministration. They do not even form 3% of the complaints registered and investigated. One reason could be the institution lacks its own machinery for investigation and has to depend on the State's Anti Corruption Bureau which is under the control of the Government. Very little could be however done in the investigation of complaints of corruption against ministers and high officials for the elimination of which the Act was mainly brought into force. Entrusting the investigation to a bureau under the State cannot be effective since the posting and promotion of the investigating officials depends on the State. We have repeatedly pointed out in our Annual Reports, the need to have an independent investigating machinery under the control of Lokayukta similar to one in Karnataka State that :

“ It is needless to say that for impartial and thorough enquiry against high officials, the investigating machinery should be totally devoid of the shades of official influence and pressures.”

The present system under the State control would not be in a position to carry out investigations without fear or favour against Ministers and high officials. What is essential is that not only there should be fair and independent investigations, but it must also appear to the public at large to be so.

## **JURISDICTIONAL LIMITATIONS**

The institution does not have jurisdiction involving a grievance in respect of:

- (i) Action in respect of investigation of crime or protecting the security of the State;
- (ii) Action taken in determining whether a matter will go to court or not;
- (iii) Action taken arising out of terms of contract governing commercial

the Governor on the advice of the Chief Minister in consultation with the Chief Justice of the High Court and leader of the opposition party. By convention the Lokayukta is a retired Judge of the High Court and the Upa-Lokayukta from the Indian Administrative Service. This pattern strikes a balance between judicial and administrative outlook in looking into public grievances. The Upa-Lokayukta being from the civil service has been able to persuade his former colleagues look into the complaints objectively and provide for speedy redressal of the grievance. In all other States both the authorities are from the judiciary and grievances get to be examined in strictly legal way.

### **JURISDICTION OF LOKAYUKTA AND UPA-LOKAYUKTA**

Lokayukta and Upa-Lokayukta are vested with sufficient powers to investigate actions and decisions of public servants. Unlike many other States, the definition of 'public servant' is wide enough to include minister and salaried officials of the Government and public sector Corporations. Once a person ceases to be a minister or public servant, this institution cannot exercise jurisdiction. This is a serious lacuna and former public servants who held position should be made answerable provided action is initiated within 3 years of their ceasing to hold public office. Similarly the Act does not authorise proceedings against Ex-Ministers in respect of their acts and omission as such ministers. Enquiry into very serious allegation against a Minister had to be dropped because of his ceasing to be a minister in the midst of the enquiry. Lokayukta is not competent to investigate charges against the Chief Minister and this is the position in all the other States except Karnataka. Two largest State undertakings relating to power and transport are outside the purview. These Organisations have lot to do with the general public and gives rise to large number of public grievances with regard to their quality of service. Similarly universities involved in promotion of higher education in the State are also outside the jurisdiction. It is time for the Government to bring these institutions also within the ambit of Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971.

However, certain categories of people are not under the purview of Lokayukta and Upa-Lokayukta. This is followed in all the countries relating to decisions of Judges, Speaker and Chairman of Legislative, Assembly, Chief Election Commissioner and his Commissioners, the Chairman and members of Public Service Commission and officers or servants of civil and criminal courts.

The departments as a result of the hearing takes necessary decision for redressal of grievance. Only when they fail to do so within reasonable time, recommendations are made. The recommendations are normally required to be implemented within two months, unless the authority is able to justify reasons for not implementing the same. The recommendations have been made even to improve the working of the administration including taking steps specified in the recommendation. When a recommendation is made, a duty is cast on the Competent Authority to take prompt steps to do all that is necessary to implement it. It is a matter of regret that at times the competent authority fails to appreciate the recommendation and avoid implementing. This invariably happens when the recommendation has financial implications. There have been occasions deliberate attempts have been made to delay or defeat the recommendations when it concerns influential persons. The enquiries are not initiated in time and even when initiated, they are dragged on for years together. It is unfortunate that the Act does not make the findings of Lok Ayukta/Upa Lokayukta binding on the Government so as to compel them to give effect to the same. This facilitates their reluctance to implement the findings and do nothing, particularly, when impugned actions happen to have been done to bestow favours. In such cases a special report is made to the Governor and which is required to be placed before the Legislature by the Government indicating the action taken.

### **EFFECTIVENESS**

In the first year 903 complaints were received and the staff was only ten. Every year there has been increase in number of complaints and reached 5,000 in the year 1985 and 10,000 in the year 1995. As the making of application does not involve any expenditure and the proceedings devoid of legal formalities, the number of complaints received are increasing every year. Easy access, economy of expenses and time and absence of complicated procedure are key factors making this institution easily accessible to the citizen, who is looking forward to a fair, equitable and efficient administration.

Institution's effectiveness is also dependent on its success rate in terms of relief secured for the aggrieved individual and relief is obtained in one-third of the cases taken up for investigations. The co-operation from the departments and offices have been so good that the number of cases decided in the years 1993, 1994, 1995 and 1996 was of the order of over 6000 and in the

relations with customers or suppliers, except where the complainant alleges harassment or gross delay in meeting contractual obligations;

(iv) service matters relating to appointments, removals, pay discipline etc.;

(v) Grant of honours or awards;

(vi) If the complainant has or had a remedy by way of proceedings before any tribunal or court of law.

We cannot investigate into any action which is taken by or with the approval of any judge, any officer or servant of any court in India, the Accountant General, Public Service Commission, Chief Election Commissioner, Speaker and Chairman of the Legislative Secretariat.

We have scrupulously avoided and not taken up investigation of any complaint falling outside our jurisdiction. In service matters we do intervene in the event of extra-ordinary delay in deciding matters of seniority, deemed date of promotion, maintenance of service records, departmental enquiry proceedings etc. No one would disagree or dispute the need to provide relief in such cases.

Such limitation exist in all the States and also in many countries.

#### **APPROACH**

The procedure followed when a complaint for investigation is taken up, as a general principle, the department or body complained is given an opportunity to comment on the complaint. There have been very rare cases when direct recommendations have been made without any notice or hearing when violation of regulations made by the Government have taken place. On receipt of the comments, the departmental files if required are called for so as to establish as far as possible the facts of the case; whether there has been maladministration on the department's part; and if so what has caused injustice. In about 20% of the cases, the redressal of grievance takes place by the suo-motu act of the department without a need for any formal hearing. Correspondences and hearing take place to expedite the redressal of grievances. All the complaints are handled simultaneously to achieve maximum disposal. The hearings are also held at the District Headquarters so that the travel expenses for the complainant is kept to the minimum. Adequate publicity of the hearings to enable public to file their complaints at the time of visit. This has enabled personal presentation of complaint and the citizen gets an opportunity to put forth his case.

**DR. MARTEN OOSTING**

**NATIONAL OMBUDSMAN OF THE NETHERLANDS**

## THE ANNUAL REPORT OF THE OMBUDSMAN

### ***INTRODUCTION\****

Every Ombudsman has a statutory duty to issue an annual report on his year's work. As a rule, this report is presented in the first instance to the body that appointed the Ombudsman, namely the parliament or the president of the country<sup>1</sup>. Not only is the annual report thus in the public domain, it is widely distributed and receives appropriate public attention. All in all, the annual report is a significant element in the Ombudsman's output for the year. Drafting it calls for a good deal of hard work.

In view of the importance of the annual report in and to the work of every Ombudsman, it is surprising that - as far as I know - it has been given so little separate consideration.<sup>2</sup> A discussion among Ombudsmen about this subject gives them the opportunity to exchange opinions on the functions of the annual report and to compare notes on their experience of annual reports.

I should like to begin my paper by indicating the functions that I believe the annual report has, and the areas and target groups to which it is relevant. Thanks to the kindness of my counterparts in other countries, the library of my office contains an extensive collection of annual reports, from many parts of the world. It would be interesting to compile a comparative study of reports issued by the world's Ombudsmen, and to determine the principles on which they are based.<sup>3</sup> Unfortunately I have not been able to do so. I shall therefore base my contribution on the practice of my own office in the Netherlands as a case study. In conclusion, I shall examine the impact of the annual report of the Dutch National Ombudsman on the various target groups.

year 1997 it is a quantum jump of 12,000 cases. The huge pendency have also been reduced by over 2000 cases. The cases pending filed during the years 1996 and 1997 is hardly 700 and 2300 cases respectively. A remarkable achievement considering during these years over 10,000 complaints have been registered for investigation. The expeditions disposal of public grievances is of paramount importance for good governance. The performance is impressive and has progressed from year to year by the ever increasing number of redressal of public grievances, a record 12,000cases.

## BREAK UP OF COMPLAINTS (MAHARASHTRA LOKAYUKTA)

I Disposal of Registered Complaints	1992	1993	1994	1995	1996	1997
(i) Rejected without enquiry	1,309	1,609	1,205	1,094	1,353	1,935
(ii) Cognisance not taken for want jurisdiction	1,660	1,653	1,594	1,754	2,252	3,402
(iii) Investigations discontinued after preliminary enquiry	706	650	494	511	627	804
(iv) On full enquiry						
(a) Remained unsubstantiated	595	542	661	774	636	1,821
(b) Grievance redressed	1,250	1,726	1,942	2,115	2,019	4,104
(c) Recommendations made under Section 12	6	64	37	6	9	41
TOTAL	5,526	6,244	5,933	6,259	6,896	12,107
II Disposal of unregistered complaints	2,616	2,698	3,334	3,227	4,145	4,427
	8,142	8,942	9,267	9,486	11,041	16,534

examine problems such as the difficulty of handling the existing case load with the funds available. The report may also refer to other activities relating to or deriving from the Ombudsman's core task, such as external relations, in the form of publicity or contacts with counterparts in other countries.

In any event, an annual report must devote much space to the products and results of the Ombudsman's work. Even though specific results and cases receive appropriate attention in the course of the year under review, the annual report is the best way of ensuring public access to the Ombudsman's work in a coherent manner. Current practice varies enormously, ranging from summary accounts to the extensive reports published by the institutions of the Ombudsman in, say, Spain, Argentina and Mexico. At any rate, it is fitting for an annual report to contain not only the year's main results, but also to comment on their impact, in particular through the recommendations.

Another point I should like to raise is the question of whether an annual report should go further than simply describing the work done, and also analyse the responses the Ombudsman encountered from the various government agencies. This could mean highlighting the most common problems, perhaps specified by individual agency, comparing agencies with one another or indicating developments per agency over a period longer than one year.

Lastly, I should like to point out the potential instructive value of an annual report that contains information on the standards used by the Ombudsman in investigating the government's actions and on how these standards are applied.

Publication of the annual report promotes public access to the work of the Ombudsman in terms of external scrutiny of the government. In this way it contributes to open government, something which is highly desirable in a democracy.

*b. Rendering account*

Independence is an essential feature of the institution of the Ombudsman. This means that the Ombudsman is not subordinate to a body that can instruct him how to do his job. It also means that his independence must be guaranteed by his legal status. Furthermore, the Ombudsman must have sufficient resources to be able to do his work properly. Such independence is essential in a government system marked by checks and balances. It is for this reason that the Ombudsman must, at regular intervals, publish an account of what action he has taken, how he took it, and what was the outcome. After all,

## I. THE FUNCTIONS OF THE ANNUAL REPORT

The primary function of the annual report is to fulfil the statutory duty I referred to a moment ago. However, a formal requirement of this kind does not truly reflect the functions which the annual report can - and in my view must - play. While many parts of its role are external, directed towards the outside world, some elements are internal, affecting the institution of the Ombudsman itself.

### 1. EXTERNAL

Externally speaking, the annual report has two main functions, which are nonetheless related: to provide information and to render account.

#### a. *Providing information*

The provision of information lies at the heart of every annual report. The information in question concerns both the operations of the institution of the Ombudsman in the year under review, and the products and results of the work done.

When it comes to operations, the report must in any event shed light on the way in which the annual report's office has performed its core task of dealing with complaints from members of the public about the actions of the authorities. If we regard the core task as a production process, this part of the report will consist of statistical data on input, output, throughput and workloads. This part of the report will also present figures on the assessment of complaints to determine whether the Ombudsman is competent and the complaint admissible, and how the complaints that were admissible were settled. Obviously, figures will also be given on the distribution of cases among the various agencies within the Ombudsman's remit. It is also appropriate here to describe the resources available for doing the work - namely the staff establishment and the budget. It is also helpful to provide information where available on details such as the geographical location or gender of complainants.

Providing information on the institution and its performance can extend beyond the mere presentation of figures. For example, it could be relevant to discuss the development of legislation concerning the Ombudsman, or to

Professional groups cannot be omitted from this list of circles of relevance to the Ombudsman. Here again, variety is the watchword. The legal profession is of interest, because of the similarities between the work of the Ombudsman and that of the judiciary, and because of the Ombudsman's contribution to the development and application of norms for government action. Professional groups, consisting of representatives of both government and the outside world - such as academic experts - may also be found in specific areas of government policy such as taxation, social security and the police. Lastly, of course, I must mention other Ombudsmen in this connection.

In the course of his work, an Ombudsman comes into contact with all these groups to a greater or lesser extent, on a frequent or an occasional basis. This is a key factor in the Ombudsman's public information policy, in which the annual report is an essential element. In other words, when determining the content and circulation of the annual report, the Ombudsman must decide whether and to what extent to address these various groups, particularly when it comes to the report's format. In theory, the annual report should be tailored to each and every target group. In practice, however, this is an impossibility if the report is aimed at a number of groups at the same time, since none must be short-changed. Inevitably, therefore, the Ombudsman must reach a compromise between the various options, and adopt an approach which will cover every angle.

There are also a number of options regarding the format of the annual report, as we can easily see from a comparison. Some annual reports are very comprehensive, and as a rule are printed and published as official documents (this is the case with most of the institutions of the Ombudsman in Europe), while others take the form of a newspaper or periodical (like the annual reports of the ombudsmen in some Canadian provinces). A compromise solution could entail an annual report that appears as an official document, while a more accessible shorter version also appears for public use. Of course, separate provision will always be made for the news media, by way of a press release.

## **2. INTERNAL**

The prime purpose of the annual report is external. However, the Ombudsman's duty to produce an annual report also has internal significance, because of the need to have key data on the production process readily available and to organise the main products and results of the year's work in such

he too is funded from the public purse. Furthermore, an institution whose purpose is to be critical where necessary must be prepared to accept criticism from others. One of the functions of the annual report is thus to render account before the bar of public opinion. Seen in this light, the annual report must present a fair picture of the operations of the institution of the Ombudsman in the period under review and the results of its work. If the report also sheds light on the Ombudsman's working methods - investigations and findings - this can help to obtain feedback, something which is of benefit to every Ombudsman.

### *Relevant groups*

Any discussion of the external role of the annual report must of course consider for whom this role is played. This brings us to the question of the Ombudsman's target groups. The institution of the Ombudsman was founded to protect the individual against the government. That statement immediately defines the two most relevant groups, although there is more to be said.

Firstly, the group of "individuals" is not only very large, it is also very varied. This means that it would be appropriate to distinguish between different categories of individuals, for example according to their situation in society. Whereas the Ombudsman comes into contact with an individual in the course of dealing with the latter's complaint, direct communication with the public as a whole through the medium of the annual report is impossible. The news media play a vital role in this connection. They too are therefore a relevant group, as are the various intermediary organisations which can assist people with problems and help them in their dealings with the agencies in question, including the Ombudsman.

The term "government" also needs to be defined more specifically. The more extensive the powers of the Ombudsman are, the more and the more varied will be the government bodies he has to deal with. This brings him into contact with both the implementing bodies and officials that are the subject of the complaints, but also the competent authorities behind them. The Ombudsman also has to deal with parliament. In many countries, Ombudsmen are appointed by parliament and are obliged by law to present their annual reports to parliament first and foremost. Parliament also merits particular attention by virtue of its legislative role and its scrutiny of the executive branch. Through the annual report and in other ways, the Ombudsman can provide parliament with information relevant to its activities in these capacities.

past year, broken down by administrative authority. The reason behind the format here was the requirement in the Act that the annual report must not only be presented to the two Houses of Parliament, but also to the Government Ministers. Each ministry must therefore be dealt with clearly in the annual report. This structure also facilitates the work of the permanent parliamentary committees, which scrutinise the activities of each Ministry. I therefore opted for a "customer-friendly" approach, with a separate chapter devoted to each Ministry. The remit of the National Ombudsman also covers what are called autonomous administrative authorities. Their work is dealt with in the chapter on the most closely related Ministry. In line with the same customer-friendly approach, separate chapters are devoted to the police and the Public Prosecutions Department, the water boards, the provinces and the municipalities.

This part of the annual report begins with a chapter on the assessment of incoming complaints to determine whether the National Ombudsman is competent to deal with them and whether the complaint is admissible. Many complaints simply do not qualify for investigation, for one reason or another. Given the need for the annual report to render account, I believe it is important to shed light on this side of the National Ombudsman's work too.

Each of the other chapters in this part begins with some statistics, and is then divided up according to the subject of the cases dealt with. Only the main points of the work are discussed, amplified by relevant passages from individual reports which are felt to be of particular importance or by cases which serve to illustrate the point at issue. Also included are policy-related passages from correspondence with the agencies and recommendations and their effects.

Part III is preceded by four chapters on the institution of the National Ombudsman itself, which make up Part II. The first chapter examines the development of legislation on the National Ombudsman, for example on his powers, and contains information on the subsidiary activities of the National Ombudsman and his deputy, and staffing and budgetary matters. This is followed by a chapter containing figures on the amount of work done, such as input, output, effects and throughput. This chapter also contains the figures that are the basis for the analyses in the opening section of the annual report. I shall return to this in a moment. A separate chapter is always devoted to the effects of the Ombudsman's work on each policy area. Part II concludes with a chapter on relations with the outside world, particularly public information and external relations.

a way as to make them easily accessible. Compiling an annual report that goes beyond summarising a few basic figures compels the writer to reflect on the institution's work in the period under review. This can enhance both the depth of the work itself and the quality of its presentation outside the framework of an annual report.

Moreover, depending on how thorough it is, an annual report can contribute to the institutional memory by providing source material that can be drawn upon in the future, if necessary, in connection with new complaints or other activities. An annual report can also be useful for new members of staff, as they endeavour to learn about their new job.

## **II. THE ANNUAL REPORT OF THE NATIONAL OMBUDSMAN OF THE NETHERLANDS**

The Netherlands has had a National Ombudsman since 1 January 1982. Section 28 of the National Ombudsman Act stipulates that the Ombudsman must submit an annual report of his activities to the two Houses of Parliament and to the Government Ministers. He must also ensure that the report is published and made generally available. To illustrate this point, I shall now look at the way in which this obligation is fulfilled, beginning with the format of the annual report, and proceeding to planning, procedure, publicity and impact.

### **1. FORMAT**

From what I have said so far about the different functions and target groups, I am sure you will agree that the task of drawing up an annual report is not an easy one. I propose to explain the choices I made when drafting the annual report for 1988, my first full year in office as the National Ombudsman of the Netherlands. The nine annual reports since then have followed the same pattern. One important factor in this decision was the need to be able to compare one year's report with another. A second was a more internal consideration, namely the importance of routine in enhancing the efficiency of the complex production process which, after all, is what the compiling of an annual report basically amounts to.

The main thrust of my annual report - about seventy per cent of the main body of the text - consists of Part III, which describes the work done in the

reflections. I then write the foreword. By this time, the other chapters of Part II and the annexes have been completed and looked at. The chief information officer and I are jointly responsible for the final editing process.

While the disks are at the printer, the main points of the annual report are drawn together into a comprehensive summary which is sent out with the annual report. The summary is then translated into English and forwarded to our counterpart institutions in other countries.

In recent years the chapters on the police, the Public Prosecutions Department and the Ministry of Justice - which are always fairly lengthy - have been published separately, along with a number of general chapters, as a service to this particular target group and to enhance the impact of the National Ombudsman's work on this field.

The annual report is always handed over to the Speaker of the Lower House of Parliament in person, prior to the press conference at which it is presented in public. Shortly after publication, the National Ombudsman holds talks with the permanent parliamentary committee on home affairs, in preparation for the plenary debate on the annual report. The Ombudsman attends that debate as an observer; the government is represented by the Minister or State Secretary responsible for home affairs, with whom the National Ombudsman also holds talks. Lastly, it is standard practice for the National Ombudsman to have a meeting with the Prime Minister shortly after the publication of the annual report.

It will be clear from what I have just said that contributions to the text of the annual report come from various quarters. Overall, I would estimate the time involved at equivalent to approximately one and a third full-time members of staff (out of a total establishment of ninety full-time equivalents). I estimate that my own share amounts to about a hundred hours.

The annual report is officially issued with a letter from the National Ombudsman to the Speaker of the Lower House. The letter and the report are printed as part of the series of official parliamentary papers and circulated to the members of parliament. This means that the Lower House is responsible for the printing costs. The total print-run amounts to some two thousand six hundred copies. The National Ombudsman himself takes six hundred and fifty, for his own staff and to distribute to government bodies and other contacts which do not receive a copy from parliament. The annual report is also for sale in book shops. The costs of compiling and printing the summary and the separate publication on the police and the Ministry of Justice (250 copies) are borne by the Ombudsman.

All the last nine annual reports have begun with a section - Part I - depicting the government as the National Ombudsman encountered it in the year under review, always fully based on the substance of the work done at that time. This part always contains an analysis of the problems most frequently arising in relations between the government and the individual, based on information from individual files. This affords the Ombudsman an opportunity to draw attention to specific problems or shortcomings in legislation or its implementation, and to examine specific subjects - such as human rights, compensation or Europe - with illustrations drawn from examples in the year under review.

The report as a whole opens with a foreword, the opportunity for the National Ombudsman to acknowledge help he has received or - if necessary - to raise issues affecting the operation of the institution, such as shortages of funds.

All in all, the main text of the report usually takes up over 350-400 pages. It is followed by a number of annexes, giving the reference numbers of the reports issued and the subjects they deal with, by agency, and the references of reports that were published elsewhere (for example in law journals), the criteria the Ombudsman uses to assess whether the conduct he investigated is proper, a list of all the government agencies within the National Ombudsman's remit and the full text of the National Ombudsman Act.

## **2. PLANNING AND PROCEDURE**

The National Ombudsman Act does not stipulate a date for the publication of the annual report for the calendar year. However, it is established practice for it to appear in the third week of March, to give the Lower House ample time to examine it before the summer recess. The disks must therefore reach the printer by the middle of February. This schedule imposes demands on the planning process, partly in view of the need to minimise the impact of compiling the annual report on the everyday work of the Ombudsman's office.

It has proved very useful for the preparatory work to follow a fixed pattern. Throughout the year, cases which are eligible for inclusion in the annual report are brought together and classified. During December, the chapters in Part III, concerning the various agencies, are drafted by the relevant units within the Ombudsman's office, so that the texts are complete by the beginning of January. I then look at the drafts, and in the middle of January the computer system produces the figures for the previous year. This enables me to write the chapter containing the statistical overview and Part I, the general

aware of the publication of the annual report and of its contents, and to what extent they modify their behaviour accordingly. Furthermore, it is difficult to separate the impact of the annual report from the wider effect of publicity about the National Ombudsman in general. As far as I know, no such study has ever been conducted. In any event, it has been beyond my powers to subject these questions to empirical investigation. I can therefore do no more than make a number of assumptions.

The first question I posed a moment ago is the easiest to answer, since it is possible to discover the circulation of the annual report. As I have indicated, every member of parliament receives a copy, as do the administrative authorities discussed in the report. It is also sent to the news media, with a press release. The public will be aware of the publication of the annual report only if it is reported in the media - as it generally is - and if they consciously note that particular news item. This will of course depend on a variety of circumstances, ranging from people's general level of knowledge and interest to the timing of the news reports and what else is in the news that day. If we look at it in that light, we can see how important it is for the Ombudsman and his work to be regularly in the news, to create public recognition.

A more difficult question is that of the annual report's effect on the behaviour of the target groups. This is a simple question to answer when it comes to the news media, for it is possible to examine coverage in their columns or programmes. Coverage in the Netherlands is fairly extensive, bearing in mind my earlier remarks about the news value of the annual report in connection with the rest of the National Ombudsman's work. A particular type of media impact is occasional editorial comment prompted by sections of the annual report.

In addition, publicity at one point - for example when the annual report is published - can lead to coverage at other times, for example if the National Ombudsman is interviewed or asked to take part in a radio or television programme. What could be called "spontaneous" publicity of this kind occurs at fairly regular intervals.

An indicator of the impact of the annual report on the public at large could be a rise in the influx of complaints following its publication. However, such an effect occurs on a very modest scale if at all. Far more often, the publicity given to individual reports suddenly changes both the volume and the nature of incoming complaints. Opinion polls could also be conducted to measure public awareness of the National Ombudsman. However, this would be difficult for the annual report, due to the nature of the publicity it receives.

### **3. PUBLICITY**

As I have indicated, the National Ombudsman's annual report is circulated - as a public document - to a much wider audience than those listed in the National Ombudsman Act, namely the two Houses of Parliament and the Government Ministers. For example, it also goes to senior officials and liaison officers in the main agencies within the National Ombudsman's remit. It is also sent to a number of other bodies and to researchers on topics of relevance to the National Ombudsman.

The question of passing the annual report on to the news media merits special attention. The official presentation is followed by a press conference, with a press release. As a rule, the press, radio and television cover the publication of the annual report. It should be noted here that reports of individual cases which merit attention are released throughout the year, sometimes also by means of a press release or press conference. In this way, the National Ombudsman is frequently in the news. However, this does diminish the news value of the annual report. The attention of the news media is determined to some extent by the news value of the figures and analyses it contains, for example if there has been a sharp rise in the number of complaints lodged or an unusually large increase in the volume of complaints about a particular subject. Furthermore, the annual report contains a great variety of information. Even an Ombudsman must accept that good news is no news. However, he should resist the temptation to highlight or exaggerate certain elements simply in order to attract attention. Experience also teaches us that the news media are generally sympathetic to the National Ombudsman, because his cases concern specific individuals and because people often identify strongly with the complainants. However, the debate on the annual report in the Lower House hardly ever attracts media attention.

Publicity about the annual report is not confined to the time of its presentation to parliament. As a rule, numerous different journals, from the in-house magazine of a government agency to specialist legal journals, cover the report if it is felt to be of interest to their readers.

### **4. IMPACT**

Finally, I would like to say a few words on the impact of the annual report on the public, parliament and the media; government agencies should be added to this list. However, that is no easy task, for if we are to examine its impact we must know to what extent the relevant target groups and their members are

-Dr Stanley V.Anderson:The Ombudsman's Annual Reports: a discussion paper. IOI Occasional Paper 2, July 1979 (an 18-page contribution to the first International Ombudsman Conference in Edmonton, Canada, in 1976). This paper was based on a comparison of the annual reports of the Ombudsman institutes in the four Scandinavian countries and Australia, Canada, New Zealand and the USA;

-Dr Bernard Frank:The Annual report. IOI Occasional Paper 33, February 1986 (8 pages). This updated Dr Anderson's paper, and covered Ombudsman institutes in 8 Canadian provinces and 4 states of the USA.

Only one article has appeared in the IOI's Ombudsman Journal:

-Dr Victor O. Ayeni:The Ombudsman's Periodic Reports - Nigeria's version (The Ombudsman Journal No. 8, 1989, pp 93 to 113).

3. The publications in Note 2 are now somewhat out of date. Moreover, the institution of the Ombudsman has spread rapidly throughout the world over the last 20 years.

1. While preparing this paper I received contributions from M. Jacques Pelletier, the French Médiateur de la République, and Dr Gerhard Peternell, of the Austrian Volksanwaltschaft. I am grateful to them for their help in developing my ideas on this subject.

2. The International Ombudsman Institute has published two papers on this subject in its series of Occasional Papers:

- Dr Stanley V.Anderson:The Ombudsman's Annual Reports: a discussion paper. IOI Occasional Paper 2, July 1979 (an 18-page contribution to the first International Ombudsman Conference in Edmonton, Canada, in 1976). This paper was based on a comparison of the annual reports of the Ombudsman institutes in the four Scandinavian countries and Australia, Canada, New Zealand and the USA;

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Estimating the impact of the annual report on parliament calls for a quite different approach. I answered this question in the formal sense in my remarks on parliamentary procedures. One type of impact can be measured during the report's passage through parliament by the extent to which members of parliament indicate their appreciation of the work done by the National Ombudsman, and hence their support for the Ombudsman's requests for more resources. Another indicator is the degree to which observations in the annual report prompt questions to the government or invitations to take action arising from the remarks. Examples of all these responses can be found in the Netherlands. For instance, for many years now, every minister has been required to inform parliament, in the explanatory notes to his departmental budget, what he has done in response to the National Ombudsman's recommendations. I would also like to say that in the Netherlands, the processing of complaints - both internally by government agencies and independently by an ombudsman - has now achieved a high level of sophistication as a complement to the legal protection against the government afforded by the courts. Parliament has expressed this view on several occasions, sometimes in direct relation to the National Ombudsman's annual report.

Lastly, this brings me to the administrative authorities. If the Ombudsman's work had no impact on their activities, the Ombudsman would have no *raison d'être*. This is not the case in the Netherlands, where recommendations from the National Ombudsman are almost always adopted, and interventions usually achieve their object too. However, it is difficult to trace a direct connection with the annual report here, as these are responses to specific cases, while it is fairly rare for recommendations to be made in the annual report. I would argue nonetheless that the annual report shows the administrative authorities that their work is being scrutinised by the Lower House and the news media, and this may enhance the National Ombudsman's authority vis-à-vis government agencies.

## NOTES

\* Originally prepared for the Sixth Meeting of European National Ombudsmen, Jerusalem, 9-11 September 1997.

1. Or the corresponding institutions in the case of a regional or local ombudsman; my remarks concern the annual reports of a National Ombudsman.
2. The International Ombudsman Institute has published two papers on this subject in its series of Occasional Papers:

I should make this point that some feasible actions has taken place by the respected members in the two previous meetings and in the preliminary meeting of the Comminute for the preparation of the draft articles of the constitution of the Asian Ombudsmen Association by which the selected representatives compiled and finalized a text on November 13th, 1997. Now that the necessary tools and means for a tangible move to the establishment of such an institution is prepared, we are ready to establish the foundations of multilateral ties among all the Asian ombudsmen and we have the opportunity to promote our steady cooperations and consultations which definitely would be conducive to a suitable atmosphere for the citizens to maintain a safe and secure society.

The Islamic Republic of Iran while welcomes such endeavors is ready to mobilize all her capability in achieving these outstanding goals.

What is important and is stipulated in the constitution of the A.O.A. Organization, is the independency in all aspects. It should not be influenced by the political wills of the great powers. It would be our commitment to adhere to common will which is sound and in accordance to the articles of the constitution.

As it was previously suggested by His Excellency the President of my organization, the establishment of group of the Asian countries As it was previously suggested by His Excellency the President of my organization, the establishment of group of the Asian countries would help and strengthen the World Ombudsmen Association.

In my opinion, we should make all our effort to make benevolent, intellectually good-minded qualified and perfect people to take the responsibility of governance which is lent to Man by divine power of the God. That is in this case, that we would promote a fraternity, just and equitable spirit, make all efforts to wipe out corruption and use all our potentiality in order to develop social, economic and cultural aspects of our society.

#### **THE SITUATION, THE TASKS AND THE EFFICIENCY OF SUPERVISION AND INSPECTION IN IRAN**

The regime of the Islamic Republic of Iran was founded in 1979 under the spiritual leadership of Imam Khomeini, after the collapse of the oppressive corrupted regime of the Shah. In this new regime, relying on the Holy Quran instructions and following the traditions of Prophet Mohammad (P.B.U.H.),

**MOHAMMAD EBRAHIM NEKOUNAM**  
**DEPUTY TO THE STATE**  
**GENERAL INSPECTION ORGANIZATION**  
**IRAN**

IN THE NAME OF ALMIGHTY GOD

Honorable head of delegations,  
Dear participants,

I am quite grateful to deliver my speech under the following titles:

1. The prelude,
2. The situation and efficiency of inspection and supervision in Iran,
3. From Seoul to Macao, the tasks and functions of the Inspection Organization of the Islamic Republic of Iran in the year past.

**THE PRELUDE**

Ladies and Gentlemen,

I am very glad that the third conference of Asian Ombudsmen is held in the beautiful city of Macao. I would also like to extend my thanks to the honorable authorities of the conference. I seize this opportunity to offer the greetings of my nation, my government and the head of the General Inspection Organization of the Islamic Republic of Iran to you all the participants.

It is remarkable that this Conference is a positive step forward to the goals and the common objectives of the Asian countries and the more strengthening of mutual ties among them.

judges can reach to a good interpretation and final decision, the job of supervision on the implementation Power, that is the government, the staff and all government bodies is bestowed to the General Inspection Organization in which the experienced and qualified judges who have a long background in the judiciary field are put to the job. In some specific case of delicate cases, the Organization uses the specialized experts of the related field.

Fortunately, the internal and external supervisory bodies are active. Moreover, due to the strong religious beliefs, the education of the people and the government staff, the belief on the God, Islam, and the Other Day and the adoption of anti-corruption and anti-graft regulations like the strengthening of punishment for bribery, embezzlement and corruption within the administrative system is not much conspicuous.

It is worth saying here that, we using the sayings of our spiritual leaders that "the administrative power is like a sword, we can rely on a sword but we can not seat upon" and a corrupted employee is actually sitting on a sword". So the General Inspection Organization of the Islamic Republic of Iran, along her tasks and responsibilities has put in her agenda all different aspects of surveying good and evil, the fair and the unfair, the crimes and the criminology. In following the case, the organization enjoys a high power. That is so to say;

1. Inspection and supervision of all administrative systems, organizations, governmental companies with no exception and also private companies and institutes which are not directly governmental, but the government has share in them or supervise them indirectly.

2. Announcement of violations and bad process of administrative and financial affairs to judicial authorities and board investigating administrative violations, in this case, judicial authorities shall investigate the affairs announced by the Organization immediately and announce the result to the Organization.

3. Requesting revision of votes of judicial authorities and investigating boards in case their votes are in contradiction with the law.

4. Requesting suspension of one or more employee(s) in a unit under inspection for good performance of work. As per Law the minister or the authority in charge of that unit shall perform request of the Organization.

5. The Ministry and authorities in charge of administrative systems shall commence executive operations for performance of suggestions of the Or-

listening to the advice of the Great leader, Ayatollah Khamenei, we have used all our potentiality to create a new society away from any sort of corruption, discrimination, exploitation. These are the goals of the Revolution which are considered and stipulated in the text of the constitution of the Islamic Republic of Iran. Among the articles providing these goals, is the article 3 of the constitution which describes the tasks of the government. I explain about some of the provisions;

1. Creation of a suitable atmosphere for the promotion of ethical and spiritual values in accordance with the common beliefs, the piety and combating all indications of corruption.

2. Strengthening the spirit of surveying, publication and creativity in all scientific, technical cultural and Islamic fields through the establishment of research centers and encouragement of the scholars.

3. The eradication of all forms of colonialism and external intervention.

4. The eradication of all indications of despotism and monopolism.

5. The provision of all socio-political rights within the law limit.

6. The contribution of the people in all political, economic, social and cultural aspects of their society.

7. Avoiding meaningless discrimination and the creation of all equitable possibilities for all in all material and spiritual fields.

8. Creation of a correct form of administrative order and the cutbacks of the unnecessary institutions.

9. The foundation of a sound, equitable economic economy for the well being and welfare of the people, eradication of poverty, any form of deprivation in food, housing and health service and the extension of insurance systems.

10. Provision of multi-dimensional rights for men and women, the maintenance of equitable judiciary security for all and equality for all against the law. etc.

Sacred ambitions as such, it is remarkable that the General Inspection Organization of the Islamic Republic of Iran, considering the task referred to it according the article 174 of the constitution, is responsible for the perfect implementation of the affairs and the law in all government bodies of the country. Because of the distinction of three powers in Iran as the legislative, the judiciary, and the implementation Powers and as far as the experienced

1. Complaints and declarations received by the people concerning the administrative systems were in total 15,461 case. Some people withdrew their complaints due to the presence of inspectors, the majority of the complaints were not prosecutable pursuant to sufficient proofs. And some of them were sent to the heads of systems for investigation and then to the administrative Courts the their contradiction to by law and circular letters.

2. All inspections made which resulted in preparation of reports from the administrative systems of the country were 1,061 cases.

3. The number of offices established by the State General Inspection Organization for extension of supervision and inspection in different provinces and along the program of de-centralization move, established 15 provincial head-offices among the 28 provinces.

4. Requests for the encouragement of the directors and the employees who had performed their job in the best manner and had innovations in their management were 15 cases.

5. Suggestions for the improvement administrative systems and adjustments or development of the organs totaled 613 cases.

6. Introducing different people to the judicial systems for investigation of their crimes were 222 cases.

7. Introducing of people to the investigation boards of administrative violations were 385 cases.

8. Directors and the Employees being suspended from their job or the number of replaced employees upon the suggestion of the Organization were 50 cases.

Once more I seize this opportunity to state my sincere thanks to the honorable authorities of the conference who have made all their endeavors for the well establishment of the conference, the distinguished representatives who patiently listened to my intervention and the authorities of Macao who hospitably and warmly received us in their city. I wish all the good and the success of the conference in achieving good and constructive results.

In conclusion of my speech, I announce my country's preparedness in holding the Fourth Conference of the Asian Ombudsman in Iran. The case has already announced in writing to the President.

With my greetings to you, and in hope that the God have mercy upon us.

ganization at most during 10 days and announce the result to the Organization . It should be added that suggestions of the General Inspection, enforceable for the administrative systems consist of dismissal or replacement of directors and employees or improvement of administrative and financial systems or encouragement of the staff,....

6. The General Inspection Organization can, utilizing its judicial inspectors, issue executive writ when it encounters financial or administrative violation or it is suspicious of conspiracy with criminals or destruction of proofs and can imprison the convicted person or make him prohibited from exit or transaction when necessary and can prosecute the affairs up to making decision from exit or transaction when necessary and can prosecute the affairs up to making decision.

I should raise one important point in this esteemed meeting;

One way the facts about violations is released to the Organization is through the information we receive from the people. When the mass of the people trust their selected government, they announce the cases of violation very easily and rapidly. Fortunately, we enjoy such a spirit of common trust in our Islamic government.

You may be well informed that in the presidential poll last year in Iran, from the total number of the people who were at the age that could cast their vote, 90% participated in the election. His Excellency Mr. Mohammad Khatami was elected with 70% of the votes casted to the electoral posts. Such a spirit of trust already existed in the previous Parliamentary election. The General Inspection Organization has rejoiced such a spirit of the popular trust quite well. Particularly that we have an advice in our religion to recommend the good and abide the badness which is mentioned {in different words in the National Inspection Charter. According to this stipulation, the people against the people, the people against the government, and the government against the people have some responsibilities.

#### **FROM SEOUL TO MACAO**

However, although the title of this section of my speech is "from Seoul to Macao", but under the title I want to briefly report the annual functioning of the Organization of General Inspection of Iran to you distinguished delegates;

**VIOLA CHAN**  
**ASSISTANT OMBUDSMAN**  
**HONG KONG – P.R.OF CHINA**

## MALADMINISTRATION AND REDRESS

### INTRODUCTION

One of the major roles of an Ombudsman is to seek redress for complainants who have suffered injustices as a result of maladministration by way of recommendations. Often, what is necessary is to get the injustice put right or the system corrected. Sometimes, a proper explanation and a sincere apology to acknowledge responsibility for the inadequate performance will suffice. There are times when a financial redress is the most appropriate and practical remedy to put right the complainant's loss.

2. This Office advocates a system of redress which is both prudent and fair. The approach to remedies must be fair to both complainants and organizations. When mistakes are made, the priority should be to encourage ready admission of mistakes, provide swift, effective and adequate redress, and take steps to ensure that similar administrative failure does not occur.

### THE OMBUDSMAN'S RECOMMENDATIONS

3. In Hong Kong, the Ombudsman is required under The Ombudsman Ordinance to report his opinion and his reasons, after making an investigation, together with a statement of any remedy that he considers should be pro-

vided and a statement of any recommendation that he thinks fit to make. If the report to the head of the organization concerned is not, in the opinion of The Ombudsman, adequately acted upon, he may submit the report and recommendations together with any further observations, to the Chief Executive. The Ombudsman may make a further report to the Chief Executive if he is of the opinion that a serious irregularity or injustice has taken place and a copy of such further report shall be laid before the legislature.

4. The Ombudsman's recommendations are made to propose appropriate remedies to the complainant when the complaint is substantiated, and where necessary, propose remedies to redress grievances and administrative, procedural, policy or even legal changes with a view to preventing recurrence of similar mistakes and eventually to bringing about improvements in the quality and standard of the public administration. In broad terms, this Office's recommendations fall into two categories -

(a) Redress of Grievances

Those aim at redressing specific grievances including issue of apologies and financial redress.

(b) Administrative Improvements

Those aim at achieving improvements in the administration of the overall or a specific service of the organization without causing changes to the existing procedures, or those aim at introducing specific procedural changes to remove administrative errors, loopholes or other areas of administrative deficiencies.

**PRINCIPLE OF REDRESS**

5. The remedy needs to be appropriate and reasonable to the injustice. In the case of relatively minor faults, an apology on the part of the organization concerned may be an adequate remedy. Some injustices can be remedied by providing the service deserved by the complainant. In other situations, a change of procedures to prevent future difficulties of a similar kind for the individual complainant or for members of the public generally may be the appropriate solution.

6. When considering remedies for justified complaints, it is important that some practical action rather than remedies extending a simple apology should be put in place to provide all or part of a suitable remedy. Remedies should as far as possible put the complainant in the position he or she would have been in but for the fault. Hence, this Office adopts the principle of “putting the complainant in the position that he or she would have been in had the maladministration not occurred”.

#### **ELEMENTS IN A REMEDY**

7. Depending on the circumstances and gravity of the injustice caused by maladministration, this Office takes into account the following elements when considering remedies for justified complaints -

- (a) Apologies
- (b) Specific action

Consideration should always be given to whether there is some practical action which would provide all or part of a suitable remedy. In other cases, it may be appropriate to recommend some practical action which would ameliorate the injustice taking into account the wishes of the complainant.

- (c) Financial redress

If there is no practical action which would provide a full and appropriate remedy; or if the complainant has sustained loss, financial compensation may be appropriate having regard to all particular facts and circumstances of the case.

8. Financial redress may take the form of ex-gratia payment, a remission or refund, in whole or in part, of the charge or fees involved. In recommending financial redress, this Office would take into account the following factors -

- (a) the effect of the complainant’s own action or inaction contributing to the financial loss;
- (b) money not paid to the complainant or overcharging;
- (c) quantifiable loss which would not have been necessary or incurred but for the maladministration;
- (d) expenses in pursuing disputes and complaints which are not routine in the normal course of pursuing disputes or complaints; or
- (e) excessive or unreasonable delay consequent upon the maladministration

which has caused actual financial loss.

**CONCLUSION**

9. The very set up of the Ombudsman institution is to afford a quick, accessible and cost-free redress system for maladministration. The Ombudsman redress system, in effect, also provides a speedy and cost-effective means to resolve disputes between citizens and the government and make recommendations to redress the grievances and institute administrative improvements caused by maladministration. In the process the Ombudsman is able to assist in providing for the good governance of the government which is the very essence of the Ombudsman concept.

*Office of The Ombudsman, Hong Kong, China*

*May 1998*

**LINO RIBEIRO**

**DEPUTY HIGH COMMISSIONER**

**MACAU**

THE OMBUDSMAN AS A REINFORCEMENT OF  
CITIZENS' PARTICIPATION IN ADMINISTRATIVE  
LIFE: MACAU'S EXPERIENCE

1. In the 3<sup>rd</sup> Conference of Asian Ombudsmen dealing with the topic "a broad role for the Ombudsman in modern societies", what I intend to do is to give all the participants, whom I welcome most warmly, an idea of how Macau has been working towards the grand ideal of the Ombudsman.

Links built up over time, History and a fraternal meeting of cultures have made Macau into a heterogeneous, multi-cultural and multi-ethnic society which, as a result of a high rate of economic development over the last decade, is constantly undergoing change. This is a society characterised by multiple and complex forms of legal expression in a combination of several legal systems and different cultures which, to a certain extent, give it a unique identity.

Macau's current political and administrative organisation is based on its own statute which gives it a high degree of administrative, legislative, judicial, economic and financial autonomy and also includes an essential set of principles and norms on rights, freedoms and safeguards. The normative system can be described as open, connected to values and rooted in demands for justice or the concept of a "State of Law" in which the subjection of power to legal principles and rules, and the protection of citizens against arbitrary acts and injustice are central.

After 1999, Macau will be governed by the Basic Law of the Future Macau

Special Administrative Region. This is a constitutional law which enshrines important political values arising from the Sino-Portuguese commitment given in the Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the question of Macau. Signed in 1987, this highlights the high degree of autonomy in the Macau Special Administrative Region, the principle of separate powers, the principle of "one country two systems" and the retention of a normative system currently in force.

However, one can also infer from this law, and find included in it certain legal principles that enshrine *values present in the legal conscience of the community* and principles whose aim is to create directly or indirectly *safeguards for citizens* such as protecting their fundamental rights and freedoms, respecting the dignity of human beings, the principle of equality, the independence of the courts, the principle of legality and administrative impartiality, access to the Law and the courts, jurisdictional control over administrative activities.

It is to be expected that any modifications or changes created by the introduction of the Basic Law should not affect the general philosophy of the current system and will thus allow the legal and constitutional system to continue without any break whatsoever with the past.

2. Over the last fifty years, the Public Administration has undergone profound changes resulting from the interventionist role it has had to adopt with a view to securing general interests. This interventionist attitude on the part of the State—which has occurred to a greater or lesser degree across the globe—has resulted in more intense relations between the Administration and citizens. While on the one hand private individuals have a more intense, lasting dependence on administrative activities, on the other hand, the Administration has increasingly required citizens' co-operation in carrying out its new tasks.

Nowadays States of Law are increasingly intolerant of an Administration that is isolated from society and a legal system that is distant from the people it aims to serve. There are moves towards a new style of Administration, marked by the participation of private individuals and a greater search for consensus, flexibility, and individualisation of decisions: an open, communicative, participating Administration.

Nevertheless, there is a big step to be taken from these intentions to effec-

tively putting them into practice. The active, interventionist presence of the Public Administration is required for ensuring certain rights yet it frequently also leads to an increase in the number of mistakes, arbitrary acts, abuses, irregular acts and inefficiency. Increased public intervention is also linked to a tendency towards excessive legislation and laws which are increasingly complex making it difficult, if not impossible, for the people being administered to understand and assimilate them. A bureaucratic culture within the Administration also emerges, placing an emphasis on regulations, formalities and the position of the authorities.

It thus becomes necessary to have mechanisms that exert external control, ensuring not only effective respect for people's interests and rights, but also permitting greater participation in administrative activities.

The Ombudsman is one of the institutions that can do most to make relations between the public authorities and citizens closer and more human, facilitating the latter's participation in public life so as to compensate any eventual deficiency in legal protection and to make up for any shortfalls in the democracy of administrative decisions.

3. In Macau the institution that embodies the figure recognised worldwide as the Ombudsman is the High Commission against Corruption and Administrative Illegality. It was created through the law in 1990 and came into operations in 1992. Although it was set up in this manner, its subsistence in the future is not in question given that provision has been made for it as an independent organ in Article 59 of the Basic Law of the Macau Special Administrative Region which, I am sure, will prevent it from being closed on the basis of an executive decision or even on a decision by the ordinary lawmakers.

The model followed was that of a public organ that enjoys total independence, not only in legal terms but also administratively and financially; an organ that is not subject to any external entity, nor to any orders or instructions; whose aim is to receive citizens' complaints concerning the acts or omission of the public authorities; which has the power to supervise and control the activities of the Public Administration; and which makes recommendations with a view to correcting illegal or unjust acts, or offers suggestions as to improving administrative activities.

Under the terms of the Law, it is responsible for "defending people's rights, freedoms, safeguards and legitimate interests, ensuring, through informal means,

that the administration acts in a just, legal and efficient manner". Obviously, these are the typical duties that have been attributed to the Ombudsman since the original Scandinavian institution up to modern times: controlling the legality and justice of administrative activity, and promoting and protecting people's rights and interests.

There is a further duty which is to "prevent and repress acts of corruption or fraud committed by holders of public office and their agents". There is a shared concern about corruption amongst Ombudsman in Asia. If this is the case, I believe that the debate as to the genuine role of the Ombudsman, particularly those who belong to the International Ombudsman Institute, has still not come to a close. We need to reconsider to what extent these traditional duties can be harmonised with the goal of eradicating or diminishing corrupt practices.

My experience in this field has been fairly positive. In fact, the High Commissioner's involvement in the domain of administrative illegality promoted the examination of situations of corruption, and allowed this phenomenon to be studied as a social factor with the aim of preventing it by proposing and recommending the adoption of laws and administrative practices that can counter corruption. While it is true that the Ombudsman contributes to achieving the values of independence, impartiality, accountability, honesty and morality in the Public Administration, we can also realise the role he can play in preventing and repressing corruption.

4. Any person, physical or legal, adult or minor, from Macau or abroad, is entitled to submit a petition, complaint, claim or denunciation concerning illegal, unjust, arbitrary behaviour or acts of corruption or bad administration. Furthermore, the High Commissioner may take the initiative to open an investigation of facts that he has learned of in any manner, and public entities must inform him of any criminal or disciplinary breaches that they know of, as well as final decisions reached in the relevant cases.

The extent to which the law gives the High Commissioner access, and the powers of investigation he enjoys, such as carrying out investigations, inquiries, inspections, interrogations, hearing witnesses and requisitioning and examining documents, means that his involvement gives citizens a new "access to the law", a new means of informing them of rights which they can enjoy, and how they can react if these are infringed. It is thus a new way of breaking down the barriers which cut them off from effectively understanding using the law.

Complaints are evaluated and processed informally, in a constant attempt to obtain a just solution without recourse to recommendations. We are pleased to note that there has been a rise in the number of cases settled through dialogue with the relevant entities, and last year these represented 44% of cases completed. This is not exactly institutionalised conciliation between plaintiffs and the entities involved, with the High Commissioner acting as impartial arbitrator, although it is true that in certain cases it can be useful to behave in this way. Nevertheless, the results achieved still point to him as a moderator, a conciliator seeking harmony between the administered and the Administration, and seeking fair measure between the claims of the plaintiff and the rigidity of the Administration, or even the law.

When the complaint cannot be settled in the course of preparations, when it is deemed appropriate to call attention to or issue an alert concerning irregular or illegal administrative acts, when there is a need to alter, revoke or create legislation in order to regulate a *de facto* situation, and when it is deemed useful to adopt certain measures with a view to improving administrative activities, the High Commissioner can make a *recommendation*, as a means of persuading the administrative authorities to make good an injustice, illegal act or irregularity.

In general, we can state that the Public Administration in Macau co-operates promptly with the High Commissioner, facilitating a rapid assessment of the validity or invalidity of complaints submitted, responding promptly to recommendations or suggestions made. In this manner, it helps to create better conditions for the co-existence of the Administration and those it administers, and also greater confidence in public services.

Our experience increasingly reinforces the idea that the Ombudsman provides an opportunity for on-going dialogue between citizens and the Administration, and acts as an institutionalised form of facilitating citizens' involvement in managing collective affairs.

The High Commission is still a young institution in Macau. It is remarkable, however, that it is already an acknowledged part of the Territory's collective life as one of the most important instruments promoting participation in administrative life. The conditions have been provided for this institution to remain here as another bulwark in defending the rights and legitimate interests of citizens. In other words, it is another contribution to the exchange between Eastern and Western culture which it is hoped will be retained in Macau.

The experiences of identical or similar institutions in this region can do much to help achieve this goal, and ACCCIA hopes to maintain close ties of co-operation and exchanging experiences, both at bilateral level and within the frame of the International Ombudsman Institute.

This explains why we are so interested in following the work done in these annual Conferences, as we can never emphasise too much their importance in developing and improving our own work.

Thank you very much.

**JOÃO ELIAS DE OLIVEIRA**

**OMBUDSMAN**

**STATE OF PARANÁ, BRAZIL**

**THE ROLE OF THE OMBUDSMAN IN BRAZIL:  
COLONIAL TRADITION AND MODERNITY**

**HISTORICAL BACKGROUND**

The acknowledgement and consecration of citizenship is an extremely recent phenomenon in Brazil.

After more than twenty years of military dictatorship and ten years of apprenticeship in a free democracy, the transition to a different kind of society is a very complex process. That is, the transition to a fully democratic society based on the rule of law, where people's rights are protected and their responsibilities are known and met, where people can freely participate in the economic, political, and social transformation underway, is a gradual and complicated one.

Mainly, we are seeking a transition to a civil society where the needs and aspirations of people can be addressed and where society itself shoulders the responsibility for helping to address the serious social consequences of fundamental change. In short, transition to a society that promotes human development.

The role of the ombudsman is one of the most important as a part of this transition, because it expands the public ability to make decisions democratically, giving a greater value to citizen's rights and establishing efficient ways that permit them to participate effectively.

The "Ouvidor Geral" (literally translated, "General Listener") institution

existed in Brazil from 1648 to 1832, during the Portuguese colonial period and the first years of the former Brazilian empire. According to historical documents, the "Ouvidor" was appointed by the King of Portugal and worked as a liaison to the former Governor's General. He was granted the power to create laws, set up cities' Houses of Representatives, and inquire into administrative abuses and unfairness on the part of government officials.

Brazil first learned of the similar institution of the ombudsman from the Nordic countries during the first decades of the past century. Within one year of Brazil's independence from Portugal, in 1823, a Member of Parliament presented a bill to create the position of a national ombudsman.

It is interesting to note that only 14 years passed between the Brazilian initiative and the constitutional implementation of an ombudsman in Sweden in 1809.

The Brazilian proposal shared many of the same intentions as those reflected in the role of the Swedish ombudsman. Unfortunately, however, the proposal was not adopted by members of the Brazilian parliament at that time.

Only after 1960 did attention return to the possibility of establishing ombudsmen within the Brazilian government. This time the proposal was accepted, and ombudsmen were placed in various federal government agencies.

Once again, however, these developments did not last long. With the *coup d'etat* that led to a military dictatorship in Brazil, the issue surrounding the use of ombudsmen relapsed into silence.

Finally, after the 1983 resurgence of a democratic regime, the first discussions took place as to how to effectively create new channels of communication between the power structure and the citizenry.

Then, in 1986, the first "Ouvidoria Pública" was established in the newly democratized Brazil, in the city of Curitiba, capital of the state of Paraná. The new "Ouvidoria Pública" was established in response to a latent social demand resulting from two decades of silence imposed on the citizenry by a political regime which had, by way of forced submission, a guarantee of its survival.

By winning back the possibility of electing mayors, the citizens of capital cities reclaimed the return of all the constitutional rights that were taken away by the military regime. During those years, the elementary right to defense of one's legitimate interests to the public administration had been confused with opposition or subversive behavior.

Once again, the state of Paraná assumed a role as pioneer in Brazil, establishing the “Ouvidoria Geral do Estado,” in 1991, inspired in part by the Scandinavian model of an ombudsman, but also in line with the Portuguese colonial tradition.

### **COMPARISON AND CONTRAST BETWEEN THE OMBUDSMAN AND THE OUIDOR**

The Ombudsman and the Ouvidor, despite sharing some similarities, are two distinct institutions. The Ombudsman, basically, functions separately to the Administration and is formally tied to the Legislature; it is not contentious, but is an individualistic, functionally autonomous institution, working in defense of the rights and legitimate interests of citizens.

The Ouvidor is considered an organ of the Executive branch, and therefore is linked to the mechanisms of internal control of the public administration, while at the same time acting to defend the rights of citizens.

Despite this legal and institutional difference, the Ombudsman and the Ouvidor follow similar instructions by which they were created. The most visible of these is that of recording the complaints, suggestions, appeals, and anxieties of citizens in an informal manner, rapidly debureaucratizing and developing oneself into a bridge by which the dialog between citizens and public servants can be conducted.

The Ouvidor also undergoes a permanent pressure to clean up the public administration through public inspection. By his transparency of action and work with communities, the Ouvidor reinforces his power in the presence of the general population and governmental organs.

Flexibility, accessibility, and credibility are components of the profile of the Ouvidor. However, unlike an ombudsman, he is nominated by the governor, not appointed or elected by the state parliament.

Of course this gives the impression that an Ouvidor lacks independence from the administration. However, such a situation is avoided by the presence of a special law which provides the necessary power and defines the roles, duties, and jurisdiction of the Ouvidor.

Today four other states of the Brazilian Republic have followed Paraná's model and have or are in the process of implementing the institution of the Ouvidor. Hundreds of municipalities already have “Ouvidoria” offices, as do the great majority of government agencies at the state and federal levels.

A seed has been sown, beginning a process of growth in pursuit of a full democratic harvest.

### **TODAY'S "OUVIDORIA"**

I was appointed the "Ouvidor Geral do Estado do Paraná" in January of 1995, for a term of four years.

As general information, please note that the state of Paraná has a population of almost 9 million inhabitants, and a territory of 200,000 square kilometers.

The Ombudsman's main office has a staff of 31 employees and a network of 120 civil servants located in their own government agencies.

The office's jurisdiction has from the beginning included all state government agencies, public schools, public hospitals, police units, and state universities. Since early 1996, despite the principle of municipal self-government, the jurisdiction has been expanded to include 87 municipal governments as a result of a reciprocal memorandum of understanding. The goal is to expand this reciprocal cooperation to the majority of the 399 municipalities.

Despite the main function of the office being that of investigating complaints about maladministration, the activities of the Ouvidor are not limited to this. His responsibilities include: informing and educating the public, analyzing the human rights situation and drafting recommendations to improve it, and informing the more vulnerable groups in society (children, minorities, community associations, etc.) of their rights and duties as active citizens.

### **THE SYSTEMZENSHP PROJECT**

In order to simplify its actions, and to make itself understandable to the average citizen, the Office fulfills its institutional obligation through the implementation of several programs according to the guidelines established in the overarching project, called "SISDADANIA - Sistema Integrado da Cidadania," translated as, "SYSTEMZENSHP - Integrated System of Citizenship."

This project allows not only the acceptance of citizen's claims, but it also encourages the proper participation of administrative groups. These groups can therefore multiply their actions towards immediate decisions and the creation of preventative measures to block damaging effects on citizens as a consequence of the government's actions or omissions.

The project easily makes it possible to involve public participation in the debate and also leads to communication among and integration of all organized sectors of society.

SISDADANIA is a daring project: it intervenes didactically and pedagogically in the spreading of concepts and practices of citizen's rights in schools and in poor communities. It also tries to improve the quality of public services by reducing bureaucratic obstacles, educating civil servants, and reviving ethics and citizens' respect towards themselves. Some programs involve the sharing of power between citizens and the public administration.

Now you may ask, "What has been done up to now?"

Firstly, we have supplied communication channels to the population from the public administration by creating and implementing links. The simplest of these is our HELLO CITIZEN service, which enables citizens to make a toll free call to the ombudsman's office in order to denounce, complain, criticize, and make suggestions about the activities of the public administration.

Another service link we have established is that of the CITIZEN'S STAMP, which provides self-addressed stamped envelopes on which citizens can express themselves, available at the nearest post office.

Citizens can also reach the ombudsman's office via the OMBUDSMAN ON THE INTERNET service, to make complaints or learn more about the Office's programs.

With the intention of finding out what the public expects from the government, we have also implemented the TELECITIZEN project. This program not only conducts research surveys to determine levels of satisfaction towards public services, but also functions as another channel for public expression.

Finally, we have established a new and simple method of communication termed THE OPEN CHANNEL, by which to obtain the cooperation of private companies in the provision of public services. The Office provides boxes and information booklets by which any citizen can send letters and messages to the government. The boxes are then made available in shopping centers, drugstores, factories, bus stations, airports, etc.

Secondly, after establishing these various means of creating dialog between the public and the government, we began our efforts towards organizing an ombudsman network, inside and outside the public administration.

In order to integrate and give responsibility to public administration agencies, as well as to introduce the ombudsman image to public offices, we stimulated and built an internal ombudsman network called the HOUSE OMBUDS-

MAN. The establishment of ombudsmans in many of the public agencies has helped to eliminate a good part of the bureaucratic process which previously limited the complaint process. Almost all of the government agencies and other bureaus now have their own ombudsmans.

In addition, as a result of a reciprocal agreement, 90 municipalities in Paraná have joined our MUNICIPAL OMBUDSMAN program, an expansion of the Office to rural areas. This provides a means by which to serve all citizens living in those areas.

Thirdly, our office is promoting an educational process by transmitting basic concepts of citizenship clearly and informally.

The program, LISTENING TO THE COMMUNITY, encourages the participation of different groups within civil society, in which debate, questioning, and data collection provide a continuous flow of information. This provides a link between the people responsible for the operational levels of government and the users of the services offered.

Acting in essentially the same way, we have created the ENVIRONMENTAL OMBUDSMAN designed to popularize ecological themes and to form ombudsman office inspection agents, by educating them about environmental issues and Earth preservation.

Another program, QUALITATIVE LISTENING, makes it possible for the ombudsman's office, according to its rules, to catalyze actions by the administration by suggesting organizational and functional development measures and popularizing achieved advances. This program has provided a wide range of information towards administrative action, both enabling an analysis, and creating parameters to establish guidelines with a thorough vision of the necessities of citizens.

In order to address the low level of public knowledge regarding citizenship, the program CITIZEN: IT'S THE FOLLOWING... was established, to explain to and inform citizens of their rights and duties through brochures, booklets, lectures, and other didactic means. Thanks to this program, the population of Paraná will not only get to know the government's actions, but will also learn about the system and which agencies can serve them directly.

Finally, we decided to invest our best efforts in actions directed specifically at children. Using a puppet play entitled THE LITTLE OMBUDSMAN, citizenship concepts are discussed in schools. The program promotes an educational process in which the notions of rights and duties are developed in children, in order to teach them how to exercise these in a practical way.

The script describes the efforts of several families to promote improvements in transport, health services, public facilities, and education in their new district. The adults also discuss forms of public deliberation and how to set up a community association. During the performance, the children are involved and are encouraged to discuss issues relating to their own personal or family experiences. Booklets and brochures describing concepts of rights and duties are distributed to the students in order to foster discussion in the classroom and at home. The program also encourages children to appoint a school ombudsman.

### CONCLUSION

Now this is our experience, and our challenge. We have begun a journey to transform private individuals into citizens.

The most evident indicator of the acceptance of the SISDADANIA project is the constant growth in citizen participation. This can be measured by looking at the number of registered services, the number of processed registrations, the number of organizations involved in the process, the speed in which the agencies work, and the press coverage. The various channels of communication which we have established allowed our state network of ombudsmans to address 80,000 citizen comments in 1997.

Certainly the SISDADANIA project has promoted change and has enabled learning and growth. But I do know that as with any process, it demands patience and time, particularly within a country experiencing many social problems.

Then again, are these sorts of problems not those which constitute a vital reason to live and to work?



DELEGATES AND OTHER GUESTS WITH THE MACAU GOVERNOR, GENERAL VASCO ROCHA VIEIRA, THE PRESIDENT OF MACAU LEGISLATIVE ASSEMBLY, DRA. ANABELA SALES RITCHIE AND THE HIGH COMMISSIONER AGAINST CORRUPTION AND ADMINISTRATIVE ILLEGALITY, DR. LUÍS DE MENDONÇA FREITAS.



*Second Session*

**MR. JUSTICE (RTD) ABDUL SHAKURUL SALAM**  
**OMBUDSMAN OF PAKISTAN**

### THE OMBUDSMAN AS A CONFLICT MEDIATOR

The basic concept of Ombudsmanship is redressal of grievances of people against administrative authorities of the State. It is achieved through establishment of an office which receives complaints of people, enquires into them, calls upon the public officers complained against to reply who may either redress the grievance or show justification of their actions. If the justification advanced is not quite right, the Ombudsman, then, hears orally or through communications both the parties and tries to bring about settlement of the dispute or the controversy. In my country Pakistan, Article 33(1) of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, part of the Constitution of the Islamic Republic of Pakistan, provides that:-

“Notwithstanding any thing contained in this Order, the Mohtasib and a member of the Staff shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice”.

This is the most informal method of resolution or settlement of the dispute or conflict between the parties i.e. the people and the State functionaries. But if the controversy is intense and conflict sharp, then the law provides the procedure for coming to a conclusion which is in the nature of a mediation of the conflict. To do so successfully, it is essential that the Ombudsman is put on a high pedestal. In my country, the Ombudsman has invariably been a sitting or retired Judge of the highest Court. The idea is that he is independent of the Executive arm of the Government so that the citizen or people have

faith and confidence in him that he will act and decide without fear and impartially and further that the officials of the State will honour and carry out what he recommends. The essence of the office of the Ombudsman is independence, impartiality and integrity.

When the Ombudsman after enquiry, perusal of record and hearing both the parties in a conflict case comes to a conclusion, it is in the nature of mediation between the parties. He does not decide like a Court finding one entitled to or the other liable, nor that one is guilty and the other is wronged. Nor, his decisions are binding or executable like those of Courts. What the Ombudsman does, on the other hand, is that the complainant making a grievance against the functionaries is heard and if his grievance is genuine i.e. he has been deprived of something to which he was entitled by law or the discretionary power of the State which should have been exercised in his favour has not been exercised, or he is otherwise deserving of State assistance, the Ombudsman makes a recommendation with reasons to the relevant authority. Since the recommendation is based after ascertainment of facts, legal or other provisions, these are given consideration by the public authorities, as they too are there to help and assist the people. The times when the State authorities were there to rule have gone by. In modern times it is accepted on all hands that the Government is not only to govern but its most important function is to bring about a free and welfare State wherein the citizens or people within its purview enjoy freedom from all possible restraints, deprivations and limitations and are also enabled to and in fact are able to live a good civilized life.

In conclusion I will submit that an Ombudsman is a person or an institution to which people can have recourse for redressal of their grievances or conflict with the State functionaries and it is for the Ombudsman to mediate and bring about a solution which is right and just, hence satisfactory to both the parties.

**SIR BRIAN ELWOOD**  
**CHIEF OMBUDSMAN FOR NEW ZEALAND**

THE OMBUDSMAN AS CONFLICT MEDIATOR

I welcome the opportunity to speak to you on the role of the classical style Ombudsman as a "conflict mediator."

It is likely that such Ombudsmen will increasingly be called upon to help resolve conflicts between citizens and their governments in most parts of the world. The concept of Ombudsmanship is now almost universally adopted. Its growth during the last decade is nothing short of miraculous.

In New Zealand our Ombudsmen largely follow the model of the classical Ombudsman as first established in Sweden in 1809 - trying to resolve disputes between the individual citizen and the State, relating to matters of administration affecting the citizen. Since our establishment in 1962, this brief has been expanded to include not just central government but also local and regional government, and all agencies of government. The New Zealand Ombudsmen have also been given the responsibility of helping resolve disputes between the citizen, Ministers and agencies of government in all forms, over access to official information held by the "government." The two roles fit together comfortably; access to information often resolving an administrative grievance.

The benefit from having a non-judicial official, appointed by the Parliament and not the Government, making non-binding recommendations on how a conflict between citizen and State might be resolved, is now well understood. Indeed such an appointment seems to be seen as an essential ingredient of good governance.

Although our recommendations are non-binding, I could count on the fin-

gers of one hand the occasions on which they have not been accepted. The acceptance might sometimes be with reluctance, but acceptance there was none-the-less. We achieve virtually 100% compliance.

Because the New Zealand Ombudsmen's recommendations are not binding, it can be said that the Ombudsman needs to act as a mediator to achieve a result which is likely to be accepted and acted upon, for he cannot direct. Although the mediation role is not the one most emphasised : that of a reviewer more frequently is, nonetheless the concept of mediation fits comfortably with an important aspect of an ombudsman's review. Once a review is completed and a wrong has been identified which should be made good, an ombudsman must seek a resolution with which both sides may be able to feel reasonably comfortable and move on.

But let me raise a broader question posed by the wider use of the word ombudsman in some parts of the world.

From my perspective the title of "Ombudsman" should desirably be restricted to investigating and mediating in conflicts between individual citizens and the State, involving central, regional and local government. In New Zealand with two exceptions, it is: the exceptions are the Banking, and Insurance and Savings Ombudsmen. My view on that question is influenced by the unique historical background to the development of the concept and the perception that the office of ombudsman is somehow related to an ability to call the administrative decisions of government to account through the independent scrutiny of an ombudsman.

The calling to account is not through the medium of a censorial or adversarial process, but by a careful gathering of the facts, the identification of what, if anything, has gone wrong and the development of a practical and achievable resolution. The ombudsmen need neither advocate for nor prosecute anyone, but can focus upon the means by which a conflict can be resolved and which both parties are free to accept or reject.

New Zealand Ombudsmen are not officers of the State; we are officers of Parliament. That means we are appointed by convention on the unanimous resolution of Parliament and not by the Government of the day. We report to our house of the people: the House of Representatives. This system removes Ombudsmen once appointed from the hurly-burly of the cut and thrust of politics, from the cross-fire of political point-scoring, and from all issues of party political patronage. As Shakespeare said in "*Julius Caesar*" of Caesar's wife - "*we must be above suspicion.*"

Although I have indicated a preference for restricting the use of the term ombudsman to the public sector, *how* ombudsmen function need not be so restricted.

The wider and now world-wide public interest in and acceptance of the concept of Ombudsmanship suggests an opportunity for ongoing reform and reassessment of how disputes are resolved in a technology-driven society, where traditional boundaries are being challenged, and where there is an increasing expectation that conflicts of all kinds will be speedily and inexpensively addressed. The Ombudsman concept is founded on the need for access, independence, flexibility and informality, leading to a recommendation for a resolution of the matter in dispute. In New Zealand, the access to the Ombudsman is funded 100% from the public purse, so is free to everyone involved. The office is clearly independent. It adopts flexible methods when undertaking an investigation. It recommends, when justified, a means to resolve a dispute or conflict supported by a climate of compliance.

Society, seemingly virtually everywhere in the world is seeking to devise cost-effective access to timely mechanisms for review or determination when disputes arise. The less legalistic - the more informal - those mechanisms can be the more likely ordinary citizens can be confident that a just solution will be found at a reasonable cost. Complaints about delays and excessive formality in bureaucratic decision-making are being heard more and more often, perhaps as part of a more general call for smaller government and less regulation, especially if delays and formality are alleged to carry higher compliance costs.

It is important that the Ombudsman focus always be on the resolution of the conflict or dispute concerned. That becomes more manageable where the process is informal rather than judicial. The focus should not be on determining who was right or who was wrong, on who wins and who loses. It should be upon the resolution of the issue in dispute upon reasonable terms.

If that could be achieved, in areas other than the governmental system, it may shift the focus of conflict resolution generally away from the courts, often designed for adversarial argument and definitive determination rather than mediation, towards mediation. The Ombudsman method of operation or process if more widely applied would enable the parties in dispute hopefully to resolve their dispute without resort to a court. That could be achieved by education and encouragement or by legislation, or both. The ombudsman process would then be available to assist in the mediation of conflicts in

either the public or the private sectors. An idea which has proved its workability and worth in the public sector would then become another tool by which a civil and civilized society can help its citizens reach a resolution when consensus about an outcome is not otherwise possible.

But the use of the title ombudsman will hopefully be reserved for the process by which the individual citizen, anywhere in the world, will seek resolution of his/her conflict with the "government".

**ALEXANDRE HO**  
**CHAIRMAN OF THE EXECUTIVE COMMITTEE OF**  
**THE MACAU CONSUMER COUNCIL**  
**MACAU**

SETTLEMENT OF DISPUTES BY MEANS OF  
INTERMEDIARIES

Dear Distinguished Guests:

Macau was not yet developed in economy in 1970s. Citizens of Macau were living in a social environment of simplicity and low demands, and they were still quite conservative in habit. Although, there occurred quite a lot of disputes in the society, many of which were economic disputes. At that time, intermediaries were frequently adopted in settling such disputes; therefore, there were very few disputes which were actually settled by legal proceedings at court. In the society of the 1970s, such intermediaries were usually the figures of noble character and high prestige, who enjoyed good moral reputation and higher social status and were considered as the authority by the public. Since the social environment at that time was quite simple, it was very easy to find such persons. We may take a historical figure - Mr. He Xian as an example. In the 1960s and 1970s, Mr. He Xian settled a large number of disputes, big and small, for citizens of Macau. All such disputes were handled by Mr. He Xian as an intermediary.

In the 1980s, great changes took place in the social environment along with the rapid economic development of Macau. The life style of citizens could no longer remain a conservative and simple one as in the past. In an

advanced and multilayered society, people's demands have been rising gradually. As a result, it is unavoidable that there arise more and more conflicts and disputes. However, in a highly developed commercial society, people tend not to readily accept the mediation made by the figures of noble character and high prestige; meanwhile, it is no longer easy to find appropriate ones as intermediaries. Once a figure acceptable to the public is found as an intermediary for settling disputes, people may comply with the agreement made thereafter and settle any possible disputes in the future according to such an agreement. After the death of Mr. He Xian, there has been actually no such a figure like him in the society of Macau who can be so influential and enjoy such generally acknowledged trustworthiness.

In 1984 when the right to vote commenced to be extended to the common people in Macau, the society of Macau actually began a new chapter since the rights of citizens have been greatly expanded. As people came to realize their greater rights, they could be no longer satisfied with the past practice for settling disputes by intermediaries. In early 1985, the first Office of the Legislative Council was set up. The office was mainly engaged in helping people in settling various disputes or providing knowledge-based legal aid. Since then, various governmental institutions have gradually established departments specialized in receiving common people to provide them with assistance in handling administrative procedures. In addition, organizations such as the Public Service Consulting Center and the Consumer Council, etc. have successively come into being. The governmental mechanism providing the mediation service for its citizens has thus begun.

In the condition that law is unable to timely systematize the whole society since the present society develops so rapidly, there exist a lot of irrational issues in Macau. Although there are some public organizations which play a role of intermediary, yet there are few regulations which can support such a role legally. Thus, cases of breaching agreement or backing out frequently occurred when the intermediary decisions were being executed. Take the Consumer Council as an example: this organization was set up in early 1989. In the past decade, the Council has done a lot of work as an intermediary, mainly dealing with the issues of getting reasonable compensation and proper replacement products for citizens, etc. However, there were quite a lot of cases like this: after a settling agreement was reached, one of the parties failed to comply with it later on. Unfortunately, there is no sufficient binding force of the settling agreement from the legal aspect. Up to now, there has been no easy way to solve

such a problem, and consequently the final settlement has to be made by means of legal proceedings at court. Therefore, it is gradually realized that there are shortcomings in the practice of mediation with no legal base.

In 1996, the Macau Government promulgated two decrees on voluntary arbitration. With the power conferred by these two decrees, the Consumer Council set up the first voluntary arbitration center in Macau in 1998. This organization certainly aims at the final settlement of disputes through arbitration. However, the voluntary arbitration mechanism involves the process of mediation which has its legal status. This practice featuring intermediary, mediation and arbitration is really a product which has gradually come into being upon the demand of the society. To promote further development of Macau, the Macau government has made the laws of arbitration in a timely manner.

It is a practical demand to provide the service of settling disputes by means of intermediary and mediation. In terms of legal proceedings and time, it is not convenient to solve small disputes or to settle the cases involving only a small amount of money. Through the current legal system, for instance, it is necessary to retain a lawyer, and spend a lot of time in court debate before the final award is given by a judge. In addition, there are quite a lot of issues in modern society which cannot be simply governed by laws or regulations. This is so called the "gray zone". If the disputes of such nature can be settled by means of intermediary and mediation, the strict and complicated legal proceedings may be avoided. With such a flexible way, people can get the disputes settled easily. Furthermore, it may bring them a harmonious environment so that it makes possible for them to solve their disputes according to their individual ability and conditions. In this way, both parties concerned may have more opportunities to achieve a satisfactory result. This warrants the necessity of the existence of intermediary and mediation. Of course, for the purpose of achieving a binding legal effect, such intermediary and mediation should also comply with the spirit of laws, of which the law of equity is most applicable, so that it may be easier for the arbitration center to guide the parties in dispute to reach a compromise. On the other hand, various sources indicate that Macau has a social tradition that its people can readily accept the way of solving problems by means of intermediary and mediation; therefore, arbitration not only reflects the progress of the society but also is a need for respecting social tradition. According to the experience of arbitration centers in Europe, especially in Portugal, most cases are settled in the stage of intermediary and mediation. Therefore, it is expected that our arbitration center will develop along the same line in the future.

Today, we are here for the International Conference of Asian Ombudsman Association held by the Anti-Corruption Commissioners Office. The work of Ombudsman is actually the work of intermediary and mediation of the top level. Since 1989 when the Anti-Corruption and Anti-Administrative Law Breaking Senior Commissioners Office was set up, the intermediary and mediation mechanism of the top level has thus started to work in Macau. From the report of the Commissioners Office, we may see that this office has done a great deal of work which is widely acknowledged by the society of Macau. However, there are also some limitations in the work. Since the law stipulates that the commissioner office only be responsible for the disputes of special institutions as well as government organizations, the major disputes concerning the private and commercial sectors are beyond its jurisdictions. This also constitutes the big difference between the Commissioners Office of Macau and the Hong Kong Ombudsman Office. It has been mentioned just now that the Consumer Council of Macau has set up the first arbitration center aiming at settling the disputes arising from consumers with a small amount of money. However, due to the complexity of the society, it is unavoidable that disputes of other natures (such as commercial and professional disputes), and sometimes even consumer disputes concerning a big sum of money will arise. Therefore, it is also necessary to work out some arbitration mechanisms with a binding legal effect for solving such disputes.

Although the disputes we mentioned for settling by means of intermediary or mediation are all individual cases, yet, as a matter of fact, it is also possible, to deal with the long term problems by means of intermediary and mediation. This is because many disputes may recur incessantly. Therefore, the work of mediation has made us realize that it is necessary to work out some professional rules so as to prevent the recurrence of the same problems. As far as the Consumer Council is concerned, we will continuously settle disputes by means of intermediary and mediation on the one hand, and will work together with the concerned professional organizations and agencies on the other hand to draw up professional or operational rules so as to help them settle professional or commercial disputes with the consumers. Therefore, I would like to emphasize once again that in the present society of Macau, intermediary and mediation is still an important means to settle disputes. However, to make this means better meet the demands of the society, it is imperative that this means have a binding legal effect and various related professional arbitration organizations be set up.

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*"THE FUTURE OF OMBUSMANSHIP"*  
*"THE DEVELOPMENT OF THE 'OMBUDSMEDIATOR'*  
*ON A GLOBAL SCALE" \**

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quirements of such an institution<sup>6</sup>, other similar types of public and private complaint-settlement mechanisms have developed. Professor Rowat lists 4167.

After having defined the institution and highlighted its characteristics (Section 2), I should point out the various types of ombudsmen according to their areas of specialty (Section 3), give an overview of similar organizations (Section 4) and classify the factors influencing the development of the institution (Section 5). After having drafted a review of the institutions' activities on a global scale (Section 6), I will examine their future prospects (Section 7).

## **2. DEFINITION AND CHARACTERISTICS OF THE "OMBUDSMEDIATOR" <sup>8</sup>**

The "ombudsmediator" has certain characteristics that distinguish it from related organizations or those bearing the same title.

### **2.1. Definition**

The ombudsman or mediator is an independent public institution set up pursuant to an Act of the Legislature to investigate violations of citizens' rights and maladministration by the Government, as well as to make recommendations to remedy injustices and dysfunctionalities.

### **2.2. Characteristics**

One of the institution's essential characteristics is its independent status.

#### **2.2.1. Independence**

Independence implies many factors: the nature of the institution's constituting statutes, the manner in which the incumbent is appointed and other elements related to his mandate and the nature of his relationship with the authorities.

##### **2.2.1.1. In accordance with the constituting statutes**

It is essential, for many reasons, that the institution be set up pursuant to an Act of the Legislature (statutory law) or to the Constitution (organic law).

First, the constituting law stipulating the mandate and powers of the institution ensures it significant stability. A position created as a result of a simple administrative decision is not guaranteed independence and permanence, since it can be easily modified. Even in States where the position is sanctioned by the Constitution, a normative text provides for its implementation. An institution can also be created by delegated legislation<sup>9</sup>.

The constituting statutes must be issued by a legislative branch, which

varies according to the level of government. The national mediator is set up by an Act of Parliament. The regional mediator is created by a regional legislative act and the local mediator is set up by local legislative powers. As such, a municipal ombudsman must be created by the community's most stable legislative instrument: a simple decision by the mayor or executive committee does not guarantee independence and permanence.

2.2.1.2. In accordance with the manner in which the incumbent is appointed and other elements related to his mandate

The method of appointing an incumbent must be provided for by the constituting law or the Constitution. He may be appointed or recommended by Parliament. In a presidential regime, wherein the president appoints the incumbent, it is preferable that parliamentary authorities participate in the selection or that they are at least consulted.

Other elements contribute to setting the level of independence of the incumbent: his mandate must be for a fixed period, renewable or not. He may be removed from office, and this, only with good reason, and only by authorities whose status guarantees the objectivity of the removal. As such, a mediator appointed by Parliament can only be removed from office by the latter or through the intervention of a judicial authority. The removal of the incumbent appointed by the Chief of State can only be effected with the consent of or notification by the Parliament or following an investigation or decision by an independent authority such as a Court of Law.

2.2.1.3. In accordance with his relationship with the authorities

To ensure his independence, the institution must not be subordinate<sup>10</sup> to the authorities over which it exercises jurisdiction. "The comptroller cannot at the same time be the comptrollee." Independence can expressly fall under provision of law specifying namely that authorities can neither interfere in the affairs of the institution, nor dictate its conduct. For want of express provision, independence may be inferred from the general economy of the law.

By way of illustration, a government minister or administrator, as well as governmental organizations exercising supervisory authority over public agencies cannot be considered as ombudsmen. Such is also the case for Attorneys General, Solicitors General, ministers responsible for monitoring public agencies and internal auditors.

In summary, an institution, including its incumbent, that fails the test of independence plays a subordinate role in which the incumbent is likened to an officer of the agency being monitored and, in so doing, is virtually in con-

flict of interest or subject to influence<sup>11</sup>. As such, they may be referred to as “executive ombudsmen” as opposed to “legislative ombudsmen”,<sup>12</sup> depending on its classification.

#### 2.2.2. Duty to Receive Complaints from Citizens

The “ombudsmediator” must receive complaints from citizens or companies. However, under the majority of constituting laws, he can also act on his own initiative, by means of autoseisin. In some States, the ombudsman acts through a parliamentary intermediary, as in England (Parliamentary Commissioner for Administration) or in France (*Médiateur de la République*). This method does not call into question the status of the mediator. Moreover, in this case, if the institution acts by means of regional delegates, the latter are generally able to handle citizens’ complaints directly: this is true of the *Médiateur de la République*.

#### 2.3 Investigative Powers

To form an opinion, the institution must be able to compile the elements it deems necessary. Hence, it exercises investigative powers; it therefore has the right to constrain witnesses, obtain pertinent documents and inspect premises, under threat of penalty for non-compliers. Certain laws, however, allow for a less coercive system by simply inviting the Government to collaborate with the institution in its investigation, with or without penalty in the event of non-compliance.

#### 2.2.4. Power to Recommend

The “ombudsmediator”, as administrative recourse for the resolution of disputes, is characterized by his power to recommend. This power is an inherent part of his role as spokesperson for the citizens he represents. Nonetheless, unlike a Court of Law or an arbitrator, he cannot render binding decisions.

However, a mediator may in particular instances, according to its statute, address a court in order to clarify his jurisdiction or powers. Some offices can bring proceedings before courts or obtain injunctions. It goes without saying that legal remedy can only be exercised when a law has been violated: the “ombudsmediator” cannot use it to enforce a recommendation aimed at modifying a standard simply because it is unreasonable, but legal, or to undertake the reform of a given field.

#### 2.2.5. “Ombudsmediator” Immunities

“Ombudsmediators” enjoy various immunities. Some cannot be compelled to testify before a court, and others, in addition to this immunity, cannot be

sued for damages with regard to the content of their annual report or their public interventions, provided that they are carried out in good faith.

#### 2.2.6. Confidentiality of the Complaint and the Investigation

Citizens' complaints and ensuing investigations are handled confidentially.

#### 2.2.7. Accountability

The "ombudsmediator" gives an account of his activities to the governing authorities, namely in a report he submits annually or in special reports. This authority varies according to the judicial system: the parliamentary institution is accountable to the Parliament. In a presidential government, the ombudsman is accountable to the President himself, however, he must also submit a report to the legislative body. Specialty ombudsmen may be obligated to report to a minister and to Parliament. Ombudsmen are ultimately accountable to the general public.

#### 2.2.8. "Appeal Body"

An ombudsman is often an "appeal body". For a complaint to be handled, the citizen must generally have exhausted all other administrative recourse. The "ombudsmediator" is not a substitute for the administrative system. He offers it the chance to correct or have the issue corrected, thus preserving the imputability of the organization being monitored.

### **3. THE CLASSIFICATION OF "OMBUDSMEDIATOR" ACCORDING TO THEIR JURISDICTION AND THE ORDER OF GOVERNMENT**

Various types of ombudsmen are noted: the general legislative and the specialty legislative, both of which exist at national, regional and local levels.

#### 3.1. The General Legislative Ombudsmen

These ombudsmen have jurisdiction over all or most of the administrative system belonging to a given order of government. As such, there are 220 general legislative ombudsmen in the world at national, regional and local levels.

##### 3.1.1. National Institutions

There are 80 general legislative offices at the national level. Nevertheless, single or federate States do not all have general legislative ombudsmen: namely Canada, the United States, India and Italy. Some institutions such as the French *Médiateur de la République* also have jurisdiction over local governments.

##### 3.1.2. Regional Institutions

Regional offices include those that have general legislative jurisdiction over

regional orders of government, which may be States that make up a federation, as well as provinces, administrative territories, federal or regional districts<sup>13</sup>.

Regional offices occasionally have jurisdiction over local governments. In Canada, British Columbia and Manitoba ombudsmen have jurisdiction over their province's municipalities, except in Manitoba, where the city of Winnipeg has its own "legislative ombudsman."

There are at least 90 regional, general legislative ombudsmen in the world.

### 3.1.3. Local Institutions

Local ombudsmen acting at a local administrative level are classified as local, general legislative systems; these are mainly found in universities and municipalities.

### 3.2. Specialty Ombudsmen

Besides general legislative offices, there are also specialty ombudsmen who act at national, regional and local levels. These ombudsmen have rights of review in specific areas of an administrative system. They are called "specialty"<sup>14</sup> ombudsmen. There are 102 of them.

#### 3.2.1. At the National Level

For example, Canada, which does not have a general legislative ombudsman at the federal level, created six federal specialty ombudsmen in the fields of access to information, privacy, official languages, penitentiary services, law enforcement and human rights. New Zealand has a national ombudsman for environmental protection. The United States, at the federal level, have an ombudsman with jurisdiction over long-term care units.

#### 3.2.2. At the Regional Level

Some Canadian provinces have "specialty" ombudsmen, namely in the fields of law enforcement, privacy and child protection.

#### 3.2.3. At the Local Level

The United States have many of these local "ombudsmediators." At the local level, municipalities may have ombudsmen in specialized fields such as healthcare and human rights. In the same way, several university ombudsmen are considered to be local specialty ombudsmen and not local, general legislative offices.

## **4. COROLLARY : ORGANIZATIONS SHARING SIMILARITIES WITH THE "OMBUDSMEDIATOR"**

Several organizations in the public and private sectors resemble that of the “ombudsmediator”.

#### 4.1. In the Public Sector

##### 4.1.1. Public Organizations Sharing Similarities with the Ombudsmediator.

Some public organizations share similarities with the institution of the ombudsman, namely their powers of investigation and recommendation. However, they do not have an independent status. They consist mainly of internal organizations within a government and report to ministers or the organization’s directors<sup>15</sup>. The United States and Canada have many. They also take on the form of complaint review boards within a ministry or public agency.

According to English and American traditions, these offices are classified as “executive ombudsmen”, as opposed to “legislative ombudsmen”<sup>16</sup>. Donald C. Rowat distinguishes them according to their jurisdiction and lists 96 general executive ombudsmen including 11 at the national level<sup>17</sup>, 20 at the regional level<sup>18</sup> and 65 at the local level<sup>19</sup>.

According to Rowat<sup>20</sup>, there are also at least 155 “specialty executive ombudsmen”, including 138 in the United States. These offices are mainly found in universities, public healthcare institutions, penitentiary services, schools, the military, the environment, law enforcement and taxation departments.

##### 4.1.2. Human Rights Commissions in Relation to “Ombudsmediators”

Several human rights commissions are comparable to the “ombudsmediator”, due to their independent status and powers of investigation and recommendation.

Human rights commissions are national organizations regulated by the “Paris Principles”, which are also aimed at ombudsmen<sup>21</sup>. Several of them have jurisdiction over public and private sectors. They can be general and specialty institutions. Several intervene only in matters of discrimination and other types of exclusion, even though they also play a role in promoting human rights. Such is the case in Quebec with the *Commission des droits de la personne et des droits de la jeunesse* (Human and Children’s Rights Commission), and at the federal level, with the Canadian Human Rights Commission. Others, such as the National Human Rights Commission of Mexico, have broader jurisdictions. As a general rule, these offices also handle maladministration pertaining to human rights.

Traditional classification distinguishes between ombudsmen and human rights commissions and requires that several nuances be made. Some people believe that ombudsmen handle only governmental dysfunctionality

(maladministration), and that the protection of human rights is the mission of human rights commissions alone. The actual situation is not so clear, as ombudsmen often intervene to promote and protect human rights. Hence, the duty of an "ombudsmediator" with jurisdiction over a penitentiary system is to protect the rights of inmates according to international instruments. The same applies when he intervenes in governmental decisions involving social and economic rights governed by international covenants.

It is my opinion that ombudsmen and human rights commissions with these characteristics exercise complementary responsibilities and in so doing, both play a major role in defending the rights of citizens from their governments' actions. In States where the two types of institutions exist, there can be a certain overlapping of mandates.

Nevertheless, the activities of second-generation "ombudsmediators", mainly those in Latin America, clearly involve maladministration and human rights. They constitute the way of the future in the development of the "national ombudsman", targeted by the "Paris Principles."

#### 4.2. In the Private Sector

In the private sector there are "corporate ombudsmen" and other non-governmental complaint mechanisms.

##### 4.2.1. Corporate "Ombudsmen"

Corporate "ombudsmen" are multiplying at an incredible rate. Goods- or service-related business firms and the media are implementing systems to receive complaints from customers, as well as company employees. There are 134 in the United States and Canada. They are also found in Australia, New Zealand and several European States. It goes without saying that these systems do not have the same independence as ombudsmen. Hence, they are comparable to "executive ombudsmen" in the public sector.

Moreover, several business firms operating in a given field of activity are grouped into associations, which also have "ombudsmen." In the United Kingdom, several of these "association ombudsmen" render binding decisions. Their areas of activity include banking, insurance, construction, real estate, investment brokerage, pensions and the penitentiary system.<sup>22</sup> Some professional orders in Scotland and England also have "association ombudsmen", namely in the legal professions.

In conclusion, the past few years have seen spectacular growth in the popularity of "ombudsmediators", as well as in other types of complaint mechanisms.

Unavoidably, the "ombudsmediator", like any political institution, appears

to have been created and adapted according to the cultural, social and political context of the society in which it evolves. It is therefore conditioned by its environment. This explains the wide variety of “ombudsmediators” and, secondarily, similar organizations. However, the term “mediator” or “ombudsman” does not necessarily signify that the institution fulfills the requirements of an “ombudsmediator.” “The name Ombudsman is a catchy one<sup>23</sup>” ... Hasty generalizations should be avoided.

#### 4.2.2. Other Non-Governmental Complaint Mechanisms

Other non-governmental organizations that promote and defend human rights, as well as advocacy groups for citizens with disputes involving the government or the private sector are flourishing. These organizations, which are particularly community-based, sometimes receive government funding and generally defend specific groups: “many advocates urge government and communities to consider the perspective of those who have been historically under-included. Many groups who have been marginalized or disempowered have found it increasingly important to work with advocates who support them<sup>24</sup>.” These organizations are often politically active and not only strive to settle disputes, but also to promote the well being of the groups they represent.

These organizations are generally made up of volunteers, legal-aid lawyers and various consultants. They are active in areas such as human rights, the environment, industrial relations, workplace accidents, children’s rights and welfare. They mainly act as advocates and are not neutral.

## 5. FACTORS IN THE DEVELOPMENT OF THE “OMBUDSMEDIATOR”

### 5.1. General Considerations

There are many factors involved in the development of the institution of the ombudsman. Whether we go back to the Roman tribunes, the Egyptian pharaohs, the Chinese dynasties or, to the Swedish *justitia-ombudsman* or the Turkish Quadi Algudat, the appearance of advocacy groups is fundamentally associated with efforts to eliminate the arbitrary use and abuse of public powers and, gradually, with the triumph of democracy. When the State took charge of the expectations and needs of its citizens, mechanisms were created that allowed citizens’ voices to be heard. The State gave them the right to protest and complain to an independent institution about decisions handed down by the government. This highly democratic right already recognized as a parliamentary tradition was expressed through “petitions.”

The “ombudsmediator” is not the only public complaint mechanism. Legal and administrative courts, as well as alternative dispute-resolution mechanisms can also be used to settle disputes between government authorities and the public.

## 5.2. Political Factors

The growth of the institution is mainly a result of political factors.

Lack of confidence in governments has, in some States, led to the creation of the institution. The establishment of an independent mechanism for settling disputes contributes to restoring public trust.

However, the movement towards universal democratization, along with the “globalization” of human rights constitutes a determining factor in the development of the institution. Thus, the explosion of ombudsmen in Latin America coincides with the rejection of totalitarian regimes; the growth of institutions in Africa coincides with the development of democracy. The same is true for East European countries. More and more Asian nations, such as Thailand and Vietnam, are considering setting up ombudsman offices. In sum, the institution’s development is currently associated with the appearance of democratic regimes and the international demand for the respect of human rights. The globalization of markets contributes, in some respects, to the development of democracies, the emergence of human rights and the fight against corruption.

Because the nature and characteristics of the “ombudsmediator” meet the expectations of citizens and governmental authorities, they are also factors in its development.

## 5.3. Meeting the Expectations of Citizens

### 5.3.1. Accessible

As a general rule, the ombudsman provides accessible recourse that is more within reach of citizens than other jurisdictional or non-jurisdictional dispute-settlement mechanisms.

The ombudsman offers easy access because, in general, it avoids the formalities typical of judicial or governmental procedures. Complaints can often be made verbally and citizens generally are not required to attend formal meetings. The fact that recourse is free is also a determining factor. Lastly, the informal nature of the procedure makes it a personalized means to settle disputes.

### 5.3.2. Quick

Intervention by the “ombudsmediator” generally gets quicker results than other avenues of appeal.

#### 5.3.3. Credible

When seeking recourse, citizens generally place more confidence in an institution like the ombudsman than in the government<sup>25</sup>. Citizens assume their cases will be examined closely and without prejudice, due to the non-partisan and independent status of the “ombudsmediator”.

The credibility of the ombudsman is such that people turn to it for a wide range of reasons, from obtaining information on a government program or the avenues available to citizens, to validating a governmental decision or verifying information already provided by the government. Public interventions by the ombudsman help increase his credibility.

#### 5.3.4. Democratic

The ombudsman offsets powerful, bloated bureaucracies and their cumbersome procedures, abuse, dysfunctionality and monopolistic nature. It corrects the imbalance between “David” (the citizen) and “Goliath” (the government). It therefore acts as an element to counterbalance the governmental system.

#### 5.3.5. Effective

According to the Supreme Court of Canada:

“ the powers granted to the ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve<sup>26</sup> .”

The institution is also effective due to its relatively high reversal rate for administrative decisions.

### 5.4. Meeting the Expectations of Government Authorities

While the ombudsman meets the expectation of citizens, it can also be assumed that, as a general rule, it also satisfies those of government authorities.

#### 5.4.1. Accepted

The accessibility of the ombudsman is something governments know well. Although at times they find it “too accessible” and even - in some cases - in competition with them, they nevertheless recognize the advantages it offers. When incapable of settling a dispute involving a citizen, politicians will often turn it over to an ombudsman. Recourse to the ombudsman is thus accepted.

#### 5.4.2. Non-Coercive

The power to recommend gives the “ombudsmediator” a moral authority

that governments accept more readily than binding decisions. Thus the institution exercises a soft form of justice.

#### 5.4.3. Non-Partisan

Unlike non-governmental organizations that promote and defend human rights, the neutrality of the institution removes any militant taint and makes it seem less menacing. The ombudsman must exercise non-partisan pressure on authorities.

Furthermore, the ombudsman constitutes an additional source of information and sheds impartial light on the pertinence and quality of governmental decisions.

#### 5.4.4. Inexpensive

For public officials, the difference between the cost of traditional justice and justice meted out by the ombudsman can be decisive. Recourse to the ombudsman can cost as little as 10% that of judicial or governmental tribunals. As a result, namely in several Canadian provinces, ombudsmen are regularly called upon in a wide variety of fields.

#### 5.4.5. Mechanism of Reform

The reforming role that the "ombudsmediator" can play in parliamentary proposals for change or upcoming legislation should not be underestimated.

#### 5.4.6. Flexible

The institution is adaptable. In several States, the express mission of the "ombudsmediator" is to protect fundamental rights and, aside from his general mandate, to act as an information, privacy and children's rights commissioner.

### 5.5. Conclusion: A Unique Resource

In conclusion, as an alternative for conflict resolution, the "ombudsmediator" is a unique resource<sup>27</sup>. He is neither an arbitrator, chosen by both parties and whose decision is binding, nor a conciliator whose main function consists of encouraging dialogue between parties with differing points of view, nor a mediator who proposes terms of agreement, nor a court whose decision is enforceable, nor an investigator who submits a report on a specific case.

Nonetheless, while the ombudsman can easily adapt to the demands of the modern State, it would be a mistake to believe that he could become a substitute:

"\_ ombudsmen in all their various forms have not been growing in number just to address new needs or, as could be thought, previously neglected ones\_ Despite the progress in the diversification of recourse, we must not be overly

smitten by the ombudsman model. It is not a universal alternative to remedies that already exist, because its effectiveness is relative\_ Ombudsmen lay the groundwork for the next step - quality control, which must not be the ultimate goal in the evolution of the various forms of monitoring government actions. Administrative law has embarked on a path of diversification of remedies, and there is no turning back to single-recourse formulas. The traditional image of the courthouse judge, and the less-defined image of the administrative law judge, is giving way to a surprisingly symbiotic image of investigator and mediator<sup>28</sup> .”

## **6. THE ACTIVITY OF THE “OMBUDSMEDIATOR” ACCORDING TO WORLD REGIONS**

The statutes of the International Ombudsman Institute provide for six regions: Africa, North America, Asia, Australasia and Oceania, the Caribbean and Latin America, and Europe. Amendments to these statutes in 1996 make provision for the formation of six regional chapters of the International Ombudsman Institute that are now being set up. The following is a brief outline of the current situation in each region.

### **6.1. Africa**

Africa has seen phenomenal growth over the past few years. Nineteen States have set up general legislative mediators and ombudsmen at a national level<sup>29</sup> and at least one national, specialty ombudsman to handle matters pertaining to ethics and corruption<sup>30</sup> .

African ombudsmen and mediators held their 5th Conference in Ghana in September 1997. The next conference will take place in Namibia in 1999.

In 1996, under the aegis of the International Ombudsman Institute, a meeting was held in Pretoria uniting investigative officers from “ombudsmediator” institutions. Moreover, Dar Es Salam University (Tanzania) accommodates the African Ombudsman Centre directed by a board of trustees made up of “ombudsmediators” from all regions of Africa.

### **6.2. North America**

North America has 9 general legislative ombudsmen at the regional level in Canada and 7 State member ombudsmen in the United States. The region also has 9 specialty ombudsmen at the national level.

American ombudsmen in the public sector are members of the “United States Ombudsman Association” (USOA). Their next conference takes place in

Detroit, Michigan, in September 1998. Another association, "The Ombudsman Association" (TOA), includes organizations in the private and public sectors.

Canadian ombudsmen are in the process of forming an association.

The last Canadian ombudsmen conference were held, in two times, in Regina (Saskatchewan), in September 1997 and in Toronto (Ontario), in January 1998. The next conference will take place in Yellowknife, in the Northwest Territories.

The Québec Ombudsman held its first meeting in June 1997 with francophone<sup>31</sup> institutions, which will be creating an association at the Nouakchott (Mauritania) meeting in May 1998.

The head office of the International Ombudsman Institute is located at the University of Edmonton in Alberta.

### 6.3. Asia

Asia has 7 general legislative or specialty<sup>32</sup> ombudsmen at a national level and 12 regional ombudsmen<sup>33</sup>.

The ombudsmen formed an association (Asian Ombudsmen Association), which meets once a year and is open to related organizations. The last conference took place in Seoul, Korea, in 1997 and the next one will be held in Macao in May 1998.

### 6.4. Australasia and Oceania

This region includes 8 national ombudsmen<sup>34</sup>, 7 regional, general legislative ombudsmen and 3 specialty ombudsmen. The ombudsmen formed an association open to related organizations. The last conference took place in Darwin (Northern Territory) in Australia.

### 6.5. The Caribbean and Latin America

Latin America and Caribbean region has also seen spectacular growth in recent years. The Caribbean lists 7 national ombudsmen<sup>35</sup>, while Latin America lists 16 national ombudsmen, 41 regional offices and 9 local "ombudsmediators."

They also created a federation that is open to similar organizations. The "ombudsmediators" held their first conference in Mexico in 1996 and the second in Toledo (Spain) in 1997. The third will take place in Lima (Peru) in September 1998.

Most Latin American "ombudsmediators" also have jurisdiction over human rights issues and, as such, have established functional relations with international organizations. As such, in November 1997, the fourth workshop aimed at national institutions for the promotion and defense of human rights was held in Merida, Mexico.

Caribbean “ombudsmediators” will hold their first meeting in Antigua and Barbuda in March 1998.

#### 6.6. Europe

In Europe there are at least 29 general legislative ombudsmen at a national level<sup>6</sup>, 37 regional institutions and 33 local “ombudsmediators.” There are also at least 20 national specialty ombudsmen.

The national ombudsmen belong to an informal association that meets annually. The last conference took place in Israel in September 1997 and the next one will be held in Malta, in September 1998. The Netherlands Ombudsman is responsible for publishing a national ombudsmen report three times a year.

Europe also has a European Institute of Ombudsmen, which holds conferences on a regular basis. Furthermore, the European Council organizes round tables for national and regional “ombudsmediators.”

#### 7. Future Prospects

Within his jurisdiction, the “ombudsmediator” intervenes as a dispute-settlement mechanism. He examines not only the legality of government decisions, but also whether they are reasonable and equitable. He carries out all-encompassing, systemic investigations. Some ombudsmen adjudicate on proposals for reform, others on upcoming legislation. In several instances, the “ombudsmediator”, within the scope of his activities, will propose guidelines and checklists aimed at improving the quality of services and decisions, as well as the respect of “rules of natural justice.” He informs parties of their rights. He also collaborates with private defenders of human rights, as well as with other public human rights institutions. Some even tackle the field of ethics. The “ombudsmediator” increasingly intervenes in the field of human rights, and several are called upon to administer in various areas such as the fight against corruption, law enforcement, privacy protection and labour relations in the public sector.

This kaleidoscope of activities begs the question, has the “ombudsmediator” become a melting pot or, simply a versatile institution capable of combining several mandates without giving way to incoherence?

With the rise in the number of ombudsmen from 47 to 321, it can no longer be said that the “ombudsmediator” suffers from the same degree of isolation as he did twenty years ago. In association with his colleagues, he plays a role in universal dynamics. Due to the regional and international structure of the institution, the International Ombudsman Institute’s role will be-

come more and more important, with the setting up of regional constituents. The "ombudsmediator" increasingly coordinates his actions with international organizations.

Lastly, the institution has acquired a superior level of expertise and professionalism that there is no turning back from. As a public institution, although independent from the State, the "ombudsmediator" has become an essential player in the prevention and correction of injustices committed by government authorities, as well as an indisputable leader in the democratization and globalization of human rights.

## NOTES

\* *This paper has been translated from the French original version*

1 Larry Hill, "The Self Perceptions of Ombudsmen: A Comparative Survey", in Gerald E. Ca'den's (ed.), *International Handbook of the Ombudsman: Evolution and Present Function*, Westport, CT, Greenwood Press, 1983, page 43.

2 Donald C. Rowat, "A World Wide Survey of Ombudsmen". Occasional paper # 60. March 1997. International Ombudsman Institute. Table 2 (Does not include the European Union Ombudsman.)

3 Ibid., Table 5.

4 This update of Professor Rowat's presentation takes into account the ombudsmen and mediators who are voting members of the International Ombudsman Institute as well as non members. I took into account the latest memberships to the International Ombudsman Institute as well as lists of ombudsmen and mediators included in certain 1996 regional reports of the Institute's regional vice-presidents for the following regions: Africa, North America, Asia, Australasia and Oceania, Caribbean and Latin America, and Europe.

5 Namely Bolivia, Ecuador and Greece.

6 See Section 2.

7 Donald C. Rowat, loc. cit., Note 2, Tables 6, 7, 8 and 9.

8 In the text, the words "ombudsman", "mediator" and "institution" are indiscriminately used to qualify the "independent" or "legislative" ombudsman. The neologism "ombudsmediator" is also employed.

9 The requirement that an "ombudsmediator" be set up through a legislative process explains the use of the expression "legislative ombudsman", which is not to be confused with the expression "parliamentary ombudsman", which qualifies the mediator appointed by the Parliament or arising thereunder.

10 Daniel Jacoby, "*Independence and Accountability of the Ombudsman: Myths and Reality*", Paper, Canadian Ombudsman Conference, Toronto, Ontario, November, 1993.

11 Donald C. Rowat, supra, Note 2.

12 See Note 9.

13 Namely: Australia, Canada, Spain, United States, Italy and Switzerland.

14 They are also called "single purpose ombudsmen".

15 See supra, Section 2.2.1.3.

16 See Supra, Note 9.

17 For example, the Procurator General of Bulgaria, the Procuratorate of China, the Public Complaints Bureau of Malaysia and the Fiscal General of Venezuela.

18 The Complaints and Suggestions Bureau of Sarawak (Malaysia).

19 Loc., cit., Note 2, Table 7.

20 Loc., cit., Note 2.

21 The "Paris Principles" were adopted by organizations for the promotion and protection of human rights during a meeting in Paris in 1991, endorsed by the Human Rights Commission in 1992 and by the United Nations General Assembly in 1993 (Resolution 48/134.) These principles define the status and characteristics of these institutions.

22 Professor Donald C. Rowat lists 31 associations with such systems in the Commonwealth and Europe. See Note 2, Table 9.

23 Stanley V. Anderson, *Ombudsman Papers: American Experience and Proposals*, Institute of Governmental Studies, Berkeley, California, 1969, page 43.

24 Ombudsman, Province of British Columbia (Canada), *Ombudsreport* (Annual Report) 1993, "Advocacy", page 6.

25 An opinion poll conducted by the Québec Ombudsman in 1993 revealed that more than 72% of those involved in disputes with government agencies do not believe they can win.

26 *B.C. Development Corp. vs. Friedman* (1984) 2 SCR 447, on page 461.

27 Daniel Jacoby, "Le recours au Protecteur du citoyen comme solution de rechange ^ la résolution des conflits", in *Alternative dispute resolution/Solutions de rechange au règlement des conflits*, Sainte-Foy (Quebec), Canada, Laval University Press, 1993, pages 195-218. See also: Daniel Mockle, "Zéro contentieux. L'ouverture d'une troisième voie en droit administratif par le règlement amiable des différends", *Bar Review*, Volume 51, No. 1, January-February 1991, pages 45-126.

28 Daniel Mockle, "Le développement des formules non juridictionnelles inspirées du modèle de l'Ombudsman", in *Nouvelles pratiques de gestion des litiges en droit social et du travail*, fd. Yvon Blais Inc., Cowansville, Ontario, Canada, 1994, pages 91 and 93.

29 Burkina Faso, Lesotho, Madagascar, Malawi, Mauritania, Mauritius, Namibia, Nigeria, Senegal, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Tunisia, Uganda, Zambia, Zimbabwe. Algeria, Gabon, Ivory Coast and Morocco have executive ombudsmen.

30 Tanzania. "Enforcement of Leadership Code Commission."

31 Belgium, Burkina Faso, Canada (federal level), Gabon, Haiti, the Ivory Coast, Madagascar, Mauritius, Mauritania, New Brunswick (Canada), Québec (Canada), Saint Lucia, Senegal and Vanuatu participated in this meeting organized mainly in collaboration with the ACCT.

32 Japan, Macao, Pakistan, South Korea, Sri Lanka, Taiwan, Thailand. (Macao will become a special administrative territory of China in 1999.)

33 Hong Kong and India. (Hong Kong became a special administrative territory of China in 1997.)

34 Australia, Cook Islands, Fiji, New Zealand, Papua New Guinea, Solomon Islands, Western Samoa, Vanuatu.

35 Antigua and Barbuda, Barbados, Haiti, Jamaica, Puerto Rico (also included in the North American region), Saint Lucia, Trinidad and Tobago.

36 In the following States: Austria, Belgium, Bosnia-Herzegovina, Croatia, Cyprus, Denmark, Finland, France, Germany, Georgia, Hungary, Iceland, Ireland, Israel, Latvia, Liechtenstein, Lithuania, Malta, Norway, Netherlands, Poland, Portugal, the Russian Federation, Slovenia, Spain, Sweden, United Kingdom.

**PAK LEE MA**

**OFFICE OF THE OMBUDSMAN**

**HONG KONG – P.R.OF CHINA**

**MEDIATION SERVICE OF THE OFFICE OF THE  
OMBUDSMAN HONG KONG, CHINA**

**INTRODUCTION**

Mediation has long been the preferred method of dealing with disputes in many parts of the world. It gives an option for investigable complaints to be resolved other than by investigation, allowing both the complainant and the complainee organization a chance to hear each side's story. Hence it enables complaints to be dealt with timely and results in greater satisfaction among parties concerned. This is in line with the ombudsman concept in striving for a resolution to a problem rather than finding of faults.

2. Complaints lodged with our Office are dealt with by way of investigation, rendering assistance/clarification (RAC) and the Internal Complaint Handling (INCH) Programme. Since mid-1997, this Office has launched a mediation service as another alternative dispute resolution method which has been properly adopted to suit Hong Kong's situation. In the process, we use mediation as a means to facilitate our discretion under Section 9 or Section 10 of The Ombudsman Ordinance to undertake, continue or discontinue an investigation. At present, we have 30 investigators and we deal with approximately 3000 written complaints a year. We reckon that about two per cent of the complaints are suitable for mediation provided both sides agree to do so.

**THE MEDIATION PROCESS**

3. We select suitable cases from among the complaints we receive after

initial assessment and preliminary inquiries. We look for some general characteristics, such as cases where both complainants and complainee organisations are at fault, where there are options for resolution and a capacity of the parties to negotiate a settlement.

4. We send them materials explaining our mediation service, including the basic ground rules such as confidentiality. When both sides agree to proceed, we arrange a mediation meeting to be held in our Office.

5. We use co-mediating approach whereby two investigators would work together to help move the process. One of them will take a more active role whereas the other will provide support and reinforcement. The former starts off by giving an introduction on their role and the basic features - such as it being voluntary and an outline of the process that will be followed. Then each side makes a brief statement about how they see the problem. The other investigator listens and summarises each of these statements and checks with each party that they have understood the key points. From there the issues for discussion and resolution are identified and these are used to form an agenda.

6. In the first joint session the investigators assist the parties to explore these issues. This usually involves identifying points of agreement and then working through unresolved matters. They facilitate this discussion by getting the parties to communicate directly and effectively with one another. This involves an exchange of information and views, the exploration and development of options and the evaluation and selection of options. Where the parties' needs cannot be met, some bargaining may take place.

7. At a suitable point, "Private Sessions" i.e. separate meetings which allow the investigators to seek other information to better understand each party's position, especially to probe any hidden agenda and to consider the effect of the parties' best and worst alternatives to reaching a negotiated agreement will be held with each party.

8. Negotiations then continue in the subsequent joint session. At this stage, the investigators move from exploring what happened in the past to focusing on the future. Now there is a much more active exploration of options for settling the dispute and it is from here that they start working on an agreed outcome. In cases where private sessions are not necessary, they may move straight towards some final decisions, and the agreement is gradually built up.

9. Once agreement is reached between the complainant and complainee organization, the investigators will summarise the agreed points in writing and confirm with both parties. They will also request both parties to agree on

the time frame for the agreed action to be taken. We do not sign any agreement and have no role in enforcing it - it is between the parties.

10. After the conclusion of the mediation session, the investigators will prepare a submission to The Ombudsman containing the major issues discussed during the mediation and a recommendation as to whether the complaint should be investigated, concluded or discontinued for approval.

11. For cases resolved or settled after mediation and The Ombudsman agrees that no investigation is necessary, a reply will be sent to the complainant with a copy to the complaine organization to the effect that we shall take no further action on the complaint.

12. For cases where no agreement is reached after mediation, they will either be concluded by the RAC approach or investigated as approved by The Ombudsman. For RAC conclusion, the complainant will be informed by a letter, as in other RAC cases to the effect that we shall take no further action on the complaint. For cases which will be investigated, the complainant and the complaine organization will be informed. To avoid possible conflict of interest, staff who have been involved in the mediation process will not take part in any subsequent investigation of the same case.

### **CONCLUSION**

13. Notwithstanding that individual grievance has been resolved and settlement reached between complainant and complaine organization, if matter involving systemic flaw or public interest is revealed during the process of mediation, our staff should bring this to the attention of The Ombudsman for consideration for conducting a direct investigation.

14. So far we have resolved 11 complaint cases by mediation bringing about settlement to the satisfaction of complainants. According to the feedback from both the organizations and the complainants who have participated in our mediation sessions, all of them have expressed their appreciation of the service as a quick and low cost method for settling disputes, which otherwise would have dragged on and on, or involved in lengthy investigations or costly litigation.

15. Finally, having participated in the introduction of our Office's mediation service over the past year and witnessed its initial success, I highly recommend it to you as a very useful means of resolving disputes.

*Office of The Ombudsman, Hong Kong, China*

*May 1998*

**JORGE MARIO QUINZIO FIGUEIREDO**

**VICE-CHAIRMAN, LATIN-AMERICAN OMBUDSMAN'S ASSOCIATION (AIO)**

**CHAIRMAN, HONORARY COUNCIL, CHILEAN OMBUDSMAN'S CHAPTER**

**COUNSEL FOR THE BAR IN CHILE**

THE PROTECTOR OF THE NATION AS  
ILLUSTRATED IN LATIN AMERICA

We need to situate the Ombudsman institution within the context of its major and practical reality. The Ombudsman is neither a utopia nor a panacea, nor is he a magic wand to resolve every problem, even less so a Quixote charging at windmills.

The Ombudsman Institution is regarded as an institution to protect the nation and the rights of man or a watchdog over the individual, whose chief concern is to recognise and respect the dignity of humanity.

His mission is to protect individuals against abuse of authority in whatever form, and guiding towards reality the State of Law in different societies.

There are various reasons for subscribing to and publicising the Ombudsman under that name or some other one.

Democratic systems have progressed, adapting their political and legal organization to the new requirements of an economic, social, cultural and technological nature.

The State is not a mere guardian, ensuring only the guarantee of liberty; rather does it basically promote justice with a view to correcting those very injustices that arise as a result of individual liberties. It is further essential that the State should act uprightly and in favour of progress, development and communal welfare; even more that it should be the faithful protector of Human Rights within a real State of Law, hence of a genuine democracy.

Jointly with the traditional control systems which have played and continue to play an important role in the empire of Law and the defence of liberty and justice, the Ombudsman is an efficient collaborator to complement such controls. His is the Institution which strengthens the State of Law.

Another aspect concerns the lack of adequate and less formal means for the resolution of individual complaints. It cannot be denied that traditional control mechanisms have their shortcomings.

Individual and juridical persons often prove defenceless against possible irresponsibility, notably that of an administrative nature. It is convenient to provide a safety-valve against increasing intervention in all its forms.

The Ombudsman is an effective medium, a new source and field for the democratic current opposing inequality, injustice, errors and abuses.

The Ombudsman has a clear and concrete mission to perform, lending character to legality, displaying public spirit and evolving a tradition of justice and understanding which enhance the dignity of the individual, ensuring his safety and defending democracy.

For all these reasons, the Ombudsman today represents a light, a voice, to convey the message that he will truly serve to correct and ever to perfect democracy, eschewing errors and imperfections so that the State of Law may become a reality.

PORTUGAL - The Portuguese Constitution of April 1976 ratified the Ombudsman Institution with the "Provider of Justice", already created under Decree Law 212 of 21 April 1975.

Thanks to the provisions of the Basis Charter, approval was given to Law 81 of 14 October 1977, promulgated 2 November 1977 and published for legal purposes on 22 November of the same year.

SPAIN - The Spanish Constitution of 1978 ratified the People's Defendant, for which the corresponding Organic Law was approved by the Courts under no. 3 of 6 April 1981, being formally accepted on 30 December 1982.

The People's Defendant, under names in conformity with traditions of the various Communities has been introduced in various Autonomous Communities, being known as the *Defensor del Pueblo Andaluz* in Andalusia, the *Sindic de Greuges* in Catalonia, the *Valedor do Pobo* in Galicia, the *Diputado del Comcen* in the Canaries, the *Arateko* in the Basque Country and the *Justicia de Aragon* in Aragon.

AMERICA: GUATEMALA - The 1985 Guatemalan Political Constitution created the Human Rights Attorney, becoming the first Latin-American Constitu-

tion to recognize the Ombudsman Institution. The relevant Law is Decree-law 32-87 of May 1987.

COSTA RICA - In Legislative Decree 7319 of 5 November 1992, the Legislative Assembly of Costa Rica created the Republic Inhabitants' Defendant.

HONDURAS - The equivalent of the Ombudsman was created by constitutional provision in article 59, and its National Human Rights Commission Organic Law is National Congress Decree 153-95.

PANAMA - The People's Defendant was created by the Law of 5 February 1997.

MEXICO - In 1992 the Mexican Constitution of 1917 was modified and established a Human Rights protection system of Ombudsman type. The Law of 29 June 1992 thus created the "National Human Rights Commission", which fulfils the functions of the People's Defendant.

NICARAGUA - Law 192, for Partial Reform of the Political Constitution, amended article 138, authorizing the National Assembly to name the Human Rights Attorney and Assistant Attorney. Thanks to the said Reform, Procuratorship Law no. 212 for the Defence of Human Rights was promulgated on 8 January 1996, published in the *Gaceto* or Official Gazette on 10 January 1996.

ECUADOR - The Political Constitution of 1979, as amended on 16 January 1996, created the People's Defendant's Office. Subsequently, on 20 February 1977, the Organic Law for the People's Defendant's Office was published in the Official Register.

COLOMBIA - to render effective the provisions of article 283 of the Political Constitution, Law 24 of 15 December 1992 was promulgated, in which the organization and functions of the People's Defendant's Office were defined.

PERU - The Peru Political Constitution of 1993 establishing the Organic Law for the People's Defendant's Office is no. 26520.

VENEZUELA - In the absence of a specific Ombudsman-type institution, the Political Constitution created the Republic Attorney-General's Office and Public Ministry, under the Attorney General of the Republic, regarded as an Ombudsman.

BRAZIL - The Constitution of the Federal Republic of Brazil has given consideration to a Public Defendant's Office and also established a Public Ministry but such offices as Public Defendants or Ombudsmen, named "Ouvidores" are at state level, most often at municipal level.

PARAGUAY - The 1992 Political Constitution instituted the People's Defendant's Office as a parliamentary Commission.

BOLIVIA - The Political Constitution was recast in August 1994, establishing the People's Defendant's Office. The corresponding Organic Law was approved.

EL SALVADOR - The 1986 Political Constitution of EL Salvador included an Attorney for the Defence of Human Rights. In the agreement signed in Mexico City on 27 April 1991, it was decided to create this Attorneyship, to be specifically responsible for the promotion and defence of Human Rights.

PUERTO RICO - Since 1997 Puerto Rico has had an Ombudsman, known as the Citizens' Attorney, subject to Organic Law no. 1345 of 30 June 1988.

ARGENTINA - The revised Argentinian Constitution of 1994 instituted the People's Defendants' Office.

To meet the provisions of the Political Charter, Special Law No. 24,284 was promulgated, being the text corresponding to the creation of a People's Defendant of the Argentine Nation.

In Argentina, there are People's Defendants for the city of Buenos Aires; the Province of Santa Fe; the Province of Chaco; the Province of la Rioja; the Province of Santiago del Estero; the province of Buenos Aires, in Neuquen; in Posadas; the Province of San Luis; Arroyo Seco; la Banda; the Province of Tucuman; and the Province of Rio Negro.

In recent years, Latin America has been abandoning dictatorships, totalitarianism and military authoritarianism, and sovereign has been expressed by democratic governments and parliaments.

This is where the need has been felt for an Ombudsman of People's Defendant as an indispensable instrument for the State of Law to become a true reality.

I close by quoting a remark made by the First People's Defendant of Spain, Dr. Joaquin Ruiz-Gimenez Cortes, who asked that in reflecting on the People's Defendant we should bear in mind the thought expressed by the Spanish poet Leon Felipe in the following words:

“hold your heads high and  
regard me not with misgivings  
for my song is one of hope,  
not of destruction.”

**MR. CHU KWANG-IL**  
**CHIEF OMBUDSMAN OF KOREA**

DEVELOPMENT STRATEGY TOWARD POSITIVE  
SETTLEMENT OF CONFLICTS

**INTRODUCTION**

Many have characterized modern society as a whirl of dynamic change amid fast-developing information and communication technologies and unlimited, borderless competition among countries. The pace of this change makes relations between a government and its people much more complicated and diversified. In its quest for national development and public interest, a government inevitably restricts or alters various aspects of the daily lives of its people.

Governments often cause the people a certain amount of inconvenience and hardship while pursuing these goals. Therefore, appropriate action to relieve and settle conflicts between a government and its people is essential in a system of democratic "checks and balances".

To this end, ombudsmen receive, investigate, and settle complaints for the people, serving as a bridge between them and their government. In addition to redressing grievances of the people, ombudsmen also protect their rights by improving government practices and policies, thereby preventing the recurrence of the problem.

"The Ombudsman of Korea" was established on April 8, 1994, to provide an administrative safeguard against mal-administration and protect the rights and interest of its people. The Ombudsman of Korea is organized as an independent committee that operates under the sponsorship of the Prime Minister.

The purpose of the Korean Ombudsman is to redress or resolve complaints and grievances of the people caused by illegal or unfair administrative measures. It accomplishes this through fair investigations conducted by independent third-party authorities. I am pleased to report that despite its short history, the Ombudsman of Korea has gained a fairly good reputation for its efficient, effective handling of complaints not only with the public in general but also with government officials.

On February 25, 1998, Korea inaugurated its 15th President, Kim, Dae-jung, whose efforts for democracy are well known both at home and abroad. Under the slogan 'The government of the people', the Kim administration is pursuing many reform policies, focusing on building an efficient, democratic government.

President Kim fully supports the Ombudsman of Korea, recognizing that its role is more important than ever in meeting the aspirations of the people and understanding that their expectations will continue to grow under the new administration.

Responding to the growing interest and expectations of the people and the new administration, the Ombudsman of Korea recently improved its operational system considerably through legislative amendments that reinforced its functions and organization.

These amendments increased the number of committee members from five to ten, and introduced a subcommittee system to strengthen its expertise and enhance its timeliness in handling conflicts between the people and the government.

The Ombudsman of Korea is attuned to Korea's cultural characteristics and political environment. Our system differs from the systems of Western countries, including Sweden from which the ombudsman system originated. The Ombudsman of Korea is working hard to fulfill its role as 'the committee of the people' charged with protecting their rights.

Today, I will start by describing our system. Then I will touch on the development strategies we are adopting to strengthen the system to carry out its task of reducing government-induced inconvenience and hardship of the people.

#### **CHARACTERISTICS OF THE KOREAN OMBUDSMAN SYSTEM**

##### **1. Civilian-led Institution**

The Ombudsman of Korea consists of ten members; three members from

the government and seven civilian members. Included among the civilian members are engineers, lawyers, professors and leaders of civic movements who have good reputations and expertise. This diverse representation ensures the independence and neutrality of our system.

The three-year term and legal status of the members are protected by the law, except in cases of criminal acts by members. That seven out of ten members of the committee are civilians outside of the government, ensures a high degree of independence and impartiality from the government.

The design of committee also emphasizes that the ombudsmen handle grievances with sympathy and compassion for the aggrieved person while seeking government cooperation.

## 2. Counseling & Guide Service

The Ombudsman of Korea also operates as a counseling center for the public.

A main objective of the Korean Ombudsman is to provide a place where people can speak freely about problems they are having with the government. The people receive professional information and advice on procedures needed to handle their cases and, if necessary, consultation about remedy options open to them.

## 3. Accessibility

Under the judicial systems for administrative suits, settlement procedures are far too complicated, time consuming, and expensive. The Ombudsman system, on the other hand, is virtually free of restrictions and complicated procedures.

The Ombudsman of Korea uses various ways to receive grievances, including written applications, oral statements, PCs, and telephones.

This is a vast improvement over the administrative suit system, which accepts written applications only.

Our Ombudsman system charges applicants no fees to process their complaints. Once a complaint is submitted, it investigates the allegation of maladministration thoroughly on the applicants behalf.

The jurisdiction of the Ombudsman of Korea covers national and local governments as well as public bodies. Therefore, our system, with easy accessibility and availability of speedy, informal resolution, helps people who are unable to seek formal remedy on their own, no matter what the reason.

#### 4. Promoting Administrative Improvement

If, while investigating grievances or complaints, ombudsmen find the behavior or practices of government officials inappropriate, we first try to advise related agencies to take corrective actions on their own initiative. Through exchange of findings and persuasion, ombudsmen endeavor to change negative behavior and inappropriate practices of government officials into positive, and appropriate ones. When the agencies concerned fail to resolve complaints satisfactorily, we intervene.

We encourage, when possible, this reference method for the simple complaints because it allows government agencies to correct their mistakes and misconduct, while making them accountable for their actions.

We feel that this approach is very effective in winning the cooperation of the government officials needed to resolve grievances and bringing about meaningful change in the attitude and practices in bureaucrats. We believe that change is more desirable when it is based on cooperation rather than coercion.

#### 5. Settlement Results

Between April 1994 when the Ombudsman of Korea was established, and December 31, 1997, over three years and nine months, 18,256 grievances were received and handled.

Of these 18,256 grievances, 4,481(25%) cases were redressed or relieved through corrective measures to remedy or improvements in the rules and regulations as recommended by the Ombudsman.

In the remaining cases we found the government's actions justifiable. Even in these cases, however, our office and the agencies concerned made special efforts to explain investigative findings and related rules and regulations to the individuals who had submitted the complaints.

The Ombudsman of Korea also provides guidance or consultation on written inquiries, walk-ins, or people who raise difficulties by telephone. These services alone help more than 170,000 people annually.

### **DEVELOPMENT STRATEGIES TOWARD POSITIVE SETTLEMENT OF CONFLICTS**

In its short 4-year history, the Ombudsman of Korea has gained recognition in the Korean society as an institution that serves the people, relieves their pain, and shares their difficulties.

We believe, however, that we still have much to learn from the experiences of other countries before we earn the appellation Defender of the people. I would like to touch on some ideas for developing Korea's ombudsman system toward positive settlement of conflicts.

### 1. Improving Investigative Capacity

Civil grievances are becoming increasingly complex as we undergo rapid economic, social and technological change. To cope with this trend, we must adopt more diversified, specialized investigative methods. In this regard, we introduced three subcommittee systems this year to ensure speedy and professional processing of grievances.

To make these new systems work, we need to recruit more dedicated, qualified staff, from both the public and private sectors in various professional fields, including legal affairs, engineering, taxes, health & welfare and human rights.

Investigation is a difficult process of probing into problems until the truth is found. We consider improving our investigative capacity a prerequisite to the Ombudsman of Korea fulfilling its mandated role.

### 2. Authority to Initiate Direct Investigations

The primary role of an ombudsman system is to act on complaints on behalf of the people and take appropriate actions. Under the current system, however, the scope of ombudsmen activities is restricted to processing only grievances submitted by the people. Consequently, individuals become unprotected victims of the system because they are unaware that the government has encroached on their rights or are unaware of how to obtain relief.

The goal we are pursuing is to obtain statutory authority to open investigations on our own initiative. If we are empowered to do this, we can initiate direct investigations on monitored misconduct by government officials or issues of wide community concern.

We firmly believe that the power to initiate direct investigations will strengthen ombudsmen to act as a citizen's watchdog, thus reducing chances for abuses of power by government officials and enhancing the quality and fairness of the public administration.

### 3. Emphasizing the Role of Prevention

To narrow the gap between a government and its people in the rapidly

changing era, the Ombudsman of Korea needs to pay as much attention to preventing causes for repeated complaints as it pays to correcting administrative wrongdoing.

With this in mind, we are going to classify repeated complaints found among the cases we have investigated over the last four years and attempt to identify major underlying complaints conductive factors.

Then we will use the powers vested in the Ombudsman - the power to present reports to the President and Prime Minister and the power to publicize the activities - to arouse attention of the people and government agencies, thus reducing chances of recurring problems.

In short, ombudsmen produce the "ounce of prevention that saves the pound of cure".

#### 4. Educating Government Officials

We consider educating government officials as part of an ombudsman's role. To lower the chance of similar complaints in the future, however, the Ombudsman of Korea must ensure the widest possible distribution of its decisions and recommendations to government agencies to be used as a basis for developing appropriate training for their personnel and improving rules and regulations.

To this end, the Ombudsman of Korea is currently setting up an Integrated Computerized System containing a comprehensive database on complaints received and corrective measures recommended by the Ombudsman.

Once on line, all government officials in charge of complaints will have convenient on-line access to this information.

#### **CONCLUSION**

The Ombudsman of Korea is proud of having become an important organization in Korea's political and administrative system and of being considered a friendly neighbor who protects the rights and interests of the people and shares their pain. I feel more attachment to and pride in assuming the post of Chief Ombudsman of Korea at this important time than I have felt in any previous assignment.

As mentioned, a government must not reign over the people. Rather, government must reshape itself as an organization to serve the people by relieving their pain and sharing their difficulties.

I hope that this overview of the Ombudsman of Korea as a positive solver

of conflicts between the people and the government, and the ideas on the development strategies of the ombudsman system will be useful and informative for strengthening ombudsmen of the world as well as Korea.

In conclusion, measures to establish the status and roles of ombudsmen must be a continuous effort, not a sporadic concern. Scholars who do research on the ombudsman system, politicians who legislate it, and the general public who benefit most from it must strive to improve related regulations to establish systems to achieve that end.

Thank you very much.

**TAKASHI MOGUSHI**

**CHAIRMAN**

**ADMINISTRATIVE GRIEVANCE RESOLUTION**

**PROMOTION COUNCIL**

**JAPAN**

ADMINISTRATIVE COUNSELING SYSTEM IN  
JAPAN - THE ROLE OF THE ADMINISTRATIVE  
GRIEVANCE RESOLUTION PROMOTION  
COUNCIL

Mr. Chairman, it is my great honor to be given an opportunity to make this presentation. I would like to express my gratitude to the Office of High Commissioner in Macau for the effort of arranging this conference.

I have chaired since 1990 the Administrative Grievance Resolution Promotion Council in Japan, which has a role of ensuring fairness and neutrality in the resolution of administrative grievances. Today, I would like to outline the administrative counseling system in Japan and the activity of the Council, with my comment on the challenges they face under the changing environment.

The Japanese Administrative Counseling System comprises three different but closely related bodies. They are the Administrative Inspection Bureau (AIB) of the Management and Coordination Agency (MCA), Administrative Counselors who are government commissioned volunteer citizens, and the Administrative Grievance Resolution Promotion Council which consists of seven knowledgeable members. By maintaining close cooperation among themselves, these bodies systematically and efficiently handle people's grievances against public administration into solution. It could be understood that these bodies as a whole function as equivalent of Ombudsman system.

Let me describe how each of the three bodies works.

First, the Administrative Inspection Bureau is legally empowered to receive administrative grievances and to mediate between complainants and administrative organizations concerned based upon its investigation and examination. The Bureau is also empowered to undertake Administrative Inspection. Organizationally, the Bureau consists of the headquarters and fifty regional and district offices. In total, two hundred staffs are engaged in the work of administrative counseling.

Secondly, administrative counselors are commissioned by the Director-General of the MCA to receive and handle administrative grievances. They are selected from among knowledgeable citizens who are highly respected in local community and are recognized to have eagerness to improve public administration. There are about 5,000 administrative counselors located all over the country. They provide people easier access to MCA's administrative counseling and contribute to the resolution of grievances at the level closest to people in keeping close cooperation with MCA. The number of grievances received by MCA and the counselors is 44,000 in 1996.

Thirdly, the Administrative Grievance Resolution Promotion Council is an advisory body to the Director-General of the MCA in the matter of its mediation. It consists of seven members with expertise in various fields. The Council is to submit its opinion from a high and broad perspective to the Director-General of the MCA upon his request with regard to cases entailing difficult judgment, picked by MCA from among those it received directly or through the counselors, such as ones affecting the basis of existing systems and policies of government. The Director-General is to act on the Council's opinion. The Council is instrumental in ensuring appropriate and effective solution of people's grievances, and contributes to guarantee fairness and neutrality in the operation of Administrative Counseling System.

I would like to explain more in detail about the Council.

Current members of the Council are two professors, one of administrative law and the other of public administration, two retired top civil servants, an editorial writer of major newspaper, a senior commentator of broadcasting company and myself. Speaking about my background, I have served as civil servant for a long time. During the period, I spent twenty-four years in the Cabinet Legislation Bureau from which I retired as Director-General, a Cabinet appointment. The Cabinet Legislation Bureau has responsibility of examining government draft bills before their submission to the Diet and cabinet

orders prior to the Cabinet decision. The Bureau will check, for instance, whether they are in accord with the Constitution and other existing laws and orders. When necessary, the Bureau recommends changes in the draft. In addition, the Bureau has authority of interpretation of the Constitution and existing laws in the government. As Director-General, I was to advise the Cabinet and the Prime Minister on legal and legislative matters.

From the experience in the Cabinet Legislation Bureau, I maintain strong interest in whether existing laws and regulations are properly applied and whether the system based on them are properly operated as intended. My another concern is whether the existing systems and operations of the government are able to adapt themselves to the changing realities of society and its people. In the Council, I consider all cases from this standpoint. As chairman I have been trying to find a solution which is clear-cut and convincing to the minds of ordinary people. I believe that only this way we would be able to answer people's trust in us.

As the socio-economic structure continues to change rapidly, public administration becomes more complex and diversified. Under such circumstance, grievance cases which require balancing of different interests and difficult judgment in providing solution increase. In resolving the cases, we may have to risk entering the arena of policy making. This happens when resolution of the case requires revision of an existing law or regulation, or new appropriations in the budget. In other cases, the necessity of relief may have to be judged after carefully examining its acceptability as to the changing requirement people attach to the public administration. These are the typical cases assigned to the Council. The Council has been playing increasingly important role as the mechanism to induce in the conduct of MCA's mediation an unrestricted and sound judgment as to what is right to the complainant and the public administration.

As I mentioned before, the members of the council are selected from various fields of expertise. Deliberation in the Council is conducted on the principle of fairness and neutrality. Equitable solutions that also fit with the people's sense of what is right are sought. Each administrative agency accepts and honors the mediation by the MCA urging specific action based upon the opinion of the Council because of such background and perhaps not the least because of the prestige of the Council. It gives me pleasure that the Council has successfully contributed to the resolution of people's grievances against public administration.

Alongside the Administrative Grievance Resolution Promotion Council which is set up in the headquarters of the MCA in 1987, there are twelve regional councils advising regional directors of MCA to deliberate on the resolution of grievances of the same nature but which are appropriate to be discussed at regional level. Once a year, the representatives of central and regional councils meet and exchange views and opinions. On attending that conference, I am always inspired by listening to their efforts in realizing resolution of difficult cases. I expect that other participants feel the same way, too.

Usually, the councils are held four times a year. To the central council I chair, approximately two or three new cases are tabled each time. A total of eleven cases were discussed in FY 1997. Including the regional councils, sixty cases were discussed in that year. The discussion will become very heated and extensive, most of the cases receiving instructions for further study and carried over to the next meeting. If necessary, the Council requires the AIB (Administrative Inspection Bureau) to undertake further investigation and taking of the views of organization and people concerned. The AIB, with its experience and knowledge of public administration accumulated in its history, is a very effective arm of the Council, and I am convinced that one of the strong points of the Japanese administrative counseling system is that the administrative counseling function could mobilize the cooperation of administrative inspection function.

Among the eleven cases deliberated in the central council in FY 1997, five have resulted in mediation, five are still on deliberation and one was dismissed. Let me give you one of the most recent cases of mediation. It was a complaint from a man about the occupational title under the law of nursery school teachers.

As almost all of the nursery school teachers have been female until recently, the teachers are officially called under the law "HOBON" in Japanese meaning "nursery MOTHER" in English. However, the number of male entering this field started to grow, and a complaint was brought by one of the male nursery "mothers", stating that it is degrading as well as offensive to be forced to take certifying examination of that title and to use the title in every official forms. This was a typical case of insensitivity of the government authority to the changes in environment and the treatment of gender issues. In addition, in the area of nursing and hygiene professionals, similar problems had already been corrected either by creating a title for male or one that is gender-neutral.

The Council reached a quick conclusion that a new occupational title which fits the male should be created, and the MCA conducted mediation to the Ministry of Health and Social Welfare in September 1997. National news media widely covered this mediation and we received many responses, most of which were very positive. In February 1998, the Ministry revised the Cabinet Order to create a new occupational title "HOIKU-SHI" in Japanese which is neutral to gender. We make it a rule to make the fact of mediation and the Council's opinion public. The administrative organization concerned will be placed under public's eye and it has to tackle the matter squarely and, without exception, takes measures in compliance with the recommendation contained in the mediation.

In Japan, socio-economic environment surrounding public administration is changing drastically in recent years. Administrative reform has become one of the top priorities of the government. One of the agendas of the reform is large scale reorganization of the structure of central government in which the number of ministries and agencies will be cut from current twenty-one to twelve. The government aims to begin the reorganization at the beginning of year 2001 if possible, or, at the latest, within five years of the enactment of the Reorganization Bill which is now deliberated in the Diet. The discussions on restructuring of internal organization of ministries and agencies, reduction of civil service staff number, economic deregulation in various fields and decentralization of power and authority of central government to local governments are proceeding. The Disclosure of Government Information Bill was submitted to the Diet and is now under deliberation. Through all this, we find growing concern including criticism of general public over the public administration.

If we turn our eyes to the Diet there was recently reorganization concerning the role of its oversight of public administration. Both Houses of Diet, the House of Representatives and the House of Councilors, have established in January 1998 new standing committees on inspection of public administration, for the purpose of making the oversight function more effective. The committees plan to promote resolution of individual grievance they receive by informing the government agencies and urging them to take appropriate measures.

In the area of resolution of grievances, my impression is that grievances demanding improvement in the administrative operations or the quality of administrative service, rather than traditional ones asking relief of infringement of individual interest, have been gradually increasing recently.

Under such changes in the environment surrounding public administration and the people's demand and sentiment toward government, the way to achieve resolution of people's grievances may have to undergo timely adjustments or even re-inventions in the coming years. In any case, I have no doubt that the importance of realizing proper, fair and effective resolution of people's grievances against public administration will grow even stronger. In this respect, it is our resolve that we in the Council recognize anew the heavy responsibility we bear and do our utmost to meet people's expectations to us.

In closing my presentation, I would like to thank you very much for your attention and hope that my discussion has served to add something to your perspective of different systems in the Region.



VIEW OF THE CONFERENCE VENUE

*Third Session*

**PROF. BERTRAM BASTIAMPILLAI**  
**PARLIAMENTARY COMMISSIONER FOR**  
**ADMINISTRATION (OMBUDSMAN),**  
**SRI LANKA**

THE OMBUDSMAN'S ROLE IN ENSURING  
ECONOMIC DEVELOPMENT FOR THE HIGHER  
WELL BEING OF PEOPLE IN THE COMMUNITY

The Ombudsman, known by different designations in different countries, is expected to perform a role that would contribute to the well being of people, or, in other words, make it possible for the citizens of a country to live a good life. After all, the end of all good government is to ensure that citizens do live a good life and in a good society.

Viewed in this context, the Ombudsman's function to be as the "citizens' defender" or to conduct the "poor man's court of justice" is defined to be the correction of infringements of fundamental rights, creation of an atmosphere wherein there will be no administrative abuses, and, if abuse of authority in administration prevails, to ensure that such abuse is appropriately remedied. The Ombudsman will contribute thus to the development of a society where equity prevails, no person is unjustly treated, and no bureaucratic or administrative wrong goes undetected and uncorrected. Where wrong has been committed the Ombudsman arranges to get relief provided or redress made.

If the Ombudsman's role is to be the one delineated above naturally he will compulsorily have to take an active part in fostering and promoting the economic development of the country whichever it is. One may have all the finest appurtenances that can embellish a good body politic but if the people, may even a part of the populace, are denied the experience of gaining happi-

ness from higher well being because of the lack of economic development then the good body politic leaves so many within it dissatisfied and not in a state of enjoying a good life. There is something basically wrong if a people or part of them suffer from want owing to the lack of economic development. The people look for satisfaction. Material satisfaction is indispensably needed for satisfaction to prevail.

The foundation on which the superstructure of a good society can be built invariably is the economic well being of the people in that society. When the foundation is deficient or weak, the edifice will be equally unsound or unsatisfactory. An Ombudsman who has so much to contribute to the creation and prevalence of good governance in a community cannot afford to overlook or ignore that fact that the foundation of economic well being is absent in society. Consequently among the functions that an Ombudsman has to discharge, particularly more so in a developing society, is to make sure that conditions are conducive not only to guarantee the growth of the economy of land, but that such development contributes to the better well being of the people in that society in practice. People must feel good.

An essential attribute of a good society which an Ombudsman must endeavour to usher in a community is the promotion of the welfare of the people by securing and effectively safeguarding a social order in which social, economic and political justice guides the functioning of all agencies relevant to the national life of peoples. Then all citizens of a country should in practice realize an adequate standard of living not only for themselves but also for their families. This would imply that they are able to enjoy sufficient food, clothing and shelter.

Moreover in keeping with the pace of development the people should be able to experience a continuous betterment of their living conditions. Furthermore the people should be able to enjoy fully their leisure and social and cultural opportunities. The Ombudsman has to strive in diverse ways to ensure that the aforementioned ambience prevails in a community. He has to labour so as to ensure that the benefits of these attributes are being provided for by the state and that the administration transfuses them into practice. Laws and practices should provide a spur to growth and redistribution.

The government has to make certain that the whole country is rapidly improved and developed. This could be done by public and private economic activity. Today more so by private enterprise in view of the trend to bequeath most activity to private hands. However, importantly, laws should be enacted in order to prescribe desirable planning and controls that would be condu-

cive for directing and coordinating public and private economic activities oriented so as to cater to meet wider social objectives and public welfare. Here the Ombudsman has a serious responsibility to encourage the state to undertake measures to build up the development of the country and more so to ensure that measures adopted are equitable and the ends to be reached thereby equally equitable.

Above all, the Ombudsman has to ensure that the prescriptions of the government and laws enacted to guide such developmental activities are impartially observed, and that the aims of the policy or of laws consequently enacted are not transgressed, ignored or relegated to remain "dead letters" in real life. It is government that prescribes policy but the Ombudsman aids in policy being translated into practice. It is he who assures that policy is being observed.

Another commendable objective towards the attainment of which in a country the Ombudsman could positively subscribe is to ensure that there takes place an equitable distribution among the members of the country's community of the material resources of the nation. So also, should the outcome of the social product be equally distributed without discrimination in order to serve best ultimately the common good. Herein the Ombudsman could entertain complaints of transgression of this aim and take steps to redress grievances about receipts and ensure no partisanship is evident in distribution. But the benign principle itself should be determined upon as policy by government.

It also is necessary that in the country a just social and economic order should be established. The means of production, distribution and exchange hence should neither be concentrated nor centralised in the state alone, or in state agencies or in the hands of a few of the elite. The people of the country should have these dispersed among and enjoyable by them. This is but fair because the people remain sovereign in a state. The Ombudsman has to ensure that this sort of equitable distribution of resources prevails in practice in a society. Nevertheless, again it is the government that should decide on a fair scheme of distribution in policy.

A government ought to work toward elevating and improving the moral and cultural standards of people. This would then ensure the full development of one's human personality. Today a severe crisis that confronts society arises from a collapse of ethical standards among people. Dishonesty "sleaze and sex" characterizes much of human conduct and vitally unfortunately at the higher levels. If the people's well being is to be assured and through a

strong economic development of the community it is important that transparency and unimpeachable integrity should underline business, commerce, trade and industry. The Ombudsman's irrevocable duty would be to make certain that such qualities are transparent, present in the business and commercial world, be it in the treatment of the employed by employer or in other transactions, contracts, negotiations; transactions should be based on equity, and the state has to provide for it by law. This helps the Ombudsman to make it possible for all people to play a fruitful part in a country's economy and contribute thereby to the fruitful part in a country's economy and contribute thereby to the common welfare of the community.

Illiteracy in the population in the population should be necessarily eradicated. Moreover, there should be access afforded to all persons of the right to equal opportunity to receive education at all levels. It is education that could enable people to gain upward social and economic mobility. Education becomes not only a leveller but aids the elevation to eminence of those with the potential to reach higher. It is an educated community that can assist the creation of well being and high living standards in a society. Herein the Ombudsman's task is to see that equal access to education at all levels is available to every person. The state should have made that the goal of its policy on schooling and instructions.

An essential requisite to provide all people the opportunity to engage in developing the welfare and the economy of a country is that all citizens should be treated as equal beings. There should be no discrimination or disability imposed on account of one's race, religion, language, caste, sex, political opinion or occupation in a plural society. Prejudice or discrimination in teaching, education or information should be outlawed so that each can contribute towards economic growth and the development of the well being of the society without handicap or impediment. the Ombudsman has to contribute towards the existence of such an environment in the country through his vigilance, and through making it sure that the above prescribed norms are observed by the administration under government direction.

The state should strive to eliminate sharp and unfair economic and social privilege and disparity among people. Also, it should prevent the exploitation of one by another or by the state. This responsibility will devolve on the Ombudsman if the government accepts the necessary policy and practice as valid good governments will do so.

Furthermore, the state has to ensure that the operation of the economic

system would not result in the unhealthy concentration of the means of production to the common detriment. A fair economic system has to be set up. The Ombudsman's function would be to ensure that the system is worked in a reasonable and just manner so as to enable that the well being of all is the result. While policy is left to government the Ombudsman can ensure that it is observed.

Another vital component which should be provided in the state's framework for a society where economic development and people's welfare are paramount is social security and welfare. The Ombudsman will be obliged to guarantee that the provisions of such a framework is sincerely observed by officials and the governmental machinery in administration.

If the aim of the state is the achievement of the economic well being of its peoples and a better quality of life, it is incumbent on the government to create the necessary economic and social environment that would enable people of diverse faiths to make a reality of their religious principles. In other words, if it is so even in economic or commercial transactions and dealings moral values will have to prevail. Religions enjoin adherence to ethical and just norms whether it be in business or buying and selling. Here again government is obliged to provide the legislative and legal basis so that principles and not expediency is pre-eminent, and governs transactions. The Ombudsman has to make clear that infringements of such principles do not occur.

There are other obligations too which a state has to discharge if it is to ensure economic development and thereby an advanced well being of its peoples. The government will have to cater specially to interests of children and youth and their general welfare. Moreover, particular attention needs to be paid to protect, preserve and improve the environment for the sake of the community's present and future benefit. As no state remains isolated, the state has to promote international peace, security and cooperation. The state has to contribute toward the establishment of a just and equitable international economic and social order. Additionally, the state should endeavour to foster respect for international law and treaty obligations in dealing with other nations. All the aforesaid responsibilities should be transformed into state policies, and resultant practices have to be adhered to by a state in its governance so that economic progress and a better well being of its peoples are realized.

The objective of any state government would be to ensure that the characteristics of a civil society are vibrant in the country. It is then alone that good governance can prevail in society and the people can be free to enjoy the virtues of good governance. The Ombudsman has for long, and more em-

phatically in recent years, been considered to be an indispensable instrument in good governance. The Ombudsman legitimately has to involve himself actively in ensuring that people enjoy the benefits of economic growth which in turn should enable them to attain a state of higher well being in life. They should not be in want and should get their needs.

The environment, the policy and the structures needed to foster economic progress and a good life should be introduced into a country by the government. Government should establish procedures, processes, and the legal as well as policy framework that would stimulate economic advancement in society. The state's bureaucratic machinery should be trained and informed in order to assist economic enterprise that would lead to growth. Again, it is the state government that should set up various agencies or sponsor their growth which would lead to economic development. Economic development then should contribute to the bettering of all people's quality of life, and there would follow the better well being of the citizens in a country.

Civil and political rights being ensured alone would be meaningless if people do not gain a fair share of material resources too. Those who suffer from material want remain economically and socially deprived and could realise little from political freedom only. To create a contented citizenry social, political and more certainly economic well being within a community needs to be provided. No wonder, then that economic rights too comprise a part of International Human Rights Law. So governments interested in the economic and thereby the general well being of their citizens will subscribe to the internationally accepted norms on economic rights and the social well being of people. The Ombudsman has to make certain that the objective of a well meaning government is not endangered by acts of omission or commission of bureaucrats.

Thereafter the Ombudsman will have to be vigilant and active in order to prevent wrongs, delays, errors, or maltreatment being suffered by a community's citizens owing to acts of dereliction or negligence caused by government officials and authorities. Also, the Ombudsman can recommend the provision of entrenched economic rights being assured to citizen by governments. The Ombudsman can urge legislation of a prudent economic character to be enacted and prevent violations of assured human rights, 'consumers' rights and other legally provided measures relating to the preservation of a country's ecology or thwart the non-observance of legal prescriptions. The Ombudsman can play a significant role in matters related to the economic development of a society and thereby contribute to the higher well being of peoples.

**ZHILUN LI**

**VICE-MINISTER OF SUPERVISION**

**MINISTRY OF SUPERVISION**

**P. R. OF CHINA**

CHINA'S SUPERVISORY ORGANS AND  
THEIR ANTI-CORRUPTION WORK

Mr. Fei Mingda, Chairman of the 3rd Conference of Asian Ombudsman Association and Senior Commissioner of Macau Anti-Corruption and Anti-Administrative Law-Breaking;

Ladies and Gentlemen:

First of all, please allow me, in the name of the Ministry of Supervision of the People's Republic of China, to extend warm greetings to the opening of the 3rd Conference of Asian Ombudsman Association. Through the joint efforts of our fellow delegates, I am sure this conference will further promote the friendly exchange and cooperation among the ombudsmen in Asia and the whole world. The Chinese Delegation would like, together with all other delegates, to make every effort for a complete success of this meeting.

Ladies and Gentlemen, China is a country with an ancient civilization of five thousand years, as well as a developing country of weak foundation with a population of 1.2 billion. China is currently in the preliminary stage of socialism and will remain in this stage for a long time to come. Economic development is our essential task. For more than twenty years of reform and opening to the outside world, the broad masses of cadres and people, under the guidance of Deng Xiaoping's theory, have gone through thick and thin together, and made many concerted efforts. As a result, our country has realized five years ahead of time the goal that the national economic output would be

quadrupled over that of 1980, and the society has made progress in every aspect. However, due to various reasons, there exist some negative factors and corruption in the Party and government organizations and in social life as well, which are, sometimes, quite serious. To maintain the rapid and healthy development of our economy, it is necessary to have a harmonious social atmosphere and a stable political environment. Firmly fighting against corruption is a prerequisite to maintain such an environment. Since the reform and opening to the outside world, the Chinese government has attached great importance to the anti-corruption work, always insisted on the strategic policy of "being tough on both the economic construction and the fight against corruption" by making sure that the economic construction and the fight against corruption go hand in hand, and emphasized the necessity of carrying out the fight against corruption throughout the process of reform and opening to the outside world. At the present stage, we have advanced a guiding ideology of carrying out the fight against corruption with the economic construction as a central task to serve the general prospect of reform, development and stability. We shall insist on taking the development of the socialist productive forces, improving the overall national strength and raising the people's living standards as the starting point; support and protect the great majority of cadres making positive and daring efforts in the reform, severely punish those who break laws, violate disciplines, and seriously disturb the reform and development by flaunting thea brief introduction to China's supervisory organs and their work.

According to the provisions of the Constitution and the Administrative and Supervisory Law of our country, a supervisory organ is an organ which is set up by the people's government and performs the function of supervision for the purpose of ensuring that the government decrees be implemented unimpededly, maintaining administrative disciplines, promoting the construction of clean and honest administration, improving the administrative mana brief introduction to China's supervisory organs and their work.

According to the provisions of the Constitution and the Administrative and Supervisory Law of our country, a supervisory organ is an organ which is set up by the people's government and performs the function of supervision for the purpose of ensuring that the government decrees be implemented unimpededly, maintaining administrative disciplines, promoting the construction of clean and honest administration, improving the administrative management and the administrative efficiency. The Chinese supervisory organs

consist of the Ministry of Supervision at central level and supervisory organs at various local levels. The Ministry of Supervision is a supervisory organ of the State Council, and the local supervisory organs mainly refer to the ones established by the three levels of the people's governments - provinces, cities and counties, which hold responsibility to and report to both the people's governments of the same level and the supervisory organs of a higher level. The main duties of the local supervisory organs are: to examine the problems concerning the observation and implementation of the laws, regulations, as well as the decisions and decrees of the local people's governments on the part of the state administrative organs; entertain cases of accusation and prosecution against the state administrative organs, public servants and other personnel appointed by the state administrative organs; investigate and handle the acts of violating the administrative disciplines committed by the state administrative organs, public servants and other personnel appointed by the state administrative organs; handle the complaints from the public servants and other personnel appointed by the state administrative organs in not agreeing to the disciplinary decisions against them made by the administrative departments in charge, and other complaints within their jurisdiction as specified in the laws and administrative codes and regulations, and undertake other duties as required of them by the laws and administrative codes and regulations. A supervisory organ implements its duties according to the laws, and has the authorities of examination, investigation, recommendation and disciplinary sanction. A supervisory organ may, based on the results of examinations and investigation, make its supervisory recommendations to the authorities concerned to give disciplinary sanction against the acts and persons/organs under supervision who have refused to implement the laws, regulations or violated the laws, regulations and the decisions and decrees made by the people's government. In addition, a supervisory organ may also make supervisory decisions according to the laws to lodge disciplinary sanctions against those under supervision for their violation of the administrative disciplines. Such sanctions may include warning, recording a demerit, recording a serious mistake, demotion in title, dismissal from office and expel.

Based on the reality of our country, the supervisory organs in China have focused on three aspects in their work of anti-corruption and have achieved remarkable success. First of all, we have tried to make sure that the leading cadres are clean, honest and self-disciplined. In view of the new situation and new issues encountered in building a clean and honest administration at the

present stage, we have made a series of regulations relating to various issues of clean and honest administration of our leaders at various levels, and worked out therefrom the Rules for Clean and Honest Administration, which require them to conduct self-examination and self-correction, and have thus effectively regulated the administrative acts of our cadres at different levels. Secondly, we have seriously investigated and handled the cases of breaking laws and violating disciplines. Over the years, we have investigated and handled a large number of corruption cases, including the ones with some senior officials involved in, and have purified our cadres team and increased the confidence of the public in our anti-corruption work. The supervisory organs are mainly engaged in investigating and handling the cases concerning administration and disciplines, and transfer the cases of criminal nature to judicial organizations for prosecution. Thirdly, we have made major efforts to rectify the malpractices of various organizations and businesses, and have preliminarily brought under control some of the problems that the masses concerned most (such as collecting fees arbitrarily, unjustified monetary penalty, etc.) The supervisory organs of various levels have also attached importance to reinforcing the supervisory inspection over the execution of the state laws, regulations, administrative decisions and decrees. The Chinese government believes that the anti-corruption work should be carried out in a comprehensive manner by treating both the root cause and symptom, which means that we not only have to tackle the existing problems of corruption one by one, but also have to research into the underlying causes which breed corruption so as to prevent and control corruption from its sources. It is also necessary to adopt economic, administrative, educational, legal and disciplinary measures, firmly rely on the support from and participation of the broad masses of the people, further strengthen the supervisory and restriction mechanism by means of reforming in the areas of retirement system, policy making and organization management, so as to reduce and eliminate the conditions for breeding corruption and improve the overall efficiency of anti-corruption.

Ladies and gentlemen, the 21st century is approaching. Asia in the new century will certainly be full of vigor and vitality. While trying its best to develop its own economy and improve the living standard of its own people's, every country is also committed to punishing corruption acts, and building a clean and honest government with high efficiency. The Ministry of Supervision of the People's Republic of China would like to, on the basis of equality, mutual respect, mutual benefit, joint development, as well as seeking com-

mon ground while reserving differences, promote broad exchange and cooperation, develop friendship and mutual understanding, and improve the work of anti-corruption together with the ombudsman organizations of all other countries and territories in Asia. Let us try to usher in the new century with a better government and a more prosperous economy.

Finally, I wish the conference great success. Thank you!

**JUSTICE (RTD) SALAHUDDIN MIRZA**  
**PROVINCIAL OMBUDSMAN FOR SINDH**  
**PAKISTAN**

## SCOPE OF OMBUDSMAN'S INSTITUTION IN DEVELOPING COUNTRIES

As everyone here must be knowing, the concept of Ombudsman was for the first time introduced in modern times in Sweden by its emperor after he returned from exile in 1809 from the capital of the Ottoman Empire and since then this institution has proved so useful that it soon spread to most of the European countries and in the post World War II era it has reached as far south as Argentina and as far east as Australia and New Zealand. The main cause of its popularity with the aggrieved persons all over the world, and specially in the developing countries, is its simplicity, informality and inexpensiveness. It can only be expected that 'greater the prevalent corruption and inefficiency in a society and the resultant injustice, the greater shall be the need of the ombudsman to combat those evils' and since these evils are more common in the developing countries, the institution of ombudsman has greater scope in these countries. Pakistan is also one of the developing countries and as such the institution of ombudsman has great scope here.

2. The developing countries are generally poor and there is no denying the fact that there is direct relationship between poverty and crime, poverty and the violation of human rights and poverty and maladministration. It is the maladministration with which the ombudsman in Pakistan is concerned. It is the existence of maladministration that gives jurisdiction to the ombudsman to step in. The meaning of the word, as given in the dictionary, is very

limited but in the Ombudsman Act 1991 under which the institution of ombudsman is established in the province of Sindh in Pakistan, it covers all acts and decisions of a government functionary which have either not been done or made in accordance with law or which have been done or made with malafide intention. The definition of ombudsman as given in the Act of 1991 is reproduced below:

Section 2 (2): maladministration includes

- (i) a decision, process, recommendation, act of omission or commission which
  - a) is contrary to law, rules or regulations or is a departure from the established practice or procedure, unless it is bonafide and for valid reasons; or
  - b) is perverse, arbitrary or unreasonable, unjust or biased, oppressive or discriminatory; or
  - c) is based on irrelevant grounds; or
  - d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives such as bribery, jobbery, favouritism, nepotism and administrative excesses; and
- (ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

3. As can be seen from the above definition of 'mal-administration' every act of a public functionary if done callously, whimsically, malafidely and for ulterior motives, is covered by the term 'mal-administration' and confers jurisdiction upon the ombudsman to investigate into the matter. This wide definition of the term 'mal-administration' is given precisely because of the peculiar conditions prevailing in a developing country.

4. In my country mal-administration generally takes the form of avoiding to do one's official duty or of causing delays or of taking biased decisions. My experience shows that there are two main grounds or reasons for the prevalence of mal-administration. One is simple apathy in doing one's duty and lack of compassion for the aggrieved persons but there is no ulterior motive behind such attitude. The other reason or ground is based on the ulterior motive either of rendering favours to those persons who are related to the public functionaries in some way or the other or in extorting money from the persons whose work is pending with them. Quite often both these reasons or grounds combine to make the life of the common man miserable. The institution of Ombudsman then comes to his rescue.

5. The most common grievance of the common man in my country is that his application or file never moves in government departments and he must either put pressure of an influential personage or grease the palm of some public functionary to have his papers moved. This institution takes up the matter with the head of the department concerned and persists until the needful is done. The second most common evil which this institution has to contend with is that employment in public sector is not provided on merits but on the basis of nepotism and favouritism. I have come across cases in which those who had qualified in the written tests and interview were not selected in accordance with the merit list and those who had secured lower positions or those who had failed to qualify or those who had even not appeared in the tests and the interview were appointed to various jobs of lower cadre.

6. The third most common mal-administration in my province is over-spending by the public functionaries, that is to say, in excess of the budgetary allocations. The result is that the bills of the suppliers and other private agencies remain unpaid and it falls to the lot of the ombudsman to persuade the government to provide funds for clearing such liabilities and to take action against those public functionaries who had spent beyond their financial allocations.

7. No doubt, the success of the institution of ombudsman lies in its ability to operate independently of control by the political executive and degree of creditability and respect it can command in the society but I feel that in the undisciplined societies of the developing countries wherein tradition of respect for law has yet to take firm roots, the Ombudsman needs more powers to deal with the evil than a mere advisory role which he has at the moment. It is his job to "better the world with a blow in the teeth of a wrong" but to do this he needs to have some teeth of his own.

**ALEC PAK MING KWONG**

**OFFICE OF THE OMBUDSMAN**

**HONG KONG – P.R.OF CHINA**

STRATEGIC PLANNING OF THE OFFICE OF  
THE OMBUDSMAN HONG KONG, CHINA

**INTRODUCTION**

To quote an old saying, the only thing that will not change is the certainty of changes itself. This saying particularly holds true in vibrant Hong Kong where changes are happening by the minute instead of days. This is the reason why strategic planning is all the more important if any organization is to harness changes and to make each change an opportunity for improving and enhancing its services to the public.

2. Strategic planning has become a very important process in the Office of The Ombudsman. It is through strategic planning that we revisit our mission, vision and values in the light of changes in the citizens' aspirations and expectations, rearrange our priorities and redirect our resources to take into account public concerns and perhaps most importantly, set our short, medium and long term targets and goals and revise and restate our strategies to meet these targets and goals.

3. In the past four years, this Office has held strategic planning conferences each year based on the general concept of "planning, implementation and evaluation" but with different themes. In 1996, the theme was performance targets and pledges. Last year, the most significant changes in Hong Kong were of

course the reunification with China and the establishment of the Hong Kong Special Administrative Region Government. In this new era, this Office, as an agent for change, has brought about significant improvements in the public service and introduced new services. With the credibility built up over the years and the guaranteed independence of this Office as solid backing and driving force, the main theme of last year's conference was the setting of targets and goals for the coming years and the strategies to achieve them.

#### **THE CHARACTERISTICS AND PROCESS OF STRATEGIC PLANNING**

4. This Office has adopted a layered pyramidal module in strategic planning, as shown below:

Mission  
Vision  
Values/Code of Conduct  
Targets/Goals  
Strategies  
Implementation Procedure

5. Working from the top layer down, the Strategic Planning Conference examined the mission, vision, values and Code of Conduct of this Office with a view to identifying any need for changes in the light of changing circumstances. The conference then reviewed the more imminent targets and longer term goals of this Office and the strategies to achieve them, having regard to the prevailing socio-economic and governance systems, human resources and priorities, The Ombudsman's role in complaint handling and the protection of human rights and technological advancements.

6. Having mapped out the strategies, the conference then proceeded to study the various options to implement the strategies and adopted the best implementation plans which were considered pragmatic and feasible.

7. Targets and goals must be definitive and measurable with the following characteristics:

**EUGENE BIGANOVSKY**

**SOUTH AUSTRALIA STATE OMBUDSMAN**

THE PEOPLE'S OMBUDSMAN AND  
POLICY IMPACT  
PRAGMATIC PATHS TO SUCCESSFUL  
ADMINISTRATION

*Adapted from A Arrien*

*"If (Ombudsmen) have as much sense as geese, we will stay in formation with those who are ahead of where we want to go and be willing to accept their help as well as give ours to others."*

1. I believe that what I have to say is not a re-invention of the Ombudsman institution. I will not be examining the fundamentals or the underpinning principles of the Ombudsman institution such as independence, impartiality, professionalism, credibility, flexibility and accessibility. I will not be focussing on the preferred mind-state of an Ombudsman when conducting an investigation with regard to his rationality, objectivity, patience and good temper; but I will endeavour to look beyond the ordinary work of the Ombudsman, and at his extraordinary capacity to be creative and realise what is often in the realm of possibility at the outset of an investigation. My presentation is also an affirmation of my response to the remarkable pace and extent of change which has enveloped public administration in recent times. There is little point I suggest in standing about and watching any formation of events affecting public administration fly past the Office of the Ombudsman.

2. I believe that the Ombudsman alone has this "personal power" to set the form of the relationship and the tone of communication with both the public

and administration. It is the Ombudsman himself and not the hardworking members of his staff who will ultimately determine whether there will be an abiding sense of trust in his judgement and respect for his opinions and recommendations; and it is the Ombudsman who will decide how far to go in any matter. The task of the investigator is to deal efficiently and effectively with the details of an investigation. In other words the investigators should constitute a clever, disciplined and professional team; the prerogative of wisdom which guides the direction of the Office lies with the Ombudsman. Undoubtedly, there will be considerable room for the exercise of discretionary judgements on a case by case basis with the members of the team, but the wider horizons and the nature of the relationship with the government at large and the public will depend almost entirely on how the Ombudsman projects his image, for instance, upon his retirement the first Ombudsman of the Commonwealth of Australia, Professor Jack Richardson felt his role to have been that of "Guardian, Mentor, Diplomat, Servant and Protector"!

3. In Australia and in several other countries I have seen the relationship between an Ombudsman and the government sour to a point at which the essential lines of communication break down. Even if there be some residual public support for an Ombudsman at such time, the Office becomes largely unworkable as it loses sense of direction and purpose. Morale of the staff must then fall. A state of cold war is established between the Office and the government; and in all cases that I know, the Ombudsman has not been reappointed for any further term of office. Whoever is right or wrong in these situations becomes totally inconsequential. The new appointment picks up where the old one failed and renewed dialogue with the government leads to restoration of the conditions required for the effective functioning of the Office. The public soon forget the old Ombudsman.

4. I know of no Ombudsman who has been immortalised. There is at least one retired and formerly long-serving Ombudsman in Australia, in the State of Victoria, whose wise thoughts continue to appear in the Victorian newspapers, as in the recent circumstance of the proposed privatisation of the Auditor-General's Office by the Victorian government. There are other Ombudsmen who make what I will call "deathbed" statements; just before their terms come to an end. They utter grimly that the government is undermining one or other of the fundamentals of a good Ombudsman, to the detriment of the general public.

5. The foremost condition I think for there to be creative work by the Ombudsman is the existence of a relationship of trust and good will with the government itself and with the administration. Equally there must be a similar working relationship with all Members of Parliament and the general public, give or take a few odd citizens with whom there can never be any real sense of trust because of an entirely different or skewed perception of the justice system, possibly related to a completely selfish or sociopathic outlook on life itself.

6. I do not necessarily hold that systemic reviews (that is, broader based investigations into any discernible pattern of complaints, attributed to failure of systems) require the same level of trust, confidence and good-will that would be required as a precondition for an Ombudsman to have a significant impact on policy itself. Systemic reviews were probably not as new as they appeared to be when first given some prominence during the Fourth International Ombudsman Conference held in Canberra, Australia during October 1988. I do not think that any agency, even one whose level of trust of the Office of the Ombudsman is at its lowest, will resist a major review whose end is to prevent recurrence of similar complaints. As with policy impact so with systemic review, the Ombudsman himself develops the "whole picture" of administrative action. Viewing the "whole picture" is referred to in some circles as "the holistic approach". For instance, in the practice of medicine an holistic approach will consider not only the malady and its orthodox cure, but avoid probable causal elements by having due regard to lifestyle, diet, psychological and emotional factors and thus the wholeness of the human being. Likewise, time and resources permitting, assuming the Ombudsman is in fact wise, we advance from the quick fix remedial approach in the instant case to an extended form of thinking or "whole picture" approach.

7. As to the desired approach of the Ombudsman, a former Ombudsman of the Commonwealth of Australia, Professor Dennis Pearce, observed at the Fifth International Ombudsman Conference in Vienna during October of 1992:

"The Ombudsman most likely to secure the implementation of recommendations will be he who has created a relationship of such kind with an agency that the Ombudsman's recommendations will usually be accepted as a matter of course."

He noted that "*The Office of the Ombudsman is highly personal - personal to the occupant and personal to the jurisdiction in which it operates.*

*Each Ombudsman must establish in the minds of the public, the bureaucracy and the parliament that it is an office uniquely designed to promote respect of human dignity and human rights at all levels of public power."*

Elsewhere in that same address, he explores the various creative opportunities for an Ombudsman and in particular how to steer his Office so as to avoid starvation of funds and be accepted within the public sector as a "valuable management tool".

8. Other Ombudsmen place a great deal of store on the media spotlight. That may be the way to go for creating awareness, but it may also lead to such imbalance of relationship of the State and the people, as would result in a stone wall around government policy. The prevailing view in most jurisdictions, supported by judicial authority is that the Ombudsman may not investigate matters of policy or make formal recommendations about government policy because it is not within the Ombudsman's jurisdiction to assume the very role of government itself. There is an array of judgements of the Victorian and the South Australian Supreme Courts which effectively hold that the Ombudsman has no jurisdiction to investigate matters of policy because these do not fall within "matters of administration" which is the jurisdictional basis of the Ombudsman activity. It is worth noting however that in the most recent of these cases, in South Australia, in the *City of Salisbury v. Biganovsky (1990) 54 SASR 117* the Supreme Court felt that "It is desirable that such (government) policies are formulated in the context of a variety of considerations including economic factors and the best use of land in the general (people's) interest, which factors are usually best known to the (government)". The Court also expressed the view that the Ombudsman "may investigate and make recommendations about the implementation of a policy in the context of an investigation of an administrative act, because that is a matter of administration and is within his jurisdiction. He may even report that the application of a particular policy to a particular organisation is unreasonable or that it is the application of the policy to a particular person or group which has resulted, in his opinion, in an administrative act which is unreasonable or unjust." The Court also considered that it would be "within the proper exercise of the function of the (Ombudsman) to draw attention to the policy in his report and to the way in which it operated in relation to the (complainant) which was unreasonable or unjust, if that is his opinion. The (government) could then reconsider the policy generally or whether to apply it to

the (complainant). A report in those terms could not be outside the jurisdiction of the (Ombudsman).” This position is entirely consistent with the earlier seminal judgement of the Supreme Court of Canada in *Re British Columbia Development Corporation and Another v. Friedmann (Ombudsman) (1985) 14 DLR 4th page 129*, and shows that there is a backdoor into matters of policy which is not locked.

The legal position I suggest for the Ombudsman is a great deal more powerful than many Ombudsmen are prepared to admit, subject I think to the obvious injunction that the Ombudsman’s opinions and influence in such matters will be respected and accepted by the government; and that acceptance will depend largely on the respect and trust that the government and the people have for the Ombudsman.

9. I think that I have hinted at the formula for maintaining trust for an acceptance of the Ombudsman by government. I am sure that there is a great deal more which needs to be considered in this regard with due regard to the nature of the socio-political environment that the Ombudsman finds himself in. In my opinion this trust is an absolutely essential precondition for real practical influence and the basis for success; and encompasses all those various fundamental ingredients and a great deal more on which we spend so much time in telling new Ombudsmen on what is expected of them.

Time does not permit a full exposition of the formula which may establish the required level of trust and acceptance of the opinions of the Ombudsman, but in my experience and observation it has as much to do with the nature and tone of the Ombudsman’s communication as with his attitude throughout his term of office. I have yet to see destructive argumentation, verbosity, arrogance, rudeness or dogmatism succeed although these characteristics of communication may be found in some complainants and some officials.

10. I turn now to the creative powers of the Ombudsman with several illustrations from my own experience and with the hope that others today may share with me like experiences; as I am of the belief that during any time of major change in public administration a wise Ombudsman should not forfeit any opportunity to serve the interests of the people and the State. Two legislative Ombudsmen in Australia have been granted the private health jurisdiction, in which capacity they are styled “health commissioners”; and I

therefore, see no reason why even privatisation of public utilities should necessarily prevent a legislative Ombudsman from retaining a public complaint handling role, subject to an agreement to such arrangement by the government and the industry and to appropriate enabling powers granted to the Legislative Ombudsman by the Legislature.

11. Some little time ago, I was concerned with a complaint involving a local government council who had proceeded lawfully in pursuance of its powers under the Local Government Act to the sale of the complainant's residential property by auction, by reason of the complainant's failure to pay off the arrears in rates. In fact the complainant had defaulted, after entering into financial arrangements with the Council, in the payment of instalments after three years of failure to make payments.

As the amount outstanding was relatively small and disproportionate to the value of the house, I considered it to be morally wrong, unreasonable, unjust and oppressive for such extreme measure of recovery to occur. I was particularly anxious about the apparent lack of opportunity for the "condemned" ratepayer to have any final say on the matter before the Council proceeded with its executive remedy of the sale of the premises. While there may be at law, always the opportunity to challenge the validity of the notice of recovery with an appropriate stay of execution by seeking an injunction and declaratory relief in the Supreme Court, the pursuit of such remedy by intervention of judicial process would be costly and hardly appropriate in the case of a complainant who had principally his own financial hardship to blame for the plight he was in. Although the amount to be recovered was not nominal, there could be circumstances when the council recovery process would not only be despotic in its effect but manifestly absurd, such as the case of a recovery of only a fraction of the amount realised on the sale of a residential property. Proportionality is a relevant consideration in any justice system.

I persuaded the Council in the case to stay the execution of the notice for such period as would (1) enable the Ombudsman to carry out an investigation into the administrative processes, and (2) with a view to permitting the complainant a reasonable opportunity to be heard, at least by the Ombudsman. One of the issues of the case was the nature and scope of the financial arrangement between the debtor and the Council and whether it had itself been fair and reasonable and not entered into under coercion. Following my

intervention, the matter was resolved with the Council providing sufficient time for the complainant to organise sufficient funds to discharge his legal obligations under the Local Government Act.

12. I considered further that the Minister of Local Government should also be advised of this problem with the legislation. As I had several cases involving possible actions by other Councils, I decided to conduct a survey of Local Government Councils seeking their views (1) whether the Ombudsman Act should be amended by the Parliament to allow the Ombudsman to defer an administrative action for 45 days, in circumstances of the case of an impending irreversible action, that would result in the sale of a person's residential premises or any other like action (2) or whether in the situation described local council's would be prepared to modify their policies to provide for the Ombudsman intervention and postponement of proceedings for 45 days. Of the 115 or so councils that were in existence at the time, 72 responded to the survey. Thirty-six councils were opposed to the Ombudsman having such power. Thirty-six Councils were in favour of the Ombudsman having such power. I recall one of the Mayors who opposed the change, reported that his Council never makes mistakes! Of those who were in favour of the amendment, six councils felt that they could incorporate such intervention of the Ombudsman within their policy, which shows agencies also treating the Ombudsman as a positive management tool.

13. That was the start of my creative thinking in that matter. At the first available opportunity, I commended those Councils who were able to accommodate my ideas within their policies. Next, I formulated my proposals for amendment to the Ombudsman Act and referred these to the Attorney-General (who is the Minister of Justice). These were given the required legislative shape by the Parliamentary Counsel and discussed with the Local Government Association. The Ombudsman Act, which is the principal legislation under which I exercise my powers and functions was accordingly amended, passing the two Houses of the Legislature. The particular provision of which I speak now enables the Ombudsman to require a 45 day stay of an administrative action by an agency thus preserving not only the integrity of the Ombudsman investigation but also providing a proper opportunity for review of the matter. However, I hasten to add that such power is to be used sparingly and only in serious cases. Thus, I say thinking beyond the immediate facts of

the case, in addition to providing an immediate remedy, a great deal more may be achieved by an Ombudsman than say by a Court of law. Of course, without some support from the administration, the government and ultimately the Legislature, such change would not have been effected.

14. My next illustration is with that recurring principle of good administration - the giving of reasons by an agency for a decision based on the exercise of a discretionary power. Although the Australian legal position has been conclusively laid down by the Australian High Court in the case of *Osmond v. Public Service Board of New South Wales (1986)* to be one of there being no duty on an executive decision-maker at common law to give reasons unless the decision-maker is required by legislation to do so, there is some scope for the Legislative Ombudsman to treat reason formulation as a critical part of the decision-making process in order to demonstrate sufficiently that the administrative process was not arbitrary or irrational. This has itself been connected to the fairness doctrine which underpins the more widely applicable rules of natural justice and demands of procedural fairness. Even Ombudsmen have unwittingly perhaps, offended these rules. For instance the Federal Ombudsman's practice was found to fall short of the requirements of procedural fairness in the case of *Chairperson, Aboriginal and Torres Strait Islander Commission v. Commonwealth Ombudsman (1995) 134 ALR 238* when the Ombudsman criticised the activities of a Federal Commission but omitted to provide the Commission with an opportunity to comment during the draft report stage on a significant allegation that appeared only in the final report of the Ombudsman. Denial of procedural fairness or failure to give reasoned decisions by the Ombudsman may undo the trust that exists between the Ombudsman and the public administration.

The Ombudsman is required to accord procedural fairness as are all other investigative bodies in Australia. This standard of good administration may also be promoted by creative Ombudsmen throughout the entire administrative system. With the giving of reasons, I have found some disparity of approach with various licensing and registration boards under my jurisdiction. Some take a hard line legalistic approach relying on the pronouncement of the High Court, and other more enlightened bodies take the view that it is better to give reasons for an administrative decision (in the absence of a statutory requirement) for a variety of policy considerations including:

1) the assurance which a reasoned opinion provides that the decision was properly made;

- 2) if the person has a right of appeal or review, reasons will enable the person to decide whether or not to proceed to such appeal or review;
- 3) a reasoned decision promotes public confidence in the administrative process; and
- 4) reasons constitute a check on the exercise of a discretion, prevent arbitrary process and provide useful guidance for future cases.

As to the policy behind not giving reasons, there is to be found the argument of inconvenience, cost, delay, possible lack of “candour” and in some matters the need to preserve confidentiality of sources. More recently, a professional registration board has refused to give reasons on the basis that it felt the complainant is inclined to be litigious or even vexatious; and that the giving of reasons would only prolong the matter before the registration board. The complainant had originally complained to the board about the conduct of a registered practitioner; and the board after investigation of the matter dismissed the complaint without providing any reasons to the complainant. I am now on the brink of proceeding with a draft report on the matter which has been further complicated in that the same complainant has brought other proceedings against the board in the District Court claiming victimisation, under the Whistleblowers Protection Act, but those proceedings were withdrawn on the understanding that the Ombudsman was in fact proceeding with this investigation of the alleged omission on the part of the board.

I have struck similar difficulties with the views of the Medical Board and other licensing authorities. It is almost paradoxical, given the reliance by these bodies on strict legality, to find the contrasting and commendable practice of the Legal Practitioners Conduct Board of communicating all or part of a lawyer’s response to a complainant. While the various individual matters within my Office are the subject of further debate with the agencies and their legal advisers, I have now taken the step of raising with the Attorney-General’s Office (Ministry of Justice) a proposal for a general enactment on the giving of reasons or at least, a government policy directive to that effect. Another basis for this universal approach is the positive impact it would have on the people and public administration in the context of the Freedom of Information laws. In the absence of reasons, the public whose suspicions are aroused, are more likely to demand access to documentation under the Freedom of Information Act, creating more work for the agency.

15. Let us not forget that one of the foremost attributes of the Ombuds-

man institution is that it delivers one of the cheapest and quickest justice systems in the world; and if that system is to be in harmony with the government itself and the people's expectation, it may not only do justice in the individual cases (a virtue itself) but also in going that little extra from the ordinary to the extraordinary. This largely educative function of the Ombudsman is consistent with that of having a balanced society and administrative environment.

As the Ombudsman institution is an integral part of the whole justice system, I and several of my Ombudsman colleagues in Australia have maintained what I can best describe as a fellowship through an association known as the Australian Institute of Administrative Law whose educative objectives are realised at gatherings, forums and conferences. An understanding of the role of the Ombudsman and its relationship to society and public administration is only part of the whole administrative law system. The South Australian State Chapter, of the Australian Institute of Administrative Law which I chair, will be hosting a major conference involving Ombudsmen, judiciary, tribunal members, public administrators and legislators during May 2000, a fore-runner for the International Ombudsman Conference later during the year, which I sincerely hope will be held in the Asian Region.

16. I conclude, by saying that the Ombudsman who has an holistic approach to problems will have no regrets upon his retirement; for the wholeness of the solution will become evident from the wholeness of his approach and the result may be as obvious and pleasing as the song of the bird. It was once said that a wise man stood up before his students and was about to deliver a sermon. And just as he was about to open his mouth, a bird sang. And he said, "The sermon has been delivered." I trust that Ombudsmen will realise their full potential by staying in formation with those who may be flying ahead with their changes; and helping the people and administration; and in being imaginative and creative in what we do, we will succeed.

**DUONG NGOC SON**

**FIRST VICE - MINISTER,  
STANDING DEPUTY INSPECTOR GENERAL  
VIETNAM STATE**

SETTLEMENT OF COMPLAINTS AND  
DENUNCIATIONS OF CITIZENS IN VIETNAM

Mr. Chairman,  
Ladies and Gentlemen,

On behalf of Vietnam State Inspectorate Delegation, I would like to warmly welcome this 3rd Asean Ombudsman Conference in Macau and I would also like to wish Mr. Chairman, Ladies and Gentlemen, all of you here, have a good health and happiness.

I thank Mr. Chairman for allowing me to give my presentation at this event.

Mr. Chairman,  
Ladies and Gentlemen,

In Vietnam, we constantly concern ourselves the settlement of complaints and denunciations by Citizens. Having been regulated by Constitutions from 1946 up to now, complaints and denunciations of the citizens are one of the fundamental rights of the citizens. Vietnam Ordinances on complaints and Denunciations by citizens in 1981 and 1991 have regulated the rights of the citizens to make complaints and denunciations, the responsibilities of all organs, organizations, agencies, at all levels and all branches to deal with complaints and denunciations by the citizens.

I'd like to introduce to you some key notes, basis problems concerning the complaints and denunciations in Vietnam.

- Citizens have their rights to make their complaints to the Authorised organs, the competent agencies on the illegal decisions and the illegal action.

- Citizens have their rights to make their denunciations to the Authorised Agencies on the illegal decision or illegal activities of Agencies, organization and individual.

- The authorized State Agencies, According to the laws, have their responsibilities to deal on time with the complaints and denunciations of the citizens, strict punishment on illegal violators.

- Making complaints and denunciations, settlement of complaints and denunciation of the citizens have to abide by State Laws. No illegal interference from organs, public organizations and individuals on complaints and denunciation and settlement of complaints and denunciation.

- Vietnam State Inspector General has his power to make decision on settlement of complaints on the Heads of Organs, Departments belonging to the Government, making appeal against the examination decisions of the Chief Inspectors of provinces, municipalities directly under the central Government and the Chief Inspector of Ministries and Branches as well.

- Vietnam State Inspector General deals with complaints, denunciations on the Heads of Ministries, and provinces as well.

- The time limit for dealing with complaints for the first instance within 30 days, other instance within 60 days.

- The time limit for dealing with denunciation for the first instance within 60 days. For the complicated cases, the extended time limit not more than 60 days.

- The Heads of organs at the levels, all Branches have their responsibilities to organize the places for receiving people, regulating time table, designate ones to receive people constantly, deal on time with complaints, denunciations, recommendations of Citizens of according to their competence.

Wherever, complaints and denunciations arising, we carry out to guide how to deal with them with a total finish. We depend on basics of people to deal with complaints relating to the neighbour relationship, as dispute on land, housings, property, or complaints which could be dealt with by mediation between two partners. The People's Inspectorates at the level of commune and ward, organ and unit with the introduction and recognition by Vietnam Fatherland Front (a Social Society), can deal with complaints by citizen at the on-the-spot local level as mediators. However, many complaints could be dealt with successfully, making a very good solidarity, and a very good stability at the local level.

In order to deal with the arising complaints, we consider the democracy at the basic level, people actually have their rights to take part in building and management of economy, society through their representatives as National Assembly. The People's Councils at all levels, and directly taking part in the business of Government of the Socialist Republic of Vietnam regulates the rules of democracy at basic level in order to allow people to give their opinions and supervise the work of organs, State Authority and public servants.

In order to take advantage for people to make complaints and denunciations and how to deal with them effectively, to make good for difficulty, troubles for the people, Vietnam Government and State have been promoting the administrative reform of procedure, to ensure that all complaints and denunciations by citizens have been dealt on time with by the competent Agencies, Organs, branches according to the State Laws.

To check for amendment, supplement or cancellation on norms, contents of State Laws, regulation, rules which are not suitable, causing a lot of troubles, and obstacles on complaints and denunciations, temporally to organize the system of receiving people, dealing appropriately with complaints and denunciations, to avoid overlapping, one case could be dealt with some organs, organizations, not totally, or some cases could be passed within any responsibility of any one. People, who make complaints, denunciations, have to go through many doors, meet many people but getting no results.

The Socialist Republic of Vietnam now step by step perfect the system of laws, the legal basics of making complaints and denunciations and the settlement of complaints and denunciations. With this idea, the Government of the Socialist Republic of Vietnam has studied and fulfilled the drafted law on complaints and denunciations for submitting to Standing Committee of the National Assembly. After collecting opinions of the masses of people, this law will be considered by the 3rd sections of the 10th National Assembly.

Ladies and Gentlemen,

We, Vietnam State Inspectorate, would like to make a very good cooperation, exchanges of experiences of settlement of complaints and denunciations with all of you, the office of Ombudsman of all Asian Countries, and we try our best for the best results.

Thank you.

**HO CHIO MENG**

**DEPUTY HIGH COMMISSIONER**

**MACAU**

THE OMBUDSMAN AS TOOL IN FIGHTING  
CORRUPTION

Corruption is a concern in modern societies, but its roots lie in the oldest cultural traditions in the world. Although it is more visible nowadays, this is due merely to the fact that State functions and the role the Law plays have become much more complex, while the need for good government, the search for better solutions to achieve happiness and peace in society has become more over-riding. It is in this struggle for good government that we find corruption censured in the classic of political thought. It is associated with the ideas of transparency and justice, for corruption aims precisely at concealing the illicit advantages enjoyed by public officials that lead them to swerve away from an upright approach to serving the people who place their trust in them.

Given that corruption is an activity born out of public duties, although it can, of course, be requested or even encouraged by private individuals whose aim is to damage all the others, imprisoning State employees and swaying them towards injustice, only a public body with supreme powers in the State can take responsibility for combating and eradicating it.

The Ombudsman, like the former censors in China, can perform these functions to great effect. A feature of the Ombudsman is that he has powers and authority apart from the other public bodies and so can criticise them with a view to correcting, to the benefit of citizens, all acts that are illegal or out-of-step with the harmony and happiness of collective life.

Not all of these acts constitute corruption, but they require the same willingness and the same institutional stance towards those whom, through negligence or misunderstanding of their employment duties, need to be set back on the path of regular procedures.

In general, State activities aimed at correcting administrative operations is done through the normal supervision of all organisations. Nowadays, this is essential for an increasingly complex State structure. This control is both necessary and, more importantly, useful, and it has been welcomed in every country, particularly those in which the Constitution requires government according to the law, giving the civil service an important role in establishing goals for progress and improvements within society.

However, negligence and a misunderstanding of civil servants' duties can grow and be transformed into perverse attitudes which the employee adopts to consciously damage collective interests in order to obtain a simple benefit for himself or another person and which runs contrary to the concept of justice and social harmony.

This is little more than a quantitative difference, yet this is a field in which if such attitudes accumulate they can lead to a qualitative difference. In any case, it would seem natural for those State organs most adept at dealing with the former aspect to intervene immediately; it is on the basis of a sensitivity towards this quantitative difference that the final manifestation of this kind of illegal attitude can be better diagnosed, isolated and remedied. This does not mean that their actions must be pursued, or that they should be judicial entities with powers to take those responsible for infractions to court.

What I would defend is that an entity such as the Ombudsman or similar organisation with a prominent role regarding the entire administration, should enjoy conditions that allow it to move from criticising administrative procedures, onto a plane in which they can uncover and investigate corruption. This would facilitate a more economic use of means as well as greater police efficiency.

These are the lines along which international thought has been moving since the Lima Corruption Conference and the final declaration approved and signed in the same city proposed that State authorities of this kind should be given primary control over the phenomena of modern corruption. However, this is a model that had already been chosen for Macau where the High Commission against Corruption and Administrative Illegality also enjoys powers of criminal investigation in the field of corruption and electoral fraud in

addition to the classical powers of an Ombudsman. Nevertheless, these powers are not so broad that he can file a case, which latter function is the duty of the Public Prosecutor.

In this task, ACCCIA benefits not only from its accumulated experience in investigating and studying cases of mal-administration or illicit administration; it can also take advantage of another very important instrument in order to improve the fight against corruption. In fact, ACCCIA, like any other Ombudsman or supervisory body, can recommend corrective measures to government or parliament as from when it has proof of regulatory failures or methods and procedures that are not appropriate in administration.

In this context, ACCCIA recently suggested to the Legislative Assembly of Macau that it improve legislation with a view to making the prevention of corruption more efficient by obliging public employees for submit regular declarations on all their assets. This will enable the authorities to assess whether any increase in wealth is founded while any non-compliance or false declarations will be punished.

This improvement in the norms governing good and regular service in the public administration is, I believe, vital in confronting corruption. It would not have been attained so easily if ACCCIA had no practical experience in the obstacles and loopholes that corrupt employees can use to successfully evade supervision of the civil service.

This potential mode of action is one of the central features of an Ombudsman or the state entity with similar duties. If it fulfills its role in this particular respect and in many others, it can give more greater consistency to governments' policies in that it can convey to their citizens the sentiment that it is essential to have effective retribution of corrupt practices, which impede development and progress in justice.

A large part of the Ombudsman's activities involves protecting the rights and legitimate interests of individuals, in terms of correcting and limiting arbitrary decisions reached by the authorities, working towards rational, complete justification of the acts of the administrative authorities to which citizens have access; promoting strict compliance with deadlines; limiting to the absolute minimum delays in reaching decision; and giving people complete information as to their rights —in other words pursuing the goal of simplified bureaucracy and transparent criteria. In view of this, the Ombudsman can act as a strong disincentive against corruption, an attitude that takes advantage precisely of defects in the administrative apparatus (slowness, com-

plexity and secretiveness) to gain a surreptitious hold. This is within the domain of preventing corruption which is possibly the simplest way of fighting it. In fact struggling for the administration's loyalty and efforts on behalf of the citizens whom it serves and should serve efficiently is, at the same time, to delineate clearly the borderline between honest employees and those who allow themselves to be corrupted.

This lets us see how right it is to allow the Ombudsman or similar bodies to also fight corruption, not only in terms of theory but also rooted in practical actions emerging from its own legal powers.

At the end of the day (1), government by law requires the containment and eradication of any deviations by the public authorities; (2) as a corollary, personal gain from public duties to the detriment of the public good, equity and justice are crimes that should be punished effectively; (3) the State organism capable of fulfilling this mission should play a prominent role in the eyes of all public servants and the network of public powers, along with the natural solidarity that binds them together; (4) this profile suits the shared idea that the Ombudsman should have supervisory powers; (5) it is more economic to hand over the initial phase of uncovering corrupt practices to these State organs which, in seeking improvements and correcting the operations of the State machine, can prevent corruption and promote improvements in public acts and laws. These improvements can only be felt if there is a link between models which can be achieved and practice, the criterion of just solutions.

**DR. ABED SHAKHANBEH**

**HASHMIATE KINGDOM OF JORDAN**

**BUREAU OF ADMINISTRATIVE INSPECTION AND CONTROL**

THE MISSIONS OF THE BUREAU OF ADMINISTRATIVE  
INSPECTION & CONTROL (BAIC)  
THE JORDANIAN EXPERIENCE

*March 1998*

**THE BIRTH OF THE BUREAU**

For the purpose of strengthening the legal sovereignty in the society and in order to ensure that the Governmental departments follow the democratic path in executing its duties, and for the desire of fulfilling the social equality for the Jordanians, and for prevailing equality in the duties and the rights of the Jordanians, as well as to guarantee that administrative development is walking in a balanced way hand in hand with the economic and social development and for the purpose of controlling the work of the Governmental ministries and departments, the Idea of founding the Bureau of Administrative Inspection and Control (BAIC) came into existence.

The Bureau of Administrative Inspection and Control came into existence in 1992 with the approval of Statute No. (55) for the year 1992 in order to develop the administrative procedures and performance of the Governmental ministries and departments.

The Bureau's Conception of Administrative Control:

The Bureau's understanding of the concept of administrative control comes out of its belief that administrative control is a mean which guarantees carrying out the Government's objectives and programmes at a degree of high efficiency

and in harmony with the planned schedule as well as according to the rules and regulations. Consequently, therefore, the administrative control, it can be said, is a tool which can be used to identify the principle of responsibility.

Furthermore through administrative control, the legitimacy of administrative activity can be ensured which is taken by the Government's departments because such departments work for the general cause.

As a result, therefore, control in this case works as a feeding system to indicate the legitimacy of the activity and the accuracy of performance.

Moreover administrative control does not aim for hunting the mistakes. On the contrary, it plays the precautionary measure which aims to directing the attention of the person in charge to the points of strength and weakness in executing the decisions. Administrative control, furthermore, contributes in treating the problems and taking the necessary procedures for the prevention of malfunctioning if possible that is because whoever tries to amend and treat will not succeed if he looks for hunting mistakes.

It is important to note that who works might make mistakes just as he might do well. Consequently, emphasising the good will on human behaviour gives an incentive for the person who works to try his best to avoid mistakes and illegalities.

In order to enable Administrative control fulfil its objectives, it is vital to be based on the full understanding of legal legislation's whether legal or administrative, and its meanings and the full understanding of the rules and procedures of work as well as the confidentiality of information to guarantee speed of response.

Using administrative control in governmental departments will guarantee democracy for all citizens as well as the benefit of the principle of equal opportunity. It will also lead to the right procedures for the improvement of the administrative performance for all ministries, departments and employees.

Out of these considerations, the Bureau of Administrative Inspection and Control came into existence and started its missions on 17th November 1992 as a governmental body concerned with the affairs of control and administrative inspection and works for the improvement of governmental administrative procedures through carrying out its missions and aims, for which it was born.

In order to accomplish these objectives, the Bureau shoulders various responsibilities and duties which enable it to fulfil its missions in control and inspection through the study and the committees of control, auditing and investigation.

The Main Objectives and Missions of the Bureau are as follows:

1. To ensure that the ministries and departments of the Government comply with instructions, administrative decisions and directives issued by the Prime Minister, or taken by any other responsible Governmental bodies according to rules and regulations.

2. To make sure that the ministries and departments of the Government were able to accomplish their plans and administrative programmes.

3. To study and analyse the administrative procedures in the ministries and departments of the Government and pinpoint the weaknesses and gaps of those procedures; and to suggest the ways to improve and simplify them in order to ensure administrative excellence in the performance of those departments.

4. To monitor overtime in the departments of the Governments; and to make sure that overtime is needed and that overtime payments are given to the right persons according to rules and regulations.

5. To make sure that departments of the Government were able to accomplish their plans in training their employees; and to make sure also that those departments have the right kind of employees with the right qualifications in the right places.

6. To study any case or report referred to the bureau by the Prime Minister or any Ministers, including investigating any case of mismanagement by any public servant.

7. To make sure that internal audit units in the Government departments are capable of achieving their objectives effectively and efficiently.

In order to accomplish those duties and responsibilities, the Bureau conducts studies, investigations, auditing, and field visits or what is known as “committees of inspection and control”; and it also receives complaints from the public.

All reports and recommendations of the Bureau are forwarded to the Prime Minister in order to take the proper action on them.

The Council of Inspection and Control consists of:

- The President of the BAIC
- The Secretary General of the BAIC
- The Secretary General of the Civil Service commission
- The Secretary General of the Audit Bureau
- The Director General of the Institute of Public Administration.
- One of the councils in the Bureau of legislation’s.

The Council of Inspection and Control acts like a board of directors for

the Bureau where it sets the guidelines for the performance of the Bureau through approving its budget and setting its annual plan.

The Bureau consists of six departments:

*First*, Department of Administrative and Financial Affairs:-This department is concerned with the administrative and financial responsibilities in the Bureau.

*Second*, Department of Legal Affairs:This department is concerned with collecting the rules and regulations as well as the acts and instructions which are related to the ministries, departments and the decisions of the Cabinet, as well as the instructions of the Prime Minister. This department shoulders also the legal studies and advice to the Bureau and participate in the control and inspection committees as well as studying the procedures which are seen against the rules and regulations and amending what needs to be amended.

*Third*, Department of Development, Study and Follow up:This department is concerned with collecting the information and data which are related to the organisational charts of the departments and the description as well as the classification related to them. Furthermore, this department offers a distinguished system of information on the various governmental departments and their staff. Moreover, it offers all the studies and research for the Bureau of Administrative Inspection and Control such as studying the procedures which control the work of the Governmental departments and offering the suggestions to alleviate its efficiency. This department contributes in preparing the annual report about the work of the Bureau. It prepares the brochures which clarifies the work, mission and the duties of the Bureau.

The above mentioned three departments are considered supportive departments.

On the other hand, however, the burden of inspection and control lies on the shoulders of the other three departments which are:

*Fourth*, Department of Economy and Money sector :This department is concerned with controlling and inspecting the governmental departments within the economic and money sector.

*Fifth*, Department of Services sector :This department is concerned with inspecting and controlling the governmental departments which are within the service sector.

*Sixth*, Department of Human Resources sector :- This department is concerned with controlling and inspecting the work of governmental departments within the field of directing the human resources.

**CONCLUSION:**

The Bureau believes that treating the malfunctioning which the country's administrative system suffers from, requires the respect of all the governmental departments for the principle of legitimacy and the sovereignty of the law and re-evaluating the internal systems which controls its work as well as improving and rectifying the government's organisation charts and its public administration according to the nature of each and every department. The bureau also believes in simplifying the work procedures and the ways used in governmental departments.

Furthermore, it is vital, as the bureau believes, to supervise the improvement of the work methods of the government's departments in order to guarantee the procedural smoothness.

Another point on which the Bureau emphasises is the prevention of governmental departments from falling in the routine's net and the prevention of prolonging the procedures unnecessarily.

Furthermore, the Bureau participates in modifying legislation's preparing job description, job classification for the public job as well as qualifying the public employees educationally and practically. The Bureau also works on encouraging public employees and directing governmental departments towards the principle of decentralisation as much as possible.

The Bureau, moreover, draws the governmental departments attention for the use of informational technology to facilitate procedures for the citizens and fights corruption in every shape or form whether administrative or financial, as well as helps to punish those who commit illegalities.

The Bureau believes that such measures will lead Government's departments and ministries to the highest degree of efficiency and fairness just as his Majesty King Hussein wanted it to be.

**JORGE LUIS MAIORANO**

**“DEFENSOR DEL PUEBLO” OF THE NATION  
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THE RIGHT TO A DEVELOPMENT IN TODAY'S  
WORLD

1. “The Right to a development” is one of the most interesting subjects related to human rights.

Due to the necessity to relate the two terms integrating this concept: right and development; to the need to define its limits and give effect to its guarantees; to the relationship with democracy and peace, and to the convergence of the work carried out, in particular by the Ombudsmen, those who seek Human Rights or Commissions of Human Rights, and in general by the National Institutions of Human Rights Promotion and Protection it is, undoubtedly, an unavoidable subject when fundamental rights are tackled.

Whichever the profile selected, it is essential to make reference to the economic, social and cultural rights, since the former will be a necessary requirement for the fulfillment of the latter.

Consequently, in the first place I shall refer to the process of acknowledgment of the various classes of fundamental rights.

2 There are no discrepancies among the doctrines of different specialized authors in that, in the chronological order of acknowledgment, the first human rights to appear are those which we know as civil and political rights, aimed at protecting the various manifestations of individual freedom against state powers. These are rights of the individual to gather, to associate with

others, to express himself/ herself, to a religious belief, to move, etc. These rights have a common feature: to demand from the State a passive attitude of acknowledgment and respect for these rights.

What seemed appropriate during the first period reaction against the state's absolute power, became gradually insufficient before the deep economic and social changes suffered in the initial decades of the last century, which affected the dignity of most defenseless sectors of our society, which had to live under poor conditions.

Thus, the evolution generated in the facts and dogmatically promoted by thinkers and politicians gave evidence of the unpostponable need for the State to adopt a permanent and active attitude aimed at protecting the new expressions of the human rights plexus. Such as the fulfillment of the necessities of shelter, food, health, protection against risks and adversities, etc.

Additionally, this was an unpostponable popular claim to ensure equality and to promote solidarity among the different social groups. Frosini was right to say that "progress in human civilization is measured essentially by the help provided by the strongest to the weakest, by the limitation of the former's natural powers as an acknowledgment of the moral demands of the latter, by an enhancement of human fraternity without which the rights to freedom become selfish privileges and the principle of legal equality turns into a leveling based upon submission to the power of the strongest"<sup>1</sup>.

Economic, social, and cultural rights began to be legally acknowledged, and the State was entrusted with the adoption of measures to make them effective. Later on, these rights were included in the national Constitutions, thus giving origin to the era of social constitutionalism, precisely with the Mexican Constitution of Queretaro, in 1917.

3. However, the mere inclusion of these rights in the constitution was not enough for them to gain full acknowledgment. Either a strong political will to implement these rights was missing, or the social and economic circumstances of many countries were not appropriate to gradually make them effective. The deep difference between the two categories of rights became evident: those which required the State's inaction, and those which demanded the State's permanent action and presence.

When the last World War ended, it became clear that, in order to prevent its horrors from happening again, it was the international community the one which had to establish clear rules of acknowledgment of the most essential

freedoms. Therefore, the so-called "second generation human rights" achieved a definite international status on December 16<sup>th</sup>, 1966 when the UN's General Assembly, through Resolution XXI, adopted together with the International Agreement of Civil and Political Rights, the International Agreement for Economic, Social, and Cultural Rights.

Both instruments of the international law evidenced the progress made in the definition of the rules for the enjoyment and protection of human rights in general, and in particular of the those rights which incorporate the human being's minimum economic, social, and cultural necessities and which, of course, provide the necessary context for the exercise of civil and political rights.

The Preamble and the initial sections of both instruments establish a new concept of human rights: that of their indivisibility and the necessary complementation of the civil and political rights with the economic, social, and cultural ones.

Over the last decades, in an attempt to complete the protection of human rights, the "third generation" or solidarity rights have emerged to the public light. These are rights that overcome the selfishness and exclusiveness of individual rights, the sectorial interest of social ones and which are based upon their incidence in the community. Their particular feature is that their owners are no longer individuals but groups of people. I am making reference, especially, to the solidarity rights, such as the rights to peace, the rights to development, to the free determination of the nations, to the protection of the environment, to the preservation of cultural and historic assets, the right to be different, among others. Here, the traditional rule which said "what belongs to everybody is nobody's interest" is replaced by "what belongs to everybody concerns every one".

It is in the last part of this process where we have passed from the individual insight to the social one, and from social insight to the community, or from selfishness to the sector and from there to the social aspect imbued with solidarity. As Bedjaoui says, these rights are placed in the intersection of the individual, the people, the State and Humanity, which enhances and makes the international law of human rights more complex<sup>2</sup>.

4. The right to a development is contemplated in various international instruments that have gradually specified its content and scope. Since the Charter of the UN established in its first section the right of people's self-

determination, the General Assembly has stated "the right to the protection of the environment", "the right to peace", "the right to food security", "the right to own the common assets of Humanity", and, above all "the right to development". In 1979 we got deep into this subject when it was stated that "the right to development is a human right" and that "equality of opportunities for development is a prerogative, both of the nations and of the individuals that from the nations".

In 1966, Article 1 of both International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights stated that "all peoples have the right to freely determine their political status and freely pursue their economic, social, and cultural development". But it was in 1986, more precisely on December 4, when the General Assembly adopted the Statement for the Right to Development, the first section of which defines this right as inalienable to every human being and to all nations. By virtue of this right, every human being is entitled to participating in the economic, social, cultural, and political development where the individual is entitled to fully exercising all human rights, contributing to such development and enjoying it.

Section 2 states that the human being is the central subject of development; he/ she must be an active participant and, at the same time, the beneficiary of such right. It establishes that all human beings bear, individually and collectively, the responsibility of pursuing this development considering the need to fully respect human rights and basic freedoms, as well as their duties towards the community, which is the only environment which can ensure the free and full participation of the individual and, therefore, a political, social, and economic order appropriate for development must be promoted and protected.

One of the advantages this definition offers is that it identifies the individual as the central subject of development, giving him a prevailing role. This point of view is consistent with the philosophical idea promoted by the Statement, since one of its basic concepts is to encourage and promote citizens' participation in all the processes that affect them.

Although the statement is not accurate enough to be applied exactly and it does not provide any enforceability mechanism, its true importance relies on the fact that the right to development has been acknowledged as a substantial part of Human Rights.

5. With the participation of 118 Heads of State or Government in the

Social Development World Meeting, carried out in Copenhagen during March 1995, various commitments related to development were made. For instance, some of the subjects considered were: the need to "enhance the resources assigned to social development", "to accelerate development in Africa and less developed countries", "to ensure that structural adjustment programs include social development goals", "to strengthen cooperation for social development through the UN".

The above-mentioned Statement evidences the intimate relationship between development and human rights. It sets forth that in order to "achieve social development, it is essential to promote and protect all rights and basic freedoms", It acknowledges the right to development as a necessary condition for the fulfillment of the individuals' economic and social rights.

6. Once "development" has been acknowledged as a "right" through the international rules already mentioned, we need to consider the former separately. In today's world, there are two ways of conceiving development.

The first - related with the theory of economic growth and its values - considers development as a quick and constant increase of the national (domestic) product per inhabitant, with the prospective aim of distributing equitably the benefits of such a growth. This is what has been called the "profitability" concept of development. Values and culture play a secondary role<sup>3</sup>.

But it is also possible to see development as a process aimed at enhancing the individual's freedom in the search of his essential ambitions. This is an "emancipating" concept of development, where material wealth is just one function within the system of values and where progress is not measured merely by macroeconomic indicators.

The purpose of this concept of development is the full realization of the human potential. In fact, this idea can be traced back to Aristotle's philosophy, which considered the existence of each individual as the succession of his actions and conditions. The potential of an individual comprises the various functional combinations of the actions and conditions he can choose.

From this point of view, the main obstacle to the harmonic development of a society is poverty. This has been expressed by the Copenhagen Meeting when, in paragraphs 16 and 19 of the approved Statement, it says that "poverty ... often (produces) isolation, marginalization, and violence ...".

The United Nations Educational, Scientific, and Cultural Organization expresses itself following this concept. For instance, its General Director, Federico

Mayor Zaragoza, at the 15<sup>th</sup> Anniversary of the constitution of UNESCO and the closing of the 28<sup>th</sup> Session of the General Conference said: "... The role of UNESCO is not merely to provide a series of adjustments, but to create possibilities for a new way of living, for new conceptions, and for a new philosophy that may inspire Humanity... What really matter at present are not ... the workshops and the factories, but Man. If we want to create a new community, it is the man the one we must recreate... The designs of development have been established to achieve economic growth and material wealth, distributed asymmetrically. The victory of democracy - which means government by the people - will come when everybody is given the same opportunities, when the bipolar structure which accumulates wealth on one end and poverty on the other can be dismantled. There is no enduring peace within development. There is no development without peace. There is no stable democracy without peace and development..."<sup>4</sup>.

It is possible to do away with poverty, and thus provide the conditions for the harmonic development of societies. It is not an utopia. We do not need a miracle to reduce inequality. Making this dream possible costs only 80,000 million dollars, and it can be done in two decades.

According to the Report of the UN Development Program, submitted a few months ago in Madrid, the money required is equivalent to the seven richest persons of the world or to the 10% of the annual expense in wearpons. With the money invested in building a park like DisneyWorld - 5,000 million dollars - poverty in the five most marginalized countries in the world would disappear. The UNDP report does not approve globalization and liberation as currently applied since, far from being the tides which were to save everybody, they are marginalizing and enhancing inequality. Therefore, the developing countries suffer annual losses of 50,000 milion dollars, a tenfold of what they receive from other countries, due to globalization. While in 1960, 20% of the poorest population received 2.3% of the world's income, at present they receive only 1.1%, and it is still going down. These data confirm a change in the qualitative profile of the poor in the XX Century.

The poor and marginalized individual of today is no longer the Asian farmer of the seventies, but possibly a Subsaharian African or a Latin American, unqualified and earning a poor salary, who lives in the city and has the face of a child a woman rather than that of an adult.

He/ She may also be a refugee, a person without land, or an inhabitant of an ecologically fragile area. In comparison with the 1970s, it is more probable

for the poor of today to be an African or a Latin American rather than an Asian due to the lack of economic growth, the slow creation of employment, the lack of growth in favor of the marginalized people, the marginalization from commerce and capitals, the environmental impairment, or the propagation of AIDS.

Instead of surviving farmers, the poor tend to workers without qualification earning very low salaries, as a result of commercial globalization and liberalization. The poor can be found mainly in the cities rather than in the farms, due to demographic changes and the emigration to the cities, the limited access to productivity resources, the increase of the sector with low productivity, and urban housing shortage. The increase of wars, ethnic conflicts and environmental and economic crises have created masses of refugees and marginalized people.<sup>5</sup>

In the case of Latin America, the figures are really shocking; our region has a poverty rate of 50% (41% in 1980), which means that out of its 470 million inhabitants, 235 million are poor; and out of this group, 110 million live on less than two dollars per day. Additionally, 41% of the poor suffer from malnutrition.

The situation of children is even worse. There are 237 million children, 60% of which are poor. 51.5% of these children have not finished elementary school, which generates sequels in their descendants. Those who have finished school have taken ten years instead of six. Child mortality rate is five times higher than in more developed countries.

Obviously, this impoverishment has increased insecurity and the crime rate in the cities. In Latin America, there are 20 homicides for every 100,000 inhabitants per year, i.e., four times more than in developed countries.

Consequently, we find ourselves facing an irritating dichotomy. The efforts of international organizations, such as UNESCO, which try to increase in the international community the conscience for the need to achieve a harmonic development, oppose a painful reality, which reflects violations to human rights.

And in this scenario, the huge pressure exercised by the international financial organizations over the debtor countries, generally end up in economic policies which affect the social structure, producing restlessness, injustice, and marginalization. When that pressure becomes stronger, it seems painfully ironical to speak of the human right to a development with social justice, as one of the solidarity rights. The images of the model show us an increasing unfair polarization.

There is a concentration of wealth in the hands of a few, and the rest (an infinitely higher number) just share nothing in poverty. This is exactly the opposite of what is expected and enforceable since human rights need to be enhanced by removing the obstacles which hinder many people from realizing their human rights, mainly in underdeveloped or developing countries.

It is at this point where the State must try to achieve a fair distribution of resources, facilitating the realization of the public welfare and creating appropriate conditions to avoid harmful social, cultural, and economic levels. The emphasis must therefore be placed upon the poorest sectors that, in general, are the target of social inequity. Without a redistribution of wealth and without an investment in the social aspect, development is not possible.

8. We must now address the role of the "Defensor del Pueblo", Human Rights Procurator or Human Rights Commissions - the Latin American versions of the Ombudsman- in this situation.

I once expressed that its incorporation to the recent democracies of Latin America, East Europe, Africa and its gradual institutionalization in Asian countries evidence a generalized process over the last ten years which strengthens the relationship of today's Ombudsmen with the human rights and the consolidation of the democratic system".<sup>6</sup>

As an independent public organization, which belongs to the State but remains far from the Government, the Ombudsman or "Defensor del Pueblo" is absolutely necessary to contribute to the strengthening of a culture of peace, respect for human rights, social harmony and social justice. This institution is an instance of dialogue, an instrument of social control. The daily defense of the rights of the poorest, of the individual who can vote but often realizes that his voice is not being heard; the individual's struggle to prevent the essential rights from becoming mere documents filled with good intentions or a nice political speech, make the Ombudsman a public official who, helping to achieve peace, contributes to the development with social justice.

Acting with absolute functional independence, without compliance or connivance with the power, it has the privileged function of assuming, from the State, the role of mediator between the dissatisfactions of a nation and the ruling authorities. It is therefore an important instrument of dialogue between confronted sectors and a means to sensitize the political power.

From this position, one can find a deep gap between the demands of the people and the priorities of their government. We must not forget that peace

- one of the conditions for development - is not only the absence of war, but a mixture of justice - another condition for development -, freedom - essential environment to exercise the right to development -, and solidarity as well, all of which imply overcoming antinomies. So the Ombudsman operates over these antinomies (public interest-private interest; authority freedom; justice-injustice; selfishness-solidarity; macroeconomics-microeconomics).

At the threshold of the XXI century, Humanity is the biggest threat to its own existence. The expansion of the cold war nuclear weapons has left a place for an equally discouraging perspective; the constant risks of ethnic conflicts; the growing number of margined people; generalized violence, etc. intermingles with the impairment of the environment, poverty, migrations, and the social inequalities. Peace can only be guaranteed when the human being enjoys freedom with dignity, and not with hunger or misery. Therefore, the various effects aimed at creating a culture of the peace link the latter with development.

9. The most authentic contribution of his Institution to the full effective exercise of the right to develop is the strong defense of human rights of the vulnerable groups before the abuses made by the political and economic powers. With a deep commitment and an innovative vision of the society, the "Defensores del Pueblo", Human Rights Procurators or Human Rights Commissions must try to make the economic power commiserate with the rights of the people, taking into account the principle that it is not fair for the majority to do the sacrifice while profits end in private hands, and encouraging the legal order to be consistent with those measures of social justice without which the right to development can not be achieved.

I agree with my former colleague and current General Prosecutor, Jorge Madrazo, that it is essential to acknowledge that the national play a major role in making human rights effective, including the right to development and the peace.<sup>7</sup>

In this sense, it is important to highlight some major advances made during recent years. The Human Rights World Conference held in Vienna in 1993, which expressed itself in the Action Program as well as the Antigua Declaration on Human Rights and Culture of the Peace, signed by seven "Defensores del Pueblo" on June 30<sup>th</sup> 1996, have acknowledged the important role performed by the Human Rights Institution in defense of the essential rights.

However, the work carried out by these institutions must not be limited to

the domestic level. Our institutions must be given the possibility of being listened to by the corresponding organizations of these international entities, since globalization must not be limited to the economic aspect. We also encourage the globalization of the human rights' defense through the acknowledgment of these institutions as valid mediators before the supranational organizations. In particular, the Latin American Ombudsmen must be united to face the difficulties and obstacles which hinder the development of new nations; this must be one of the main tasks of the economic, social, and cultural rights which are, undoubtedly, a condition for the rights to development to be achieved.

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MEETING OF THE FOUNDING MEMBERS OF THE ASIAN OMBUDSMAN ASSOCIATION



**DRA. ANABELA SALES RITCHIE, PRESIDENT OF MACAU LEGISLATIVE ASSEMBLY,  
DELIVERING HER SPEECH AT THE CLOSING CEREMONY**

SPEECH BY HER EXCELLENCY  
THE PRESIDENT OF  
THE LEGISLATIVE ASSEMBLY

**MADAM ANABELA RITCHIE**

*Macau, 6<sup>th</sup> May 1998*

Given that I have the honour and the privilege of bringing to a close this IIIrd Conference of Asian Ombudsmen, I would like, first of all, to convey my gratitude for the kind invitation, and express my congratulations to the organisers for the work they put into preparing this important meeting which has given its distinguished participants, whom I greet most warmly, a chance to reflect upon and discuss the role of the Ombudsman in modern societies.

In the case of Macau, the primacy of the law is rooted in its own, solid legal and judicial system, enshrined within a frame of broad autonomy. This reflects a unique, dynamic context in which the separation of powers is both clear and unequivocal.

This individual framework, based on a significant degree of autonomy, as has been the case, ensures that the Territory can enjoy effective conditions for development. Consequently, its continuation into the future as provided for in the Sino-Portuguese Joint Declaration on the Question of Macau will also lay down, as from the 20th of December 1999, a safe, smooth path towards social and economic progress for the future Macau Special Administrative Region.

In effect, the rapid, on-going changes that the modern societies to which we belong experience —with the inevitable social and economic ups and downs— lead to imbalances and divergences that must be corrected. This requires attentive, balanced reactions from the political powers in order to ensure a just division of citizens' freedoms and duties.

Following these lines, and taking into account the Territory's social and

cultural environment and geographical location, the Legislative Assembly created the High Commission Against Corruption and Administrative Illegality in 1990. This independent public authority, based on an organic model which has proven appropriate for the demands of our times and has met social expectations, is endowed, by law, with two kinds of powers: acting as an ombudsman, and fighting corruption.

Nevertheless, in its constant search for more and better responses to the needs of the community, in 1996 the Legislative Assembly extended the sphere of ACCCIA's duties to include investigations of crimes involving fraud and electoral fraud.

This measure was an attempt to pursue a suitable path in keeping with the ideal of a representative, involved State, genuinely concerned with promoting and developing the concept of citizenship and social accountability.

Similarly, the work of the Legislative Assembly of Macau has been marked by its constant efforts and care in examining and discussing legislative projects that can contribute towards a more transparent, more accountable political and administrative system in the Territory.

This was why, in addition to creating the High Commission Against Corruption and Administrative Illegality, laws such as the "Criminal Regime concerning Corruption", and the "Declaration of Assets of Holders of Public Office" have been approved, with a view to creating the proper conditions for achieving better results that can promote this aim.

At present, we are debating and voting on the draft law on "the Declaration and Control of Income and Assets" which will be applied to the entire political and administrative apparatus, in other words, holders of political office, public office and civil servants of Macau.

Nevertheless, in order for such noble aims to be fully accepted, they depend not only on a reliable, transparent and efficient administration which citizens view as a driving force and facilitator of harmonious and sustained social development; it is also essential that, individually and collectively, conditions be created to ensure greater and better participation and a critical awareness of management of public affairs.

This interactive role between Administration and the Administered is no more than the social framework behind the spirit enshrined in the Lima Declaration. In the case of Macau, it means that the High Commissioner is set on a path which culminates in the consolidation of the "3rd Generation Ombudsman".

I shall close by expressing my hope that the exchange of experiences and ideas generated by the sessions in this Conference have provided more effective guidance towards combating arbitrary acts and injustice, damaging elements that affect the normal, smooth and healthy development of societies.

In the same manner, I would also like to express my hope that this important event has made a significant contribution towards extending and reinforcing co-operation and exchange between different countries and territories, of which I would highlight the establishment of the Asian Ombudsman Association as a laudable, specific contribution to seeking common responses to collective problems.

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III Asian Ombudsman Conference*

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